

Applied Linguistics and Language Analysis in Asylum Seeker Cases

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When asylum seekers flee persecution or war in their home countries, they often arrive in a new country seeking asylum, without documentation that can prove their nationality. They are thus open to the accusation that they are not actually fleeing persecution and/or war, but they are from another country and they are merely seeking 'a better life'. Indeed, among those who seek asylum there may well be some such people. Anyone arriving in such a way without a genuine fear of persecution in their home country cannot qualify for refugee status. In order to test nationality claims of asylum seekers, a number of governments are using 'language analysis', based on the assumption that the way that a person speaks contains clues about their origins. While linguists would not dispute this assumption, they are disputing a number of other assumptions, as well as practices, involved in this form of linguistic identification. This paper presents recent developments in this area of applied linguistics, including the release of Guidelines by a group of linguists concerning the use of language analysis in such asylum seeker cases. It concludes with discussion of the role of applied linguistics in questions of national origin.

Keywords: asylum seeker; refugee; language analysis; linguistic identification; homogeneity; transcription; bilingualism; forensic linguistics.

FORENSIC LINGUISTICS AND REAL-WORLD ISSUES

This paper presents recent developments in the application of linguistic work to immigration issues, particularly concerning refugees, and specifically within the legal context of determining eligibility for refugee status through validating (or invalidating) of nationality claims. Such application of linguistics to legal contexts comes within the scope of forensic linguistics, which I will first briefly introduce.

With the establishment of the International Association of Forensic Linguists (IAFL) in the early 1990s, the term 'forensic linguistics' is increasingly being used broadly to refer to linguistic studies in legal contexts, and narrowly to refer to the presentation of linguistic analysis as expert evidence in a court case. Both in its broad and narrow senses, forensic linguistics has a concern with 'real-world'¹ issues—such as the ways in which lawyers use language in courtrooms to constrain, control, or coerce the evidence of witnesses (e.g. Danet *et al.* 1980; Matoesian 1993; Cotterill 2003), or in the investigation of the identity of a person making a threatening phone call (e.g. Labov 1988; Rose 2002).

To date, most scholars who carry out linguistic research in legal contexts have not referred to themselves as applied linguists. While the field of applied linguistics has focused overwhelmingly on educational contexts and concerns, scholars who do forensic linguistic work find their strongest academic connections (e.g. in conferences and journals) with other linguists, and particularly sociolinguists. The writer is one of a number of linguists who applaud the widening of the scope of applied linguistics to include studies of language in legal contexts, as evidenced in the recent special issue of *Applied Linguistics* (vol. 25, no. 4, 2004), and the inclusion of this paper in this issue, as well as Gibbons (1999) and Eades (2003) in the *Annual Review of Applied Linguistics*.

Much forensic linguistic work has remained either within the academic community, or within the legal community at the level of individual legal cases. But recently, a number of linguists working in this area have applied their initial work in either the narrow or broad sense of forensic linguistics to specific real-world problems in the legal context. An excellent example is the work of John Gibbons on the wording of the police caution (= 'Miranda rights' in the USA) in the Australian state of New South Wales. For a number of years in the 1980s and 1990s, Gibbons worked on individual cases to show that particular suspects of Non English Speaking Background (NESB) would have difficulty with the syntactic complexity of the police caution (e.g. Gibbons 1990).² Gibbons went from work on individual cases to work with the police service in New South Wales in the late 1990s on revising the wording of the police caution, reducing its linguistic complexity, partly by applying principles of the plain language movement (Gibbons 2001). (This work also involved revisions to procedural guidelines for police interviews, which included guidelines about the use of interpreters).

Another forensic linguist whose work on individual cases led to a much wider application to real-world problems in the law is Ann Graffam Walker. Following her linguistic work (e.g. Walker 1993), Walker (1994) published the *Handbook on Questioning Children: A Linguistic Perspective*, a definitive and accessible book which draws on a wealth of psychological, psycholinguistic, and sociolinguistic research to provide very specific guidelines for social workers, police, and lawyers who interview children in the legal process.

While forensic linguistics has dealt with a number of aspects of criminal and civil law for the past two decades, the most recent legal area in which linguists are becoming involved is in immigration law, specifically in the use of 'language analysis'³ in the investigation of nationality claims of asylum seekers. This paper outlines this involvement, focusing on areas of concern that have arisen from specific cases, and shows the concerted action recently undertaken by an international group of linguists in producing a document entitled *Guidelines for the Use of Language Analysis in Relation to Questions of National Origin in Refugee Cases* (Language and National Origin Group 2004).

These Guidelines (as they will be referred to here) are reproduced at the end of this paper.

ASYLUM SEEKERS

At the end of 2003, there were estimated to be 9.7 million refugees around the world (UNHCR 2004a). People who fear persecution in their home country and are seeking refugee status in another country are generally termed 'asylum seekers'.⁴ (Once their application for asylum has been successful, they are termed 'refugees'.) The number of asylum seekers in Western Europe, Australia, Canada, and the USA combined peaked at over 800,000 in 1992 (Forced Migration Online (FMO) 2004). Despite public discourse, which often asserts that the crisis is worsening, the number of people seeking asylum in industrialized countries in 2004 is the lowest in seventeen years (UNHCR 2004b).

