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The Role of Expert Witnesses in the Adjudication of Religious and Culture-based Asylum Claims in the United Kingdom: the Case Study of 'Witchcraft' Persecution

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This article examines the role of cultural expertise in asylum judicial decisions in the UK by focusing on witchcraft-based persecution. The case study highlights multiple challenges to decision-making created by religious and cultural diversity, and the ensuing problems of assessing unfamiliar facts and beliefs against the often lack of corroborating evidence. Drawing on legal sources and a small number of anthropological studies, as well as analyses of judicial decisions, the article discusses how the unique characteristics of witchcraft cases, with their unfamiliar paradigms, are illustrative of the need to analyse and understand asylum claims within their broad cultural, historical, economic, and political contexts. The article exposes how cultural expertise assists judges in appreciating specific contexts and curbing their Eurocentric understanding of culture and religion, and shapes the final outcome of cases.

Keywords: witchcraft persecution, refugee status, religion and cultural practices, cultural expertise, adjudication issues

Introduction

This article contributes to the debate on the role of cultural expertise in the legal sphere by examining judicial decisions handling of 'witchcraft'-based persecution in the United Kingdom (UK). So far, most socio-legal scholarship on the use of expert witnesses in asylum claims (Hepner 2015: 242; Lawrence 2019; Federici 2018: 61) has discussed the necessity to evaluate facts originating in the asylum seekers' country of origin that would amount to the grounds of persecution in the country of refuge (Wilson 2016: 743; Holden 2019b: 3). Their focus has been on the clash of epistemologies between cultural experts and judges—i.e. sociological, legal and anthropological studies—because of their different fields, language, methodologies and preoccupations with experts' neutrality when they are instructed to give evidence by one of the parties (Riles 2006; Good 2007;

Vetters and Foblets 2016; Gallagher 2018). Further, even when experts are instructed, it still remains at the judge's discretion whether the evidence is accepted and to what extent. However, the role of cultural expert witnesses giving evidence regarding the countries of origin on the outcome of asylum cases remains unclear (Holden 2019a: 195; Lawrence *et al.* 2015: 2). Whereas there is agreement that asylum cases supported by expert reports have a greater chance to succeed, there is little data on the use of such expertise (Lawrence *et al.*2015: 2).

Although some scholars have criticised the terms 'witchcraft and sorcery' for being neo-colonial—'referencing inappropriate European traditions, and failing to identify the highly diverse range of practices and beliefs at stake' (Donnelly 1984; Subedi 1999; Ashforth 2002: 126 cited in Forsyth 2016: 333; Murrey 2017: 158; Millbank and Vogl 2018: 376)—I have decided to use the term 'witchcraft' because it commonly appears in the legal texts and in asylum judicial decisions (Millbank and Vogl 2018: 376). Also, I acknowledge that anthropologists such as Edward Evans-Pritchard have traditionally distinguished between 'witchcraft' and 'sorcery'. According to them, witchcraft denotes innate supernatural powers used to inflict misfortune and/or death. By contrast, sorcery involves rituals, spells and the handling of herbal substances to harm someone, and its practice could be learned (1937). However, this distinction is made mostly in East Africa and Melanesia, but not in other parts of the world. Therefore, in line with most recent scholars, in this study I use the term withcraft to mean both concepts (see also (Barnard and Spencer 2010: 715; Niehaus 2010: 715). Finally, in this article, 'cultural expertise' means 'special knowledge that enables socio-legal scholars, experts in laws and cultures, and cultural mediators' to 'describe relevant facts, in light of the particular background of the claimants' and 'for the use of the court' (Holden 2019b: 2).

This article discusses how the unique characteristics of cases relating to persecution based on beliefs in witchcraft, with their strong cultural and magical elements, are illustrative of the need to analyse and understand asylum claims within their broad cultural, historical, economic and political contexts (Hanson and Ruggiero 2013: 5; Lawrence 2019). Standard Country of Origin Information (COI)—country information used in refugee status determination procedures (EASO 2018b: 8), drawn from different sources, including government bodies, international human rights institutions, non-governmental organizations (NGOs), the media and academic publications—may be insufficient in establishing such contexts as they generally do not specifically address the feared harm or document the circumstances of an applicant. COI information cannot document all types of persecution that can possibly occur in a county (EASO 2018b: 9). In the absence of corroborating evidence in asylum claims, judges often revert to assumptions, tend not to believe unusual accounts, and struggle to reach their conclusions. This article demonstrates how cultural expert witness evidence plays an important part in assisting adjudicators to reach well-informed decisions in complex cases within which witchcraft is the primary cause or one of the causes of persecution. It supports previous research that the use of expert witness evidence is important in complex decision-making where religion and culture are being

challenged, not only to provide raw data, but also to interpret such data and give an opinion (Lawrence *et al*. 2015: 5, 7–8, 10–11; Vogelaar 2019). It should be noted that the aim of this short piece is not to address all possible angles on expert witnessing in asylum cases in the UK, but to concentrate on the role of 'country experts', and especially anthropological evidence—because of their training, anthropologists 'are critically engaged in nuanced, complex cultural analysis' (Hepner 2015: 242; Federici 2018: 61)—in these complex claims as far as outcomes are concerned.

This article starts by explaining the methodology adopted for this research and giving background information on witchcraft beliefs and practices. Then it makes the link between violence carried out due to witchcraft beliefs and practices and the possibility of obtaining refugee status on such basis. Further, it examines the case law dealing with persecution based on witchcraft beliefs and practices, focusing on the two contested issues of the ground of persecution and internal protection in the country of origin. In these sections the corroborating evidence presented by the expert witnesses and its impact on the cases' outcomes is discussed. The last section considers the value of cultural evidence in asylum cases and draws some conclusions.

Methodology

In order to conduct this research, I relied on three particular sets of sources: first, I carried out a review of scientific literature on witchcraft allegations in asylum cases searching electronic databases and scientific journals. I also collected studies in social and legal anthropology, NGO's reports on witchcraft cases (Molina 2005; WHRIN 2013), and United Nations' documents (Bussien *et al*. 2011; Schnoebelen 2009), mainly focusing on developments and cases in the field within the past 20 years. Despite my broad approach, the majority of the literature I relied on deals with Africa and Melanesia, which may be due to the searches being limited to materials that are available in English (Forsyth and Eves 2015). Also, whereas I recognize the significance of the wider literature on witchcraft and sorcery killings in early Europe and North America in the current perceptions of Europeans and the wider western world on the concept of witchcraft, such scholarship is beyond the scope of this discussion. Furthermore, this article is written from the perspective of a lawyer and refugee law scholar and therefore key authors and texts on witchcraft may be missing.

