

COMMENTS ON THE DECISION OF THE UPPER TRIBUNAL IN RB (LINGUISTIC EVIDENCE SPRAKAB) SOMALIA (2010) UKUT 329 (IAC)

15 September 2011 (see end)

Before Messrs Ockleton, Perkins, McKee

Between RB and the Secretary of State for the Home Department
RB (Linguistic evidence – Sprakab) Somalia [2010] UKUT 329 (IAC)

I have been asked to comment on the above determination.

I focus, although not exclusively, on language aspects of this case. I do not deal with the merits or otherwise of the particular case but with Sprakab and forensic linguistic analysis. The numbers used below refers to sections in Determination and Reasons. In 2004, a group of 19 experienced and mostly senior forensic linguists issued a set of eleven **Guidelines** for this kind of work (Arends et al 2004, see Bibliographical References at the end). These are referred to by number during this report.

10, 13, 14, 15, 20, (27). The qualifications of the Sprakab linguists (01, 02, 03, 04) and analysts (EA10, 14, 19, 20, 246, 249). I have dealt with dozens and dozens of Sprakab analyses of those claiming to be Somali Bajuni refugees. In the course of these I have looked carefully at the qualifications of these linguists (Scandinavian) and analysts (East Africans). With the exception of EA14, not one is a native speaker of Bajuni (EA14 has now left Sprakab’s employ, which might tell us something): ‘mother tongue ability’ is a poorly defined term but in any case not the same as being a native speaker. Few have any training in African languages, Swahili, or Bajuni, and none has any published on these fields. Some of the Scandinavians have qualifications in Scandinavian languages and Arabic. In each case, at least one of the team (linguist, analyst(s)) ought to have recognized qualifications in the discipline of linguistics and in African languages/Swahili. This is not the case.

Guideline 3 “Judgements about the relationship between language and regional identity should be made only by qualified linguists with recognized and up-to-date expertise, both in linguistics and in the language in question, including how this language differs from neighboring language varieties. This expertise can be evidenced by holding of higher degrees in linguistics, peer reviewed publications, and membership of professional associations. Expertise is also evident from reports, which should use professional linguistic analysis, such as IPA (International Phonetic Association) transcription and other standard technical tools and terms, and which should provide broad coverage of background issues, citation of relevant academic publications, and appropriate caution with respect to conclusions reached”.

I have been in this field for 40 years and am familiar with the publications in the field. I keep up to date with new material. I am not aware of work in this field by any Scandinavian or East African. In

each of the four Sprakab reports one would expect some combination of native speaker ability and recognized qualifications in linguistics and African languages/Swahili. I don't find that in any of the reports. It is unusual that Sprakab would find it necessary to produce four reports – usually one suffices.

11, 12, (18, 19, 21). Ms. Kumbuka and her analyses. I am concerned with two issues here. One is, what are Ms. Kumbuka's qualifications? Not really stated. Two, various generalisations are made here about her report and her characterisation of the interviewer's Swahili. Anyone can claim that the moon is made of cheese but without access to supporting data, it is not possible to evaluate her claims. So it is here: neither I nor any other linguist can evaluate her generalisation without seeing her supporting data, so I am inclined to suspend judgement on what she says.

10 (last sentence), 13 (last two sentences), 14 (last sentence), 15 (nearly all), etc. I would repeat that I have read many Sprakab analyses of those claiming to be Somali Bajuni refugees. As they all follow the same pattern and make similar kinds of statements it is easy to generalize about them. Linguistic analysis, including forensic linguistic analysis of this kind, starts by laying out all the available linguistic data and proceeds through analysis to conclusion. General claims should not be bald assertions but need supporting evidence. Sprakab reports on those claiming to be Bajuni refugees from Somalia do not do this. They do not set out all the data but invariably give just a few 'examples'. The data most often consists of a few words, and rarely shows other linguistic material, such as phonetics, morphology, or syntax. The data rarely leads to the conclusions that Sprakab draws, and the generalizations are rarely based on solid data. There are many unsupported assertions. Central to the analysis is exactly how Bajuni differs from Standard Swahili. It is possible to list the differences (see e.g. Nurse 2010a, the sections called *Grammatical sketch* and *Word list*) but no Sprakab report I have seen shows any sign that the team is able to do this: see the last clause of the first sentence in **Guideline 3**, above). The language situation in the Bajuni area of southern Somali has changed radically over the past two decades but not once has any Sprakab report ever discussed this:

Guideline 2 “The way that people speak has a strong connection with how and where they were socialized: that is, the languages and dialects spoken in the communities in which people grow up and live have a great influence on how they speak”.

