

TALES OF SUFFERING:

ASYLUM NARRATIVES IN THE REFUGEE

STATUS DETERMINATION PROCESS

>> ANTHONY GOOD

When someone flees their home country to seek asylum, they can generally take with them little or nothing in terms of personal documentation, either because of the haste and danger marking their departure, or because their arrival in the country of hoped-for refuge is always to some degree clandestine, there being no wholly legal way of travelling there for this purpose. Consequently, when asked to demonstrate that they have a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion' which entitles them to be granted asylum under the 1951 Refugee Convention, all they have to fall back upon is their own personal story of suffering. That story will perforce be judged, not by usual legal standards of evidentiary corroboration, but largely in terms of its credibility.

In this context 'credibility' is a technical legal term. According to UNHCR (1992: §204), the basic requirement is that the story should be 'coherent and plausible' and 'not run counter to generally known facts', while the Immigration and Refugee Board of Canada notes that judges have to 'decide if they believe the claimant's evidence and how much weight to give to that evidence. In determining this, they must assess the credibility of the claimant,' (IRB 1998: Foreword). The problem, however, is that there is no standard means of carrying out such assessments: they depend almost entirely on the unique individual circumstances (IRB 1998: ¶1.2).

On numerous occasions during the course of their asylum application, would-be refugees are required to tell their stories to interrogators or interlocutors of various kinds. In fact—although lawyers largely ignore or discount this unless a fairly disastrous breakdown in communication occurs—these are not dialogues but trialogues in which the omnipresent interpreter serves, supposedly, as a mere 'conduit' striving for the chimera of verbatim translation. These interviews differ in terms of the

purposes and motives of the questioners, and the techniques and strategies followed. All, however, depart to some degree from normal conversational form, because of the need to work through the interpreter and because of the artificially rigid question-and-answer format employed in legal processes (Atkinson and Drew 1979).

In the United Kingdom, the first such triologue is the screening interview, which takes place soon after arrival, perhaps even on that same day. This interview mainly collects data regarding the identity, nationality, and mode of travel of the applicant, but it does also require them to say briefly what lies behind their asylum claim. Even though they may be tired or frightened, any errors or confusions over dates or names will be held against them later.

The substantive asylum interview with a case owner¹ from the UK Border Agency (UKBA), a few weeks or months later, goes into their claim in more detail, though as we shall see the mode of questioning often restricts their ability to explain their claim fully as they themselves see it. Over this same time period, they will be preparing a witness statement with the help of their legal representative. Here the questions are more open ended and the questioner probing but more sympathetic. When a good lawyer takes an asylum statement this ideally runs over several sittings, not only because the experience is emotive and tiring, but also because details have to be checked and the final product has to be read back to the asylum seeker in their own language.

These two stepping-stones in the asylum process form the main focus of this article, but they do not exhaust the contexts in which asylum applicants must tell their stories. Many applicants

1 The case owner 'is the person who will deal with every aspect of [the] application for asylum, from beginning to end' (www.ukba.homeoffice.gov.uk/asylum/process/caseowner/; accessed 22 October 2010), including interviewing the asylum applicant, making the initial decision on their claim, and (in theory though this almost never happens in practise) representing UKBA at any subsequent appeal hearing.

require medico-legal reports to substantiate their claims to bear torture scars, or to diagnose degrees of trauma; they must therefore tell their story yet again to a doctor and with each telling, the possibility increases that discrepancies will (appear to) arise between these different versions.

Finally, there is the appeal hearing itself, before the Immigration Judge, when the consistency, plausibility and credibility of these various accounts is subject to attack by the Home Office Presenting Officer (HOPO), through submissions to the court but also, first and foremost, through detailed cross-examination. This is the longest part of every asylum appeal hearing. HOPOs ask detailed questions about the events mentioned in the transcript and witness statement, hoping to provoke inconsistent replies that can be used to attack the appellant's credibility.

