LINGUISTIC RIGHTS IN THE ASYLUM CONTEXT

Peter L Patrick
University of Essex
Development of Human Rights

- **Negative rights:** equal protection of laws, national self-determination, freedom of speech/opinion & from tyranny
  - UN Charter 1945, Universal Declaration of Human Rights 1948

- Move towards **positive rights:** protection of minorities, freedom from discrimination, educational & economic rights, maintenance of identity, full civic participation
  - Covenants on Discrimination, Civil/Political, Social... Rights 1965-6

- Decentralisation, **special measures** for endangered groups
  - Rights of Child, Oslo Recommendations, Indigenous Peoples 1989+

- **Civil rights/national context** > Universal HR/global context
Development of Language Rights

1. Language as one basis for fundamental freedoms:
   - “w/o distinction as to race, sex, language or religion” etc
   - Non-discrimination but w/o interest in language rights per se

2. Language as instrumental to delivery of other rights:
   - Be informed of charges, have interpreter assistance (CCPR)

3. Language as inalienable community/cultural property
   - Linguistic minorities’ rights to use their own language (CCPR)
   - Right to take part in cultural life (CESCR), respect for child’s language and identity (CRC), detailed minority LRs (ECRM:, Oslo LRNM)

4. Inalienable individual rights? Eg right to tell own story?
Concerns for Rights of Refugees

- Ancient social category: Herodotus V:51, Thucydides I:2
- WWII reorganized national boundaries, massively displaced national and ethnic groups, often short-term
  - May 1945: 40+ million in Europe; end of 1951: c. 400,000
- Post-1967, category expanded, became open-ended:
  - 1983: 10m; early 1990s: 17m; 2007 population of concern 33m
- Increase due to globalizing, continuing phenomena, but also a global phenomenon in its own right
  - Capitalist expansion/growing mobility etc. affect the settled too
Pressure to Manage Refugee Flow

- Govt. concern for borders, control over population, spread of conflict, economic selfishness of Have, desire to regulate economic migration, leads to...
  - Attempts to manage/reduce flow of asylum seekers, selectively discriminate their categories & outcomes.
- Search for tools to serve these interests leads to (among many other trends, policies and procedures, bureaucratic tools, genres, routines based on language)
  - selective equation of language with national identity
  - ...in order to identify & forestall false asylum claims.
What is Sociolinguistics?

Comparative study of speech communities, linguistic practices, and social ecologies of language

- Sociolinguists≠ HR practitioners, interpreters, lawyers — and these professionals, of course, are not usually linguists

- Sociolinguists professionally involved w/ issues such as
  - language **endangerment**, esp. preservation/revitalization
  - language **planning**, at academic, govt/local/NGO levels
  - forensic, clinical, and other **institution-based** linguistics
  - bilingual education & other **school-centred** language issues
  - action research with **urban linguistic minorities**
  - **discourse analysis** of talk by powerful/vulnerable speakers
  - ethnolinguistic work w/ **indigenous peoples**, & much more...
Asylum seekers are vulnerable speakers

- People in some circumstances are more vulnerable to having what they say be distorted or ignored.
- This is especially true of bureaucratic/institutional contexts which first restrict the speech of speakers, then claim rights to interpret it, and have power to act on it – esp. to determine their fate/status.
- Examples of vulnerable status & settings include:
  - Women as victims of violence, in legal contexts
  - People with disabilities or mental illness in clinical settings
  - Children & the elderly as witnesses in court, or w.r.t. social services
  - Ethnic minorities in standardized bureaucratic contexts
  - People seeking asylum from govts/international agencies
Language assessment of refugees in the process of applying for asylum

- **LADO** - Language Analysis for Determination of Origin
  (focus may be national, regional or ethnic)

Gatekeeping mechanism employed by governments to assess claims of origin and weed out false ones

- Performed in context of general governmental and public disbelief or hostility to immigration & refugees – UKBA “culture of hostility”
- E.g. belief that most are economically motivated, as opposed to motivation by “a well-founded fear of being persecuted”

Lay Assumption: Language reflects Citizenship (?!?)

