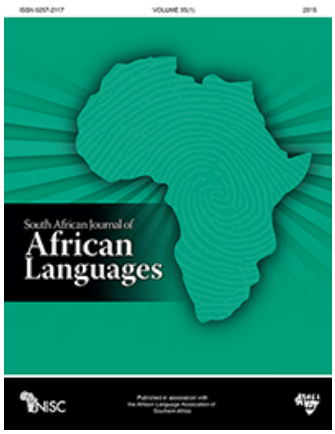

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Communicative challenges of interpreting in cross-border languages in South African courtrooms

Sam Erevbenagie Usadolo[ab] & Ernst Kotzé[ab]
[a] Department of Communication, University of Fort Hare, Alice, South Africa
[b] Nelson Mandela Metropolitan University, Port Elizabeth, South Africa
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Communicative challenges of interpreting in cross-border languages in South African courtrooms

Sam Erevbenagie Usadolo and Ernst Kotzé

Department of Communication, University of Fort Hare, Alice, South Africa
Nelson Mandela Metropolitan University, Port Elizabeth, South Africa
Corresponding author email: usadolo1@yahoo.com

This article presents some of the challenges encountered by court interpreters who interpret in cross-border languages, i.e. languages spoken across the borders of two neighbouring countries. Data used in the article were collected from participants by adopting a qualitative approach, based on the observation of courtroom proceedings, and unstructured interviews. Among the languages observed in the study are Chisena, spoken in Mozambique, Malawi and Zambia, and Afrikaans, spoken widely both in South Africa and Namibia. The article points out that the interpreters may not be adequately informed about the prevailing socio-cultural issues in the home country of the accused, especially when the accused is from a lusophone country and the interpreter from an anglophone country.

Another potential challenge is that of different orthographies used for the Malawian and Mozambican varieties of Chisena. Both varieties have words which are phonetically similar, but are spelled differently, and this may be a challenge to the interpreter. The article emphasises that court interpreters should be well-informed about relevant circumstances in the countries in which the cross-border languages are spoken, and do a pre-trial interview with the accused in order to mitigate these challenges.

Introduction

The multilingual nature of the South African society is expressly stated in the South African Constitution (1996: Section 6, [1-3]), in the form of giving official status to the erstwhile marginalised languages, i.e. isiXhosa, Sesotho, isiZulu, Sesotho sa Leboa (Northern Sotho or Sepedi), isiNdebele, Setswana, Tshivenda, Xitsonga and siSwati. This is one constructive step taken to ensure the protection of linguistic human rights, which the majority of South Africans were denied during apartheid. As noted by Du Plessis (1999: 6), in order to guarantee linguistic human rights, the state of the neglected indigenous African languages, as well as the disparity in language status between Afrikaans and English, on the one hand, and those of African languages on the other, have to be addressed.

The provisions, which unquestionably constitute linguistic human rights – also before the court – are clearly inviolable and sacrosanct elements of the democratic basis of the Republic of South Africa, i.e. its Constitution. It is therefore important that such rights be honoured in respect of speakers of the official indigenous African languages and, by extension, those of immigrant communities (cf. Section 9[3] of the Constitution) in the administration of justice. Linguistic human rights in the context of court interpreting are very important because they are a means through which accused persons are able to express themselves in defence of their rights that may have been violated.

The courtroom is a sensitive social institution because matters that come before it sometimes mean the difference between freedom and captivity or, in some countries, even life and death, for the accused person brought before it. This fact emphasises the need for effective communication between participants in the courtroom, a need which is echoed by Khoon (1990: 110), who advises that all communication in court should be handled carefully, because 'any misrepresentation, be it even a verbal slip, may have dire consequences, particularly in cases where the fate of a defendant hangs in the balance'.

Thus, in South Africa, the promotion of equal access to justice has a direct bearing on the need to bridge communication barriers between different language groups in the courtroom. For this reason, provision is made for court interpreters to assist many South Africans and others who appear before the courts and cannot speak or write the main courtroom languages (Afrikaans and English) used during the proceedings. This is well stipulated in the South African Constitution: 'Every accused person has a right to a fair trial, which includes the right to be tried in a language that the accused person understands; or, if that is not practicable, to have proceedings interpreted in that language' (South African Constitution, 1996: Section 35 [3(k)]).

The ubiquity of nationals with foreign languages requiring assistance with interpreting in South African courts stems from South Africa's unique economic advantages over many other countries in Africa and other developing countries. These advantages have encouraged foreign African migrant workers from other Southern African countries to enter the jurisdiction. This may also have been the reason for the unprecedented influx of immigrants from different parts of the world to South Africa following the 1994 democratic elections that ushered in a new political dispensation.

