

Refugee Law Initiative

WORKING PAPER No. 7

Narrating Atrocity: Obstacles to Proving Credibility in Asylum Claims

Carol Bohmer* and Amy Shuman**

* Carol Bohmer is a lawyer and sociologist who is presently a Visiting Associate Professor in the Government Department at Dartmouth College, a Visiting Fellow at the Human Rights Coalition, School of Advanced Study, University of London, and a Teaching Fellow at King's College, London. Her publications include: *The Wages of Seeking Help: Sexual Exploitation by Professionals*, *Sexual Assault on Campus: The Problem and the Solution* with Andrea Parrot, and, with Amy Shuman, *Rejecting Refugees: Asylum in the Twenty-First Century*. (carol.bohmer@dartmouth.edu).

** Amy Shuman is Professor of Folklore, English, Women's Studies and Anthropology at The Ohio State University, a core faculty member of Project Narrative and the Center for Folklore Studies and a fellow of the Mershon Center for International Security. Her publications include: *Storytelling Rights: The Uses of Oral and Written Texts Among Urban Adolescents*; *Other People's Stories: Entitlement Claims and the Critique of Empathy*; and, with Carol Bohmer, *Rejecting Refugees: Political Asylum in the 21st Century*. She is a Guggenheim Fellow (shuman.1@osu.edu).

WORKING PAPER SERIES

The Refugee Law Initiative (RLI) ‘Working Papers’ are a web-based research series focusing on the protection of refugees and other displaced persons in law and practice. They provide a means for the rapid dissemination of preliminary research results and other work in progress. This resource is particularly intended to facilitate initial distribution and discussion of high-quality postgraduate research prior to eventual peer-review publication.

Opinions expressed in individual Working Papers are solely those of the author/s, who retain the copyright. They do not represent the views of the RLI, and should not be attributed to it. Any correspondence on individual Working Papers should be directed to the author and not to the RLI.

RLI Working Papers are prominently displayed on the RLI website as a resource for scholars and practitioners worldwide. They are also stored in SAS-Space, which records the date deposited.

REFUGEE LAW INITIATIVE

Human Rights Consortium| School of Advanced Study| University of London
Senate House, Malet Street, London WC1E 7HU, UK

Email: RLI@sas.ac.uk

Telephone: +44 (0)20 7862 8570

Narrating Atrocity: Obstacles to Proving Credibility in Asylum Claims

Carol Bohmer^{*} and Amy Shuman^{**}

August 2013

Abstract:

Political asylum is one remedy for human rights abuses. By offering safe haven to people fleeing persecution in their homelands, countries providing political asylum acknowledge that violence can make some places too dangerous for members of particular groups. Asylum law addresses human rights abuses on an individual basis and does not apply to many of those who, it could be argued, suffer from such abuses. Discourses about human rights abuses play a significant role in particular political asylum cases. It has been argued that a human rights vision of refugee law would refocus away from the provision of individual sanctuary in the host country and toward an emphasis on the refugee's right to return to his country of origin to live a life without human rights abuses. In this paper, we first briefly discuss the history of political asylum policy in relation to its connection to human rights, and then turn to a particular case in which the violations of human rights are unquestionable but the individual's application was twice denied before being granted asylum status. We examine in depth the case of a woman who fled Cameroon to the US where she claimed asylum. We argue that these denials illustrate the ways in which credibility concerns and the asylum hearing officers' reliance on scenarios that meet their assumptions and expectations often outweigh an assessment of the human rights violations involved in the case.

Keywords:

Human rights-asylum-framing claims

^{*} Carol Bohmer is a lawyer and sociologist who is presently a Visiting Associate Professor in the Government Department at Dartmouth College, a Visiting Fellow at the Human Rights Coalition, School of Advanced Study, University of London, and a Teaching Fellow at King's College, London. Her publications include: *The Wages of Seeking Help: Sexual Exploitation by Professionals, Sexual Assault on Campus: The Problem and the Solution* with Andrea Parrot, and, with Amy Shuman, *Rejecting Refugees: Asylum in the Twenty-First Century*. (carol.bohmer@dartmouth.edu).

^{**} Amy Shuman is Professor of Folklore, English, Women's Studies and Anthropology at The Ohio State University, a core faculty member of Project Narrative and the Center for Folklore Studies and a fellow of the Merhson Center for International Security. Her publications include: *Storytelling Rights: The Uses of Oral and Written Texts Among Urban Adolescents; Other People's Stories: Entitlement Claims and the Critique of Empathy*; and, with Carol Bohmer, *Rejecting Refugees: Political Asylum in the 21st Century*. She is a Guggenheim Fellow (shuman.1@osu.edu).

1. Introduction

Political asylum is one remedy for human rights abuses¹. By offering safe haven to people fleeing persecution in their homelands, countries providing political asylum acknowledge that persecution can make some places too dangerous for particular individuals and groups. Although political asylum is historically connected to human rights, in practice, there is a significant disconnect between the two. To explore one dimension of the disconnect between human rights and political asylum, we examine the relationship between documents and narratives as modes of inquiry relying on norms of evidence in political asylum hearings. Asylum officials rely on various sorts of evidence to address what they see as inconsistencies in asylum applicants' narrative testimonies. Some of these inconsistencies are, however, irresolvable. The human rights narrative is measured by loss and reconfigured kinship and social connections, and in the political asylum hearings, applicants must account for stable political affiliations and hard and fast distinctions between friends and enemies.

