

Institution: The University of Edinburgh
Unit of Assessment: Anthropology and Development Studies
Title of case study: 3: The Use of Expert Evidence in Asylum Procedures
<p>1. Summary of the impact</p> <p>Since the mid 1990s, Social Anthropology staff have provided expert advice as part of UK asylum procedures. Impact has taken two main forms:</p> <ul style="list-style-type: none"> • Shaping lawyers' arguments and informing individual decision-making by the UK Border Agency and Asylum Tribunals, and by immigration authorities in the US, France, and Canada, through the provision of 'expert country evidence' on the socio-political circumstances in specific countries (Zimbabwe, Israel/Palestine, Sri Lanka), • Shaping professional practice through providing guidance and/or training for immigration practitioners and judges on the general limits and potentials of expert evidence, helping practitioners to adapt their evidential strategies in asylum claims and allowing rival protagonists in adversarial hearings to discuss mutual concerns.
<p>2. Underpinning research</p> <p>Edinburgh Anthropology has a long history of providing expert evidence in asylum cases, and has produced two kinds of underpinning research: research on countries from which people have sought asylum, and research on the asylum process itself.</p> <p>Researchers have carried out long-term ethnographic research on social and political circumstances in countries of origin for asylum seekers, which serves as the basis for expertise in asylum procedures. Kelly has been a lecturer in Edinburgh since 2005, and his research on citizenship and residency in the Israeli-Palestinian conflict (2008) has enabled him to work as an expert witness, as rights of return are often central to Palestinian asylum claims. Spencer, at Edinburgh since 1990, has been carrying out long-term research on the causes and consequences of the 30-year conflict in Sri Lanka (2011). Good, at Edinburgh since 1980, has conducted several fact-finding visits with immigration lawyers to assess the human rights situation in Sri Lanka, producing reports for use as generic evidence in asylum cases. Fontein, at Edinburgh since 2004, has researched the post-colonial state in Zimbabwe, and conflict over land and water resources in particular (2010), issues central to the claims of many Zimbabwean asylum seekers.</p> <p>Research has also taken place on the use of expert witness evidence in the asylum process itself. Good and Kelly have both carried out separate, but related research on asylum procedures, focusing on differences between various forms of expert knowledge, and the ways in which these different forms of knowledge can be put to best use.</p> <p>Good's research, funded by the AHRC in 2000, assessed the role of expert evidence in legal processes associated with asylum appeals and explored the professional and ethical dilemmas posed by such work. Later work, funded by the AHRC in 2006 looked comparatively (France and the UK), at how lawyers translate asylum applicants' narratives into legal discourses and the effect this has on the types of claim that can be made for asylum. Good (2007) was the first ethnographically-based account of the UK asylum decision-making process. It exposes the different ways in which immigration practitioners and academics understand key terms and concepts, and therefore how the two groups can better communicate with one another.</p> <p>Kelly's (2012) research, funded by the ESRC in 2008-11, explored the dilemmas and problems involved in documenting and assessing evidence about torture. As most claims about torture in UK courts are made during asylum claims, the research focused heavily on asylum and immigration tribunals. It also involved participant observation with torture rehabilitation organisations, as well as interviews with clinicians, lawyers, judges and case-workers. Kelly</p>

argues that for individual claimants a focus on torture can be counter-productive, as it raises the political and moral stakes, which can seldom be met by the often necessarily limited evidence available. Seemingly more mundane and less charged descriptions of violence may therefore be more pragmatically useful for claimants, but also more helpful for decision-makers as they provide greater specificity.

3. References to the research

Fontein, J. 2010. 'Between Tortured Bodies and Resurfacing Bones: the Politics of the Dead in Zimbabwe', *Journal of Material Culture*. 15(4): 423-448, DOI: [10.1177/1359183510383105](https://doi.org/10.1177/1359183510383105).

Good, A. 2007. *Anthropology and Expertise in the Asylum Courts*. London: Routledge-Cavendish, available from HEI.

Kelly, T. 2008. 'The Attractions of Accountancy: Living and Ordinary Life during the Second Palestinian Intifada', *Ethnography* 9(3): 351-376, DOI: [10.1177/1466138108094975](https://doi.org/10.1177/1466138108094975).

Kelly, T. 2012. *This Side of Silence: Human Rights, Torture and the Recognition of Cruelty*. Philadelphia: University of Pennsylvania Press, available via REF2.

Spencer, J. 2011 (ed. with Jonathan Goodhand and Benedikt Korf) *Conflict and Peacebuilding in Sri Lanka: Caught in the Peace Trap?* London: Routledge, available from HEI.