I subsequently analysed legal provisions and policies relevant to witchcraft persecution. I was able to gather 37 decisions dealing with witchcraft allegations from 1997 to date. Not all judicial decisions are reported and available through internet searches as the courts decide whether or not to make a case publicly available. Further, I found some unpublished decisions in private legal data bases (e.g. Westlaw, Lexis Nexis, Electronic Immigration Network, etc.). The search terms that I used were: witch, witchcraft, voodoo, magic rituals, sect, cult, sorcery, human sacrifice, vampires, vampirism, occult, supernatural, Satan, black magic, and exorcism (Forsyth 2016: 337, 344; Nagle and Owasanoye 2016;

Mace *et al.* 2018). I also included 'disability' and 'albinism' because, in some African countries, people affected by these conditions may be at risk of human rights violations and being associated with spiritual meanings, such as being considered a bad omen (Glucklich 1984; Ndlovu 2016; Reimer-Kirkham *et al.* 2019; Taylor 2019).The cases which I found deal with witchcraft persecution to varying degrees; in order to ensure that only the most relevant cases were considered, I excluded those where witchcraft did not carry any weight in the final outcome of the claim. Statistics on these cases are not available and it is not possible to assess whether those identified are representative of witchcraft persecution. Thus, some issues may remain uncovered and unclear and more research is needed in this area. The most common countries of origin are Nigeria, Cameroon, and the Democratic Republic of Congo (DRC). Most cases involved issues of fact rather than issues of law and therefore most of them were decided by the specialized immigration tribunals rather than the higher courts. An analysis of the decisions and the whole court files may have given a better idea of how judges arrived at their conclusions (this was the case in *RNM v SSHD* [2018]; *OA v SSHD* [2019]); however, such files are not publicly available.

With this in mind, the next section provides an overview of the phenomenon of witchcraft beliefs and practices in the countries of origin with the aim to contextualize harmful practices associated with ritual attacks and accusations of witchcraft.

Background on Witchcraft Practices and Violence

Witchcraft accusations occur when disproportionate suffering or injustice is blamed on the actions of a witch who is believed to use their supernatural powers for their own 'evil desires or out of pure malice' (Forsyth 2016: 334). Witchcraft powers are considered to be resisted in three main ways—by forcing the witch to give up her powers through exorcism, rituals or other practices involving torture; with the use of countermagical powers 'to neutralize the harm'; or with the use of 'physical means to remove or deter the witch' (killing, banishment; Forsyth 2016).

Witchcraft practices are common in many countries most notably in Tanzania, Nigeria, New Guinea, Angola, the DRC, India, Nepal, Indonesia, and China (Forsyth 2016: 332). Around the world, several doctrines and religions, including Christianity, Islam, Hinduism and indigenous practices, support beliefs in supernatural beings such as gods, satans, good and evil spirits, as well as perform rituals promoting these beings. Some studies comment on how, in some cultures, witchcraft is a daily element,

> forming an invisible background to social life and giving new impetus to the energetic activities of churches, healing rituals, relations of gift-giving and sharing, and people's patterns of socialization... (Rio 2010: 182)

Such beliefs are part of a collective imagination or common-sense world used to understand events that cannot otherwise be explained (Evans-Pritchard 1937:

18–32; Bourdieu 1977: 324; Edwards 2013: 324). Evans-Pritchard (1937) discusses how witchcraft does not preclude appreciation of natural causations, but supplement it with addressing unusual and unfortunate events.

Witchcraft has long been a subject of anthropology and history research (Levack 2013; Burton 2017), but it has attracted the attention of legal (Luongo 2015; Dehm and Millbank 2019) and public policy (Tebbe 2007; Kahn 2011) studies only in recent years (Forsyth 2016: 332). This increased interest is due to the fact that, in some countries, witchcraft practices do not only affect the individual, but also institutions (Mbogo 2017), the legitimacy of governments (Ashforth 2005: 12), and poverty alleviation and development programs (Foana'ota 2015: 80–81). In many communities where witchcraft is common, such practices can be socially, economically, and politically destabilising and cause legal and social order problems (Geschiere 1997: 21; Cimpric 2010; van de Grijspaarde 2013: 24)—for instance, witchcraft may lead to displacement and economic deprivation of the accused and their family (Forsyth 2016: 335). Children accused of witchcraft may be abandoned and become vulnerable to trafficking, servitude, and sexual exploitation (Bussien *et al.*2011: 9). In some countries, witchcraft may be used to marginalize women (Spence 2017) or to control them—for example, in Nigeria, vodoo rituals are employed to enslave and coherce victims of trafficking (see van Dijk 2001).

Witchcraft beliefs and practices are part of the right to freedom of thought, conscience and religion as protected by several international instruments (including the Universal Declaration of Human Rights, Art. 18; International Covenant on Civil and Political Rights, Art.18; Convention on the Rights of the Child, Art. 14; Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 9) and are not generally considered harmful practices. Nevertheless, when beliefs are distorted and abused, they can cause serious human rights violations, more specifically when these practices include beating, burning, cutting, semi-strangulation or starvation, which can result in physical or psychological harm and even death (Hanson and Ruggiero 2013: 61). As such, they should not be dismissed as purely superstition and have the potential to give rise to grounds for protection.

In terms of the scope of witchcraft persecution, there is little information on the available numbers of persons accused of, or victims of, witchcraft (Forsyth 2016: 335). Nevertheless, the number is 'high in the aggregate' (Forsyth 2016) and witchcraft violence is on the rise (Jorgensen 2014; Forsyth 2016), although statistics are unreliable owing to the hidden nature of such phenomenon (Forsyth 2016).

Anyone can be a victim of a witchcraft accusation, but gender and generational divisions often characterize classes of victims in particular locations, depending on the cultural-religious and social context (Forsyth 2016: 335). Women are overwhelmingly more likely to be victims than men and this can be seen throughout history (Marwick 1965; Edwards 2013). However, there are communities in which men are mostly the victims, such as in areas of Kenya and Melanesia (Schnoebelen 2009: 9; Jorgensen 2014; Forsyth 2016: 335). Children are also an increasing

category of victims, particularly in Africa (Garcia 2013; Quaretta 2019). Similarly, the elderly (Adinkrah 2004; Dhar 2015: 571; Eboiyehi 2017; Atata 2019), the disabled (Stone-MacDonald and Butera 2014; Brooke and Ojo 2020), albinos and other vulnerable persons (Dahl 2012; Roxburgh 2019) are often victims of witchcraft accusations (Forsyth 2016: 336). Those accused of witchcraft are often close kin of, or neighbours with, their accusor (Geschiere 1997: 24–25; Forsyth 2016: 336). Recently, the problem of withcraft and the violation of human rights of persons with albinism, especially in Tanzania, Burundi, Zimbabwe and the DRC has attracted particular attention (Cimpric 2010). Albinos are considered to be a curse which may impact on the family and the community. As a consequence, albinos may be marginalized, attacked and killed. Children constitute a large part of albino victims as the use of their body parts in magic rituals is believed to be particularly powerful (UN Human Rights Council 2016: para 42,2017: para 33; Taylor 2019). Additionally, children are more easily victims because they are physically easier to capture (UN Human Rights Council 2017: paras 29, 34, 47).