There are several different ways in which an asylum seeker can claim refugee status—for example by approaching representatives of the United Nations High Commission for Refugees (UNHCR) in a country to which they have escaped,⁵ or by arriving legally in a new country (e.g. on a tourist visa or a student visa), and then requesting refugee status. But the most politically contested way is to arrive without a visa in a new country—often having paid huge amounts of money to a people-smuggler—and then apply for refugee status. Asylum seekers who arrive in this way often have no documented proof of nationality, such as a passport or birth certificate. Growing antagonism in many countries to people who seek refugee status in this way is often seen in the public discourse which asserts that such people are not genuine refugees at all, but simply people seeking a better life in a new country (often termed 'economic refugees').⁶

So how do countries determine who is a 'real' refugee? This determination is governed by the 1951 UN convention, which clearly states:⁷

A refugee is a person who 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country'. (United Nations Convention Relating to the Status of Refugees (UNHCR) 1951)

In order to satisfy the terms of this convention, asylum seekers are generally required to demonstrate to the satisfaction of the immigration department in the new country both that they are from the country which they claim to be from, and that their fears in relation to returning are 'well-founded' under the terms of the UN Convention. Where asylum seekers have no documentary proof of nationality, a number of governments—including Australia, Belgium, Germany, Great Britain, the Netherlands, New Zealand,

Sweden, Switzerland—are using so-called ‘language analysis’ to ensure that asylum seekers are not making false claims about national origin in order to qualify for refugee status.

LANGUAGE ANALYSIS IN ASYLUM SEEKER CASES

The basic assumption underlying such language analysis, one that would not be disputed by linguists, is that the way that a person speaks contains clues about their origins. However, in many different countries around the world, linguists are increasingly raising concerns about overgeneralized and erroneous assumptions and practices involved in the linguistic identification of asylum seekers. This paper will outline some of these concerns, as addressed in the Guidelines which follow the paper. But first, I will briefly outline some of the methods being commonly used in carrying out this so-called ‘language analysis’. While there are some individual differences in the ways in which countries are carrying out this linguistic identification of asylum seekers, the underlying assumptions and goals are widely shared. However, it should be pointed out that in recent discussions among linguists, it has become apparent that the language identification practices in Switzerland appear to differ from most other countries in several important ways, and indeed that some of these would indicate some ‘best practice’ principles for other countries to follow (see Singler 2004).

Method

When a decision-maker in an immigration department believes that an asylum seeker is not being truthful about their national origin, the asylum seeker is interviewed for the purpose of language analysis. (This is usually not the first interview the asylum seeker has with the immigration department.) In some countries, such as Australia, this interview is conducted in the asylum seeker’s first language, with an interpreter. In some other countries, such as Germany, an international lingua franca, such as English, is used as the language of the interview, while in other countries, such as the Netherlands, either approach is used, depending on the individual and the language(s) involved.

The tape-recorded interview is then subjected to language analysis. In some countries, such as Australia, all such language analysis work is done by companies from outside the country, whose analysts makes a determination about the nationality of the speaker, based entirely on the linguistic features found in the speech on the tape recording. This determination is given in a report, which is often between one and two pages in length, and which is sent to the immigration department, where it can play a decisive role in the official decision about refugee status. But in other countries, the analysis is done within a section of a government department, as for example in Switzerland, Belgium, and the Netherlands (see Singler 2004;

Maryns 2004; Eades and Arends 2004, respectively). Readers are directed to decisions of the Australian Refugee Review Tribunal (<http://www.austlii.edu.au/au/cases/cth/rrt/>) for examples of language analysis reports carried out for the Australian government.⁸ An example of a similar language analysis report produced by the Belgium government's 'language analysis desk' is cited in full in Maryns (2004).

The extent to which governments are using this type of analysis is unclear. Eades and Arends (2004) document evidence which suggests escalation of its use in the Netherlands, and several linguists report an apparent escalation in other countries. This practice of linguistic identification has only recently been adopted by the UK and New Zealand governments.

Legal avenues for a rejected asylum seeker to make an appeal differ from country to country. In Australia, the appeal process can be quite lengthy, starting with the Refugee Review Tribunal (hereafter RRT), followed by the Federal Court, and finally the High Court.⁹ During the appeal process, an asylum seeker's lawyer may seek an alternative expert opinion on the claims made in the original language analysis report. Sometimes called 'contra-analysis' (based on the Dutch 'contra-analyse', see Eades and Arends 2004), this expert evidence appears to be increasingly sought from trained linguists, although interpreters have been used in the recent past, at least in Australia (see Eades *et al.* 2003). The Netherlands is possibly leading the world in terms of demands for linguistic contra-analysis in such cases. The demand has been too strong for academic linguists to fulfil in addition to their university work, and in late 2003, a privately-owned 'language company'—De Taalstudio—began to provide such expertise, using only professionally qualified linguists (see <http://www.taalstudio.nl>).

Concerns

As mentioned above, linguists would generally agree with the notion that the way that a person speaks can contain clues about their origin. But linguists have raised concerns—in email discussion, at conferences, and in publications—about the ways in which such clues can become the basis for a government *determination* about the truth or falsity of nationality claims. Many of these concerns have been addressed in the Guidelines which follow this paper. The major concerns will be outlined here.