Crucial though they may be, these multiple narrations of the appellant's autobiography of persecution are not the only evidence before the court. In addition to the medical reports already mentioned, both sides submit what is commonly termed 'objective evidence', that is, information about the political and human rights situation in the appellant's country of origin. UKBA normally submit only the reports produced by their own Country of Origin Information Service (COIS), but lawyers for the appellant usually draw more widely on reports from human rights NGOs, news agencies, multinational agencies like UNHCR, and 'country experts' like myself. They may even submit the COIS Report too, but will ask the Judge to interpret it differently. The Immigration Judge must then produce a written determination announcing the decision, and justifying it on the basis of a credibility finding, findings of fact on the appellant's story, and an indication of the weight given to each piece of 'objective evidence'.

TELLING THEIR STORIES: ORIENTATION AND CONSISTENCY

All the legal practitioners interviewed stressed

the key importance of the witness statement in building a case. The aim is to write down their client's life history as accurately and chronologically as possible. This requires them to restructure a narrative that is almost invariably given piecemeal and in a form which may reflect cultural conventions of story-telling very different from those familiar to the court, and re-present that narrative in a form which conforms to legal expectations, thereby maximising the chance that it will be understood and accepted by the Judge. What is required, in other words, is a conversion from what the American legal anthropologists Conley & O'Barr (1990) call 'relational mode' into 'rule-oriented mode'.

Their research, in small claims courts in the USA, shows that the ways in which lay persons present evidence in court lie along a continuum. At one extreme, litigants who display a relational orientation focus on broad notions of morality rather than specific legal breaches or claims: they tend to define rights and responsibilities in terms of 'a broad notion of social interdependence rather than... the application of rules' (1990: 61). This is unlikely to be a successful strategy, because its logic is very different from that of legal practitioners and judges. As a result the courts 'often fail to understand their cases, regardless of their legal merits' (1990: 61). By contrast, other litigants adopt a rule-oriented approach, quoting chapter and verse from the laws or regulations which they claim have been breached: they 'evaluate their problems in terms of neutral principles whose application transcends differences in personal and social status' (1990: ix). Because this perspective resembles that of legal professionals themselves, there is a better chance that their problems will be understood by the court and, all else being equal, they are more likely to succeed in their claim.

Most asylum applicants display a relational orientation in their responses during interviews and cross-examination, and it is their lawyer's task to

convert these responses into rule-oriented format. Partly as a result, many applicants are baffled by the whole process of taking the statement, and their lawyers must repeatedly remind them about its purpose. Several of the lawyers interviewed said they did this using cinematic analogies:

Solicitor A: I tell my client, 'this is like creating a good movie'. You can have a real, genuine story, but you have to produce it, and direct it, and present it in a different way, so all those skills have to be employed without which, even the best story on the planet can't attract people to watch that particular movie.

Many Immigration Judges say that they base their credibility assessments largely on the degree of consistency between the accounts that asylum applicants give under cross-examination, and previous versions in the asylum interview and witness statement. Yet as psychiatrists and oral historians well know, stories come out differently on different occasions even under the best of circumstances, and research involving Kosovan and Bosnian refugees shows that differences are even more pronounced for traumatic events (Herlihy, Scragg and Turner 2002). Linde argues that life stories are judged by listeners mainly in terms of coherence rather than factuality, that is, the causal chain in the narratives must appear 'adequate' (1993: 220-1) in terms of the common sense beliefs and understandings which speakers and listeners from similar cultural backgrounds assume they both share (ibid.: 222). For many asylum narratives, however, the cultural differences between teller and listener are such that common understandings cannot necessarily be assumed. Constructing witness statements is crucial, therefore, because this process allows legal representatives to structure their clients' accounts according to the common sense expectations of western legal cultures.

THE KEY INTERVIEWS

It is not only the passage of time which leads asylum applicants to narrate their stories in different ways, but also the differing strategies employed by their various interlocutors:

A story does not exist fully developed on its own, but only emerges through a collaboration between the teller and a particular audience (Conley and O'Barr 1990: 171).

Several lawyers explicitly contrasted their own techniques for eliciting information with those of UKBA case-workers in asylum interviews:

Solicitor B: [I]t certainly was always a Home Office tradition that the first question they ask is, 'So what made you come here?' So you end up with the last question first, and it's very, very confusing for clients, because then they think they're not required to go back any further in an interview. But my technique is exactly the opposite, which is to delve right back into ancient history and say, okay, did you or your family suffer any persecution in the 1980s? And that opens it up, you know, that sort of question.