Scholars who study witchcraft allegations provide several theories that can help explain their emergence, such as system transformations due to the effects of colonialism and globalization (Geschiere 1997; Comaroff and Comaroff 1999); religious changes, in particular the arrival of Pentecostalism and pastors of independent African churches (religions which emphasize exorcism, mystical forces and powers, and have increased fears about the Devil, illnesses, and death. Federici 2018: 64–70; see also Pels 1999), 'the collapse of traditional institutions, including the extended family, and social problems suffered by both children and adults' (Comaroff and Comaroff 1993; Petrus 2011; 2012; Hanson and Ruggiero 2013); and wealth and power inequalities (Marwick 1965: 247).Furthermore, challenges to existing social arrangements and patriarchal power, as well as land disputes and political-economic tensions, can lead to witchcraft accusations (Steadman 1985; Edwards 2013; Federici 2018: 64–70). On the other hand, some scholars stress how withcraft practices are not only connected with discourses of discontinuities, but also with the revision of 'particular forms of tradition' (Sanders 2003: 338; see also Niehaus 2010: 717).

In order to address the complexity of harmful practices associated with accusations of witchcraft and ritual attacks, scholars underline the necessity to carefully investigate each specific local context in which they occur (Hanson and Ruggiero 2013). Harry West points out that withcraft practices are real construction of reality, continue to evolve with time, and should be seen as life-world experiences rather than downgraded to fiction (West 2005; see also Ciekawy and Geschiere 1998). Witchcraft consists of a great variety of representations and practices, which further vary within a country and according to different socio-cultural groups (for more detailed extrapolations of the term witchcraft, see Evans-Pritchard1937; Sanders 2003; Cimpric 2010; and Forsyth 2016: 334–335; for a discussion on how social experiences influence what people find plausible beliefs, see Douglas 1966, 1978, 1986). Their unique characteristics among communities and their different conceptions may lead to the need to understand them from a cultural perspective in asylum proceedings.

Witchcraft Violence and Refugee Status

Accusations of witchcraft leading to psychological, emotional or physical abuse can raise fear of persecution and grounds for protection under the 1951 Convention (Bussien *et al.* 2011; Edwards 2013; Hanson and Ruggiero 2013:14; Millbank and Vogl 2018: 370; Dehm and Millbank 2019). In the UK, applicants claiming to be witchcraft victims qualify for refugee status if they show that they have a well-founded fear of persecution for reasons of race, religion, nationality, being a member of a particular social group (MPSG) or political opinion (see 1951 Convention: Art. 1A; Qualification Regulations 2006: reg. 2; Immigration Rules 1994: para. 327; Dzubow 2017). Moreover, they must also establish that they are unable to (1) relocate elsewhere in the country of origin and (2) receive protection from the State (Immigration Rules 1994: paras. 339O(i), 339L; Council Directive 2011/95/EU: Art. 8; Schultz 2019: 19–22).

As any other asylum applicants, victims of witchcraft accusations bear the burden of establishing 'on the balance of probabilities' that they would fear harm upon return to their country of origin (Immigration Rules 1994: para 339I; UNHCR 1998: 8). This means that they must provide consistent and credible testimony concerning the personal experiences that have given rise to fear of persecution (Lawrence 2019: 133–134). Generally, they must also submit corroborative evidence reinforcing the veracity of the statements made, including personal documents and COI (i.e. publicly available information, either official or by institutions, NGOs, academics, etc.; Immigration Rules 1994: para. 339L; Lawrence *et al.* 2015: 2). Corroborating evidence must be reliable and independent and help the decision-maker to reach an understanding of the case (Vogelaar 2019: 501–504).

The scholarship explains that the determination of refugee status is a complex process and is affected by several evidentiary problems. In practice, applicants are often not in possession of personal documents or other corroborating proof due to the circumstances that led to their flight (UNHCR 1998: 3). An applicant'serrors in dates and/or confusing remarks can be considered signs of insincerity and affect the final outcome of the case (Kobelinsky 2015: 85).The effects of trauma that applicants may have suffered, as well as language and cultural differences between applicants and decision-makers, further negatively impact on the credibility of cases (Dowd *et al.* 2018: 78). In this regard, an empirical investigation of the refugee determination process in Canada by Cécile Rousseau and others found a 'dearth of information' concerning the impact of cultural diversity on the outcome of cases (Rousseau *et al.* 2002). Decision-makers showed little understanding of the 'complexities of violence' and of the abuse of power by authorities (Rousseau *et al.* 2002: 61–62). In a study dealing with the Swiss asylum process, Walter Kalin found the interaction between the applicant and the adjudicator affected by a number of obstacles, including the cultural relativity of concepts, different perceptions of time, and the applicant's way to express him/herself (1986).Furthermore, policies on refugees and migrants in general have become highly contested issues (Souter 2011; Kagan 2015), and concerns with maintaining

the integrity of the asylum system (Lawrence *et al.* 2015: 27, 31ft 10) reinforce the climate of suspicion towards applicants' credibility.

In the cases of witchcraft persecution, one frequent challenge is to show the objectivity of the feared harm and explain how it is linked to their fundamental beliefs or culture of the community of belonging (see Vetters and Foblets 2016: 275). Historically, in the UK, it has been notoriously difficult for an asylum claim to succeed on the basis of fear of witchcraft-related persecution. The very few studies dealing with violence driven by witchcraft practices as basis to obtain refugee status have pointed out the problem of judges dismissing the claims as 'signs of primitive magical thinking' (Lawrence *et al.* 2015: 21), thus bringing to light the paradox of deciding on the truth of statements regarding beliefs that are assumed to be false. Some scholarship has also questioned the cultural sensitivity of adjudication and has highlighted that asylum claims can fail because of the difficulty to identify one of the recognized grounds of persecution under the 1951 Convention, specifically on the grounds of 'religious belief' or being a MPSG. It has however not linked these problems to evidential aspects, despite the difficulties of proving witchcraft persecution with 'tangible evidence admissible in court' (*ibid.*). The analysis is limited to a very small number of decisions, and it has only superficially addressed issues of proof, evidence and credibility. As a consequence, knowledge on this matter remains fragmented (Edwards 2013; Millbank and Vogl 2018: 370; Dehm and Millbank 2019).Thus, the next sections explore the contribution of cultural expert witnesses to the decision-making process and outcome. In particular, anthropological experts can inform and enrich legal knowledge with their 'on-the-ground, intensive engagement in a refugee's country of origin, usually over a sustained period of time' (Hepner 2019: 268) and 'nuanced understanding of how cultural context shapes patterns of persecution, vulnerability/risk' (*ibid.*). The focus is on the role of expert knowledge in establishing a ground of persecution and the impossibility to obtain protection or relocate within the country of origin.