From the outset, it is problematic to make political and/or bureaucratic decisions on the basis of what is, primarily, a social matter, namely the particular language variety spoken by an individual. In this matter, Switzerland appears to be different from the other countries that use linguistic identification, in that it sees that this approach can provide information about an individual's country or region of socialization, rather than this person's nationality or citizenship (Singler 2004). While there is often a strong connection between region of socialization and nationality, this is not necessarily the case.

Linguistic concerns have also addressed all stages of the linguistic identification process. First, problems can arise simply from the choice of interview language. Where it is the asylum seeker's first language, there is no guarantee that interviewee and interpreter will be speakers of the same dialect. Thus there is a clear possibility that the interviewee might accommodate to the interpreter's dialect, which can mean using linguistic forms that are considered by the analyst to be not genuine features of the language variety claimed. In cases where an international lingua franca is used, more complicated problems can arise. Linguists working with speakers of pidgin and creole languages from West Africa are raising concerns about naïve misunderstandings in language analysis interviews about the relationships between these pidgin/creole languages and their lexifier language, English (e.g. Corcoran 2004a; Eades and Arends 2004; Maryns 2004). The complexity of the linguistic relationships can be combined with multiply different ways of naming one's own language variety to produce often ludicrous interview situations (see Corcoran 2004a and Maryns 2004 for two specific examples, in the Netherlands and Belgium, respectively).

Secondly, linguists have concerns about the qualifications and expertise of the analysts and, related to this, the problematic judgements made in the reports, and the serious consequences for understanding relationships between neighbouring language varieties, an issue central to the linguistic identification process. These concerns rest on a fundamental disagreement with people not trained in linguistics about how to answer the basic question 'who is a linguist?'—put another way: 'what qualifications are needed to be able to make judgements about a person's origin on the basis of their speech?' It appears that Switzerland may be the only country whose policy is to use analysts with postgraduate training in linguistics, although it does make some exceptions to this policy (Singer 2004). At the opposite end of the spectrum, the Netherlands government 'has stated explicitly that it prefers language analyses produced by native speakers who are non-linguists to those produced by professional linguists' (Eades and Arends 2004: 193–4). The major companies that conduct a large number of the analyses appear to be somewhere between these two points. There is often a problematic apparent equation of native speaker expertise with expertise in linguistic analysis, insisting that professional analysis of linguistic features and relationships between neighbouring language varieties can be undertaken by people who do not necessarily have linguistic training.

One company has explained to the Australian government the basis of its selection of analysts (cited in a number of RRT and Federal Court decisions, for example Federal Court of Australia (FCA) 2003), saying that the 'minimum requirement for an analyst' is:

- 1 that the analyst has the language in question as his/her mother tongue

- 2 that he/she has proved capable of listening, making, and formulating observations on a linguistic level
- 3 that he/she is able to give logical and credible answers to questions put by [the company's] linguist in conjunction with the assessment writing
- 4 that his/her assessment fits in with other assessments in the same case (cross checking)
- 5 that he/she has passed a thorough test where he/she shall identify languages and dialects
- 6 that he/she has passed our security control (FCA 2003).

In a number of Australian appeals to the RRT, the qualifications of the analyst have been queried by appellants. The following statement is typical of the immigration department's reponse to such a query (as cited in RRT decisions): 'The analyst used in this case is described as a university graduate from Afghanistan whose mother tongue is Dari, who is also a Pashto speaker, who has very good linguistic skills and a knowledge of Afghan culture and society' (RRT 2001). It is important to note that the discipline of the analyst's university degree is not specified. Further, the expression 'very good linguistic skills', like the expression 'observations on a linguistic level' (above), appears to use the ordinary English connotation of linguistics as an ability to speak more than one language, rather than an ability to analyse language according to the training of the discipline of linguistics.

A related concern is that there is often secrecy about the identity of the analysts. Singler (2004) points out that while there may be good reasons for confidentiality and security, the result is that it is impossible to properly query the expertise of the analyst providing the report.

Aside from the Netherlands government's actual preference for native speakers rather than trained linguists, this choice may often be made for practical reasons, given the large numbers of languages which are relevant to current asylum seekers, and the paucity of linguistic research on many of them. Related to this point, the Guidelines assert that 'Language analysis must be done by qualified linguists', and thus it is clear that there are some situations in which linguistic identification should not be attempted, particularly where there is no linguist with expertise in the relevant language varieties.

An indication of the lack of professional linguistic expertise in these reports is quite striking in terms of two issues: transcription, and reasoning about the language–origin connection. Turning first to transcription, it appears that the analysts used by the Australian and several other governments do not use linguistic conventions, such as the International Phonetic Association (IPA) system. The reports cite extracts from the tapes in capital letters, hardly a professional basis for the analysis of regional accent variation. For example: 'He has a hard pronunciation of the consonant "T", which is a common way to pronounce the letter in Pakistan' (RRT 2000a). Further, there can be serious problems with accuracy in transcription (compounded in the

cases where the audio quality is very poor). In some of the Australian cases, a trained linguist asked to prepare a contra-analysis for the asylum seeker's appeal against a decision based on a language analysis report has disputed the transcription of certain words and phrases. (However, in some other cases, the original tape is not provided to the asylum seeker or their lawyer.) It appears highly likely that the analysts (most of whom do not have training in linguistics) are unaware of the complexities of transcription (see Fraser 2003).