There follow two excerpts from interviews, which illustrate the differences between UKBA asylum interviews and statement-taking interviews between lawyers and clients. Both involved the use of interpreters, so of course the words attributed to the asylum applicant are in fact translations of their answers as supplied by the interpreter. In both cases, too, the interpreter did a lot of prompting and clarifying, without objection from the interviewer. While this usually contributed positively to the mutual comprehension between interviewer and applicant, it would not be permitted in court where interpreters are required to provide 'verbatim' translations with no glosses of their own.

The first example involves a UKBA case owner conducting an asylum interview with Mr P, a young Tamil man from Sri Lanka. I have not been able to attend such interviews, but in recent years applicants have had the right to demand that the interview be taped, with copies supplied to their lawyers. This extract has been transcribed from a tape which I have been permitted to use for this purpose. Listening to the tape is a somewhat alienating experience, not only because of the interminable pauses between questions as indicated and discussed below, but also because a metallic voice in the background (not of course audible to the original participants) chants the date and time at ten second intervals as a safeguard against tampering. There are also frequent 'noises off', as though it is a large room with other people talking at the other end of it

After the case owner had recited the date and file number for the benefit of the tape, the asylum interview began as follows:

Case Owner: Do you have any documents that you wish to submit today?

Mr P: No.

[40 second pause; intensive rustling of paper]

Case Owner: Please tell me about your problems in Sri Lanka.

Mr P: You want me to... er... tell you from the start or from when I was born?

[44 second pause]

Case Owner: I'm interested in the problems that caused you to leave Sri Lanka. [pause for translation] When did these start?

Mr P: November masam.

Interpreter: November month.

Mr P: I was arrested by the army. [Interpreter checks] They told me that I was being arrested on suspicion... [Interpreter: What suspicion?] Suspicion that I was supporting the... [Interpreter: Who?] the LTTE.

[46 second pause]

Case Owner: Did the army offer any evidence for suspecting you?

Mr P: No.

[14 second pause]

Case Owner: Who arrested you?

Mr P: Sri Lankan army?

[31 second pause]

Case Owner: Do you know the names or the rank of any of the army men?

Mr P: No.

[15 second pause]

Case Owner: How many men arrested you?

Mr P: Seven army personnel, but this was during a round-up.

[27 second pause]

Case Owner: Who else was arrested during this round-up?

Mr P: Two others.

[11 second pause]

Case Owner: Who were the two others arrested?

Mr P: Two men... men from my village... my friends. One person's name is Re---... and Ra---.

[11 second pause]

Case Owner: And the other?

Interpreter: I said. Re--- is one and Ra--- is the other.

Case Owner: Ah sorry, yeah; Re---...

[38 second pause]

Case Owner: At what time of day were you arrested?

Mr P: Eight in the morning.

[37 second pause]

Case Owner: Did the army have any reason to suspect you of LTTE involvement.

Mr P: They told me that 'Someone gave us information about...'

[45 second pause; rustling of paper]

Case Owner: And what about Re--- and Ra---? Were they involved with the LTTE?

Mr P: No.

[16 second pause]

Case Owner: What happened after you were arrested?

Mr P: I was taken to a camp in... [Interpreter: Where?] K---

[6 second pause]

Interpreter: P--- area?

Mr P: [grunt]

Interpreter: K--- camp? [repeats doubtfully] K--- camp.

[31 second pause]

Case Owner: How were you taken?

Mr P: A tall vehicle called P---. [Interpreter sounds unsure about the last word]

[5 second pause]

Case Owner: P---?

Interpreter: Must be the name of the make, I suppose. [Laughs] I have never heard of it.

[20 second pause]

Case Owner: When did you arrive at the Camp? What time?

Mr P: Twelve-thirty; twelve-thirty p.m.

[54 second pause]

Case Owner: Can you describe the journey to K--- camp?

Mr P: I was kept inside the vehicle and taken away. It took half an hour to travel. I couldn't see outside.

[29 second pause]

Case Owner: Did you travel on main roads?

Mr P: Yes.

Contrast this with a statement-taking interview conducted by a solicitor with Mrs A, a Somali lady in her early 40s from the Ashraf clan, who had been displaced to Ethiopia for some years before coming to the UK in 2008 with her five children. Her fifteen year old daughter sat silently beside her, while her little boy played quite noisily with toys supplied by the lawyer, before falling asleep and emitting occasional snores.