Establishing a 1951 Convention Ground in Witchcraft-Related Persecution and the Role of Cultural Expertise

Witchcraft as Religious Persecution

In most of the reviewed cases, witchcraft persecution was not framed as or recognized to be religious persecution. This may be due to the fact that 'the witch phenomena' in the European context is seen as 'historical matters' and superstitious (Hsu 1960: 36; Federici 2018: 13) whilst in other societies, witchcraft is commonly associated with contemporary belief systems or social practices (Forsyth 2016: 333; Lawrence 2019: 131).

However, according to the United Nations High Commissioner for Refugees (UNHCR), the meaning of the term 'religion' should be wider and encompass 'religion as belief, religion as identity and religion as a way of life' (2004: para. 5). Specifically, 'belief' should be interpreted so as to include theistic, non-theistic and

atheistic beliefs. Beliefs may take the form of convictions or values about the divine or ultimate reality or the spiritual destiny of humankind. Applicants may also be considered heretics, apostates, schismatic, pagans or superstitious, even by other adherents of their religious tradition and be persecuted for that reason (UNHCR 2004: para. 6). UNHCR adds that

> [p]articular attention should be paid to the impact of gender on religion-based refugee claims, as women and men may fear or suffer persecution for reasons of religion in different ways to each other. (2004: para. 24)

For instance, '[w]omen are still identified as "witches" in some communities and burned or stoned to death' (UNHCR 2004: para. 24). Thus, UNHCR concludes that witchcraft-related persecution could be appropriately determined under the religious ground.

Despite the UNHCR guidance, the religious ground in witchcraft-based persecution is underused because, as Anthony Good has argued, the dominant interpretation of religion is not questioned by both lawyers and judges (2007: 69, 72–73)—raising the initial argument presented that there is a clash between the legal and social epistemologies. The decision of *Omoruyi v SSHD*[2000] is an example of the failure to identify fear of witchcraft using the religion ground from the 1951 Convention and reject the asylum claim accordingly (Millbank and Vogl 2018: 381). In this case, Mr Omoruyi, a Nigerian national, feared persecution by the hands of the Ogboni cult. He stated that his father was a member of the cult and wanted him to join, but he refused to do so because it was contrary to his Christian faith (Good 2007: 69). When his father died, he refused to surrender his father's body to the cult and had him buried in the family compound. As a consequence, the cult told him that he had 'violated the laws of the society and the penalty for this is death' (*Omoruyi v SSHD*: para. 3). The applicant described the Ogboni as a 'mafia organisation involving criminal acts', a 'devil cult' 'whose ritual involved idol worship, animal sacrifice and drinking blood' (*Omoruyi v SSHD*: para. 2). He claimed that the Ogboni used human organs to prepare 'satanic concoctions' (*Omoruyi v SSHD*: para. 3), and practised 'ritual killing of innocent people' (*Omoruyi v SSHD*). Its members include powerful persons, such as politicians, civil servants, police, doctors, members of the legal profession (*Omoruyi v SSHD*). He said that after his father's death, cult members killed his brother mistaking him for himself (Mr Omoruyi; *Omoruyi v SSHD*; Good 2007: 68–69). After fleeing to the UK, Mr Omoruyi's 3-year-old son was also killed by the Ogboni as part of their revenge (*Omoruyi v SSHD*: para. 4). He applied for asylum on the ground of religious persecution, as he had a real, well-founded fear of persecution at the hands of the Ogboni cult members. The Court of Appeal held that the applicant's problems stemmed not from his Christian faith, but from his refusal to comply with Ogboni cult's demands. The judge considered whether the Ogboni cult is a 'religion' in order to fall within the 1951 Convention grounds and cited James Hathaway's legal definition of right to a religion, consisting of two elements: (1) 'right to hold or not to hold any form of theistic, non-theistic or atheistic belief'; and (2) 'the ability to live in accordance with a chosen belief, including

participation in or abstention from formal worship and other religions sects, expression of views, and the ordering of personal behaviour' (*Omoruyi v SSHD*: para. 6; Hathaway and Foster 2014: 382–390). In light of this definition, the judge reasoned that the cult involved pagan rituals and it was not in any true sense a religion, but rather, the Ogboni cult was a criminal organisation (*Omoruyi v SSHD*: para. 7).

This approach of not identifying cult or cultural beliefs and practices within the ground of religious beliefs has been replicated in other decisions in witchcraft persecution asylum cases in the UK.In *BL (Ogboni Cult—Protection-Relocation) Nigeria CG* [2002], for instance, the applicant claim[ed] that, through his mother's family, by culture and tradition, he was due to inherit the title of Aro. Being an Aro meant being initiated into the Osugbo cult, which was described as a demonic cult that uses ritual sacrifice, cannibalism and other rituals (*Omoruyi v SSHD*: para. 3). The applicant was said to be

> a practising Christian [like] his mother, who did not wish to become an Aro. His refusal [. . .] led to the [her] death . . . at the hands of cult members. . .[F]or five days he was held by the cult (*Omoruyi v SSHD*: para. 3)

and was tortured. An unknown cult member freed him and helped him to escape. The applicant fled to the UK in 2001 and sought asylum (*Omoruyi v SSHD*: para. 5). The Asylum and Immigration Tribunal found no grounds within the 1951 Convention for the alleged persecution. In particular, the Asylum and Immigration Tribunal reasoned that the

> persecution comes from [the applicant's] rejection of joining the cult. The cult is not seeking to persecute him because of his religious convictions or opinions. Albeit his motives for refusal, which were accepted by the Adjudicator as arising from his Christian faith (*Omoruyi v SSHD*: para. 12; Millbank and Vogl 2018: 383).

The facts and reasoning in the case illustrate how the judge was unfamiliar with the nature of the cult and its practices, as well as with the cross-cultural meaning of religion.