Moving from transcription issues to the reasoning used in the reports, there are a number of judgements or assertions that are either clearly erroneous or contradicted by widely-known linguistic research. An example of an erroneous assertion is the claim found in a number of Australian cases, including RRT (2000b, 2002), that 'Urdu is not spoken in Afghanistan' and thus the use of a few Urdu words is part of the argument that the speaker is not from Afghanistan (see Eades *et al.* 2003). An example of an inadequate judgement is the overgeneralization about the 'hard pronunciation' of the 'letter T', cited above.

The reports often contain linguistically naïve comments which indicate lack of understanding of linguistic processes such as variation within language varieties, as well as diffusion, language change, and bilingual speech practices, such as code-switching. Compounding these problems is the underlying assumption that during an interview an asylum seeker should consistently speak only one language variety, with no linguistic influence (for example in phonology, lexicon, or grammar) from another language variety. It appears that any example of such influence can be taken as proof of the asylum seeker's deception about their country of origin or residence. Thus, the following is typical of the reasons given in the reports for invalidating an asylum seeker's claim to Afghanistan nationality:

[the immigration department reports that the language analysis] 'reported that the applicant speaks Dari Hazaragi, which is spoken in central Afghanistan as well as in the Quetta area in Pakistan, with a Pakistani accent and that he uses several Iranian words which the analyst states are not used in Afghan Dari but which do feature in the Dari Hazaragi as it is spoken in Pakistan. (RRT 2001)

The reports appear to ignore the possible effects on an asylum seeker's linguistic repertoire of movement of people between countries with porous borders, and of the diffusion of linguistic features during time in refugee camps. They often also ignore language variation and change. These problems are found in another of the Australian cases, in which a language analysis report determined that the asylum seeker was not from Afghanistan, as he claimed, but from Pakistan, on the basis of allegedly pronouncing many words with a Pakistani accent (in the Hazaragi variety of the Dari language).¹⁰ In his appeal, the asylum seeker 'referred to the

history of civil war in Afghanistan and the movement of people into neighbouring countries and into Iran and associated with that the development of variations in accents, traditions and customs. ...He said the shop in which he worked with his uncle was on the main road to Pakistan so he had constant contact with people who may have influenced his accent' (FCA 2003). This is also another of the Australian cases in which the language analysis report erroneously claimed that Urdu is not spoken in Afghanistan (see Eades *et al.* 2003), and thus this asylum seeker's use of three Urdu words was also cited in the language analysis report as proof of his Pakistan origins.

A particularly clear and troubling example of linguistic ignorance is found in a New Zealand case (Refugee Status Appeals Authority (RSAA) 2002), in which the on-line decision of the RSAA cites the full language analysis report (the first case using language analysis to be considered by this authority). In this case, the language analysis report addresses not only the issue of the asylum seeker's nationality claim (with which it concurs), but also the claim about residence, specifically that he had not been a long-term resident of Pakistan. This latter claim was rejected by the language analysis report, primarily on the basis of the asylum seeker's use of a single lexical item. Thus, the report states that 'On one occasion [in the 15 minute interview] the person uses a typical Pakistani word *patata* (=potatoes), which indicates that he has lived in Pakistan for a period of time'. Readers are referred to this decision for the contra-analysis given by a linguist with more than 12 years residence in Pakistan, Ruth Schmidt. Schmidt's report in part states: 'Even if *patata* is used in Pakistan the use of a single vocabulary item is not proof of residence in Pakistan. Vocabulary from non-indigenous food stuffs is typically borrowed'.

The problematic assumption that an asylum seeker will speak only one language in the interview—'uncontaminated' by words or accent from another language variety—is strongly rooted in what Blommaert and Verschueren (1998) term 'homogeneity'—the widespread ideology that sees societies as characterized by a common language, and thus sees an individual as 'normally' monolingual and a member of one culture (as Eades and Arends (2004) point out).¹¹ This ideology of homogeneity is rampant in many societies around the world, and has a strong impact on many of the concerns of applied linguists, including bilingual and bidialectal education, language learning, approaches to interpreting and translation, and the workings of bilingualism in the legal system. While an important consequence of this homogeneity is that it ignores the realities of language variation and bilingual speech, these realities have been shown to be central to understanding the language practices of asylum seekers, especially in the work of Katrijn Maryns and Jan Blommaert (e.g. Blommaert 2001; Maryns and Blommaert 2001), and in the contributions to the special section of *International Journal of Speech, Language, and the Law* (2004, no. 2) by Corcoran (2004a), Maryns (2004), and Singler (2004).

RESPONSES BY LINGUISTS

It appears to be only in the last few years that linguists have been drawn into this area, either as experts in particular cases, or as commentators on the problematic assumptions and practices involved. The first published work on this topic appears to be the article by Simo Bobda, Wolf and Lothar (1999) in the journal *Forensic Linguistics* (now known as *The International Journal of Speech, Language and the Law*). This article lists linguistic differences between a number of regional varieties of English as a second language in sub-Saharan Africa, as part of an enthusiastic claim that 'The regional and national origin of African speakers of English can very reliably be identified on the basis of [linguistic] clues' (p. 303). A number of linguists believe that this claim is, somewhat irresponsibly, overstated (e.g. Eades and Arends 2004; Corcoran 2004b).