Until recently all the Sprakab reports I saw from 2004 to 2012 started with the two generalizations: “with certainty doesn't come from Somali.... with certainty does come from Kenya (or Tanzania)”. But Guideline 4 says, inter alia:

Guideline 4 “Linguists should have the right and responsibility to qualify the certainty of their assessments, even about the country of socialization. It should be noted that it is rarely possible to be 100% certain of conclusions based on linguistic evidence alone (as opposed to fingerprint or DNA evidence), so linguistic evidence should always be used in conjunction with other (non-linguistic) evidence. Further, linguists should not be asked to, and should not be willing to, express their certainty in quantitative terms (eg '95% certain that person X was socialized in country Y'), but rather in qualitative terms, such as 'based on the linguistic evidence, it is possible, likely, highly likely, highly unlikely' that person X was socialized in country Y'. This is because this kind of language analysis does not lend itself to quantitative statistics such as are often found in some others

kinds of scientific evidence”.

Since 2012 Sprakab has modified its categories: “(very high, high, medium, low, very low) degree of certainty that the speakers come from Tanzania and/or Kenya” and “ (very likely, likely, even chance, unlikely, very unlikely) that speaker come from Somalia”. The reports I have seen using this categorization all state that with a high or very high degree of certainty the speaker’s linguistic background is Tanzania and/or Kenya, and it is unlikely or very unlikely that the speaker’s linguistic background is Somalia. This is a quite minor change from the previous eight years.

My general conclusion about Sprakab reports on these refugees runs like this: Lay people, people in the street, can make general and unsupported opinions about language and language use, but linguists are expected to provide technical support for their claims. These Sprakab reports mostly do not do that.

While a few of their claims (usually the minor ones) are true (“speaks Swahili as mother tongue, doesn’t speak Bajuni as such”), I find the rest of their analysis and conclusions brief, careless, lacking in supporting evidence, unreliable, and unconvincing. The few claims that are true are in any case of little consequence as many young ethnic Somali Bajunis today speak either Swahili and no Bajuni or they speak Bajuni-coloured Swahili. I do not think much credence should be attached to this Sprakab analysis. In my opinion, it would be unwise to use it or its conclusions as a basis for deciding that the applicant is not from Somalia.

I have not seen the four reports in this case but have no reason to think they differ from the others.

24 - 27 I have no objection to keeping the Sprakab employees anonymous but we do need to know more about their qualifications and their sources (see **Guideline 3** above). For example, EXP 249 is said to have published a grammar of Swahili – where is it, what is it called? What have these people published, what have they read?

43 (second sentence) All the Bajuni Islands are close to the mainland. Nearly all Bajuni islands villages are on the landward side of the islands, so it is possible to see the mainland. On the island of Koyama are two villages, *Koyamani* and *Gedeni*. The latter is on the landward side so one can see the mainland but the village *Koyamani* is near the east = ocean side, in a hollow, and it is not possible to see the mainland directly without walking a distance. She is from *Koyamani* village (wrongly called *Koyamani Street* in the preceding section, 42). There are no named streets in Bajuni villages.

44. Bajuni history is not written down, it is oral, passed down from a few elderly males to others. She is right in saying that she would not know anything about it unless she consulted such a person.

47. Contrary to what the elders in the 2000 JFFM report said, most Bajunis do not speak Somali.

52. Since the Sprakab linguistic analysis of the Sprakab interview is not reliable, is there a recorded version of the HO interview and has its language been analysed?

53. We have no recording either of the court proceedings or of the HO interview so we do not know what dialect/language was used (how can the judges in court or on this report judge that?). Until we

do, no linguistic conclusions should be drawn from the HO interview or about language distinctions in the court proceedings. This would include any conclusion about the distinction between Bajuni and Swahili. See remarks in next section but one.