Mrs A was preoccupied by UKBA's insistence that her above-mentioned daughter was over

eighteen, meaning that UKBA would house and assess her separately. Even so, she was unusually analytical, and constantly related her own experience to the wider security situation in southern Somalia. It did not feel appropriate to tape the interview (and I did not even ask) so this transcript is based upon my scribbled notes, taking things down as fully as possible and writing up the same evening. The interview began as follows:

Solicitor: Okay, I want to get into the details of your asylum case now. I'm taking its history, so effectively I'm asking about your life history. I'm sure you'll begin to feel that you're being asked so many questions, but it's important. As we discussed last time, the crucial thing is to establish your credibility—making the Home Office believe your account. And we talked last time about how detail is important, and consistency is important. And if you get to any point where you're not comfortable with another person in the room, just say so.

Mrs A [laughingly, glancing at me]: No I don't have anything to hide from anyone!²

There followed two hours of detailed discussion about Mrs A's clan membership (this was vital to her claim because if UKBA or, failing that, the Immigration Judge, decided that she was indeed a member of a minority clan, she was almost certain to gain asylum) and the origins of the civil war in Somalia³. This ended as follows:

Solicitor: And what happened when the UN came? Did things change?

Mrs A: Well, thanks to the intervention of the UN troops, they distributed food to us, they provided us with water, and the situation has calmed down

² At the end of the second day of interviewing Mrs A responded to my thanks for allowing me to be present by saying, 'When there is peace in my country you can come to my house.'

³ Some of this discussion will appear in Good (2011).

for a few years. We were all right while they were in the country.

Solicitor: Do you know when they left?

Mrs A: I cannot exactly say, but I would say that they were in B--- for two years.

Solicitor: And what happened after they left?

Mrs A: The same story again.

Solicitor: And which clans were involved?

Mrs A: The population of the region received UN and American intervention and were happy with their presence. As Aideed was angry with the UN, and he accused the region of giving a hand to the UN, so the region was punished by him and his clan, and the situation went back to what it had been.

Solicitor: What's his clan?

Mrs A: Habr Gedir.

Solicitor: So they attacked?

Mrs A: They attacked the town, and overwhelmed the Rahanweyn clan who tried to resist the invasion, and the Rahanweyn militia were pushed to the countryside.

Solicitor: And what happened to you and your family?

Mrs A: Then we were living like that, until the RRA took control of B--- from the Habr Gedir.

Interpreter: The RRA is a Rahanweyn militia. I think R stands for Rahanweyn and A for army; probably it's an English abbreviation.

Mrs A: So they made this organisation to fight with the majority clans. It took them many, many years to recoup the region from the Habr Gedir.

Solicitor: Do you remember when they did?

Mrs A: I would say either the end of 1995 or 1996.

Solicitor: And what were things like when they took control?

Mrs A: Well, they were militia, and they started persecuting minorities such as Ashraf, which is my clan.

Solicitor: So they didn't spare anyone from the Ashraf.

Mrs A: There are some Ashraf who are of nomadic background. They have eliminated the Ashraf in the bush and then they came to town. Then they would do what the majority clans were doing to them, to us. Raping, looting, killing... There are some very small minorities in B--- and they were targeted. We Ashraf don't take up arms.

Solicitor: And were you yourself attacked during this period?

Mrs A: Let me come to the main incident. One day—it was before early morning prayers—a group of armed militia men attacked our home. Our house was big, and they forced their way by breaking the main gate. They started shooting at us. My father was killed. They sprayed bullets in the house, killing my father and brother, and my cousin on my mother's side was wounded. My mother was also wounded. I panicked and I tried to flee. I don't know what happened, but someone hit me on the head with something. I was pregnant at the time. I became unconscious. In the morning after sunrise, the neighbours came for our rescue. I, my mother, and our two daughters were taken to a house within the neighbourhood. I was also bleeding. I thought I would die. I was told what happened, and I was informed of the death of my brother and father. My mother was injured, but from that day she was not the same person because of the shock. And that's when my father was buried, the same day. And we only remained in B--- for two weeks and we left for Ethiopia.