The publication of research by Jan Blommaert and Katrijn Maryns on the narratives of asylum seekers in Belgium came soon after (e.g. Blommaert 2001; Maryns and Blommaert 2001). This work does not directly address the use of language analysis for identification of national origins but has important implications for this issue (see Eades and Arends 2004). Particularly relevant is their analysis of the complexities of language variation and alternation in the asylum seekers' narratives, showing the indexical work that is done by 'various forms of fusion and micro-shifting' (Maryns and Blommaert 2001: 69).¹²

In early 2003, an applied approach to the issue was taken in Australia by a group of five linguists, including the present author. This took the form of a report to the government addressing problems with the current practices as used in this country (Eades *et al.* 2003). In forming a professional opinion about this topic, the report's authors examined 58 decisions of the RRT, in cases in which language analysis had been a part of the initial immigration department decision to reject the asylum seeker's claim to refugee status. While the companies which carry out the language analysis are secretive about their approach and methodology, their reports are widely cited in the decisions of the Australian RRT. Thus these decisions, of which 20 per cent are freely accessible on the internet (<http://www.austlii.edu.au/au/cases/cth/rrt/>), formed a valuable database for the Australian linguists' study of the assumptions and practices involved in language analysis of asylum seekers in this country. The damning conclusion of the Australian report is 'that "language analysis", as it is currently used, is not valid or reliable. It appears to be based on "folk views" about the relationship between language and nationality and ethnicity, rather than sound linguistic principles.' Further, it became clear that where a person who was rejected, at least partly on the basis of a language analysis report, was able to engage an expert to produce a new language analysis report, their chances of succeeding in having the original negative decision overturned was very high. This finding in the Australian context highlighted the key role that can

be played by linguists in providing contra-analysis. But, given the difficulties in finding linguists with expertise in the relevant languages,¹³ it highlights the arguably more important role that linguists can play in bringing awareness generally concerning the fundamental problems with assumptions and methods in current linguistic identification practices.

The Australian report (published in *Language Policy* 2004 as an example of scholars in the field of language policy engaged in advocacy) was sent to the Minister for Immigration and the RRT, with letters calling on the Australian government to stop using this kind of flawed language analysis. There has, to date, been no visible result from this action, despite some media publicity and wide circulation of the report. It is understood that it has been used in more than one appeal in Australia, but the extent to which it has been influential appears minimal (Federal Magistrates Court of Australia (FMCA) 2003; RRT 2004).

The next scholarly undertaking on this topic was the special session convened by Jacques Arends at the 2003 conference of the international Society for Pidgin and Creole Linguistics (SPCL). Revised versions of the papers presented in this session, together with a paper by Katrijn Maryns, were published in a special section of the journal *International Journal for Speech, Language and the Law* at the end of 2004. As well as introducing the topic, these articles provide specific studies concerning Sierra Leoneans in the Netherlands, Liberians in Switzerland, and Sierra Leoneans and Turkish Kurds in Belgium. These specific studies provide exemplification of practices and problems, discussed in general terms in this article, and addressed by the Guidelines.

Unsurprisingly, the discussion in the SPCL colloquium focused on ways to address the problems with this so-called language analysis, which was shown to be seriously flawed, yet gaining in popularity with many governments in their handling of the perceived 'refugee crisis'. Following suggestions in this colloquium, a small email discussion group was started, bringing together a number of linguists known to have involvement in the issue. From August 2003 until June 2004, this group of linguists discussed issues of concern, while drafting and re-drafting a document for governments and lawyers. It was felt to be important that this discussion list remain confidential, as the adversarial legal system, which is so crucial in some of the countries involved, makes experts very vulnerable in relation to disagreement among professionals. (For example, cross-examination of experts can greatly exaggerate and distort differences of professional opinion, which might be considered healthy debate in academic contexts, but 'proof' of theoretical failure if aired in the adversarial legal system.) This 10-month email discussion was a fruitful and valuable forum, in which broad principles were proposed and repeatedly reformulated in the light of the practical experiences of several members. An important part of the discussion involved the extent and tone with which different members were willing to engage with governments, especially on an issue which is in many countries

clearly part of a wider anti-asylum seeker agenda. Fundamental differences in orientation to applying linguistics to real-world problems were negotiated.

The resulting document is the 2,000 word Guidelines, reproduced following this article, released in June 2004, and signed by nineteen linguists from six countries. The Guidelines are being widely circulated, to governments, lawyers, refugee advocacy groups, and linguistic organizations. At the time of writing this article, it has been endorsed by the Australian Association of Applied Linguistics, the Society for Caribbean Linguistics, the Linguistics Association of Great Britain, and the Society of Pidgin and Creole Linguistics and is being considered for endorsement by the British Association of Applied Linguistics, and the Australian Linguistics Society. It has also appeared in several publications which deal with refugee issues, including the *Journal Vreemdelingenrecht* (Journal for Aliens' Law) in the Netherlands, and *Asylmagazin* (Asylum Magazine) in Germany.

WHAT CAN LINGUISTS HOPE TO ACHIEVE?