4. Details of the impact

Judges in asylum cases require detailed information about conditions in asylum seekers' countries of origin. They rely on 'country of origin information' (COI) to inform their decisions about the credibility of asylum claims and potential risks if applicants are returned home. Through the provision of expert evidence, Edinburgh researchers have been a central part in the decision-making in hundreds of asylum cases. Researchers have also provided training and advice on the assessment and use of expert evidence to asylum practitioners. The research has therefore *impacted on legal practice, shaped the implementation* of immigration and asylum policy, and had an *effect on the quality* of the decision-making process, as well as helping to *define best practice*.

Informing individual decision-making. Work by members of the UoA has played a significant role in individual cases in the immigration and asylum process. Members of the UoA have produced reports in over 700 asylum cases (usually of a length between 30 and 60 pages) as well as giving expert oral evidence at dozens of asylum hearings. Good, Kelly, Spencer and Fontein have national reputations as providers of country of evidence. Collectively, they are recognised as among the most significant providers of expert COI in the UK (see corroborating sources 5.1, 5.2). Good, for example, has been described in a determination by a High Court judge as 'well known' (5.3). Kelly has been described by a leading asylum lawyer as an 'outstanding, and outstandingly useful, country background witness', whose reports are 'factually unchallenged', and is the 'expert of choice in Palestinian appeals' for asylum lawyers as 'his objectivity and detail are valued by the immigration judiciary' (5.2). The reports produced by Edinburgh researchers have helped to decide, given the nature of asylum cases, on matters of life and death. A leading asylum solicitor, who has instructed over 30 reports from Good has written that 'I do not think that one of my clients about whom he has produced these reports has been removed ... He has saved many lives . . . The mere fact he has provided a report can sometimes be enough ... to enable one of my...clients to win their asylum case' (see corroborating source 5.1).

Evidence provided by Good, Kelly, Fontein and Spencer has frequently been cited by judges in important High Court cases, reported Tribunal determinations, and Country Guidance cases (see, for example, 5.3, 5.4). In 2011, Fontein has also provided expert evidence on Zimbabwe during a high-profile criminal trial involving witchcraft allegations. Good also provides expert evidence for appeals in Canada, USA, Switzerland and Australia, as well as a generic report on Sri Lanka for the French NGO CIMADE, which has been extensively used at the Cour National du Droit d'Asile.

The nature of the judicial decision-making process, revealed by Good and Kelly's own work, means that expert reports are often not directly cited in determinations. However, the fact that they are commissioned in the first place indicates their impact among lawyers: legal aid requirements mean that reports cannot be commissioned unless they potentially make a material difference to the outcome.

Informing professional practice. Work by members of the UoA has contributed to the professional practice, knowledge and skills of decision-makers and those people representing asylum seekers. In the highly polarised context of asylum decision-making, Good and Kelly's research adds depth to understandings of the nature, strengths, and limits of the various forms of expert evidence available in the asylum process, understandings which are otherwise often either one-dimensional and legalistic, or overly politicised. Amongst anthropologists, Good's work increased awareness of the importance of expert evidence, and encouraged many academics to offer their expertise. Equally importantly, it helped them understand how to write expert reports without falling into traps that would lead to them being dismissed by decision-makers as politically motivated or irrelevant. Whilst practitioners may not always agree with Kelly and Good's findings, dissemination of their work has *informed or stimulated practitioner debate*, and *challenged conventional wisdom among stakeholders*.

Good, Fontein, and Kelly have convened a series of workshops bringing practitioners and academic together to discuss the challenges and potentials of the production and assessment of expert evidence. In March 2009 Good co-convened a workshop on asylum processes attended by 15 senior judges, lawyers, interpreters, NGO executives, and judicial and ministerial officials from France and the UK. Participants reflected critically and comparatively on their professional activities with a view to developing 'best practice'. The workshops were described by Head of the Legal Information Centre at the CNDA (French National Court of Asylum) as a 'rich exchange', and as 'excellent' by the Chief Executive of an immigration law charity (5.9). In April 2011, Kelly co-convened a workshop examining the use of evidence in asylum claims, involving over 20 immigration lawyers, clinicians from Freedom from Torture, civil society campaigners from the Scottish Refugee Council, immigration judges, and UKBA officials. Fontein convened a workshop in 2013 involving 12 police officers, social workers and expert witnesses looking at the professional challenges involved in producing legal evidence around witchcraft allegations. All three workshops provided rare opportunities for practitioners from different parts of an often antagonistic process to discuss their mutual concerns.