Every political asylum applicant's story is part of a larger narrative of people displaced by social/political conflict. The story of how contemporary political asylum policy was created is itself a human rights story; the right to claim asylum is a human right.² At the same time, political asylum policy diverges significantly from human rights policy. People have the right to request asylum; states have the right to refuse it. States cannot return people to places where they will be persecuted or killed (called the policy of non-refoulement), but they can determine that a person's home country offers them (in principle anyway) protection. We first briefly discuss the history of political asylum policy in relation to its connection to human rights, and then turn to a particular case in which the violations of human rights are unquestionable but the individual's application was twice denied before being granted asylum status. We examine in depth the case of a woman who fled Cameroon to the US where she claimed asylum. We argue that these denials illustrate the ways in which credibility concerns and their focus on scenarios which must be comprehensible to the asylum hearing officers outweigh an assessment of the human rights violations involved in the case.

2. Human Rights and Asylum

We recognise that credibility is not the only way in which human rights concerns are not sufficiently addressed in asylum cases. There are other issues, including the narrowness of the Convention grounds, and the need for the person to connect her persecution to one of those grounds, which also mean that asylum may not be available for claimants who

¹ As most of this research has been conducted in the US, we use US terminology rather than that of the EU/UK.

² Marie- Bénédicte Dembour, *Who Believes in Human Rights? Reflections on the European Convention* (Cambridge: Cambridge University Press, 2006).

have suffered human rights violations. This paper, however, will focus on the role of credibility assessment in asylum.

Although the concept of political asylum has existed for centuries, the institutionalisation of political asylum as a global remedy for contemporary human rights violations was developed after World War II and implemented more expansively after the Vietnam War. After World War II, the international community set up a system of asylum because the lukewarm or negative response of so many states to people fleeing Nazi persecution seemed in retrospect to be morally unacceptable.

The intersection between political asylum and human rights is a complex one in which individuals' rights and countries' obligations do not always match. The right to asylum could be described as a human right; however, while one could argue that a person has a right to seek asylum, the obligations of nations are circumscribed by the terms of the 1951 Convention and the 1967 Protocol. The Convention was focused on issues that were seen as important at the time, and was "carefully phrased so as not to challenge the sanctity of the sovereign state"³ It was originally designed by European states for European refugees⁴ Much has changed in the world since the policies were promulgated after World War II. During the Cold War, the system worked reasonably well, when refugee producing states and those providing asylum were ideological opponents who welcomed refugees for political reasons⁵. Since the end of the Cold War, the political benefits no longer exist, and refugee producing countries may just as easily be political or economic "friends" as enemies; ironically as it became easier to leave, it became harder to enter. Nowadays, refugees flee in large numbers from a wide range of states, and receiving countries are increasingly unwilling to accept them. Under the Convention the state has the right to grant asylum, but individuals seeking asylum do not have the right to be granted it. Many scholars have pointed out the limitations of the UN definition of refugee as applied to current circumstances⁶. They consider it to be too narrow and that it should be anchored within the current human rights regime.⁷ Hathaway proposes a definition of persecution as the "sustained or systemic violation of basic human rights."⁸

³ Richard Falk, *Achieving Human Rights* (New York, NY: Routledge, 2009), 3.

⁴ James C. Hathaway, 'Reconceiving Refugee Law as Human Rights Protection' (1991) 4(2) *Journal of Refugee Studies* 113-131.

⁵ James C. Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law' (1990) 31(1) *Harvard International Law Journal* 129-183.

⁶ e.g. Matthew J. Gibney, *The Ethics and Politics of Asylum*. (Cambridge, UK: Cambridge University Press, 2004); James C. Hathaway, *The Law of Refugee Status* (Butterworths, 1991); Lisa S. Alfredson, *Creating Human Rights: How Noncitizens Made Sex Persecution Matter to the World*, (Philadelphia, PA: University of Pennsylvania Press, 2009).

⁷ Hathaway, *supra* n.5.

⁸ *Ibid*, p.99.

Some regional instruments (and some individual states) provide a broader definition of refugee than the Convention one along the lines proposed by Hathaway. The OAS and the Cartagena Instruments include those who have fled their country because of such crises as generalised violence, foreign aggression, civil war, or massive human rights violations.

Such definitions address the problem with the Convention definition; that it does not encompass many of those who are affected by atrocities, because they can't prove that they were targeted directly as individuals. Asylum law requires that applicants prove that they were persecuted on account of one of several categories (race, religion, nationality, membership in a particular social group, or political opinion) which imply group membership, and also that they personally have been targeted for persecution. The many people who flee their countries out of a general fear of the disorder and generalised violence of civil conflict, or those who are forced out, are not covered by asylum law because they cannot prove personal persecution. The recent surge of Afghans into Britain who have unsuccessfully claimed asylum is an example of this disconnect.⁹ As Alfredson puts it: “[a]sylum seekers falling outside this definition may not only remain invisible to our conception of just what a refugee is or what ‘makes’ refugees, but may have their chances of survival seriously threatened¹⁰.” Another limitation of the UN definition is that it only covers those who have left their country of origin, and therefore provides no redress to those whom UNHCR call IDPs (internally displaced persons).

National legislation does not generally frame the circumstances in which an asylum seeker can obtain asylum in a host country in terms of human rights. While there is much rhetoric claiming that asylum is about protecting the human rights of refugees, in practice the refugee system is fundamentally concerned with protection of powerful states¹¹.

Asylum and human rights' discourse have run on parallel tracks in the post World War II period. But while both human rights and refugee policy have developed since then through both international instruments and national legislation, they have not generally been perceived by the various relevant communities as part of a holistic regime.¹² The first phase of the modern conceptualisation of human rights came in 1948 with the Universal Declaration of Human Rights. As Falk points out, however: “Governmental engagement with this affirmation of human rights was understood from the beginning as never intended to be more than a gesture, and was carefully phrased so as not to challenge the sanctity of the sovereign state¹³.” Because of this belief in the sanctity of

⁹ Adam B. Ellick, ‘Running Out of Options, Afghans Pay For an Exit’, *New York Times* (5 July 2009), 10.