Some decisions have degraded the fear of persecution based on claims of witchcraft to be merely personal disputes, detaching them from the wider social background and true significance (Millbank and Vogl 2018: 383). A close look reveals that expert testimony was not included as part of the evidence presented in any of these cases and thus, the decision-makers were unable to gain sufficient understanding of the beliefs or to contextualize the facts and see their meaning in relation to the economic, cultural and political realities (*Prince Michael Paulinus Eze v SSHD* [2000];*Prince Bright Omoregbee v SSHD* [2001]; *Kenny Keniyinbo Owei v SSHD* [1999]; WO (Ogboni cult) Nigeria CG [2004]: para. 20; *Dakuro Fibresima v SSHD* [1997]; one exception to this line of cases is *Ismaila Demba v SSHD* [2015]—holding that the persecution of witchcraft feared by the applicant was on the grounds of traditional religious belief and practice. However, the key difference in this case, compared to the others, was that the persecution was by hands

of the State rather than by private actors and was well-documented in COI documents.

Cultural expert witness evidence in such asylum claims would have established that harmful witchcraft practices, similarly to any other beliefs, do not take place apart from personal interest or profit, and they are linked to traditional practices and emotions such as revenge and fear (Comaroff and Comaroff 1993; Molina 2005; Mgbako and Glenn 2011: 398–402; Favret-Saada 2012: 45; Powles and Deakin2012: 7; Luongo 2015:193–195; Millbank and Vogl2018: 383). In this regard, Good has suggested that religion shall be understood in a broad way to include how anthropologists have attempted to define 'religion' over the course of years, including:

1. an interest in godlike beings and men's relations with them;
2. a distinction of the world into sacred and profane, and a key concern with the sacred;
3. a propensity towards salvation rather than worldly existence;
4. ritual practices;
5. beliefs based on faith;
6. an ethical code supported by faith;
7. supernatural punishment for breaching that code;
8. a mythology;
9. a body of scriptures;
10. a priesthood, or religious elite;
11. association with a moral community, ethnic or similar group (2007: 69, 72; Millbank and Vogl 2018: 382).

Thus, a culturally-sensitive approach to religion would allow the decisions-maker to take into consideration the asylum seekers' experiences in their context and to conclude that the various cults and beliefs discussed in the cases under review are indeed a religion, whether appealing or not (Good 2009: 45).

Membership in a Particular Social Group as a Ground of Persecution

Most cases dealing with witchcraft persecution were articulated under the MPSG of the 1951 Convention. To establish whether or not they are aMPSG, the applicant must share with a group an innate characteristic or common background that cannot be changed, or share a characteristic or belief so fundamental to their identity or conscience that the person should not be forced to renounce it (see *HJ (Iran) v SSHD and one other* [2010] paras. 76, 105). In addition, the recognition of the group by the society in question will help to identify it as a distinct entity (*Regina v Immigration Appeal Tribunal and Another Ex Parte Shah* [1999]; UNHCR 2002: para. 11; Millbank and Vogl 2018: 385).

The claims tended to be successful when applicants had specific characteristics that distinguished them from the rest of society, such as women, the disabled and children. In other words, those who had a recognized innate characteristic more

often received refugee status based on their other vulnerabilities than their claim of witchcraft persecution. The fear of witchcraft in the social context was weighed as a relevant factor when corroborated by expert evidence. As further explained below, such cases recognized that, in Tanzania, albinos may be killed for their body parts to be used in magic, and in Nigeria, the DRC, and Afghanistan people with disabilities are stigmatized and persecuted.

Specifically, in *JA (child—risk of persecution) Nigeria*[2016], the Upper Tribunal ruled that Albino children in Nigeria can be regarded as MPSG because they could suffer discrimination and persecution due to their skin colour (para. 8).The expert report, which had been submitted, established the widespread discrimination against albinos based upon the view that albinism is a curse imparted upon a family. In some cases, albinos have been murdered because it is believed that their body parts would cure or bring luck to others. On such basis, the Upper Tribunal accepted that the applicant was likely to have a subjective fear that both she and her son would suffer from discrimination in a wide number of areas as a result of his albinism. It also accepted that the Nigerian authorities were not likely to be able to provide effective protection to them 'against ongoing discrimination or the risk of more serious harm arising from potential ritualistic abuse' (*JA (child—risk of persecution) Nigeria*[2016]: para. 11).

Similarly, in *AA and others v SSHD* [2016], the Upper Tribunal recognized the strong witchcraft beliefs in Nigeria and that one of the applicants, a disabled child, would be perceived as being possessed by evil spirits and, as such, he would face discrimination amounting to persecution as a MPSG (para. 20). Expert evidence stressed that a large part of the Nigerian population, regardless of educational background, holds a belief in witchcraft and supported that the applicants' condition would be seen as a 'form of spiritual attack and treated by exorcism that could involve physical abuse' (*AA and others v SSHD* [2016]: para. 37) such as beating and acid burning. The expert witness explained that 'the belief that disability is a sign of witchcraft originates from the supernatural explanation of life events, behaviour and misfortunes that most Nigerians believe in' (*AA and others v SSHD* [2016]).

In *DL v SSHD* [2019], the Upper Tribunal carefully engaged with the argument that the applicant suffered from severe psychotic disorder. It considered the anthropologist's expert report that corroborated how mentally ill people are subject to 'a range of possible ill-treatment in the DRC, including physical abuse, ostracism, discrimination' (paras. 26–27, 37, 39), severe stigmatisation and perception that the illness is associated with witchcraft or has some other supernatural cause (para. 39). After assessing the consistency of the expert report with other background documentation, the Upper Tribunal was satisfied that there is likely to be a risk of arrest, detention and ill-treatment by members of the authorities if the appellant is unwell and behaving in an abnormal way. Even if the risk only emanated from non-state actors of persecution within Congolese society, the evidence shows that the authorities do not enforce laws relating to discrimination and are likely to be unable or unwilling to provide effective protection to a person in the appellant's position. Widespread societal discrimination towards people

who suffer from psychotic disorders is likely to extend to many members of the authorities (*DL v SSHD* [2019]: para. 29).

The Upper Tribunal concluded that the applicant fell under the MPSG ground and specified that, for such purpose, a narrower group of people suffering from a severe and enduring psychotic disorder can be identified. It explained that people like the applicant,

> who will never recover fully from their illness, can be described as having an innate and immutable characteristic. They are perceived as an identifiable social group that is discriminated against in the DRC in a way that goes to the core of their fundamental human rights. (*DL v SSHD*[2019]: para. 38; for a similar case involving an Afghan applicant, see *NK v SSHD* [2019])

The court referred to the case of *Islam v SSHD and R (ex parte Shah)* [1999], in which the House of Lord stated that

> a particular social group did not need to be cohesive nor its members interdependent. It is distinguished by an immutable characteristic and should not be defined by reference to shared persecution. The House of Lords made clear that one must first consider the society in which the social group is said to be drawn. (*DL v SSHD* [2019]: para. 33)

By contrast, in *JA & VA v SSHD* [2019], no expert witness was instructed to provide evidence, and the Upper Tribunal held that the applicants did not fall under the MPSG of the Refugee Convention and rejected their arguments that, upon return to Nigeria, they might be accused of witchcraft if their mental health issues were discovered (para. 9). The judge commented that the applicants would not be bound to disclose their health issues and, unlike sexual preferences, they would not wish to disseminate them (citing *HJ (Iran) v SSHD and one other* [2010]: para. 7). Significantly, the judge noted that there was a 'the lack of up-to-date evidence', as well as absence of a claim that medical treatment would be unavailable in Nigeria should the applicants need it (*JA & VA v SSHD*: para. 41).