- “linguistic passport” (Blommaert 2009)
Institutional Pressures on LADO

- Three key institutional positions w.r.t. language expertise
  - **Independent** individual: academic linguist, free-lance interpreter, non-expert native-speaker (NENS) informant (i.e., native speaker who lacks extensive scientific training)
  - **Government** immigration bureau: civil servant, linguist
  - **Commercial** analysis firm: owner, linguist, NENS analyst

- Differentially exposed to pressures such as
  - Rules of procedure, staffing levels, caseload, costs, profit motive, government policies, education, language ideology, expert status
  - Contrasting institutional norms, practices, ideology, rewards

- All exert influence on beliefs, practice, assumptions
  - E.g. what constitutes a fact? how important is best-practice?
Issues of Expertise & Training

- Different areas of knowledge/expertise required by these different participants in the asylum process
  - Scientific linguistic knowledge (analyst, = linguist)
  - Native-speaker knowledge (informant, interpreter)
  - Qualified interpreting skills (interpreter)
  - Knowledge of country info (bureau officer, ?analyst?)
  - Correct basic understanding of relation of language to social experience/identity (all participants, incl. bureaucrats)

- Problem: Different levels of training/qualification
  - Undermines validity/reliability of LADO legal process now
What Linguists Do and Are

- Analyse elements & structures of recorded speech data
- Identify them as organised into recognized systems – languages/dialects described in the scientific literature
- Familiar w/contact processes between languages (not random, but according to empirically-studied principles)
- Professional training means post-graduate specialization
- Experts w/knowledge based in literature & own research on 1 or more languages (besides native ones, usually)
- Contribute to scientific knowledge: present research at open conferences, publications reviewed by peers
Non-linguist language professionals

- **Spoken-word interpreters or translators** of written word
  - May be trained, but little/no linguistics, rarely do research

- **Students of “foreign” languages** at university/elsewhere
  - Typically no linguistic analytic or comparative training
  - Rarely any formal training in ‘exotic’/unwritten languages, hence no standards exist for knowledge of such languages

- **Native speakers** of exotic or un(der)-studied languages
  - Any study/training usually literary not scientific, text not speech, fails to question power of standard languages, ignorant of (role of) variation

- Some language firms offer such qualifications for analysts but

- They do not satisfy requirements for **linguistic analysis**
More on ‘Native Speaker’ v Linguist

- Linguists often work w/native speakers as informants
  - NSs who are representative of their speech community can unreflectively produce typical and idiomatic speech data

- NS status does *not* amount to expertise (thus NENS)
  - NSs also have typical attitudes/bias to Standard/Majority, unaware of variation/diversity, lump Others together, unwarranted confidence
  - Education: reinforce bias vs. minorities, conflate Language w/Nation, stress purism, privilege writing, ignore variation

- **Linguistic training** works to: eliminate native bias, separate normative response from scientific fact, use tools (e.g. IPA) to perform(valid, reliable) analysis, interpret scientific results
Nature of the Speech Community

- SpCom is a socially-based unit of linguistic analysis, used to model speech in cities, villages, small nations, clans, etc.
- Addresses relation of linguistic systems to speakers’ collective behaviour – “natural unit of sociolinguistic taxonomy” (Hymes).
- SpCom is the locus of socialization into one’s native language.
- Postulates uniformity of speech on different occasions by diff. speakers, and identity of a group based in language practices.
- Variationist concept of SpCom: informed by focus on vernacular languages, inherent variation and social variability.
- It serves the correlation problem (linking language behaviour to social structure) better than the indexical one (accounting for how the social meaning of language forms arises & changes).
Axiom of the Speech Community:

“Speakers who share language socialization are alike enough in linguistic production & evaluative norms to be identified as members of the same Speech Community”

If language is indexical of origins, can LADO reveal whether a speaker is alike enough to other SpCom members?

Speech community member competence overlaps:
- Essentially speakers share the same grammar, lexicon, stylistic norms, phonological inventory, vowel system, subject to same sound changes

However, a range of heterogeneity in speech is normal:
- Inherent variation always occurs, due to linguistic and social contexts
- No single categorical reference norm exists for most living languages
- Range of inter-speaker variability and intra-speaker variation within a speech community is routinely established by empirical methods
‘Language analysis’ requires **expertise in Linguistics**

- Scientific, comparative study of language systems
- Structure of sounds, words, grammar, meaning
- Study the range of human languages to discover:
  - What elements are necessary/possible in human language?
  - In which ways can they be organized into systems?
  - How languages change, are learned, and disappear
  - How we manipulate systems/elements for social functions