Solicitor: I know this is very painful no doubt to talk about, but I just have to clarify, did you lose the baby?

Mrs A: Yes the girl is alive, but I have been bleeding until I give birth.

Solicitor: But do you think the bleeding was because of the injury to the head?

Mrs A: I don't know if I was hit here, I only know I was hit on the head. If I was hit on the stomach, I don't know.

Solicitor: And you don't believe that you were sexually assaulted?

Mrs A: I don't believe, no.

Solicitor: Okay, so you then went to Ethiopia. What year was this?

Mrs A: It was March 1997 when we left.

Solicitor: And who went, did you all leave at the same time?

Mrs A: My mother, mother-in-law, husband, my two daughters, and myself.

There are of course many ways of conducting interviews. There are also, no doubt, significant differences in style among UKBA case owners, and this may be even more true of solicitors because the solicitors I interviewed all told me that they had undergone little or no training in statement-taking and had rarely, if ever, observed colleagues doing so. Moreover, the examples here involve asylum applicants of different nationalities and genders describing events of quite different kinds. All that said, many of the differences between these two interviews are undoubtedly systemic. One does not even have to read their content to notice these differences; merely looking at the two extracts laid out on the page is enough.

The UKBA interview clearly illustrates solicitor B's point about the focus being on the end of the story rather than its beginning. Not only that, the case owner then makes an immediate move away from the experience of the applicant himself and possible reasons for his arrest, to pose a series of circumstantial questions about an event whose date, place and context are as yet wholly unestablished. Even though the applicant knows some of the answers, they shed (at this stage of the interview, at least) no obvious light on the nature of his asylum claim.

Above all, UKBA interviews are interrogative in form; they display almost no narrative give-and-take and a preponderance of short, grammatically

simplistic questions which often elicit only monosyllabic answers. Indeed, applicants are often interrupted if they attempt to answer at even moderate length; or the case owner will simply ignore the answer, repeat the original question and instruct them to answer it. The disjointed feel is exacerbated by the aching long pauses. In part these reflect the need for the case owner to write out the questions and answers by hand, but they are often far too long to be accounted for purely in that way. As I know from my own experience of giving oral evidence where the judge is writing down my answers in longhand, such pauses greatly disrupt narrative flow and inhibit one's ability to answer with any degree of conviction. I invite the reader to perform that interview excerpt out loud, observing the pause lengths as indicated: the deadening and alienating effect should become clearly apparent!

By contrast, statement-taking conveys a feeling of information being shared. Although there must still be pauses to allow for interpretation, there is a flow whereby one question leads to another, often motivated by the previous answer rather than determined in advance, and the applicant is granted far greater scope to develop more nuanced, complicated, and therefore also lengthy, responses.

CROSS-CHECKING

It is inevitable that in both types of interview the replies sometimes seem unclear, perhaps even contradictory in light of earlier answers. The responses of lawyers and case owners are again quite different. For legal representatives, one aim in subsequent statement-taking interviews is to explore, and hopefully resolve, matters which seemed unclear at earlier meetings. For example, at the second interview with Mrs A, several weeks later, her solicitor went back to the militia attack on their home:

Solicitor: I know it is very difficult for you to talk about your father's death, but did you actually

witness it or were you unconscious?

Mrs A: I was hit first and became unconscious, and then my family was murdered.

Solicitor: I see, okay; and your mother's injury was to her leg, is that right?

Mrs A: Yes.

Solicitor: Okay, when you travelled to Ethiopia by, was it a private car?

Mrs A: By lorry.

Solicitor: Okay; the screening interview seems to say 'car'; do you remember what word you used?

Mrs A: I said baabuur, it's a vehicle.

Interpreter: It can be anything with four wheels. So that for 'car', we use fatuura in my terms. [The interpreter passes over to me the sheet on which he has written this word.] I don't know, she says that's what Mahatri call it!