56, 57. Many Bajuni and Swahili kinship terms are different. These two sections raise the possibility that the translator (same as interpreter?) was not familiar with Bajuni.

59. The camps were a linguistic melting pot. Although we have no recording of language use there, it is very likely that she and other Bajuni used Bajuni among themselves and Swahili to others. As a recent young applicant put it nicely, “When we returned from the camp (to Somalia)...we continued to talk to one another in the Swahili we had adopted at the camp...it became almost a cool thing to do”.

67. Bajunis had no access to banks. Traditionally they dug holes and buried their wealth (gold jewellery) in the ground. The location was known to very few people.

70, 71, 74, 75, 76, 77, 78. As I understand this, a number of words were put to her by the interviewer in the Sprakab interview, she is asked what they mean, she doesn't answer appropriately, the Sprakab analysis concludes she doesn't know (some) Bajuni words, and finally Ms. Whipple takes her to task. This chain all rests on the initial Sprakab interview. I have heard many such sections in the interviews, I listened to two within the last two weeks, and they often proceed like this. First, the interviewer gives the interviewee a number of Swahili words and asks for the Bajuni equivalents: this usually proceeds fairly flawlessly. Second, interviewer pronounces a number of Bajuni words in what he thinks is the appropriate way, very slowly, drawn out, exaggerated, even grotesque. The result here is less satisfactory – the most common reply is “I don't understand” (even though at others points in the interview the interviewee sometimes uses the words herself). It is one thing for the interviewer to produce Bajuni words, it is another thing to pronounce them in a way that native Bajunis recognize. I don't trust the claims here that she is ignorant of these words.

Of the words given, *jabia*, as far as I know, means ‘rock’, as she claims: *vehundu* means ‘red people’ (not just ‘red’); *mkuru* refers to anyone big in stature, physical or social: and I am not familiar with *ikoto* or *igoto*, and am not able to locate it in any dictionary.

85, 86. See above, under **10, 13, 14, 15, 20, (27)**.

88. All the many analyses I have seen adduce examples of words, the lowest linguistic form. Fairly few deal with phonology including intonation, morphology, or syntax, and where they do, the analyses usually fail to base conclusion on data (see comments in **10 (last sentence)**, **13 (last two sentences)**, **14 (last sentence)**, **15 (nearly all)**, etc, above).

89 - 90. Degree of certainty. All the Sprakab reports I saw up to 2012 use the single term ‘With certainty’, as in ‘language spoken with certainty not in Somalia’, and ‘language spoken with certainty in Kenya (or Tanzania)’

89, 94. That sounds like a calm and rational procedure (“discusses...produce a report, giving a judgement (about origin”). The reality is different - I have heard several Sprakab interviews recently in which at the end the interviewer tells his colleague over the phone: “I'll call you back in three/five

minutes with the result”, which is not what (94) ‘run through the recording three times before producing the report’ says.

93. The phrase “she assured us that her analysts made due allowance for dialect and language mixing”. I have yet to see a single Sprakab report in which this is discussed in terms that professional linguists (sociolinguists) would find acceptable.

93. I have listened to 100+cases and in all the interviewers use Swahili, not Bajuni. Not one ever used Bajuni, because they cannot speak Bajuni. That is the real reason and has nothing to do with using Swahili “because 97% of those claiming to be Bajuni turned out to be from Kenya”. All the interviewers are from central or western Kenya.

95. Ms. Fernqvist insisted that all the islanders can understand Swahili. If I understand this correctly, she is saying the refugees speak Bajuni but “understand” Swahili. In no Sprakab report so far have I seen any Sprakab employee admit that any refugee spoke Bajuni. If an individual is bidialectal in A and B, that individual is more likely to use A when addressed in A, and B if in B. If a young Somali Bajuni is addressed in Swahili, the Swahili content of his/her speech is likely to be greater, if addressed in Bajuni then his/her Bajuni content is likely to increase.