Women fearing witchcraft persecution, even without expert evidence, seemed usually successful in their claims when they presented their fear of persecution as linked to family relationships and the general ill treatment of women (Millbank and Vogl 2018: 386). In *RG (Ethiopia)* [2006], and in *Oco v A Decision of The Upper Tribunal (Immigration and Asylum Chamber)* [2012], for example, the gender dimension of the feared harm was prevalent and witchcraft persecution was not presented as a strong element. The general COI on domestic violence and discrimination against women was sufficient to establish the applicants' claims for refugee status (see also *JB (AP) v SSHD* [2014]; *G & H, R(on the application of) v SSHD* [2016]; *LSL v SSHD* [2017]; *Blessing [I] v SSHD* [2019]; *MRM v SSHD*[2019]).

In the other cases examined, male claimants' accounts were not usually presented as connected to other formulations of MPSG (Millbank and Vogl 2018: 386), and they were more likely to fear harm concerning issues of belief, social

status and inheritance. Millbank and Vogl discuss the tendency not to identify male asylum seekers with the typical idea of the vulnerable victim of witchcraft (overemphasising women, elderly and children's vulnerability) and thus to exclude them from protection. Instead, the feared harm is more generally linked to family relations and their gender as male applicants who often refused to follow local traditions, such as patrilineal power positions in tribes or sects. Thus, men's resistance to such roles could be seen as going against the dominant gender norms and fall under the idea of gendered persecution (2018: 393). The review of the cases confirms Millbank and Vogl's research: the likelihood of witchcraft accusation seems to increase for those who fit the stereotype about who might be practising witchcraft, whether it is based on age, gender, physical attributes, success, or membership in a specific family (2018: 377; Schnoebelen 2009: 40).Critically, however, the analysis also shows that, in most of these cases, cultural expert witness evidence was not provided, highlighting that, without it, judges fail to be able to understand how witchcraft could cause potential harm and how witchcraft persecution falls within the 1951 Convention grounds. Across my data set (with the exception of the case of *Feudjeu v SSHD* [2002]), in the absence of adequate evidence, males' fears of witchcraft were often seen as irrational, lacking objectivity and disconnected from the broader social context. For instance, in *Senu v SSHD* [2002], the judge stated: '[w]e utterly reject as having any objective basis his claim that the cult members could find him by means of black magic'. Also, in *WO (Ogboni Cult) Nigeria CG* [2004], the judge noted:

> If any political violence in Nigeria has an Ogboni element, the objective materials would say so. Given the restricted ambit of the cult and the virile nature of the Nigerian press, silence on the issue cannot be ascribed to fear. (para. 21)

The above outlined cases confirm that expert witnesses in this area of law are particularly important to provide specialized knowledge on events, human rights situations, the future risk of persecution, the agents of persecution, and unusual cultural practices and beliefs that do not have an ordinary every-day meaning from a Western point of view (Barnes 2004: 350, 352). Expert witnesses are critical when men fear witchcraft-related violence or when witchcraft persecution is the sole basis of the claim. The contribution of cultural expert witness evidence improves the outcomes for asylum claimants.

State Protection and Internal Relocation

Ultimately, many decisions involving witchcraft-related violence turned on the issue of internal relocation and State protection, and were decided on the basis of factual and evidentiary assessments (Noll 2005 cited in Noll 2006; also see *SSHD v OH and others* [2017]; *AA and others v SSHD* [2016]; *JA (child—risk of persecution) Nigeria* [2016]; *HD (Trafficked Women) Nigeria CG* [2016]; *G & H, R (on the application of) v SSHD* [2016]; *HK v SSHD* [2006]; *MRM v SSHD* [2019]; *Blessing*

[I] v SSHD [2019]). In several cases where the COI was inadequate to explain the general situation in the country or evaluate the specific account, the judges deemed that internal relocation was possible on the ground that the risk of harm was localized due to the threat stemming from actors without the ability to pursue the applicants country-wide (see *Prince Bright Omoregbee v SSHD* [2001]; *VAO v SSHD* [2019];*Senu v SSHD* [2002]; *CN (internal flight alternate, female minor) Cameroon* [2004]; *OA v SSHD* [2019]; *Obasi v SSHD* [2007] EWHC 381 (Admin)).

In *Senu v SSHD* [2002], where the applicant feared persecution by cult members, the Asylum and Immigration Tribunal stated that the applicant failed to show the unreasonableness of internal relocation and pointed to the absence of evidence on this matter. The Asylum and Immigration Tribunal found that the cult members would not come to know where the applicant was unless he told his family (para. 91; also see *Kenny Keniyinbo Owei v SSHD* [1999]). From the text of the decision, it seems that the unreasonableness of the internal relocation aspect was not even put forward by the applicant's lawyer, disregarding how leaving one's place of residence may increase the chances of vulnerability, human rights harms, difficulties integrating and unemployment (Schultz 2019: 74).

In other occasions, the courts found that the applicants had to seek protection through the authorities of the country of origin before applying for international protection, assuming this was possible (see *Prince Michael Paulinus Eze v SSHD* [2000]; *Obasi v SSHD* [2007]). In *BL (Ogboni Cult) Nigeria CG* [2002], the judge found that the published objective background material did not support the conclusion that the police or authorities in Nigeria fail to act against traditional religious cults; it also did not support the proposition that cults are non-state agents of persecution in that the police or authorities would exercise control and/or investigate or deal with satanic/ritualistic ceremonies which include cannibalism (para. 14). TheImmigration Appeal Tribunal also stated that the applicant did not provide evidence 'to show that the size of the particular cult was such that it was to be found throughout Nigeria' (paras. 14, 18). In reaching this conclusion, the judge implicitly believed that the authorities would protect victims of witchcraft violence, despite witchcraft beliefs being deeply rooted and widespread across Nigerian society, including the 'literate and illiterate, the wealthy and the poor, the law enforcement agents, social welfare workers, law makers and leaders of revivalist churches' (Hanson and Ruggiero 2013: 11) Similarly, in *Prince Michael Paulinus Eze v SSHD* [2000] as well as *Omoruyi v SSHD* [2000], the judges were not presented with expert evidence which supported the claim that the authorities in Nigeria would not provide assistance and protection to victims of witchcraft accusations.