Kelly was a keynote speaker at a workshop attended by over 60 human rights practitioners on bridging the gap between research and practice at Dignity: Danish Institute Against Torture- one of the largest anti-torture NGOs in the world. Following this presentation he discussed the implications of his book *This Side of Silence*, in a public forum with practitioners (see 5.6). In response to this discussion, a senior anti-torture activist has written about Kelly's 2012 book that 'few contemporary books are more relevant to the prevention of torture' (5.8).

Edinburgh researchers have provided training and guidance for lawyers and decision-makers involved in the asylum process. As such they have *influenced professional guidelines or training and the development of resources to enhance professional practice*. Good acted as advisor for the sections on expert witnesses in both editions of the Best Practice Guide to Asylum Appeals, the practitioners' desk manual (see 5.5). He has provided practitioner training sessions for the Immigration Advisory Service and Freedom from Torture (FfT), was a member of the Reference Group for the Ministry of Justice's Expert Witness Fees Project, and a founder member of the Advisory Panel for the Office of the Immigration Services Commissioner, which accredits providers of immigration advice. Kelly has also created training material for FfT's induction process for new employees and volunteers. Kelly and Good, working with lawyers suggested by the Immigration Law Practitioners Association, have produced a widely distributed Best Practice Guide for Expert Witnesses, which, according to the Chief Executive of a leading asylum organization, is 'regarded as a valuable tool by both experts and those who wish to instruct them', (5.10). The Guide is distributed through the Refugee Legal Group and the Electronic Immigration Network, the leading sources of information for asylum and immigration practitioners (5.12). As an indicator of the

esteem with which the guide is held, it is being submitted as part of the evidence in a UK Supreme Court cases challenging the Home Office's use of expert evidence (5.2)

Public debate. Kelly and Good have also contributed to broader public discussions about difficulties in documenting torture. For example, in 2011 Al-Jazeera commissioned an opinion piece from Kelly on the documentation of torture, which was picked up by the international press (see 5.7, 5.11), whilst Good spoke in 2013 at a meeting in the House of Lords on torture in Sri Lanka.

5. Sources to corroborate the impact

PDFs of all weblinks are available at www.wiki.ed.ac.uk/display/REF2014REF3B/UoA+24

5.1 Letter from asylum solicitor corroborating the importance of Good as an expert witness. Provider is a reporter on the process of impact.

5.2 Letter from asylum solicitor corroborating importance of Kelly as expert witness. Provider is a reporter on the process of impact.

5.3 Example of case: Veerasingam v SSHD [2008] EWHC 3044 (Admin). Corroborating use of Edinburgh expert witness reports in important asylum cases, <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2008/3044.html&query=Veerasingam&method=boolean>.

5.4 Example of case: Rabah & Ors, R (on the application of) v Secretary of State for the Home Department [2009] EWHC 1044 (Admin), <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2009/1044.html&query=rabah&method=boolean>

5.5 Immigration Law Practitioners Best Practice Guide Asylum and Human Rights Appeals, 2012. Corroborating Good's involvement in shaping best practice, <http://www.ein.org.uk/bpg/contents>

5.6 Information on book launch and discussion of Kelly's work at human rights NGO, <http://www.dignityinstitute.org/servicenavigation/news-and-activities/news/2012/05/british-researcher-launches-new-book-at-rct.aspx>

5.7 Opinion piece by Kelly, 'Why are 'others' always guilty of torture?', for Al-Jazeera, 8 November 2012, <http://www.aljazeera.com/indepth/opinion/2011/11/20111115124650315926.html>

5.8 Review of Kelly (2012) by Human rights NGO, Dignity: Danish Institute Against Torture, <http://www.dignityinstitute.org/servicenavigation/news-and-activities/news/2012/05/british-researcher-launches-new-book-at-rct/book-review.aspx>

5.9 Email from Senior French Immigration Judge and Chief Executive, Immigration Law Charity. Available from University of Edinburgh.

5.10 Email correspondence from Chief Executive, Immigration Charity. Available from University of Edinburgh.

5.11 'UK so far forced to pay £14m to Iraqi torture victims', 21 December 2012, Press TV. Corroborating interest of international press in Kelly's work, <http://www.presstv.ir/detail/279324.html>

5.12 Corroborating evidence of the Guide being available through a prominent position on the EIN website, <http://www.ein.org.uk/experts/?q=experts>