During this study our observation of court proceedings of different criminal cases, ranging from assault, robbery and domestic violence to rape, in the Johannesburg, Hillbrow and Germiston Magistrate Courts, in the city of Johannesburg, showed that a day would hardly pass without foreign African immigrants who are language-handicapped in terms of the two official languages used in the courtrooms being arraigned in court. This, it should be noted, has added to the already complicated and contentious issues about linguistic and cultural rights, both during and subsequent to the apartheid regime. Also, while the judiciary is faced with the challenge of finding suitable court interpreters to level the playing field in terms of the linguistic human rights of the diverse indigenous linguistic communities of South Africa (Moeketsi & Wallmach, 2005: 3), the appearance of foreign immigrants on the scene has added more challenges regarding the conundrum of language issues and the administration of justice. Some of the problems the court is said to be facing in this regard has been characterised as 'enormous linguistic challenges... the greatest being that the technical registers of the African languages are underdeveloped, and the languages themselves are not yet fully standardised' (Wallmach, 2006: 4).

Thus, given the need to protect the rights of all that come before the court, especially in the light of the provisions of the Constitution, quality interpreting is required to bridge communication barriers between those who do not understand the two main languages used in the courtroom and other principals of the court, such as the magistrate, the prosecutors and attorneys. This requires the use of interpreters with expertise, specifically with regard to the socio-cultural and economic contexts influencing the use of language. As mistakes made by incompetent interpreters will distort evidence and result in the miscommunication of facts, which will in turn lead to the miscarriage of justice, anything short of competent interpreters is to the detriment of the linguistically-disadvantaged accused and plaintiff.

This study is therefore aimed at examining the court interpreting situation in South Africa, with particular emphasis on the use of foreign African court interpreters who interpret cross-border languages in selected Magistrate Courts in Johannesburg, Hillbrow and Germiston. The article will specifically focus on those foreign African court interpreters whose working languages are cross-border languages, and then discuss the challenges they face in interpreting these languages. The discussion will focus on a few examples of cross-border language challenges we noticed in our courtroom observations of interpreters and from the unstructured interviews used in the study. We will support our discussion with information gleaned from literature in order to highlight challenges resulting from the use of cross-border languages by foreign African court interpreters in South African courtrooms. Some of the languages focused on in this study are: (1) Chisena, spoken in Mozambique and Malawi, and (2) Afrikaans and German as spoken in Namibia and South Africa. German as a medium of communication has a restricted use in South Africa and does not feature in any official capacity in the South African judiciary. It is used more widely in Namibia, and its closeness to Afrikaans has a particular sociolinguistic significance, which constitutes challenges we noticed in our study, but which will not be addressed in this article.

There are few studies on cross-border languages in the southern African region. Banda (2009), for example, discusses cross-border languages among other multilingualism issues, and then argues that they should be considered in corpus planning in order to enhance multilingualism as a linguistic resource and an opportunity for socio-economic development. Mulaudzi (2011) discusses the relationship between cross-border languages such as Lembethu (spoken by people in the Chiturupasi and Chikwarakwara regions in Zimbabwe) and Tshilembethu (spoken by people in the Hamutele, Hagumbu and Matshakatini regions in South Africa) with Tshivenda spoken in some part of Limpopo Province in South Africa, by highlighting the historical, geographical and linguistic features that emerge as people speaking the languages move across borders. Mulaudzi (2011) states that Lembethu and Tshilembethu are varieties of Tshivenda. Ndhlovu (2013) discusses various ways in which Southern African cross-border languages can be used to promote regional socio-economic, political and cultural integration. Barnes and Funnel's (2005) research focuses on Chisena as a cross-border language, because its speech communities are to be found both in Malawi and Mozambique. Their article focuses on the possibility of harmonising the two varieties (Malawian Chisena and Mozambican Chisena) in order to arrive at a standardised language. Our research draws heavily from the issues pointed out by Barnes and Funnel (2005) to articulate the state of cross-border languages in the context of court interpreting in South African courtrooms. Our research can be deemed as important as there is no previous study that has considered cross-border languages in terms of court interpreting in South Africa. A comprehensive study looking at the challenges faced by foreign African interpreters in this regard is therefore necessary, given the emphasis of linguistic human rights in the South African Constitution. This will be done in the form of highlighting some communicative challenges faced by foreign African court interpreters, and, by extension, the consequences for the judicial system in South Africa. It is hoped that the issues addressed in this study will draw the attention of individuals and agencies involved in the areas to be addressed in order for the aims of the Constitution to be achieved on this issue.

Methodology

The data analysed in this study were collected through unstructured interviews that lasted from 15 to 20 minutes, and from documented information following our observations of proceedings in open courtroom sessions. The observations of court proceedings enabled us to establish the challenges faced by foreign African court interpreters in interpreting cross-border languages, and the roles of participants such as the magistrate, the prosecutors and the attorney in the courtroom.

As the focus of this study was based on foreign African court interpreters in South Africa, all foreign African court interpreters (from all countries in Africa) in South Africa constituted the target population[1] for investigation. The

magistrates, prosecutors, attorneys, and managers of court interpreters (chief interpreters) are considered important elements in court interpreting in South Africa; hence they were treated as individual and separate populations within the study. For a complete and comprehensive study, it would have been necessary to collect data from every element of the population (or every single member of the population). Since this was evidently not possible, the study had to be based on a statistically-justifiable representative sample of the population and extrapolated to the entire population. Sampling for a purpose such as this, as stated by Walliman (2006: 75), is then in essence simply a '… process of selecting just a small group of people from a large group'.