¹⁰ *Alfrdson*, supra n.6 at 50.

¹¹ *Hathaway*, supra n. 6.

¹² Jane McAdam, ‘The Refugee Convention as a Rights Blueprint in Need of International Protection’ in McAdam, Jane (ed.), *Forced Migration, Human Rights and Security*. (Oxford, UK: Hart Publishing, 2008), 263-282.

¹³ Richard Falk, *Achieving Human Rights* (New York, NY: Routledge, 2009), 3.

the sovereign state and the absence of either the means or the political mandate to protect human rights abuses which are internal to sovereign states, asylum and refugee law provide one rather piecemeal and ineffective method of addressing such human rights abuses.¹⁴

Asylum law addresses human rights abuses on an individual basis and does not apply to many of those who, it could be argued, suffer from such abuses. Asylum may serve the purpose of alerting the world to the existence of human rights abuses in a particular state.¹⁵ This is particularly true for human rights abuses that take place in states which do not receive attention by the media or political institutions.¹⁶ As such, asylum can be seen as an expression of humanitarian concern.¹⁷ But such concern is symbolic rather than a practical solution for those suffering from human rights abuses.

A further complication with a human rights approach to asylum is the basic question of when human rights should outweigh cultural traditions.¹⁸ This is particularly relevant in claims of asylum based on gender practices that are part of the cultural tradition of a society, as, for example, FGC and honour crimes. In these cases individuals have claimed to be the victims of sexual violence (a human rights violation), but the courts have, until recently, not been willing to regard that violence as targeted against a member of a social group, a requirement to meet the criteria for asylum. Narrow interpretations of the category “membership in a social group” have had significant consequences for considerations of gender violence as a human rights violation warranting asylum; further, cultural assumptions about gender normativity have created obstacles to considering victims of gender violence for asylum. As Alfredson points out, “Cultural relativism underpins interpretations and applications of the universal standards upon which refugee policy is based. Thus in some cases asylum seekers may be denied protection despite legitimate human rights violations.¹⁹” At the very least, as Bhaba points out, the nature of the asylum claims may result in stereotyping of what may be complex political situations in the country of origin.²⁰ The result of this simplified framing may make it harder for those claimants who do not fit the cultural stereotype to obtain protection.

¹⁴ Ibid at 73.

¹⁵ Alfredson, supra n.6.

¹⁶ Jacqueline Bhaba, ‘Internationalist Gatekeepers?: The Tension Between Asylum Advocacy and Human Rights’ (2002) 15 *Harvard Human Rights Journal* 155-181.

¹⁷ Ibid.

¹⁸ Supra n. 16, Alfredson, supra n.6.

¹⁹ Alfredson, supra n. 6 at 67.

²⁰ Supra n. 16 at 162.

Discourses about human rights abuses play a significant role in particular asylum claims. The immigration officials who evaluate individual cases use their knowledge about the general situation in a particular country as part of their assessments of the credibility of the individual. For example, an immigration official in the film *Well Founded Fear* points out that it's not enough to be the victim of injustice; an Algerian woman who has been raped by a soldier has suffered a human rights violation, but it doesn't necessarily warrant asylum.²¹ Evaluating evidence in a political asylum case relies not only on information provided by the applicant but also information gleaned from a variety of formal and informal sources, including official information provided to the officials about the situation in different countries, media representations, and accounts by expert witnesses. Further, when translators are used, they sometimes provide interpretations of the applicant's testimony based on their own knowledge.²² Media sources can have additional weight when the very fact of media exposure changes the status of an applicant's possible persecution upon return to their native country. For example, Mende Nazer was kept as a slave in the London home of a Sudanese diplomat. Her initial claim for asylum was denied, but because her case was picked up by a journalist and received vast medial coverage, the Home Office reversed the denial, saying: 'I have read Ms Nazer's account of her experiences in Sudan. In view of the widespread publication of her book and the high profile given to her claims both in Sudan and elsewhere, I am satisfied that Ms Nazer would face difficulties which would bring her within the scope of the 1951 [refugee] convention were she to return to Sudan.'²³

3. Elements of the Claim

As we have argued elsewhere, evidence is one of the most problematic areas of the political asylum process.²⁴ Asylum applicants often leave their home countries in difficult or dangerous circumstances and very often without any documentation. Not only do they not have documentation of their birth, marriage, school matriculation, police detention, or political activism, they are not in a position to acquire such information because doing so would put their families or friends who remain in their home countries in jeopardy. Often, applicants have only their narratives as evidence of the atrocities they have suffered and their fear of return.

Proof of identity is central to an asylum claim. Asylum seekers, lawyers, and the immigration authorities have a common goal. They all need to prove that someone is

²¹ Shari Robertson and Michael Camerini, *Well-Founded Fear* (PBS documentary, Epidavros Project Inc., 2000). Throughout this paper, we have substituted already publicised cases or have generalised cases from our own research beyond recognition to protect the asylum seekers.

²² Marco Jacquemet, *Credibility in Court: communicative practices in the Camorra Trials* (Cambridge: Cambridge University Press, 1996).

²³ Mende Nazer and Damien Lewis, *Slave: My True Story* (New York, NY: Public Affairs, 2003) 331.