What does this 'Language and National Origin' group of linguists hope to achieve with the Guidelines? While an ambitious and optimistic view would aim for all of the following goals, even a partial achievement of some of them would be valuable:

- 1 raise awareness in immigration departments, and tribunals who review their decisions, of the complexities involved in determining nationality on the basis of language analysis;
- 2 persuade decision-makers to reject any language analysis report not carried out by a trained linguist;
- 3 assist decision-makers to distinguish between linguistically sound and flawed language analysis reports;
- 4 provide linguistic backing for citation in individual cases contesting a decision about refugee status which has been based on flawed language analysis reports;
- 5 encourage governments not to spend funds on language analysis reports being carried out with such problematic assumptions and methods as to invalidate their conclusions.

However, we cannot hope for such outcomes in the absence of a critical understanding of the society in which we are hoping to effect change. Elsewhere, I have explained how my experiences in a different application of linguistics to the real world have confirmed the need to be cautious about assuming that awareness can lead to justice (see Eades 2004, following Pennycook 2001: 168). And given the highly political nature of the refugee issue in many countries, it is clear that providing sound linguistic advice is not enough to change unjust practices. However, the Language and National Origin Group is idealistic enough to hope that these Guidelines can play some role in the on-going real-world struggle for justice in which so

many of the world's most vulnerable and dispossessed people are engaged. This struggle is multi-faceted, and linguistic expertise is only one of many contributions. If the Australian experience is any example, merely getting governments and opposition parliamentarians to respond is going to be a long and painful process. Dissemination of the Guidelines to refugee support organizations and immigration defence lawyers may be the most effective way of contributing to any change in the use of linguistic identification.

Finally, it is important to remember that the ultimate problem here is not a linguistic one.¹⁴ Linguists are not responsible for, nor qualified to, provide a solution to this problem, namely the validation of nationality claims. But we might be able to do something to address the errors and injustices brought about by problematic language analysis.

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NOTES

- 1 It is of course an oversimplification to use the term 'real world' to refer to contexts outside of the academe, as if the latter context were somehow not real. But I do agree with the organizers of the BAAL and AAAL symposia, and the editors of this issue, that it is important for scholars to think about the applications of our work outside academe. Given this point, I will not continue to use scare quotes for the term 'real world' in the remainder of the paper.
- 2 While Gibbons' work here was based primarily on linguistic analysis of the caution, a similar study in the USA (Brière 1978) examined comprehensibility of the Miranda rights by means of psycholinguistic tests (see also Cotterill 2000; Russell 2000).
- 3 The scare quotes surrounding *language analysis* are motivated by the serious problems surrounding this practice in several countries. However, in order to prevent possibly irritating repetition, I will omit the scare quotes around these terms in the remainder of this paper. Nevertheless, in all instances where this term is used from now on, scare quotes should be understood as being tacitly present.
- 4 Both of the terms 'asylum seeker' and 'refugee claimant' are used to refer to a person claiming refugee status. Notwithstanding the particular connotations which may arise in different countries at different times, this paper follows the United Nations in using the term 'asylum seekers'.

- 5 Brennan (2003: 8) points out that such countries of first asylum, 'being adjacent to the countries producing the flows [of people fleeing war and persecution], are usually as poor and as under-resourced as the source countries'. Further, they are 'often not much more stable or secure than the source country', and 'not necessarily spared the presence of some of the warring factions from the source country'.
- 6 See for example Blommaert (1999), Blommaert and Verschueren (1998), Clyne (2003), Macken-Horarik (2003), Maryns and Blommaert (2001), Brennan (2003).
- 7 The Forced Migration Online website (FMO 2004) states that 'Some 150 of the world's 200 or so states have undertaken to protect refugees and not return them to a country where they may be persecuted, by signing the 1951 Refugee Convention and/or its 1967 Protocol'.
- 8 For a full report see the decision of an Australian Federal Court appeal (FCA 2003).
- 9 Brennan (2003: ch. 6) documents attempts by the Australian government to introduce a 'privative clause' which would prevent decisions under the *Migration Act* from being subject to judicial review in the courts (thus preventing unsuccessful asylum seekers from appealing the government decision in court). The government's attempts were finally rejected by a unanimous High Court decision in February 2003, which established that asylum seekers in Australia do have access to the courts.
- 10 The Hazaragi variety of the Dari language is spoken by ethnic Hazaras in both Afghanistan and Pakistan. Because Hazaras have suffered terrible persecution in Afghanistan, but not in Pakistan, recognition of the refugee status of Hazaras is related to whether they are from Afghanistan or Pakistan. Many of the asylum seekers in Australia whose Afghanistan nationality claims have been subject to language analysis are determined to be from Pakistan, often on the basis of accent in a few words.
- 11 Other anthropologists and sociolinguists who have discussed manifestations of such an ideology include Jacquemet (2003), Piller (2001), and Silverstein (1996, 1998).
- 12 These two scholars have also examined asylum seekers' narratives from a perspective not directly related to questions of national origin, namely narrative style and structure, and the ways in which government interviewers shape the story-telling during the interview (e.g. Blommaert 2001; Maryns and Blommaert 2002). This focus on the institutional recontextualization of asylum seekers' narratives, is, however, quite relevant to the larger issue which encompasses the national origin question, namely that of the credibility of individuals seeking asylum.
- 13 For example, many of the Australian cases subjected to linguistic identification involve the relationship between different dialects of Dari (in Afghanistan, Pakistan, and Iran). There appears to be no Australian linguist with relevant expertise in these language varieties, and contra-analysis for these cases has to be done by a linguist based in the USA.
- 14 Indeed some countries, such as the USA, do not use language analysis in asylum seeker cases. They do investigate the validity of nationality claims in the cases of asylum seekers who arrive without nationality papers, primarily by

interviewing such people about details, such as their former region of residence, and details of topography,

local customs, cuisine, etc., checking answers to such questions against researched local information.