In this study, the selected sample comprised 30 foreign African court interpreters from ten African countries, and consisted of three each from Namibia, Nigeria, Zambia, Zimbabwe, Ghana, Mozambique, Malawi, the Democratic Republic of the Congo (DRC), Tanzania and Somalia working in the Central Johannesburg, Germiston and Hillbrow Magistrate Courts in Johannesburg, South Africa. A total of ten magistrates, ten prosecutors and ten attorneys were also sampled. Each Magistrate's Court has a chief interpreter whose main duty is to employ interpreters and to see that interpreters are assigned to any case that requires interpreting. It was noticed during this study that in some cases one chief interpreter's line of authority cuts across many Magistrate's Courts in close proximity. No sampling was done in the selection of chief interpreters, which means that all the chief interpreters in the courts mentioned were respondents in this study.

The foreign African court interpreters who were participants in this study had worked between six and ten years as non-permanent members of staff of the Department of Justice and Constitutional Development (DoJCD) of South Africa. The data analysed here, however, focus on the interpreters who interpret cross-border languages such as Chisena, while cited examples of other languages such as Afrikaans and German are used to further exemplify challenges which cross-border language interpreters could face.

The data used in this article were taken from a pool of data collected for a broader study of court interpreting in the Magistrate's Courts mentioned above. Analysis of data collected through unstructured interviews and observation of court proceedings was aimed at identifying major themes or categories for investigation. From these categories or themes, the data that reflected the cross-border languages category were further analysed as reported in this study.

Cross-border languages

Cross-border languages are languages spoken across the borders of two neighbouring countries. In some cases, the language is found in two countries that may not even share a border, such as Hausa, which is spoken in both Nigeria and Ghana. Examples of cross-border languages where the countries speaking them do share borders are Kanuri, spoken in Nigeria, Niger and Chad, as well as Pidgin English, spoken in Nigeria and Cameroon.

In Southern Africa, Barnes and Funnel (2005: 42) refer to the Chichewa or Chinyanja people who live in Zambia, Mozambique and Malawi, the Chikunda people who live in three Southern African countries, namely Mozambique, Zambia, and Zimbabwe, and the Sena people living in Mozambique and Malawi, as cross-border language speakers. Since Setswana is spoken in both South Africa and Botswana, it can also be regarded as a cross-border language. The same applies to Tumbuka, which, according to Banda (2009: 8), is spoken by more than 1 million people in both Zambia and Malawi.

Cross-border languages are a consequence of the colonial boundaries drawn by the Berlin Conference in 1884/5. This drawing of boundaries is referred to in colonial history as the 'scramble for Africa', where colonial powers divided Africa up among themselves (Elugbe, 1998). Referring to the 'scramble for Africa', Barnes and Funnel (2005: 41) remark that

> …boundaries were created by geographical markers, such as mountains or rivers, with the result that many ethnic groups who were living on these mountains or along these rivers were divided, and now live in two, and sometimes even three or more different countries.

Past bitter rivalry between traditional chiefs and territorial leaders has also been referred to as the major cause of cross-border languages. Mulaudzi (2011: 437) states, for example, that the Tshilembethu and Lembethu speakers who are found on both sides of the Limpopo River are products of past rivalry between local chiefs and traditional leaders.

Thus, the geographical markers only succeeded in keeping people who were of the same ethno-linguistic background apart under different geopolitical authorities, but their language use has remained similar across all their needs for communicative encounters. However, over time, many local languages began to change form as a result of borrowing from the lexicon, or adapting to the orthography of the dominant language. In some cases, it is common to see people code-mixing or code-switching between the local and dominant languages. There are also reported cases of geolectal differences, as can be seen in the examples given of the use of Afrikaans in Namibia and South Africa in the next section. Such communicative situations may present challenges to an interpreter who is not familiar with the sociolinguistic issues of the local language that have developed over time. In the context of the present study, we posit that the use of these cross-border languages over time reflects the form of their prevailing official or dominant languages in the countries in which they are used. This is explored further in the next section.

Cross-border languages – challenges for court interpreters

Most of the interpreters who were respondents in the (larger) study said that they interpret in cross-border languages, such as Setswana, isiNdebele, Chisena, Yao, Chichewa, Chikunda and Afrikaans. Some of these languages, Chisena and Afrikaans, aroused our interest

during the investigation, because in the Magistrate's Courts covered by this study, we found that Chisena-speaking Mozambican interpreters are allowed to interpret for Chisena-speaking Malawians, and vice versa. Some court interpreters from Mozambique, Malawi and Zambia reported that on several occasions, they had some difficult challenges while interpreting from Chisena as source language (SL) into English as target language (TL) for accused persons who hail from other countries than their own.

Out of the 30 interpreters who were respondents in this study, the data show that 52% (N = 16) of the respondents interpret in languages which have a cross-border distribution. In most cases, they are assigned to interpret for accused from countries other than their own because they speak the same language as the accused. As local languages in colonised countries are in most cases influenced by the official languages of the countries in which they are spoken, interpreters in such circumstances may experience some obstacles which may affect the quality of their interpreting. For instance, Barnes and Funnel (2005: 41) note that,

> [t]he Sena people on the Malawi side of the border are living in an anglophone country and are influenced by the English and the very dominant Chichewa language, while the Senas on the Mozambique side are in lusophone territory and are influenced by the Portuguese.