²⁴ Carol Bohmer and Amy Shuman, *Rejecting Refugees: Political Asylum in the 21st Century* (New York, NY: Routledge, 2007).

who they say they are and that their stories of persecution are “true”, and their fear well-founded, all in a world without evidence. People are asked to produce identity in a system that produces ignorance, a system that erases identity systematically and then asks for identity that itself obliterates who they are.²⁵ The classic patterns of escape often require them to compromise traces of their identity on their journey. Some of them pitch their documents en route to conceal their identity from pursuers, while others leave them behind in their rush to escape. Some never had any documents to begin with, and others use false documents for a variety of reasons.

Identity for the asylum authorities is defined in terms of documents. For the applicants, by contrast, identity is about much more than one’s name on an unforged document. It is about how they formed the political identity that led them to flee, why they adhere to the religious beliefs which got them into trouble, how they identify themselves as a member of a particular ethnic group who are persecuted because of it. Their names and identifying characteristics are a small part of that identity. In other words, identity is a matter of reputation and relationships rather than a bureaucratic record.

Evidence is also needed to prove that a claimant’s story is true, or, more correctly, credible.²⁶ Even though case law both in the U.S. and the U.K. permits informal evidence and allows for the granting of asylum based exclusively on the applicant’s story, asylum hearings are dominated by a search for the “truth” as perceived by the official hearing the case. For many of the people involved in the asylum process, credibility is the crux of the matter. How can the officials tell whether applicants are telling the truth when they themselves are the only source of information about who they are and what happened to them? Documentary evidence is the classic kind of “objective” evidence that reassures immigration officials that a narrative is “true.” Without it, a person doesn’t have much hope of getting asylum, even though the law allows for such a possibility. Ironically, the fact that a person does not have documentary proof of a claim may be perceived as evidence that she left in such a hurry that she couldn’t gather the materials to support the claim, even assuming she knew that this would later be necessary. Even if someone had the time and the presence of mind to collect corroborating evidence, it is entirely likely that such evidence does not exist. Most countries from which people flee persecution don’t have the kind of press that reports details of political activism. Nor do they provide someone who was arrested with paper attesting to that fact.

This critique of the ways in which credibility is used in asylum hearings is by no means unique. There is now a body of legal and psychological literature, and a number of

²⁵ Carol Bohmer and Amy Shuman, ‘Producing Epistemologies of Ignorance in the Political Asylum Application Process’ (2007) 14(5) *Identities* 603-629.

²⁶ James A. Sweeney, ‘Credibility, Proof and Refugee Law’ (2009) 21(4) *International Journal of Refugee Law* 700-726, at 700.

reports by NGOs on the issue of credibility.²⁷ Of relevance here, this literature highlights the discrepancy between requirements of the law in the evaluation of credibility and its implementation by hearing officers. It also points to the need for a credible story to fit into the decision-maker's basic understanding of how the world works.²⁸ Our case example, described below, provides a telling example of this problem

Despite the human rights legacy of political asylum policy, the evaluations of asylum applications are less human rights stories about safe haven for persecuted people and more surveillance stories about possible fraud (and thus criminal trespass across national borders). To understand how that happens, we turn our attention to the story of a Cameroonian woman who was twice denied political asylum in the United States, but who eventually received asylum status. This particular story offers an opportunity to discuss one area in which the connection between human rights violations and political asylum processes breaks down: the failure (on the part of political asylum officials) to understand the complexity of social networks in situations of conflict. Often, we argue, asylum applications are denied because the officials are suspicious of the legitimacy of the applicant's political membership and thus of his/her fear of return. Political affiliation is complex; most often, for the people we have worked with, it is a response to immediate situations rather than an abstract ideological position; also, as in this case, personal loyalties can trump political ones, and individuals being persecuted of necessity rely on personal connections with their enemies to escape. Political violence disrupts and destroys ordinary life, but even in the middle of total destruction of a community, people sometimes are able to make use of ordinary connections to provide a means of escape. Evaluating asylum applications requires understanding this complex connection between public and private, ordinary and extraordinary, and contradictory loyalties.

4. The Case Study

The Cameroonian woman, whom we will call Margaret, had a clear case of the violation of her human rights. She was arrested, tortured, and raped in response to demonstrating peacefully as part of a student protest. Her brother was killed because of his relationship with her. However, the asylum officials denied her application because of inconsistencies that raised suspicions about her membership in a persecuted political group. Margaret found herself forced into a situation of political conflict because of social injustice. She is from the southern, Anglophone, part of Cameroon. When Cameroon received its independence, the southern, Anglophone, part, was given the choice of joining English speaking Nigeria, joining the northern, French speaking part of Cameroon, or standing on its own. The British eliminated the third option, which would

²⁷ E.g. supra n. 26; Gregor Noll (ed.), *Proof, Evidentiary Assessment and Credibility in Asylum Procedures* (Leiden/Boston: Martinus Nijhoff Publishers, 2005); Jane Herlihy, Kate Gleeson and Stuart Turne, 'What Assumptions about Human Behaviour Underlie Asylum Judgments?' (2009) 22(3) *International Journal of Refugee Law* 351-366. Amnesty International, *Still Human, Still Here: Why so many initial asylum decisions are overturned on appeal in the UK* (April 2013).

²⁸ *Bohmer and Shuman*, supra n. 24 at 154-166; Gregor Noll, 'Asylum Claims and the Translation of Culture into Politics' (2006) 41 *Texas International Law Journal* 491-502, at 499.

have required substantial British support, and in an election, southern Cameroonians decided to join northern Cameroon. There was to be a vote after a year to review the decision, but that never happened, and southern Cameroonians consider themselves to be an oppressed group.²⁹

Margaret studied to be a nurse at the only English speaking university in Cameroon, the University of Buea. In her narrative, she recounts many inequities in the system including the requirement to do clinical practice in French speaking hospitals—the closest English speaking hospitals are in Nairobi, Nigeria. At a point, the Cameroonian government decided not to grant credentials to the students at the University of Buea. The students decided to go on strike. As Margaret reports in her affidavit for political asylum:

“In December 2001 the newly appointed Minister of Higher Education, in collaboration with the Minister of Public Health, decided to limit the Nursing and Medical Laboratory Science Bachelor’s programs at the University of Buea to two-year Diploma programs. This decision was based on the fact that there were no French speaking equivalent programs. I believed that this decision was part of the plan by the government of Cameroon to further marginalise Anglophone Cameroonians and prevent them from having access to educational and professional opportunities.”