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*Guidelines for the Use of Language Analysis in Relation to
Questions of National Origin in Refugee Cases*

June 2004

Language and National Origin Group

[an international group of linguists whose names appear below]

Language analysis is used by a number of governments around the world as part of the process of determining whether asylum seekers' cases are genuine. Such analysis usually involves consideration of a recording of the asylum seeker's speech in order to judge their country of origin. Use of language analysis has been criticized on a number of grounds, and some uncertainty has arisen as to its validity. This paper responds to calls for qualified linguists to provide guidelines for use by governments and others in deciding whether and to what degree language analysis is reliable in particular cases.

We, the undersigned linguists, recognize that there is often a connection between the way that people speak and their national origin. We also recognize the difficulties faced by governments in deciding eligibility for refugee status of increasing numbers of asylum seekers who arrive without documents. The following guidelines are therefore intended to assist governments in assessing the general validity of language analysis in the determination of national origin, nationality or citizenship. We have attempted to avoid linguistic terminology. Where technical terms are required, they are explained (e.g. 'socialization' in Guideline 2, and 'code-switching' in Guideline 9c). The term 'language variety' which is used in several guidelines, refers generally to a language or a dialect.

GENERAL GUIDELINES

(1) LINGUISTS ADVISE, GOVERNMENTS MAKE NATIONALITY DETERMINATIONS

Linguistic advice can be sought to assist governments in making determinations about national origin, nationality or citizenship. Linguists should not be asked to make such determinations directly. Rather, they should be asked to provide evidence which can be considered along with other evidence in the case.

(2) SOCIALIZATION RATHER THAN ORIGIN

Language analysis can not be used reliably to *determine* national origin, nationality or citizenship. This is because national origin, nationality and citizenship are all political or bureaucratic characteristics, which have no necessary connection to language.

In some cases, language analysis CAN be used to draw reasonable conclusions about the country of socialization of the speaker. (This refers to the place(s) where the speaker has learned, implicitly and/or explicitly, how to be a member of a local society, or of local societies.) The way that people speak has a strong connection with how and where they were socialized: that is, the languages and dialects spoken in the communities in which people grow up and live have a great influence on how they speak.

It is true that the country of a person's socialization is often the country of their origin. Therefore linguistic conclusions about a speaker's country of socialization may, in conjunction with other (non-linguistic) evidence, be able to assist immigration officials in making a determination about national origin in some cases. However, linguistic expertise cannot directly determine national origin, nationality or citizenship, which are not inherently linked to language, in the way that socialization is.

(3) LANGUAGE ANALYSIS MUST BE DONE BY QUALIFIED LINGUISTS

Judgements about the relationship between language and regional identity should be made only by qualified linguists with recognized and up-to-date expertise, both in linguistics and in the language in question, including how this language differs from neighboring language varieties. This expertise can be evidenced by holding of higher degrees in linguistics, peer reviewed publications, and membership of professional associations. Expertise is also evident from reports, which should use professional linguistic analysis, such as IPA (International Phonetic Association) transcription and other standard technical tools and terms, and which should provide broad coverage of background issues, citation of relevant academic publications, and appropriate caution with respect to conclusions reached.

(4) LINGUIST'S DEGREE OF CERTAINTY

Linguists should have the right and responsibility to qualify the certainty of their assessments, even about the country of socialization. It should be noted that it is rarely possible to be 100% certain of conclusions based on linguistic evidence alone (as opposed to fingerprint or DNA evidence), so linguistic evidence should always be used in conjunction with other (non-linguistic) evidence. Further, linguists should not be asked to, and should not be willing to, express their certainty in quantitative terms (e.g. '95% certain that person X was socialized in country Y'), but rather in qualitative terms, such as 'based on the linguistic evidence, it is possible, likely, highly likely, highly unlikely' that person X was socialized in country Y'. This is because this kind of language analysis does not lend itself to quantitative statistics such as are often found in some other kinds of scientific evidence.

(5) LANGUAGE ANALYSIS REQUIRES USEFUL AND RELIABLE DATA

Linguists should be allowed to decide what kind of data they need for their language analysis. If the linguist considers the data provided for analysis to be insufficiently useful or reliable, he or she should either request better data or state that a language analysis can not be carried out in this case. Some relevant examples include a recording of poor audio quality, a recording of insufficient duration, or an interview carried out with an interpreter who is not speaking the language of the interviewee.

To avoid such problems, it is preferable for linguists to collect the language sample(s) for analysis, or to advise on their collection.