As both countries (Malawi and Mozambique) have different official languages, Elugbe (1998) and Barnes and Funnel (2005: 41) maintain that these official languages would influence the written varieties of Sena in both countries. In a case in the Germiston Magistrate's Court involving a trio of accused who are Chisena-speaking Mozambicans and an interpreter who is a Chisena-speaking Malawian, we noticed the influence of official languages of both countries as an obstacle to the interpreting process. While it was not very clear to us what the problem was (not being conversant in the languages concerned), we noticed that the interpreter was demanding to know what one of the accused meant by some of the words he used. A demand for clarification from the interpreter during break-time revealed the following:

> Ag shame, it wasn't much of a problem. We do encounter challenges of this nature always, especially when you are interpreting for an accused from different country as yours. You know...in Mozambique they refer to sword as *supada* in Chisena, and as I am a Malawian who speaks and write Chisena, I refer to sword as *talasada*.

The interpreter continued and expressed his concern about the quality of interpreting as a result of the fact that the accused and himself are from different countries:

> My only concern is that I used the word *talasada* (instead of *supada*) when I interpreted the charges as read out by the prosecutor from English into Chisena.

The terminological difference can be attributed to the fact that the word for 'sword' or 'big knife' in Mozambican Chisena is *supada*, adapted from the Portuguese word *espada,* while in Malawian Chisena it is simply called *talasada*.

In addition to this, and of greater importance in the case of court interpreting, there is the possibility of the scenario of a shared language, but not necessarily of a shared culture (Corsellis, 2005: 131) between the interpreter and the accused or witness he or she is representing in the courtroom. Corsellis provides an interesting analysis of a communication process to explain how a shared language, but not a shared culture, may cause a problem in interpreting. Her analysis reads as follows:

- The speaker thinks of the message he/she wishes to communicate;
- He/she reads what are known as the 'indicators' of the listener: age, social and educational background, context, and so on;
- He/she then 'encodes' the message, selects such elements as words, tone of voice, stress, grammar;
- The listener 'decodes' the message; and
- There is a monitoring/feedback process to ensure mutual understanding that may include a nod, another question or a statement in reply.

In response to the analysis of the communication process above, Corsellis (2005: 130) asks: 'How does the speaker read the indicators of someone with whom he does not share a culture?' This communication process or scenario referred to by Corsellis is very pertinent when considering the interaction between a cross-border language interpreter and the accused or witness he or she represents in the court. For instance, one may also ask the same question when a Chisena-speaking interpreter from a lusophone country (Mozambique) interprets for a Chisena-speaking accused from an anglophone country (Malawi).

This describes the cross-border interpreting reality in court as evidenced in the data collected and discussed above. In the communication triad taking place between the interpreter, the accused and the magistrate, there is a dyadic difference because of different cultural conventions between the interpreter and the accused. This dyadic difference in the communication between the accused and the interpreter may influence the interpreter to reflect the wrong feedback from the accused to the prosecutor, attorney or magistrate. This may lead to a ripple effect of misinformation, based on the feedback, and the consequence may be a miscarriage of justice.

In a nutshell, in a situation where the interpreter and the accused do not share the same culture or cultural conventions, the possibility of mutual comprehension is low (Corsellis, 2005: 130). Cultural conventions in this regard apply to how a dominant language of a particular group of people influences other languages used by the people. An example is how English and Portuguese influence certain words in Malawi and Mozambique respectively. The word *parata* means 'silver' in Mozambican Chisena, and it is borrowed from the Portuguese word *plata* (Portuguese being the official language of Mozambique). On the other hand, the word *siliva* means 'silver' in Malawian Chisena, and is borrowed from English, the official and dominant language in Malawi.

Apart from interpreting, which in most cases is done in consecutive mode in South African courtrooms, interpreters

are always called upon to sight translate documents. At the beginning of the trial, the prosecutor will read the charge(s), and the magistrate will ask the accused if he or she is guilty or not guilty as charged. The charge is passed to the interpreter, who will sight translate the charge sheet into the accused's mother tongue. On other occasions, interpreters are called upon to sight translate various other documents, such as diary entries, letters, sales agreements, etc., into the mother tongue of the accused or witness.

In the case of sight translation done in a cross-border language situation, the interpreting may not yield the desired outcome if the interpreter and the accused or witness are from different countries. One potential problem area, which is pertinent to the use of written documents, is that of different orthographies used for the Malawian and Mozambican varieties of Chisena, something which the interpreter might not be aware of. There are also instances where some of their words may have homographic forms, or the same spelling, but different meanings. An example in this regard is the word *chisa,* which means 'village' for a Chisena-speaking Mozambican, but 'nest' for a Chisena-speaking Malawian. A Mozambican interpreter specifically referred to the cited word *chisa* in this regard, and continued to say that 'there are other words that do come up while we are interpreting that confound the interpreting process'.