In response to the Minister’s decision, Margaret and other student leaders attempted to meet with the administration, and when they received no response, they decided to strike. Some of the student leaders were killed; many were imprisoned and tortured. Margaret escaped from prison after having been arrested three times and, because she had already been awarded a Fulbright Fellowship, was able to get entry into to the United States on a student visa; she then applied for political asylum.

Margaret’s account offers a good example of the difficulties of translating a human rights story into a successful political asylum case. Our analysis of her narrative focuses on how she accounts for social networks including her family, her co-activists, the people who aided her escape, and the people, including Carol, who were involved in her asylum application process. We argue that these social networks, or kinship affiliations, are one of the central areas of dispute in asylum decisions. Both denials of Margaret’s asylum application rested on the asylum officials’ suspicions of her social networks. Asylum officials’ suspicions often focus on the legitimacy of the applicant’s claim to being part of a political group and on any seemingly contradictory connections across lines of dispute, especially aid provided in an escape. Complex, seemingly contradictory connections, especially the use of bribery, offend the officials’ unarticulated belief in the idea that lines of conflict ought to be clear-cut and that government officials ought not be corrupt. Further, officials are especially suspicious when people are helped by people who should be their enemies.

²⁹ *Cameroon: Information on the Relationship between the Anglophone and Francophone Communities* (2002), available at: <http://www.unhcr.org/refworld/publisher,USCIS,,CMR,3f51eaa4,0.html>.

We use six different sources of representation of social networks: Margaret's affidavit; her letter of denial of asylum; her narrative told to Carol's³⁰ class at Dartmouth; her narrative told to me; Carol's narrative about her work with Margaret; and website accounts of the events.

In her affidavit, Margaret provides a chronology of events, numbered 1-66, beginning with some background information, followed by three sections representing her three imprisonments, and a conclusion. In the following excerpt from the section on her first imprisonment, she describes how she got involved as president of her university's student organisation, the steps the organisation took to get a response from the Minister of Higher Education, the student protest, and her arrest. She positions herself and her fellow students as acting peacefully, within the accepted practices of the university. The students went on strike only after receiving no response. They were arrested following a peaceful demonstration.

“As president [of the student organisation], I reacted [to the Minister of Higher Education's decision to discredit the program] by organising a meeting with other student leaders at the university.

...

After receiving no response from the government officials, we began a strike

....

We continued our peaceful demonstration...and were granted a meeting with the Vice Chancellor.

...

The Vice Chancellor...ordered the arrest of all student leaders.

I was arrested by the Gendarmes at my student hostel room as I was getting dressed to go to school.

...

while I was in jail, I was tortured by the Gendarmes.

...

³⁰ For consistency and clarity, we refer to the asylum applicants and ourselves by first names.

I was released...along with the other student activists and ordered to pay a sum of 50,000 CFA francs (about \$95 US). This was a sort of “bail” that we were extorted to pay by the Gendarmes.

...

I joined the Southern Cameroons National Council (SCNC) and the Southern Cameroon Youth League (SCYL). As a volunteer, I was assigned to work in the Molyoko community, which is a neighborhood around the University of Buea.

My goal in working with these two organisations was to educate people in Anglophone communities about the discrimination and marginalisation of our communities by the Government, and to inform them about important political and health issues.”

When Margaret prepared this affidavit, she was having great difficulty telling her story. Much later, after she had been turned down twice for political asylum (and coincidentally on the eve of learning that she did receive asylum), she spoke about her experiences to Carol’s class at Dartmouth. After her first denial, she began to have weekly conversations with Carol, who helped her to rehearse her story to be able to tell it without breaking down. Carol felt terrible about asking Margaret to relive her experiences, although the rehearsals were necessary for the success of the asylum case. As Carol says,

Every week I would force her to talk about her traumatic experiences and revisit her pain, including the arrests and her treatment in jail, including her rape. Not surprisingly she had tremendous difficulty doing this and every time we did this, she began to cry. I spoke to her about her current life and how she was dealing with it, including both her academic concerns and her emotional problems. Every week I would get off the phone feeling like a monster for torturing her further. I also felt utterly drained by the conversation myself, something I have never felt with other clients I had worked with. I was careful not to let her know that I didn’t have my usual protective objectivity in her case. She didn’t need to add to her burden this way. After a couple of months she had her hearing, about which she told me she felt much better, because she felt she had been listened to.

Margaret didn’t dread her conversations with Carol at all. To the contrary, as she said to Amy, those conversations let her know “there was somebody out there who cared.” Margaret regards Carol and the other lawyers who helped her as part of the network that she relied on from the beginning of her ordeal. Speaking to Carol’s class was not only more comfortable because of the months spent rehearsing the story; also, the university environment was a familiar context for her, in contrast to the immigration hearing.

In the narrative told to the students, rather than list a chronology of events, Margaret describes her experiences as an “aha moment.” Instead of positioning herself and her fellow students as following procedures, demonstrating peacefully, and then becoming the unwitting victims of injustice, she describes herself and her group as knowledgeable

about the consequences of their acts. She positions herself ethically, relying on her upbringing to respond to injustice with courage. She positions the gendarmes who arrested her as acting violently, as forcing her to sign papers saying she would not continue her political involvement and as trying to force her to identify other students who had been involved.