- "**Linguist**" has both **folk** and **expert** senses:
  - Untrained person who speaks several languages? ✗
  - Specialist with post-graduate training in linguistic science ✔
Relevance of *Sociolinguistics*

- Connects social characteristics w/language behaviour
- **Socio-linguistic** premise of analysis in asylum context:
  - Vernacular use of native language(s) is intimately connected w/language socialization & long-term membership of speech community, esp. early in life
- LADO thus requires training in sociolinguistic issues, eg
  - How unequal power in bureaucratic contexts affects speech, &
  - Ethnic/racial/class conflict affects cross-cultural communication
  - Why people code-switch & language mix, and what it means
  - Pressure to assimilate to Standard/Majority speech/ideology
Case for Applied Sociolinguistics

- Basic LADO question is a **sociolinguistic** one:
  - How does an applicant’s linguistic performance in a LADO context correlate with their history of **speech community** membership and **language socialization**?
  - Are there people for whom mapping language onto social history is difficult/unreliable? **Yes**, of course. (Here LADO shouldn’t be done)

- Language often ascribed gate-keeping functions
  - **Workplace**: hiring, discrimination, language choice
  - **Education**: admissions, testing, evidence of disability
  - **Courts/policing**: witness/suspect credibility, probity
  - **Healthcare**: ability to access high-quality care & services
Gate-keeping: Standards v. LADO

- I.e., language enforces society’s class/ethnic/racial/etc. bias
- Promotes linguistic assimilation of minority to majority
  - Standard is symbolic of accepting majority values generally
  - Precondition for access to elite groups / resources
- Standard language hegemonic ideology & institutions:
  - The powerful judge whether the powerless’s speech conforms to arbitrary standards deserving of access
- For LADO, replace Standardization w/ ≅ Categorization
  - Asylum speaker’s language must fit appropriate category
  - Analyst’s job: make sure categorization is well-motivated
Qs: LADO as Applied Sociolinguistics

- Does LADO assessment serve appropriate functions?
- What linguistic expertise is required to do LADO properly?
- Which procedures should (not) be employed in LADO?
- Which cases/contexts are (not) decidable by LADO?
- Are existing resources utilised? What needs development?
- How to represent linguistic knowledge to decision-makers?
As a result of linguists’ growing awareness of cases, efforts to codify best practice began to occur in...

**2003:** report by Eades, Fraser, Siegel, McNamara & Baker
- Study of 58 Australian Refugee Review Tribunal cases
- Language analysis by overseas agencies based on ‘folk views’
- Such language analysis by NENS found to be “not valid or reliable”

**2004:** L&NOG *Guidelines for the use of language analysis*...
- 19 coauthors/signers from Africa, Europe, Australia, USA (incl. me)
- Published and discussed in peer-reviewed linguistics journals
- Now available from UNHCR’s RefWorld database, [www.unhcr.org/refworld/](http://www.unhcr.org/refworld/)

None yet based on systematic comparison of data from multiple sources, independent of institutional pressures

**2010:** ESF Workshop, launch of LARG research group
Who is performing LADO?

- Varies widely from one jurisdiction to another
- Swiss, Germans use independent academic experts
- Dutch BLT have own analysts, use commercial agencies too
- UK, Australia, Austria, Belgium, Denmark, Ireland, Norway, Sweden have all used commercial analysts
  - Eg Skandinavisk Språkanalyse – Sprakab – my focus here
- Typical UK Somali report by 1-2 ‘analysts’, 1 ‘linguist’
  - ‘Analysts’ speak target language; do analysis; sign reports?
  - ‘Linguists’ rarely speak TL; check analysis; responsibility for reports unclear - do not sign individual statements of truth or compliance
  - But note UK BA Guidance says “report will be produced by a linguist working alongside the analyst” – so who’s responsible?
UKBA says: Sprakab linguists should have “equivalent of MA in linguistics” – but what is the case in practice?