This also applies to a situation where words are phonetically similar, but spelled differently – another detrimental factor in the quality of interpreting. For example, Barnes and Funnel's (2005: 50) work on the orthographical differences between Malawian Chisena and Mozambican Chisena highlights words with the same pronunciation but with different spelling as indicated in Table 1.

The differences in the spelling of these words can be attributed to the fact that the Malawian spelling of the words follows the dominant English and Chichewa orthography respectively. In addition to English, Chichewa is the dominant language in Malawi, while the Mozambican spelling follows the dominant Portuguese orthography. Minority and indigenous languages usually follow the orthography of the dominant language. Afrikaans used to be the dominant language in certain areas of South Africa and, as a result, many of the words borrowed from that language in South African indigenous languages follow its orthography, although adapted to the phonology of the receiver language. For example, the Northern Sotho word for 'church' is *kereke* (from *kerk*, in Afrikaans) and the Zulu word for 'knife', *ummese* (from *mes*, in Afrikaans). While the orthographical differences in the words in Table 1 may appear marginal and as such not worthy of concern, the need for exactness, to render as realistically as possible the meaning of SL into TL, supports our view that it is better to use interpreters with the same sociolinguistic background (from the same country, or possibly from the same community as the accused) in order to avoid obstacles capable of impacting negatively on the quality of the interpreting. For example, Grabau and Gibbons (1996: 259) explain that –

> [a]n ideal interpreter must have an adequate level of cross-cultural knowledge — including the ability to manipulate dialect and geographic variation, different educational levels and registers, specialised vocabulary, and a wide range of untranslatable words and expressions.

Another example is the orthographical differences regarding Biblical names, many of which are also used as given names among citizens of African countries. In this regard, Barnes and Funnel (2005: 52) point out that the differences in the way in which Biblical names are spelled is an indication of the influence of the erstwhile colonial languages in both countries. Some of the Biblical names referred to by Barnes and Funnel are listed in Table 2.

As shown in Table 2, Barnes and Funnel (2005: 52) point out that Biblical names in Malawian Chisena reflect their English equivalents, while Biblical names in Mozambican Chisena reflect the Portuguese equivalents. In light of the orthographical differences discussed above, there are two possible problems (which will be mentioned below) that interpreters working with cross-border languages may encounter during sight translation. The first problem is due to the orthographical differences between, for instance, Malawian Chisena and Mozambican Chisena as pointed out by Barnes and Funnel above. Because of this, interpreters will have difficulty in accessing written texts quickly. The second problem is that, due to the different backgrounds, the court interpreters may not be adequately informed about the societies and cultures of the accused persons, especially when the accused is from a lusophone country (e.g. Mozambique) and the court interpreter from an anglophone country (e.g. Malawi).

Further examples in this regard pertain to the use of Afrikaans in South Africa and Namibia. Some loan words from indigenous African languages used in Namibian Afrikaans could be incomprehensible to speakers of South African Afrikaans in court. One example is the word

Table 1: Orthographical differences between Malawian Chisena and Mozambican Chisena

Malawi	Mozambique	English
Kuchita	Kucita	To do
Kuchemera	Kucemera	To call
Kutchitha	Kuchita	To descend

Table 2: English and Portuguese orthographical influence on Biblical names in Malawi and Mozambique

Malawian Chisena	English	Mozambican Chisena	Portuguese
Yohani	John	Djuwau	João/Juan
Yakobo	James	Tiago	Tiago
Yosefu	Joseph	Zuce	José
Iguputo	Egypt	Idjitu	Egito

monokko (possibly from Oshiwambo), which means 'wet cement' in Namibia, and is known as *dagha* in South African Afrikaans (cf. definition in WAT). *Onkans*, which means 'mischievous' in Namibia, is referred to as *onnutsig* in South African Afrikaans. German as spoken in Namibia also differs from that used in South Africa in some ways, especially as a result of the influence of Afrikaans. For example, a 'bread roll' is referred to as *Bretchen* in Namibia, while it is referred to as *Brötchen* in South Africa and Germany. A possible explanation for the difference in spelling and pronunciation is that rounded front vowels (such as ö, pronounced as 'ee', but with pouted lips) are often unrounded in some varieties of Afrikaans, also in Namibian Afrikaans – hence the pronunciation of *Brötchen* as *Bretchen* in Namibia, indicating that the Namibian pronunciation of German may be linked to Afrikaans varieties.

The verbs *raak* and *word* as main verbs in Afrikaans can both mean 'to become'. For example, 'He became ill' is *Hy het siek geraak,* 'It is becoming cold now' is *Dit word nou koud*, 'It becomes interesting' is *Dit raak interessant,* and 'They become friends' is *Hulle word vriende*. However, as an auxiliary verb, *word*, is also used to form the passive, as in 'It is being said' which in Afrikaans is *Dit word gesê*, 'He is being interrogated' is *Hy word ondervra* in Afrikaans. In Namibian Afrikaans, *raak* is often used as a passive auxiliary, as in 'His hand was cut' which is *Sy hand het gesny geraak*. Though this phenomenon also occurs in some regional varieties in South Africa, its frequency in Namibia is regarded as relatively high (according to a lexicographer at the WAT who was born and bred in Windhoek, Dr FL Lombard – personal communication), and it can be regarded as a predominantly Namibian feature, which will be best handled by an Afrikaans-speaking Namibian interpreter, and not an Afrikaans-speaking South African.