”We knew somebody was going to diewe knew somebody was going to be arrested.”....The gendarmes broke into my apartment. I was detained for two days. On the third day I was released, my brother came. I was asked to sign a document that said I’d never get involved again. You come to a point in life where you really believe in the cause. I was raised to stand up for what was right. That was my aha moment—that is how I decided to join SCNC (the opposition party of the Anglophones). On 20 May 2002 we demonstrated, we got arrested, the gendarmes came out. . . At 3am....(I was arrested) they were forced to list other people. I don’t blame them. That’s how they found me. They snatched my door open, took me to the gendarmerie. My brother bailed me out; I was still made to sign papers.

This is not only an account of what happened—that she was arrested—but also an account of her social networks, first with the other students who had protested together and knew “somebody was going to die...somebody was going to be arrested;” second with the Gendarmes, who had received her name from her colleagues and who wanted her to betray the names of others; third with her family and upbringing who raised her to “stand up for what is right; fourth with the cause she decided to join as a result of her “aha moment,” and fifth with her brother, who bailed her out. Later in her account, she includes a sixth connection, with a policeman from her village who helped her escape.

It is hard to know whether the differences in how Margaret presented her case, as a chronology of events in the affidavit, or in terms of complex relationships and emotional responses in her narrative to Carol’s class, made any difference in her denial of asylum. The affidavit followed customary procedures for political asylum cases, and we know from other hearings that accounts of emotionally complex relationships are sometimes disregarded by the officials.³¹ Margaret’s denial was based on suspicion regarding her social networks.

The asylum denial points to inconsistencies in Margaret’s account of the dates of her arrests. The official wrote, “such an inconsistency is material since it undermined your testimony regarding a central instance of persecution...Your testimony about the history of the SCNC was also previously found, not in clear error, to lack detail in material respects...your testimony about conversations with your activist mother and your reasons for continuing to fear persecution in Cameroon were also inconsistent in material respects.”

³¹ Thomas Spijkerboer, *Gender and Refugee Status* (NY: Ashgate, 2000).

The letter of denial does not refute Margaret's claim to have been persecuted for her participation in the student demonstrations nor does it deny unjust treatment of Anglophone Cameroonians. The officials do not deny that her brother was killed. However, they do question Margaret's reasons for continuing to fear persecution, should she return to Cameroon. They base their suspicions on inconsistencies that call into question the idea that she would be targeted upon return as a leader of the student group.

The asylum officials' suspicion of Margaret's connection to SCNC (the Southern Cameroon National Council) may be part of a larger suspicion about the group itself. Researchers have established some correlations between countries considered to have serious human rights abuses and successful asylum applications³² Cameroon is not a country generally recognised for human rights abuses, although Anglophone Cameroonians consistently report human rights abuses as well as inferior treatment, as does the US State Department.³³ Many of the Cameroonians we know and some whose stories are on the web or in the media who did receive asylum status were initially rejected.³⁴ The SCNC may raise suspicion because it is portrayed by the Cameroonian government as a secessionist organisation rather than as a human rights organisation.

Margaret's account in particular may have raised suspicion because as she attests, she joined the political organisations (SCNC and the Southern Cameroon Youth League {SCYL}) not out of ideological conviction but as a response to a situation. Although many of the asylum applicants we have worked with similarly describe their political action in these terms, the asylum officials seem to expect a different profile for political action, more tied to human rights violations in general than to their own experiences. Here we see another illustration of the need for narratives to be in accord with decision makers' perceptions of how and why people become politically active.

In her affidavit, Margaret established the history of her involvement in the student organisation, the SCNC, and the Southern Cameroon Youth League (SCYL). She attributes her arrest to her participation as a student leader in the protests against the new higher education policies. Both the SCNC and the SCYL have been outlawed by the Cameroonian government. In her affidavit, Margaret states: "I am afraid to return to Cameroon, fearing for my life due to my documented work as a political activist fighting for the rights of Anglophone (English-speaking) Cameroonians."³⁵ At the end of her affidavit, she writes:

³² Jaya Ramji-Nogales, Andrew I. Schoenholtz, and Philip G. Schrag, *Refugee roulette: disparities in asylum adjudication and proposals for reform* (NY: NYU Press, 2009).

³³ US State Department, *Country Report of Human Rights Practices for 2012: Cameroon*, available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#section4>.

³⁴ Emily Brady, 'The Year of Living Nervously', *New York Times* (5 December 2008).

³⁵ See <http://www.unhcr.org/refworld/topic,4565c2254a,4565c25f5a5,4829b55cc,0.html> which explains the background/history of this struggle in Cameroon.

“My cousin x told me an email on (date) that when she was traveling by bus to a village outside of Yaounde, police and gendarmes at several checkpoints asked if there was anyone on the bus by my name or who knows me.

If I return to Cameroon, I will be arrested by the police for my escape and my previous political activism.

I am afraid to return to Cameroon because I believe that I would be arrested, beaten and either killed or sent to prison.”