By contrast, in a number of cases where country conditions and unusual accounts of witchcraft persecution were supported by evidence, including expert knowledge, sufficiency of protection was discussed and balanced against the applicants' circumstances and the appeals were allowed. In *JA (child- risk of persecution) Nigeria* [2016], reference was made to the expert report and it was accepted that the applicant

> was likely to have a subjective fear that both she and her son would suffer from discrimination in a wide number of areas as a result of his albinism. It was further accepted that the Nigerian authorities were not likely to be able to provide effective protection to the appellant and her son against ongoing discrimination or the risk of more serious harm arising from potential ritualistic abuse. (para. 11)

Similarly, in *HK v SSHD* [2006], to reach its conclusion and allow the appeal, the Court of Appeal relied on an expert report which explained how the applicant's scars could identify him as one who underwent a secret initiation ceremony without completing it, and would therefore be at risk upon return to Sierra Leone. The Court of Appeal underlined the unusual and remarkable experiences of the applicant, which 'do not appear to be borne on by any general country material' (para. 33). Thus, the Court found the expert evidence provided particularly helpful as it supported some aspects of the applicant's testimony, which could otherwise have appeared dubious (i.e. the existence of the Wunde society, the secret and forced initiation in the bush, the use of biting ants during the initiation ceremony, the presence of body parts in the path, and the Wunde having connections and power throughout the country; paras. 41, 53). Both cases stress the key relevance of expert evidence in approaching contested characteristics of culture and beliefs, the existence of witchcraft practices across the countries, and interpreting their effects on human rights violations, regardless of whether or not one believes in witchcraft.

In light of the foregoing, it can be concluded that in most cases where expert testimony was used, judges accorded considerable deference to it and could reach well-informed conclusions on the cases before them (see *Feudjeu* v *SSHD* [2002]; *HK v SSHD* [2006]; *AA and others v SSHD* [2016]; *JA (child—risk of persecution) Nigeria* [2016]; *G & H, R (on the application of) v SSHD* [2016]; *HD (Trafficked Women) Nigeria CG* [2016]; *SSHD v OH and others* [2017]; *DL v SSHD* [2019]; *NK v SSHD* [2019]).

This was not however the case in *WO (Ogboni cult) Nigeria CG* [2004] paras. 17, 18, 21, 23 (reasoning that the expert report supported neither the applicant's claim that the Ogboni could persecute him throughout Nigeria, nor their claim that the Ogboni would kill people who refused to join the sect); *CN (internal flight alternative, female minor) Cameroon* [2004] paras. 9–11 (pointing out that, whereas the expert report supported the applicant's risk of persecution in her home area, there was no evidence that she could not relocate in the capital where her sisters and aunt were living); and *SSHD v Ann Obikwelu* [1997]) page 5 (finding that the expert knowledge on the Nigerian authorities to provide protection was limited; finding also that the expert did not state that the cults targeted relatives because members of specific families and 'she would have said so' if that was the case). In these appeals, expert evidence had proved insufficient for the claims to succeed because the judges assessed it to be unreliable and/or incomplete and not helpful to fill the evidentiary gaps. As Robert Thomas discusses, judges have to weigh such evidence against other pieces of evidence and assess whether it is reliable

(2011: 186, 188). Expert evidence is considered reliable if the expert has sufficient knowledge of the country in question and his testimony is based upon up-to-date, trustworthy and verifiable sources (Thomas 2011: 187). Moreover, the expert must be independent and objective, as his/her duty is to assist the judge on topics within his/her own expertise regardless by whom the expert was instructed (*ibid.*).

On the basis of the above analysis, it can be concluded that good quality expert evidence focused on the applicant's account can provide information that may not be publicly available and found in the COI (Lawrence 2019: 145–146). It can also assist in asking appropriate country of origin questions, such as what the situation of internally displaced persons actually is (especially vulnerable persons), the possibility of making a livelihood in the new location and effectively integrating, the accessibility of travel routes, whether witchcraft violence is deeply rooted throughout the country (Hanson and Ruggiero 2013: 11),and the effectiveness of the law—whereas laws may take various steps to criminalize witchcraft, this does not always mean that they protect victims of witchcraft in practice (Bailliet 2011: 5) and the existence of such protection may not be readily available information (Greenfield *et al.*2012; The National Working Group on Child Abuse Linked to Faith or Belief 2012; Secker 2013; WHRIN 2013: 9; Forsyth 2014; Partners for law in and development 2014: 138). On the other hand, the reviewed cases bring to light the difficult judicial task of assessing the quality of cultural expertise and balancing it against other evidence (Thomas 2011: 186, 1920).

The Role of Cultural Expertise in Asylum Claims Relating to Beliefs in Witchcraft

This study confirms what previous research has concluded: that some traditions may be unfamiliar to lawyers and judges and therefore subject to misinterpretation (Renteln 2010). Country experts contribute to aiding asylum applicants by tackling 'judicial ethnocentrism' through cross-cultural analysis and the provision of on-the-ground knowledge (Hepner 2015: 267)—however, this is true as long as experts provide reliable and high quality knowledge within their field, an unbiased and impartial perspective, and make the evidence accessible to the decision-maker (Lawrence *et al.* 2015:14; on the limitations of expert evidence, see also Barnes 2004). Previous research had pointed out that culture plays a problematic role within the refugee status determination process and in particular in the credibility assessment of an asylum applicant given the Eurocentric understanding of culture and human rights (Donnelly 1984; Kalin 1986: 232; van Es 2013; Lawrence 2019). The assessment is inevitably entangled with ethnocentrism—i.e. 'the tendency to view the world from the perspective of one's own culture' (Barnard and Spencer 2002: 604; Noll 2006: 497). Ethnocentrism can lead to the discarding an applicant's claim upon assumptions of what is considered normal or is believed the applicant should have done in that particular situation (Shaw and Witkin 2004; Coussey 2006: para 3.19). The lack of consciousness of different perceptions is the cause of misunderstandings and affects the asylum cases' outcome (Edwards 2013: 327). Some of the reviewed cases (*Omoruyi v SSHD* [2000]; *BL* (*Ogboni Cult—Protection—*

Relocation) Nigeria CG [2002]; *JMB v SSHD* [2009]; *JA & VA v SSHD* [2019]) illustrate how the harm feared was at odds with decision-makers' conceptions, cultural sensitivity, and awareness of witchcraft-based persecution (Edwards 2013: 327). For these reasons, scholars have highlighted the importance of expert knowledge within these types of complex cases, whereby Eurocentric conceptions are at odds with current cultural practices (Vetters and Foblets 2016: 280). Expert witness evidence acts as corroborating evidence, which has been shown to prevent the tendency to oversimplify, generalize, and reach unfounded assumptions about other cultures, such as in *JA (child—risk of persecution) Nigeria* [2016], *HK v SSHD* [2006], and *DL v SSHD* [2019] by decision-makers (McDonald 2016: 143). Moreover, it encourages decision-makers to avoid the propensity to view beliefs in a vacuum, without considering cultural or individual factors (McDonald 2016). Expert witness testimony is critical not only in the form of corroborating evidence and courtroom testimony, but also in the early stages of the case preparation, as it can assist lawyers to clarify the issues of the case and identify the right questions to address these issues (Renteln 2010; BHRC 2017, 2020).