The differences in the use of Afrikaans in South Africa and Namibia above are lexical in nature, in addition to some grammatical particularities, as exemplified by *raak/ word*. These features can also be described as a restricted number of geolectal differences between the South African and Namibian varieties of Afrikaans, which might not be known to an interpreter who is unfamiliar with such differences.

The instances of the use of Afrikaans above and those based on our interviews with court interpreters from Malawi underline the erroneousness, or risk, at the very least, of using a Chisena-speaking interpreter from Malawi to interpret for a Chisena-speaking Mozambican, and vice versa. As they (accused and interpreter) are from the different countries, differences are bound to occur regarding what appears to be their common and mutually intelligible language of use. In the light of this, a Chisena-speaking Malawian interpreter cited the following example: *Ndi thangwi yache ndiku pangani* (which means 'This is the reason I am telling you') is rendered by a Chisena-speaking Mozambican as *Ndi thangwi eneyi ine indinakupangani.* The apparent lexical differences between these two sentences, which would negatively influence mutual intelligibility to some extent, are amplified by a markedly different pronunciation characteristic of the two varieties. According to this interpreter, there are a considerable number of words which are pronounced, and also spelled differently in both countries.

A representative example is *chifupi*, which means 'near' to Chisena-speaking Malawians, while their fellow Chisena speakers in Mozambique use *dhuzi* (or *duzi*) to refer to the same concept. On the other hand, the two Chisena-speaking Malawian interpreters who were respondents in this study, and several Chisena-speaking accused (precisely six accused), regarded the word *dhuzi* or *juzi* as a Shona word meaning 'jersey' or 'jumper'. However, the statement below shows the extent to which a Chisena-speaking Mozambican interpreter regards Malawian Chisena with disdain: 'Forget about Malawian Chisena, it is to us the "bastardised" type, because in most cases they are not pure in their use of Chisena'. While this response reflects an ethnocentric view of their language, it suggests that there are several instances where Chisena is used differently in Malawi and Mozambique. Thus, it highlights the challenges cross-border language interpreters will encounter in courtrooms if they are not familiar with the kinds of differences pointed out above – and as indicated in the discussion of our courtroom observation of court proceedings below.

In the following example, the accused, who was arraigned on a charge of assault, was a Chisena-speaking Malawian pastor, and the interpreter was a Chisena-speaking Mozambican. The magistrate and the prosecutor were Afrikaans-speaking South Africans, while the state-appointed attorney for the accused was a Sotho-speaking South African. The trial was conducted in English, making it the TL. The accused was found guilty as charged. Although the accused was a Chisena-speaking Malawian, he elected to use English and Chisena in the form of code mixing. The transcribed court proceedings below refer to the section specific to the data that will be discussed. For this analysis, we are only concerned with the code mixed part of the statement in Chisena.

The extract discussed below represents an attempt by the accused's lawyer to make the magistrate understand the context in which the accused did what was being described as indecent assault, and includes the interpreter's version of the accused's statement.

(1) Attorney: Can you tell the court your relationship to the plaintiff?
(2) Accused: *Ndine pano* pastor.
(3) Interpreter: I am a pastor.
(4) Attorney: What happened between you and the accused on the night of 14 September 2009 in your flat in Hillbrow?
(5) Accused: As usual, we were having our midweek intercession service in which the plaintiff and other members were in attendance. As we were praying, I noticed the plaintiff in an unusual mood, contorting into a shape I least expected. I ran up to him and I laid my hand on him and I knew…I mean it was…in fact *akhadaphatwa na mzimu wakuipa*…and I had to pray by laying hand on him, and through prayer I had to physically set him free.
(6) Interpreter: *Mwati chani zina chitika kawa iye*? *Akhadaphatwa na mizimu ya kuipa?* (What did you say

is happening to him? Had he been grabbed by spirit of evil?).

(7) Accused: *Tayi*, *akhadaphatwa na mzimu wakuipa* (No, he had been grabbed by evil spirit).

(8) Interpreter: *Akhadaphwa na mizimu ya kuiipa*? (Has he been grabbed by spirit of evil?)

(9) Accused: *Ande*, yes, *akhadaphatwa na mzimu wakuipa* (Yes, he has been grabbed by evil spirit).

(10) Interpreter: My Lord, the accused said, as usual, we have our midweek intercession service where all the members do come to pray. I noticed the accused with funny body shape and realised *he has been bound by spirit of evil.* I pray by laying hands on him and with prayer I had to physically set him free.