The asylum officials questioned Margaret’s claim that she would face danger of persecution upon her return. What makes some claims more vulnerable to such suspicion, especially when the officials do not doubt that the kinds of injustices described are occurring in a particular country? We know from our research on political asylum that it’s not unusual for people to come under scrutiny because the officials are more suspicious of applicants from a particular country.³⁶ Unlike Tibetans or Burmese who rarely face suspicion, Cameroonians are frequently suspected to be fraudulent asylum applicants. Terretta describes various cables and reports from the US Consulate in Yaounde, Cameroon, beginning in 2003, and for several years thereafter which claimed that most of the asylum applications in the US and Europe were either frivolous or fraudulent.³⁷ The Consulate also argued that the situation in Cameroon had not deteriorated over the last few years, contrary to the State Department Reports mentioned above. The Consulate used the fact that Cameroon had a high rate of corruption in support of the claim that most asylum claims were fraudulent.³⁸ In the Transparency Index, Cameroon was the most corrupt country in 1999, and since then has been in the bottom quartile.³⁹ We believe that it is in part because of the frequency of corruption that Margaret was able to make the arrangement she did to escape from prison, as we describe below.

We also suggest, though we cannot be certain, that part of the problem is the Cameroonians’ complex social networks, especially their reports of being aided in their escape by people who look like their enemies.

In her affidavit, Margaret describes how she escaped:

³⁶ See also supra n. 31.

³⁷ Meredith Terretta, *Expert testimony and the (A)political: Changing Roles for Expert Witness in African and Global Politics since the 1950s* (Paper presented at the Conable Conference, University of Rochester, New York, April 2012).

³⁸ See Transparency International Reports 2012, available at: <http://www.transparency.org/cpi2012/results>.

³⁹ Ibid.

‘I overheard the Commissioner telling a police officer to prepare for my departure to Kondengui prison.

...

I recognised the police officer that was assigned to supervise me. We knew each other because he had brought his father to the National Center for Diabetes and Hypertension at the Yaounde Central Hospital, where I worked from July 2002 to May 2003. He was also from Babessi, my hometown. I struck a deal with the police officer—he would help me escape, and I would pay him 500,000 CFA francs. We arranged that I would bring the money to his wife’s house after I escaped.’

Margaret gave a similar version of the story to the students in Carol’s class:

“I was taken to the French speaking prison, jailed there. The letter I had signed was distributed everywhere. I knew I would be locked up in the prison where I had been a nurse. I had to do something where I was or I would go to jail. They gave you assignments. They tortured you in the morning and you worked in the afternoon. Someone I knew happened to be one of the law enforcement officers. ‘What are you doing here?’ ‘I got arrested. You need to help me.’ I struck a deal with him. I was assigned to clean floors...I just walked away. That’s how I left. I was in hiding. I went to a friend’s house, a friend from the University of Buea.”

In this version Margaret includes the actual conversation with the policeman rather than the details of how she knew him. In a version she told to Amy, she explained that she was given a cleaning job at the prison and that she had to go outside to get water. She was returning with the water when she saw the policeman:

“So when he saw me he was shocked

He said ‘what are you doing, what happened?’

I explained to him

I told him I said, ‘please you really need to help me

If you don’t help me, this is the end of it

I really need you to help me”

So, he wouldn’t do it without a price

So we had to strike a deal

And that’s how I walked away.”

Margaret elaborated on her connection with the policeman; not only was he from her town, she lived in a building with his wife's relative:

“His wife was related to someone I knew in the university

She lived in the same building

We lived in university apartments for students

I lived with her in the same building.”

This kind of connection is often the crucial element in someone's escape. A chronicle of another Cameroonian asylum seeker also describes bribing a guard to escape¹. However, bribery often requires more than money, and several of the asylum seekers we have worked with have described a situation in which an enemy helped in an escape. As we report in *Rejecting Refugees*:

“Henri was questioned at his asylum hearing at great length about why someone would let him escape from the Central African Republic to Cameroon. He described how an “enemy” (someone from the current leader's party (Patasse) helped him cross the border. It was clear that the officer couldn't understand why an “enemy” would help someone. In fact, as Henri told him over and over, he was also a childhood friend. In that society, longstanding friendships trump party affiliation. Similarly, the AsylumAid report describes the case of : “J.L., for instance, was allowed to get away by Zairian soldiers who had captured him on orders, because he spoke in Tshiluba, their language. But shared loyalties are not a motive the Home Office recognizes.”⁴⁰”

One reason that the asylum officials don't recognise shared loyalties across enemy lines is that doing so contradicts basic understandings of justice and injustice. Political asylum is designed to protect innocent people against unjust aggression, and if the aggressors are sometimes sympathetic, identifying legitimate asylum cases is more complicated, if not compromised. Of course, receiving preferential treatment from someone one knows is as common in modern democracies as it is in situations of persecution. In a sense, it's nothing more than being well-connected. In politically fraught situations, especially those involving violence, being well-connected is crucial, and those connections often if not always cross enemy boundaries. Avoiding human rights violations often relies on these connections.

It is ironic that decision makers may have trouble accepting the power of allegiances and the ways in which people help those whom they know even when they are on opposite sides of a political divide. Because our system relies less on community, we are less likely to see that networking and the help Margaret received to get out of prison are part

⁴⁰ Supra n. 24 at 166.

of the same social system. In this case, we have an example of the importance of “contacts” in our society. After the second denial, Margaret’s lawyer called someone he knew in the Department of Homeland Security to ask them to reevaluate her case, and as a result, she was finally granted asylum. But we do not call this corruption or bribery or even favoritism, which is how we negatively label the actions of those who help asylum seekers.

As Margaret’s “aha moment” suggests, the connections people make, the organisations they join, and the decisions they make to resist injustice are based on particular situations. And those situations rarely exist only in a public domain. Margaret attributed her decision to stand up for what is right to her upbringing, to her family rather than to a public arena. She describes several motivations for the policeman to help her: He knew her; they came from the same town, and she lived in a building with his wife’s relative; also, she paid him. He knew her from their interaction at the hospital where he had brought his father and she had worked as a (possibly his) nurse. In addition, possibly, he felt compassion for her. In any case, Margaret was not just his prisoner; she was a person with a connection to him, and he agreed to obligate himself to that connection. Not all of these motivations appear in every version of her story. The money element is absent in the version she told to Carol’s class. The elaborate dialogue and effort to persuade the policeman is only in the version she told to Amy. This version, told after she received asylum, describes a more complex relationship with the policeman and it displays her vulnerability at that moment.