96. Ms. Fernqvist “did not think there had been much change in Bajuni since the breakdown of the Somali state in 1991”. Oh? The following describes the situation better (from my own standard format):

“In sum, up to twenty years ago, we can be sure that at least the islands were almost 100% monolingual Bajuni-speaking, although male traders and fishermen who travelled to Kismayuu and Kenya would have had some exposure to Swahili. The language situation on the islands has changed dramatically in the last 20 years or so. From listening to many refugee cases, it was clear to me that the Bajuni spoken by young Bajunis (born from the 1980s onward) from the islands was not that of their grandparents or even parents: they speak poor Bajuni but lots of Swahili. Those were my thoughts as I recently communicated with the second source mentioned above, a man who has over 750 hours of experience interviewing Bajunis (Mr. Allen). He confirms that today there is a huge range of Bajuni language ability among those claiming to be Somali Bajunis. At one end of the scale there is more or less full fluency in Bajuni: such individuals tend to be elderly and living on the islands. At the other end of the scale are individuals who speak only Swahili, and no Bajuni: mainly young and living in Kismayuu. In between are individuals who speak a Bajuni-coloured Swahili, Swahili with some Bajuni, mainly vocabulary and common phonetic features, added. He also confirms that the prevalent attitude among young people is that they prefer Swahili, an international language with prestige and utility, whereas Bajuni has neither so they no longer find it useful. So some younger Somali Bajunis can be characterised as semi-speakers.

The situation has gone from the mid-nineteenth century where the community was more or less completely monolingual in Bajuni, with a very minor Swahili presence, to a situation 150 years later, where Swahili is rapidly taking over and few (any?) fluent Bajuni monolinguals are left in Somalia. Bajuni in Somalia is rapidly becoming an old people’s language. Young Bajunis from Somalia today speak the kind of Swahili widely spoken in East Africa, especially along the adjacent coast of Kenya”.

See also **112**, where EA19 admits the language might have changed.

97. I have read 100+ Sprakab interviews of refugees claiming to be Somali Bajunis. All have said “With certainty not from Somalia”. I admit I have no way of knowing how typical they are.

97. EA24 or EA14? See 13 and 14 where EA14 is mentioned. Who is from Chovae?

103. I cannot judge this unless I see the actual words.

110. ‘the Kenyan dialect of Bajuni’ versus ‘the Somali dialect of Bajuni’. For comparative purposes, linguists use a standard list with 100 basic vocabulary words. If the list is filled out for Kenyan then Somali Bajuni, the result is identical – there are no differences between the two. A false distinction. There are minute local differences, but equally there are minute differences between the different islands in Somalia. See also **128** and **129**.

111. How can her Bajuni have improved after living three years abroad?

113. Bajunis felt threatened at home and thought they would be safe in the camps in Kenya. However, they found that use of Bajuni in the camps soon revealed their identity, so the commonest pattern was they used Bajuni in the family but common denominator Swahili in public. The common language in the camps was Swahili, and the camps were porous, so many inmates could pass out and Swahili-speaking outsiders in. In 1998 Kwa Jomvu was closed, mainly because the Kenyan government was concerned with leakage from the camps into the surrounding area.

114, 115. Linguist 01 talks of “the unvoiced /b₀/ found in the bilabial position”. That is phonetic nonsense. No other observer has ever recorded this in over a century. Is 01 then to be believed in **116**?

117. “The HO guidance itself made sure (that although) the Sprakab analysis should never be the sole determinant of a nationality question, it was a reliable pointer to the resolution of that question”. I beg to differ. See my comments in **10 (last sentence)**, **13 (last two sentences)**, **14 (last sentence)**, **15 (nearly all)**, etc, above.

122. I agree about the degree of understanding. Of the Bajuni population given, some 3,000 to 4,000 are or were in Somalia, the rest in NE Kenya.

127. See my comment above on 97.

128, 130 Ability in Somali For several centuries before the 1980’s, from at least AD1600, maybe longer, there was a balance between the domains of Somali and Bajuni in southeast Somalia. Ethnic Somalis lived on the mainland and did not venture onto the islands, and most Bajunis were born, lived, and died on their islands. The mainland was mainly Somali-speaking and the Bajuni Islands of Somalia were monolingually Bajuni. A few adult Bajuni males spoke some Swahili and/or Somali as a result of fishing or trading activities. Most islanders were resolutely monolingual – adult Bajunis did and do not care for Somalis or Somali, did and do not speak Somali, did and do want to speak it, and strongly discouraged their children from speaking it. Relations between Bajunis and ethnic Somalis were frosty, to say the least.