From the extract above, it can be seen that the interpreter was demanding clarity regarding the code mixed part of the accused's statement. The interpreter repeated what the accused had said twice, in order to confirm that she understood it clearly, to which the accused in the first instance responded in the negative, as follows: *Tayi*, *akhadaphatwa na mzimu wakuipa*. When she (the interpreter) repeated the statement, with little or no difference, he confirmed it, but not before repeating what he said as *Ande,* yes, *akhadaphatwa na mzimu wakuipa* meaning *he had been grabbed by evil spirit.* However, the interpreter repeated a***khada****phatwa na mzimu wakuipa* as *akhadaphwa na mizimu ya kuiipa,* which she interpreted into the TL (English) as *he has been bound by spirit of evil*.

We noticed this particular instance of language use as we were observing the court proceedings because of what appeared to be a misunderstanding between the interpreter and accused. We could see that the interpreter was demanding more clarity from the accused with regard to the exact wording of *akhadaphatwa na mzimu wakuipa*. The analysis which we did in collaboration with Chisena-speaking interpreters from both countries (Malawi and Mozambique) revealed specific differences in the orthographic and syntactic elements of the accused's and the interpreter's versions. Even though a significant part of the accused's statement was in English, the interpreter's rendition of the accused's statement into the TL was a significant distortion of the original.

As the accused was a pastor, his clerical response to justify his physical manhandling of the plaintiff did not come as a surprise. The section of the statement which we are interested in reads *akhadaphatwa na mzimu wakuipa*, which means *he has been grabbed by evil spirit.* In defence of his action, which was described as indecent assault in the court, the accused said he needed to physically support himself while praying to release the plaintiff from the evil spirit. Hence he went as far as performing the action referred to as indecent assault; but he referred to it as 'shoving and pushing' of the plaintiff while praying.

However, the interpreter gave the court another version by saying that *akhadaphwa na mizimu ya kuiipa*, which she renders as *he has been bound by spirit of evil.* Apart from the fact that the interpreter's version was different from the accused's in terms of the orthographical and syntactical elements of the statement, the interpreter's use of the word *bound* seems to mean that the evil spirit is restricting the plaintiff. It does not denote the meaning intended by 'grabbed', which represents some significant measure of force in the version of the accused's statement. Another part of the sentence, *spirit of evil,* seems to convey that the spirit keeping the person in bondage is evil by nature, having a quality that can be described as cruel or punitive, whereas the accused's version reads metaphorically as *evil spirit,* saying that what had grabbed the person, is an evil spirit (i.e. an entity), as opposed to the qualification of a spirit by the Chisena-speaking Mozambican interpreter. The accused personified the concept 'evil spirit' by saying that the accused was *grabbed by (an) evil spirit,* and hence he felt that the plaintiff had to be set free physically. The interpreter's rendition weakened the accused's statement, and did not support the accused's justification of force, which resulted in injury to the plaintiff. The interpreter's version also necessitated a discussion of the nature of spirit said to be binding the plaintiff. In other words, the interpreter's version seems to leave it open to the magistrate to question the nature of the spirit and the concomitant use of force by the accused that resulted in the injury that was described as indecent assault.

The theme of 'evil spirit' or 'spirit of evil' has Biblical connotations, especially in the light of the fact that the accused claimed to be a pastor. There has not been any known published text of spiritual significance in both Chisena in Malawi and Mozambique, except the Bible, which has both Malawian and Mozambican versions (Funnel, 2004). It is no wonder then that the Bible served as a reference text of Chisena to both the interpreter and the accused, as evidenced by their words, which are clearly taken from the translated Chisena Bible in their respective countries. For example, the pastor's statement is similar to the translated Chisena Bible in Malawi. The pastor could have supported himself with this particular verse in the Bible, Matthew 12: 22. Or the pastor could have been influenced by the translated Chisena Bible in Malawi, which is heavily influenced by English. Although the interpreter's version differs in certain respects from the text in the Chisena Bible of Mozambique, the similarity to the Mozambican version does lend credence to its influence as well.

Our analysis also revealed that the accused was a pastor in the Zoe Ministry, a church notorious for its members' physical demonstration of their thoughts and actions while praying, a fact which the interpreter was not aware of, by her own admission. Zoe Ministry has branches in many English-speaking African countries, including Malawi.

Given the defence strategy of the accused's attorney, the understanding of the accused's religious background, which the plaintiff was aware of or recognised, would have played a part in the consideration of the verdict by the magistrate. The accused was found guilty as charged and jailed for one year. In the light of our argument, facts that would have helped in mitigating the sentence were de-emphasised by the interpreter's rendition that weakened the accused's statement. The relationship between text in the SL and TL (Kenny, 2001) given by the interpreter was significantly weak. In court interpreting, the meaning in the TL has to significantly reflect the meaning embodied in the SL text in order for justice to be served. In this regard, we believe the accused would have got away with a lighter sentence had the question of equivalence between the SL and TL

as indicated in our argument been addressed appropriately by the interpreter. In most cases, it is not possible to simply substitute word-for-word equivalence from SL into TL in interpreting, hence interpreting scholars recommend dynamic equivalence in order to have the same force of meaning (Graham, 2003) in the TL. This ensures that the TL is significantly the same as the SL in court interpreting.