The reciprocity of their relationship is too complex to chart completely, and in any case for Margaret as for many other victims who receive aid from enemies, it is possibly ongoing. Some asylum officials in the west are completely unfamiliar with this sort of relationship and obligation, especially when people maintain their enemy status but still step across it to aid each other. One could say that the policeman was interested only in the monetary reward, but this is probably an over-simplification. One could interpret his request for money as compensation for the great risk he was taking. In other cases we observed, the opposite is true; people aided “enemies,” and it was not a particularly risky action, though it was interpreted as risky by the asylum officials. The obligations of reciprocity go beyond the two individuals involved and usually implicate whole families. In Margaret’s case, as she explains, it involves a relative who lives in her building as well as the father and wife of the policeman. This same larger kinship connection is at work when relatives of a targeted individual are killed.

Violations of human rights fundamentally alter connections, loyalties, and the obligations humans have to one another. Margaret was able to prevail on the prison guard’s loyalties to her and persuade him that she was good for her word in offering him a bribe. Her escape depended on bribery, itself a kind of reconfiguration of loyalties. But affiliations also were what caused her the most harm. As she explains, the worst thing she endured was not torture and rape but the murder of her brother by gendarmes looking for her. From her affidavit:

A week after I left Cameroon, the police invaded my elder brother's residence and asked him where I was hiding. He insisted that he did not know, and they beat and arrested him. He started vomiting blood while in jail and was taken to the hospital. He died a week later."

Margaret's brother's death wouldn't necessarily warrant her asylum even though it is the source of her greatest suffering and fear. If they would kill her brother when they couldn't find her, surely, in her view, they would kill her if she returned. Many asylum seekers' home situations have been destroyed; there is nothing to return to but loss. Others, like Margaret would return (in her case for her mother), but fear being killed. Qualifying for political asylum is not measured by one's loss. Margaret's loss of her brother was more than she imagined. As she said to me, "It's been a very, very steep price for me to pay." Margaret describes herself as knowingly taking risks and knowingly taking a stand when she protested against the decisions of the Minister of Education. She and her group knew that people would be arrested and possibly killed. They experienced their world as already lost and their decision as necessary. However, for Margaret, her brother's death, at the hands of gendarmes looking for her, was a still higher price.

In her book *Life and Words*, Veena Das asks "What is it to lose one's world?"⁴¹ As part of her answer, she proposes, "this theme of annihilation of the world, or of finding oneself within the scene of world-annihilating doubt, is not necessarily tied to big events."⁴² This is certainly true for many people seeking asylum. Das' point is that the categories of ordinary and big events are always overlapping and intersecting; violations of human rights are always both personal and political, not as separate categories but as constantly reconfigured alliances. As in Margaret's case personal alliances can challenge political obligations. Neighbors become enemies but, in certain circumstances, individuals can rely on those neighborly allegiances or associations. Violations of human rights often complicate the boundaries of what are considered political or personal acts. Margaret's brother was killed not because of his political affiliations but because he was her brother.

5. Conclusion

The relationship between political asylum and human rights is complicated by competing assessments of affiliations. At the state level, if the country granting asylum regards the applicant's nation as an ally, then asylum officials will be less likely to recognise violations of human rights. If the applicant's country is perceived as being relatively stable, the officials will assume that the applicant can get protection from the state and not require asylum. If the state is accused of the violations, decision makers may consider the applicant to be justly detained or imprisoned even if the treatment in detention or

⁴¹ Veena Das, *Life and Words: Violence and the Descent into the Ordinary* (Berkeley: University of California Press, 2007).

⁴² *Ibid* at 7.

prison is unjust. After all, the US itself is accused of unjust treatment. At the local level, as we see in Margaret's case, affiliations are further complicated both by situations in which the applicant was aided by an enemy and by the applicant's political profile. Answering the question who was persecuted by whom depends on the question of how people are associated with each other, and these configurations are usually more slippery than the asylum officials recognise.

Political asylum officials are particularly suspicious of what looks to them like contradictory affiliations. However, these contradictions are endemic to the political asylum process at all levels, from the irresolvable goals of human rights protection and border control to the local entanglements that make people rely on their enemies for assistance in escaping. The problem is not only finding sufficient documentation to overcome the officials' identifications of inconsistencies in the applicants' accounts. In many cases, no amount of documentation could overcome the larger contradictions in both the political asylum process and in the applicants' complex experiences of violence and loss. Political asylum cases are rarely simple, and hearings, understandably expose this complexity. Many of the recent political asylum applicants are the victims of civil wars and violence that divides otherwise co-existing communities. The victims of that violence have connections and affiliations that cross enemy lines, and often their survival depends on crossing those lines. Further, in the process of escaping corrupt regimes, they may take advantage of that corruption, especially to bribe individuals as a means of escape. More often than not, the individuals seeking asylum are both political activists and unwitting victims of persecution, both people seeking safe haven and people seeking a better life. They are victims of human rights violations, but they may look like economic migrants at the same time. Careful scrutiny of political asylum applicants is, of course, necessary, but this scrutiny is flawed and misguided when directed at discovering what the hearing officers regard as inconsistencies in how a victim should/might behave, thus overlooking the complexity of violent situations involving the complete disruption of ordinary orderly life. Victims of human rights violations seeking political asylum are asked to produce a consistent narrative with supporting documentation when neither is possible when narrating atrocity.