This impression of language use was initially based on what I was told thirty years ago by

elderly Bajunis, both from northern Kenya and southern Somalia, long before the present chaos. It runs counter to what the British-Danish-Dutch fact-finding commission (2000) was told by a set of Bajuni elders, who said that ‘many’ Bajunis could speak ‘some’ Somali. The words ‘many’ and ‘some’ here are unquantifiable. I am strongly inclined to pay little heed to the testimony of these elders to this commission.

131. “It surprised us to learn that the familiarity of the islanders with Somali ...resulted from forced displacement in the 1970’s”. It surprised me too. “Forced collectivization of Bajuni fishing operations at that time” (133), yes, but mass acquisition of Somali is doubtful.

134. The elders are not right here. Bajuni was and is spoken in a continuous line of coastal settlements from Kismayu in southern Somalia down to the mainland opposite Lamu in northern Kenya. It is the same Bajuni dialect on both sides of the border. The southernmost Bajuni settlement in Somali is Ras Kiamboni. It is possible to walk, and people do regularly, from there to Ishakani, the most northerly in Kenya, in a couple of hours (see the map, *Ubajunini*, in Nurse 2010a).

135. The Nofali clan. The standard reference work on the Bajunis, their society, clans, and history is Grottanelli (1955). Grottanelli wrote long before any of the current chaos. He is quite specific about the Nofali being the original and the largest clan in Koyamani, so this is significant. The HO report does not seem to refer to Grottanelli. The appellant will not have read a book in Italian written fifty years ago, so it is significant that the appellant names the Nofali clan specifically.

132, 133 and elsewhere. For comments on the 2000 report, see Nurse 2010a.

140. Professor Nurse would be happy to attend, if funds can be found for his airfare.

145. See comment on **67**, above.

146. See comment on 44, above. She is right. She is not a Somali and although clans exist among the Bajunis they play little role. Bajunis do not need to understand their clan history to function in society.

147. In this regard though not in others, I believe the 2000 report. Some fishermen were taken to the mainland to train Somalis in fishing. It doesn’t follow that their whole families went, too.

150, 151, 152. (150) See **52, 53** and **70, 71, 74, 75, 76, 77, 78** above. In any case, there is no hard and fast line these days between Bajuni and Swahili among Somali Bajunis today. There are ethnic Bajunis from Somali today who speak no Bajuni, sad but true.

153. That “the appellant is not truthful and not Bajuni” depends on 145 to 152. I find 145 – 152 to be unreliable.

157. “In most contested cases it supports the applicants”. See comment in **97**, above.

159. In all the cases up to 2012 I saw only one category, “With certainty”, used. See **Guideline 4**, in **10 (last sentence), 13 (last two sentences), 14 (last sentence), 15 (nearly all), etc**, above.

160. sentences 3, 4, 5 sound good but do not, in my experience, correspond to what Sprakab analysts actually do in Bajuni cases. As the judges say, Sprakab's methodology is the major weakness.

I would also add that Sprakab's techniques in the interviews leave much to be desired. I am able to discuss this in more detail if required (see Nurse 2010c).

161. 'Distinctive speech patterns are much harder to copy and even harder to abandon'. Yes. Most Sprakab reports that I have read on these alleged Bajunis make claims about intonation and accent. In not a single report have I seen a single concrete example of how Bajuni intonation = accent differs from that in Swahili, so the claims are unsupported assertions.

165. I agree that deficiencies in interview technique do not necessarily lead to an analysis being wrong. However, I would make two points. One is that interviewers are supposed to conduct interviews in the interviewee's dialect/language – Sprakab's interviews of these refugees never do this. The other is that although most interviews last between 23 and 30 minutes, the length of useful speech by the interviewee available for linguistic analysis is much shorter, less than half that time, typically 8-12 minutes – a sample barely adequate. Mr. Allen's interviews last three hours.

171. I agree fully but I do not think Sprakab's analyses are adequate.

References

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Victoria, 6 February 2011

Sections 10-13-14-15, 89-90, 93, 97, 159 were slightly modified in May 2013 to bring them up to date