Sample: 40 Somali cases 2008-10 in UK, 3 Sprakab linguists

- Lxt01: BA Nordic Languages, Computational Linguistics
- Lxt02: BA Linguistics, coursework in Arabic/Nordic languages
- Lxt04: MA Linguistics, misc. coursework, no research publications cited
- Lxt05: ?MA? Linguistics, Anthropology, no research publications cited

None claims any expertise or ability in Somali languages

- “Attend conferences/workshops” to defend current methods, but no presentation of research or data, little or no peer reviewed work
- Claim to belong to international linguistic societies – which have either endorsed the 2004 Guidelines critical of Sprakab practices, or declined motions to endorse some of Sprakab’s key principles
40 Somali cases: only 1 Sprakab ‘analyst’ on 1 case had a Linguistics degree – in 39/40 cases, no linguistics degree
- Credentials cited in Law, Maths, Chemistry, CompSci, Economics...
- **Falsifies Sprakab claim** “Analysts typically have background in linguistics”, also **UKBA standard** that hired “Language analysts have linguistics backgrounds and experience in dialectology”

In 20 of 40 cases, ‘analyst’ credentials conflated with Linguist’s: unclear who possesses which qualification *(compare across cases)*
- All joint cases before Sept 2008 *(FASHA)*; all separate from 2009 *(AMY)*
- Training: Analysts “taught at Sprakab to think critically & analytically regarding language” – but no training details are provided
- Tested before joining Sprakab – periodic spot checks? No testing info
Language Analysis in the UK

- **UKBA: LADO ‘routinely permitted’ for Somalis, Afghanis, Iraqis**
- **Eligible: anyone, incl. unaccompanied children > age 12**
- **Besides Somalis/Afghanis, anyone ‘strongly suspected’:**
  - ‘Unable to speak primary language’; ‘inconsistent’ language use
  - *I.e., language judgment is made before language testing is done*
- **Phone interview b/w applicant and Sprakab analyst, “who will speak the language… at mother-tongue level”**
  - Preliminary result given 3-15 mins (!) after interview is finished
  - Sprakab will analyse data & provide report within 2-4 hrs (!)
- Source: UKBA Language Analysis Guidance (28 Jan 2009)
What question is posed of analysis?

- **Positive hypothesis**: “Applicant speaks a language/dialect consistent with the area they claim to originate from” (see COI)

- **Negative hypothesis**: motivated by specific empirical data

- Typically, no hypothesis offered → “fishing expedition”

- Somalis of persecuted Benadiri clan eligible for asylum
  - Clan has a distinctive stigmatized dialect: Af-Reer Hamar
  - Most Benadiri can speak & understand Standard Somali, so
  - Finding that they “speak Somali” is neither here nor there.

- **Key Q**: does applicant speak Af-Reer Hamar dialect?
  - Detailed analysis routinely ignores this issue, instead contrasts Southern Somali with Northern Somali – ignores N Somali is basis of Standard S.
  - Analysis of any Af-Reer Hamar features in only 2 of c35 reports
Data/Certainty of Linguistic Analysis

- LADO interviews range 12-25 mins, mean = 18 mins (n=45)
  - UKBA Guidance: “interviews will ordinarily last for 20-30 mins”
  - Sociolinguists recommend min. 30 mins, better 1-2 hours
- Analysis of phonology, morphology/syntax, lexicon
- ‘Analysts’ judge likelihood of the language spoken by the applicant being found in the claimed area:
  - Found “with certainty, most likely, likely, possibly”
- Results in 38/42 cases: “with certainty” the speech is found in (N, C or S) Somalia, Kenya, Ethiopia (once: “not RH”, “most likely”)
  - Academic & forensic linguists find many cases very complex; “have right/responsibility to qualify certainty of assessments” (Guidelines); “scientific analysis is seldom able to provide absolute certainty” (Shuy)
What answers are given?

- Vast majority of cases agree w/applicant’s broader claim to speak Somali like someone from Mogadishu/the South

- Typically 1 sentence finds that “the person did not speak Reer Hamar dialect”; no justification is given. Normally,
  - No indication of attempts made to elicit speech in RH dialect
  - No details of how competence in RH dialect has been tested

- Only 1 of 6 ‘analysts’ even claims to speak ARH natively
  - Took part in 23 analyses, often only “confirmed” non-native analyst

- How can key Q be answered if the ‘analyst’ neither speaks ARH, nor attempts to elicit dialect & test applicant’s ability?
Issues of language choice

- Most Benadiri (=Reer Hamar) recognised to be bi-dialectal: speak/understand Standard (S) Somali and also ARH

- Sociolinguistic patterns of bilingualism well-known:
  - In-group languages are chosen for kin, clan members
  - Standard/prestige languages for outsiders, those in power
  - Stigmatized dialect speakers may not be able to say which language they have just used; or may claim their use of dialect as standard