(6) LINGUISTS SHOULD PROVIDE SPECIFIC EVIDENCE OF PROFESSIONAL TRAINING AND EXPERTISE, WITH THE RIGHT TO REQUIRE THAT THIS INFORMATION REMAIN CONFIDENTIAL

Linguists should provide specific evidence of their professional training and expertise, for example in a curriculum vitae, so that a court may have the opportunity to assess these matters. But linguists should have the right to require that this information is kept confidential, and not revealed to either the asylum seeker, or the country from which they are fleeing.

(7) THE EXPERTISE OF NATIVE SPEAKERS IS NOT THE SAME AS THE EXPERTISE OF LINGUISTS

There are a number of reasons why people without training and expertise in linguistic analysis should not be asked for such expertise, even if they are native speakers of the language, with expertise in translation and interpreting. Just as a person may be a highly accomplished tennis player without being able to analyze the particular muscle and joint movements involved, so too, skill in speaking a language is not the same as the ability to analyze a language and compare it to neighboring language varieties.

MORE SPECIFIC GUIDELINES**(8) WHERE RELATED VARIETIES OF THE SPEAKER'S LANGUAGE ARE SPOKEN IN MORE THAN ONE COUNTRY**

In many regions throughout the world, national borders are not the same as linguistic borders, and the same language, or closely related varieties of the same language, is/are spoken in more than one country (e.g. ethnic Armenians living in both Armenia and Azerbaijan speak what is known

as 'Standard East-Armenian', and ethnic Hazaras living in both Afghanistan and Pakistan speak Hazargi Dari).

In such situations, while linguistic analysis may often be able to determine the *region* in which the speaker's socialization took place, it can not be used to determine in which *nation* the speaker's socialization took place. In such situations, an analyst should

- (a) be able to specify in advance whether there exist linguistic features which can reliably distinguish regional varieties, and what they are,
- (b) be able to devise reliable procedures, similar to linguistic field methods, for eliciting these features from the speaker without distortion or bias,
- (c) be prepared to conclude, in the event that such features do not exist or do not occur in the data, that in this case linguistic evidence simply cannot help answer the question of language socialization.

(9) LANGUAGE MIXING

It is unreasonable in many situations to expect a person to speak only one language variety in an interview or other recording, for the following reasons:

- (a) Sociolinguistic research shows that multilingualism is the norm in many societies throughout the world.
- (b) In many multilingual societies, it is common for two or more language varieties to be used on a daily basis within a single family. In such families, it is also common for the speech of individuals in one language variety to show some influences from other varieties spoken in the family.
- (c) Many bilingual or multilingual speakers use more than one language variety in a single interaction: this use of 'code switching' or 'style shifting' is very complex, and often subconscious.
- (d) Further, there is variation in all language varieties, that is, more than one way of saying the same thing.
- (e) It can often be hard for linguists to determine the difference between variation within a single language variety, and code-switching between related varieties. For example, when analyzing the speech of a person from Sierra Leone, it may be very difficult to know for some particular utterances whether they are in Krio, the creole language, or Sierra Leonean English. It is also important to note that while linguists distinguish these as separate varieties, their speakers often do not.
- (f) Another factor which complicates this issue is that language varieties are always in the process of change, and one of the most influential sources of change is the vocabulary and pronunciation of related language varieties.
- (g) A further complicating factor is that interviews may be done several years after an asylum seeker has left their home country, and their language variety/varieties may have undergone change in the interim.

- (h) While linguists are devoting a great deal of research to language mixing, they have been unable to determine the extent to which an individual can consciously control the choice of language variety or of variables.

(10) WHERE THE LANGUAGE OF THE INTERVIEW IS NOT THE SPEAKER'S FIRST LANGUAGE

In addition to the use of language to assess national origin, issues of professional concern to linguists also arise during the interview in relation to the assessment of the truthfulness of the applicant's story. We note that in some countries, such as Germany, an international lingua franca (e.g. English) is the language of asylum seeker interviews, used either for language analysis in the determination of national origin, and/or in the assessment of the applicant's truthfulness. These cases call for particular care.

An interviewee with limited proficiency in the language of the interview may—simply because of language difficulties—appear to be incoherent or inconsistent, thereby leading the interviewer to a mistaken conclusion concerning the truthfulness of the interviewee.

In many post-colonial countries there are a number of language varieties related to the former colonial language, such as English or Portuguese. These varieties may include pidgin and/or creole languages. There are frequently not clear-cut boundaries between these different varieties (see point 9 above). Asking a person to speak only English or only Krio (the creole language of Sierra Leone), for example, may well be a linguistically impossible demand.

(11) WHERE THE DIALECT OF THE INTERVIEWER OR INTERPRETER IS DIFFERENT FROM THE DIALECT OF THE INTERVIEWEE

In some situations interviewees who are speakers of a local dialect are interviewed by an interpreter speaking the standard dialect of the language. In such situations it is common for people to accommodate to the interviewer's way of speaking, whether consciously or sub-consciously. This means that interviewees will attempt to speak the standard dialect, in which they may not necessarily have good proficiency. This accommodation, brought about by dialect or language difference, may make it difficult for interviewees to participate fully in the interview.

CONCLUSION

For all of the reasons outlined in these guidelines we advise that language analysis should be used with considerable caution in addressing questions of national origin, nationality or citizenship.

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