The central thesis of our argument accompanying the extract above is that as the interpreter and the accused are from different countries, there are bound to be some sociolinguistic concerns in terms of cross-border language. Consequently, the question of dynamic equivalence, which connects socio-cultural elements in two languages 'on the basis of the highest degree of approximation' (Nida, 2004: 163) will not be properly addressed. This, in turn, affects the quality of the interpreting and the effective dispensation of justice by the magistrate.

The challenges mentioned above are common in the courtrooms we observed, and could also be gleaned from the information we collected from the chief interpreters. The chief interpreters confirmed that they assign interpreters to interpreting assignments on the basis of the language listed as their working language and not necessarily according to the nationality of the interpreters. Put differently, the interpreting programme, as managed by the chief interpreters, allocate interpreters for cross-border languages without ensuring that the interpreter and the accused are matched geolinguistically, i.e. hailing from the same country, in addition to speaking the same language. This omission may jeopardise the dispensation of justice by the magistrates, whose main interest is indeed to make sure justice is done. For accused foreign African immigrants and witnesses who do not understand the two *de facto* official languages of the court, the language proficiency and skills of the interpreters to bridge language barriers that exist between them and other participants in the courts is paramount. Underscoring this fact is Mikkelson (2000: 2) who states that interpreters 'level the playing field by overcoming the language barrier, and not to put the interpretee at an advantage over other litigants'. Or, as De Jongh (1992: 65) puts it, '…the interpreter must act as a "faithful echo" of the remarks of all parties, therefore casting themselves in the role of the non-partisan, a sometimes difficult, but necessary task'. This will be a distant reality, in the light of the discussion of cross-border languages and the possible challenges they pose to interpreters.

Recommendations

It is the duty of any judicial system to ensure fairness of court proceedings, and this rests directly with the trial magistrates, who are obliged to ensure that they are scrupulous when considering matters that come before them. However, this objective is only achievable if patent language difficulties are professionally addressed in such a way that the magistrate is able to reach a fair judgement, in the interest of justice, so that the aggrieved party in the dispute also receives a fair deal. Given the nature of the challenges discussed in this article, it is imperative that interpreters do constant reading to obtain relevant information and update their knowledge. This applies especially to court interpreters who interpret cross-border languages, as they need to be well-informed about the socio-cultural milieu of the countries in which the cross-border language they interpret is spoken. This will be necessary, for example, for a Malawian court interpreter who interprets for an accused or a witness from Mozambique. The fact that a Malawian court interpreter understands, and to some extent, writes the Mozambican's variety of Chisena is of no use if he or she is not, at the same time, well-informed about the socio-cultural milieu (which may be in constant flux) affecting the use of Chisena in Mozambique.

One further aspect pertinent to the discussion of challenges interpreters face in terms of cross-border languages is the fact confirmed by the chief interpreters that court interpreters are not provided with detailed information concerning impending trial cases in which the accused people they are interpreting for are involved. They also do not conduct any pre-trial interviews with the accused or plaintiffs. This is not a standard practice, and it is a fact attested to by the Healthcare Interpretation Network (2007: 16) that it is incumbent on the person requiring the service of an interpreter to provide detailed information about the interpreting assignment he or she is giving to the interpreter 'that will enable the interpreter to have the necessary background and foreground information that will assist him/her in preparing for the interpreting task'. Equally, the Australia Interpreting and Translation (AUSIT) Code of Ethics and Code of Conduct (2012: 14) recommends that '[i]nterpreters prepare themselves by obtaining from the initiator/client as much information and briefing as is necessary for the proper execution of their interpreting'. As this is a standard practice, it is recommended that this provision should be taken into consideration by the authorities responsible for court interpreting in South African courtrooms. Such a requirement would provide the court interpreter with an opportunity to interact with the accused or witness, and in the process learn about the dialects and colloquialisms that apply in the cross-border languages of the accused or witnesses.

Conclusion

As stated above, a significant percentage (52%) of the foreign African court interpreters are frequently called upon to interpret cross-border languages in the courtrooms we examined in this study. Given the different sociolinguistic situations which may have an influence on the varieties of cross-border languages in the different countries where they are spoken, it remains to be seen how the court interpreters can maximally render effective communication between the accused and other principals in the courtroom.

One of the challenges which may render the interpreting of cross-border languages problematic has been pointed out in the analysis. This challenge, as discussed, is the possibility that there may be a shared language, but not a shared culture, between the interpreter and the accused or witness he or she is representing (Corsellis, 2005: 131). When this is the case, the possibility of mutual comprehension necessary in court interpreting is low (Corsellis, 2005: 130).

In our discussion, it was further pointed out that the interpreter may have orthographical differences to contend with during sight translation as a result of different colonial influences. For example, Chisena in lusophone Mozambique will be influenced differently from the variety of Chisena as used in anglophone Malawi. Some of these orthographical differences, as noted in the analysis, are apparent from the way Biblical names are spelled in Malawi and Mozambique respectively – and this indicates the influence of the erstwhile colonial languages of both countries.

Note

1. The term 'target population' is used here in a statistical sense, which is reflected in the definition by Easton and McColl (http://www.stats.gla.ac.uk/steps/glossary/sampling.html#targpop): 'The target population is the entire group a researcher is interested in; the group about which the researcher wishes to draw a conclusion'.

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