- Thus in bureaucratic context, choice of Somali is expected
  - Esp. to non-clan member, person in power, non-ARH speaker

- Choice not to use ARH in interview is what we predict:
  - It cannot prove that the speaker is unable to use ARH
Problems with report conclusions

- "Person did not speak Af Reer Hamar" is ambiguous:
  - ? CAN not speak ARH? But where/what is the test to determine this?
  - ? DID not choose to use ARH? But this proves nothing re: competence

- Reports should contrast S Somali w/ARH, but fail to
  - Details of analysis given are thus irrelevant to main issue

- Most fail to address primary issue w/relevant expertise

- "Sprakab’s report must be rejected… There is no reasoning to support, what is for me, its central finding, namely that appellant does not speak the Reer Hamar dialect.”
  - Appeal Determination, 24 March 2009, by Immigration Judge Malone
UKBA apparently often fails to ensure that the crucial question for Somali cases is addressed by language analysis.

This Q often is not explicitly posed to Sprakab for analysis; immigration judges in many cases fail to note this shortcoming.

Due to lack of basic language expertise within UKBA?

- In both Somali & W African (eg Krio, Liberian) cases, the Sprakab report provided by HO to lawyers contained analysis details not in Int’l Phonetic Alphabet as claimed, but in Greek characters! [PaOs ex.]

- Not one of 42 reports cites a reference – a dictionary, a grammar, a dialect study – of Standard Somali or Af-Reer Hamar.

Are UKBA unaware this fails to meet their own standards?
Credentialling of Experts in Court

- Details/limits of expert’s relevant qualifications – in public
- Duty to provide independent, unbiased, objective opinion
- Make explicit all evidence, data, assumptions relied upon
- Cite relevant scientific or professional literature in reports
- Testimony is the product of reliable principles & methods which are generally accepted in the scientific community
- Methods tested, subjected to peer review & publication
- Were all analyses/tests/measurements made by expert?
- Acknowledge range of opinion, motivate the choices made
- Fairly give facts/arguments counter to opinion expressed
- = All standard expertise requirements in many nations’ courts
Credentiailling of Experts in LADO

- Asylum & Immigration Tribunal 2007. Practice directions, sec. 8A.

- **Hardly any** of the criteria are met by Sprakab reports.
- Can Sprakab linguists train analysts to become expert?
  - One “teaches a university course in phonetics”, but it is not possible that s/he can adequately train hundreds of analysts —
  - Qualifications by accredited academic bodies w/no £$€ interest

- Such “expertise” is likely to be rejected by codes of practice of many civil or criminal courts — in the very nations to whose government immigration bureaux Sprakab retails reports.
Who defines LADO expertise?

- This question remains unanswered & contested
  - Language & Asylum RG founded to stimulate applied research
  - ESRC Research Seminar series to address this & other Qs

- So long as that is the case,
  - Private firms will compete to offer cheapest services
  - Linguists will both practise, & actively criticise, LADO procedures
  - Govt. procedure will be perceived as on shaky ground
  - Judgments will continue to be successfully challenged in court
  - Different standards will prevail across host nations

- **Future:** LADO needs a secure, scientific research base against which expertise can be established.

- **Now:** Sprakab reports in UK cannot be routinely accepted.
Endorsements of 2004 Guidelines

- AAAL – American Association for Applied Linguistics
- AIDA – Association Internationale de Dialectologie Arabe
- ALAA – Applied Linguistics Association of Australia
- ALS – Australian Linguistic Society
- ANELA – Netherlands Association for Applied Linguistics
- AVT – Netherlands Society for General Linguistics
- BAAL – British Association for Applied Linguistics
- IAFL – International Association of Forensic Linguists
- LAGB – Linguistic Association of Great Britain
- LSA – Linguistic Society of America
- SPCL – Society for Pidgin and Creole Linguistics
Email: patrickp@essex.ac.uk, larg@essex.ac.uk

Homepage: http://privatewww.essex.ac.uk/~patrickp

Guidelines for use of language analysis in relation to questions of national origin in refugee cases (2004):
http://www.essex.ac.uk/larg/resources/guidelines.aspx

Language & Asylum Research Group (LARG):
www.essex.ac.uk/larg/
Schollers are men of Peace, they beare no Armes, but their tongues are sharper than Actius his Razor.

Sir Thomas Browne, *Religio Medici*, 1642