The final draft of the witness statement, drawing on these two conversations, then recounts the attack and their journey to Ethiopia as follows:

43. I do remember clearly the main incident which caused us to leave Somalia. On 1st March 1997 very early in the morning, before early morning prayers the Rahanweyn militia attacked our home. They forced their way in breaking the main gate. They started shooting spraying bullets all over the place. I panicked and tried to flee. As I did so I was hit over the head by something. I think I probably fell on the ground and injured my knee at the same time. I was pregnant at the time. I fell unconscious. The next thing I remember was in the morning when neighbours came. Me, my mother and two daughters were taken the neighbours [sic]. My husband was at his mother's house at the time. I was losing blood. It was a very frightening experience. I thought that I was going to lose the baby and that I was even going to die myself. I do not know why I was bleeding, whether I was also hit on the stomach or whether it was just from the head injury. I did not lose the baby thankfully. I found out that my father and brother had been shot dead. My maternal cousin who was

also with us was also wounded. My mother was wounded in her leg. My mother was in shock. My mother has never been the same since.

44. My father and brother were buried in B---. Two weeks later we left Somalia. [...]

47. We travelled to Ethiopia by lorry. I see from the screening interview that it is recorded that I said by car. However, this is not what I said specifically. The word I used was 'Baabuur' which is in fact the word for vehicles in general. Where I come from, the word we use for car is 'fatuura' which I did not use...

The format of the UKBA interview, as already described, and especially the fact that it is almost invariably completed in one day, gives case owners little scope for exploring events in this interactive way. It is therefore not surprising that credibility issues are often raised in Refusal Letters which had never been put to the applicant during the asylum interview. This is perhaps most noticeable where torture and sexual violence are concerned. Possibly out of embarrassment, case owners commonly skate over such matters, and even if they are raised by appellants themselves—which may not happen, because their memories are painful and shameful—they are often not followed up.

For example, in a recent case with which I was involved as 'country expert' a young, single Tamil woman described her arrest by the army in 2009 while being held in one of the postwar internment camps in northern Sri Lanka. She was asked what happened next, and in the course of her reply she stated that she had been beaten, and added 'I was tortured and raped for four days'. The case owner asked two follow-up questions:

Case Owner: Who was it that tortured and raped you?

Applicant: Army officers; Sinhala army officers.

Case Owner: Was there any other mistreatment apart from beating?

Applicant: They pulled me by my hair, that's all.

As became clear when this lady received her Refusal

Letter, the case owner did not believe that either the torture or the rape actually happened, yet in the interview these doubts had never been put to her. Moreover, she had no opportunity to supply further details that might (or, of course, might not) have made them seem more plausible to her interviewing officer. In fact, there was no further discussion whatever of the rape or torture in the remainder of the interview. Contrast this with the Somali example above, where the lawyer sympathetically broaches the question of possible sexual assault.

* * * *

It is widely accepted that the full meaning of a narrative emerges only during its performance, out of 'the interaction with ... the audience and its expectations' (Finnegan 1992: 93). This process is, however, greatly inhibited by the procedural rules applying in legal contexts, especially their highly artificial question-and-answer formats. Although these are intended to circumvent 'practical problems posed by ordinary discourse' (Atkinson and Drew 1979: 8), one effect is to diminish 'the rhetorical force of the account' (Conley and O'Barr 1990: 40), making it less involving for the speaker, less dramatic and interesting for the listener, and—potentially—less credible for the Judge. The need to use interpreters further dampens the performative force of asylum applicants' own utterances.

While these limitations apply to both the contexts illustrated here, they do so, clearly, to different degrees. There is far more of a conversational feel to the statement-taking interview; the applicant is given much greater scope to answer discursively, on her own terms; and, although this only partly emerges from the actual passages quoted, the interpreter is allowed to play a far more active role in clarifying answers that are not fully understood. It is clear even from the brief extracts, though, that in both interviews the interpreter is far more than a mere 'conduit'.⁴

Lawyers, of course, start from the presumption that their client has been persecuted and will tell the truth if given an opportunity, whereas UKBA case owners, at least by repute, presume the exact opposite. The irony is that the lawyers' strategy, with its conversation-like flexibility, extensive and detailed cross-checking, and dispersal across several sessions, seems a far more effective means of interrogating apparent discrepancies, and could therefore also potentially be more effective in identifying cases where stories have been invented.

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interposition of interpreters, however competent, into the asylum process, and this is also considered, from the perspective of a practising public service interpreter, in the work of Rycroft (2005).

4 I have discussed elsewhere (Good 2007: Chap. 7) some of the complications and drawbacks resulting from the