Of course, experts' role in asylum cases can bring in some problematic aspects (Lawrence *et al.*2015: 16).

> [T]ensions, contradictions, and unintended consequences abound. Expert knowledge may contribute to the reification of fluid and complex social, cultural, and political realities and the decontextualization of the claimant from [their] political subjectivity to make [their] experience legible to the law... (*ibid.*

Furthermore, the expertise provided must conform to legal procedures and thus it may contribute to 'exclusionary logic' of the law (*ibid.*). Also, although the experts' skills may translate experiences that 'are highly embedded in specific cultural and politico-economic contexts' (*ibid.*) into a comprehensible language and cultural frame, the consequences of 'such elite "voicing" on behalf of African migrants reinscribes hierarchies of power and difference that some might otherwise consider objectionable' (*ibid.*). Nonetheless, asylum decisions should not be reduced to solely legal procedures on the grounds that it would be determinantal to the case to ignore expert witness evidence as this would detract from the value of their epistemological contribution (*ibid.*). This is particularly the case after expert witnesses' insights into the nature of these types of complex asylum claims have ultimately been shown to alleviate some of the problems caused by the limitations of the decision-makers as discussed in the article. In this regard, Joost Fontain (2014) additionally points out that, based on her experience as an expert witness in a criminal trial, even if anthropological evidence can be constrained during the procedures, it may still 'have efficacy in the judge's deliberations' (95).

This study supports arguments that judges should not be seen as 'cultural dopes' who mechanically apply the law (Vetters and Foblets 2016: 288). Whereas some scholarship criticises them for adopting a strict legal positivist approach to questions of cultural evidence and expertise in the courts (Good 2009; see also Luongo 2015: 185), the judicial practices must be considered

in light of the duties of the profession and the procedures. In systems such as the UK, which follow an adversarial approach, judges have to assess the evidence submitted by the parties and are not allowed to engage in an investigation of the facts and rectify evidentiary problems (Vetters and Foblets 2016: 281). On the contrary, in inquisitorial systems, the burden to obtain relevant COI rests primarily with members of courts or tribunals and may vary depending on whether they are able to obtain assistance from support staff, for example, research units, COI units, etc. (EASO 2018a: 114). In the UK, judges have to carefully address all the issues of evidence, weigh the material before them, decide on the credibility of an applicant and reach conclusions. It is not part of judges' duty to find evidence that the parties themselves have not produced. For a judge to do so would constitute an error of law (*SSHD v OH and others* [2017] para. 5) This means that, if applicants are not well-represented and expert witnesses are not instructed, important pieces of evidence could be missing and judges then are generally unable to find or accept that the harm feared by an asylum applicant is 'real'. The analysis shows how the lack of corroborating evidence regarding the feared curse or threats was considered problematic, even where applicants were found to be credible (*Kelechi Mbaeri, Naysa Amadi v SSHD*[2002]). In *BL (Ogboni Cult—Protection—Relocation) Nigeria CG* [2002], where from the text of the decision, one can read the frustration of the Immigration Appeal Tribunal for lack of expert evidence and specific information regarding the asylum seeker. In these cases, judges were unable to grant asylum without any further basis and, on a few occasions, they had to remit the claim to the competent decision-maker to allow the introduction of new evidence and make new findings-of-fact (see, for instance, *SSHD v MK* [2016]; *SSHD v Meli* [2002]; *SSHD v Lian* [2002]). Significantly, on this point, the Court of Appeal's decision in *HK v SSHD* [2006] recognized

> the very difficult task faced by Immigration Judges when they are called upon to make findings of fact, in circumstances where there is no direct factual evidence other than that given by the appellant himself, and a lack of background information or of general experience upon which the Judges can safely rely. (para. 1)

Therefore, although I follow Millbank's and Vogl's analysis of witchcraft claims on several points, I do not share their criticism on the assessment of why decision-makers reached negative conclusions. Whereas Millbank and Vogl argue that cases relating to beliefs in witchcraft represent major jurisprudential failings for not properly considering the grounds of persecution due to unfamiliar forms of knowledge about potential harm, they fail to discuss who has to prove such harm and how (2018).

Finally, although former studies written by anthropologists on the treatment of their testimony argue that their expert witness advice had been misinterpreted or ignored by the decision-makers (Good 2009; Campbell 2015), the discussion of expert witness evidence and the outcome of cases demonstrate that the contribution of experts was normally given due consideration and helped in the appraisal of witchcraft persecution related cases (see also Thomas: according to him, it is

incorrect to believe that, generally, judges 'minimise the role of country experts' (2011: 189)). Thus, expert witness participation cannot only make a difference for the asylum applicant and an early positive outcome, but can also contribute to the development of case law over time (Hepner 2015: 267). It can also help create awareness and mindfulness within lawyers and judges of their contribution to the adjudication process.

Conclusion

This article has illustrated the contribution of cultural expert witnesses in the judicial decisions treatment of witchcraft-based persecution in the UK. In particular, it has shown the importance of addressing the difficulties in proving accounts based on unusual and little-known practices and beliefs that challenge the European conceptualisation of religion and conceptions as related to the 1951 Convention. This article has also exposed the limits of the law and the complexity of assessing cultural aspects, life stories and reasons for claiming asylum and fitting these into legal categories and procedures (Hanson and Ruggiero 2013: 1–5). The analysis of the cases presented has established that expert witness evidence shapes the cases' outcome, as their evidence aids the decision-maker in curbing their Eurocentric understanding of culture and human rights, affording the claimant a fairer and better adjudicated outcome.

To reach fairer and better-informed decisions, more expert witnesses need to be instructed on cultural issues such as witchcraft persecution allegations at the onset of the adjudication process. Cultural expert witnesses have much to contribute to decision-making as they help to understand non-European cultures, traditions and legal norms. They also provide information on the context to be considered by the court that lies outside of the information available in COI.

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