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LANGUAGES, JUSTICE AND THE COURTS: A MISINTERPRETATION

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According to media reports, the Department of Justice and Constitutional Development is getting ready to introduce indigenous language courts "in an attempt to speed up justice" and "make courts more accessible".

A pilot project for indigenous language courts was run in 2009, but was stopped after an assessment by the Department. The Department stated last month that it was reopening the project.

According to the Department, the objective is to introduce and promote the use of indigenous languages in a few courts, then to expand to other courts. Other objectives are to attain multilingualism in the courts, to allow participants in courts to use languages they understand best and to make indigenous languages in courts languages of record. A departmental spokesperson added that there would be cost implications, as cases would have to be translated from indigenous languages to English for purposes of appeal and review.

The state of interpreting and translation services in the South African courts and justice system has been an ongoing - and worrisome - topic of discussion for some time. A recent example is the incident involving fake sign language interpreter, Thamsanqa Jantjie, who embarrassed South Africa in the international arena during the memorial service for Nelson Mandela.

Further recent incidents include the murder trial of paralympian Oscar Pistorius, where certain state witnesses lost so much confidence in the Afrikaans-English interpreter that they opted to testify in English, rather than Afrikaans. In the same trial, a new interpreter misinterpreted witnesses' testimonies on several occasions. One example was when defence counsel had to correct an interpreter during the testimony of one state witness (a former police Colonel) who stated: "...when we arrived there were towels and black garbage bags on the scene." The interpreter interpreted this testimony from Afrikaans into English as: "...there was black clothing." The witness also stated: "The person was already dead when the paramedics arrived" and the interpreter responded: "The body died on their arrival."

In another matter in the Eastern Cape High Court in Port Elizabeth at least 16 State witnesses who testified in a murder trial were recalled because the interpretation of their original evidence in court was not up to standard. Reports indicate that during the course of the trial the three accused in the matter - all isiXhosa speakers - raised their concerns over the quality of the interpretation of certain evidence given by State witnesses. After the complaint the chief interpreter of the court (acting as inspector of interpreters) confirmed that not only was the interpreting of the evidence not up to standard, the witnesses were also not properly sworn in by the interpreter.



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The South African Competition Tribunal also recently decided to have both Afrikaans testimony and the English interpretation thereof transcribed in order to ensure that the Court properly captured what witnesses had said. According to media reports, the Tribunal's chairperson asked whether a witness would mind testifying in English, since he was concerned with the quality of the interpretation of her responses into English. This occurred after another witness had to switch from Afrikaans to English during his testimony after another interpreter failed to properly convey his responses to the Tribunal.

Chief Justice Mogoeng Mogoeng has expressed his concern about the problem when he recently addressed the Judicial Officers' Association of South Africa in Benoni. Mogoeng voiced his concern about the poor training of interpreters and stated that South Africans are losing court cases because of the poor quality of court interpreters.

In the context of a court case, the importance of quality and accurate interpretation of testimony and proceedings is obvious and cannot be overstated. If an exact and accurate rendition of either is not given in the target language (i.e. the language interpreted into), the testimony or proceedings will be flawed. The position is very sensitive and can be aggravated if the presiding officer, for example, is not proficient in both languages spoken in court for the presiding officer has to rely fully on the interpreter's rendition, with the belief that what is presented is correct and accurate.

What about the present situation?

The Department of Justice - responsible for providing interpretative services in South Africa's courts - has not yet adequately responded to questions about plans to improve interpreting.

It is questionable whether dedicated indigenous language courts will "speed up justice" and "make courts more accessible" to South Africans.

It is also questionable whether proposed courts such as these - which will be exclusive depending on the language of a particular court - are in the spirit of the Constitution?

Will there, for example, be more isiXhosa, isiZulu and Afrikaans courts than siSwati, Sepedi or Tswana courts, and how will this be decided and implemented? Will access to justice be served where, for example, a TsiVenda speaker has a legal issue, but the court closest to his or her home, is an exclusive SeSotho court?

Would it not be more viable to address the existing problem of poor interpreting services in the justice system? A positive step could include better and proper training specifically for court interpreting - there are currently no dedicated court interpretation degree qualifications and UNISA's BA specialising in court interpreting was terminated in 2009. There must be a demand for proper quality assurance measures in all courts (not only in high-profile cases) which could possibly include regular interpreter testing as well as proper and recognized accreditation as a court interpreter.



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If it really was serious about improving access to justice - and given that South Africa has 11 official languages - the Department of Justice ought to seriously consider implementing a system of real-time simultaneous interpreting in our courts - similar to a system used for example at the United Nations (UN). Dedicated interpreters provide simultaneous real-time interpretation during proceedings in the UN's official languages, which are Arabic, Chinese, English, French, Russian and Spanish.

Where a trial is conducted in a language an accused does not understand, the need for an interpreter is obvious. In the matter of *S v Ndala* the Cape Provincial Division (as it then was) reiterated that "the provision for an interpreter required a sound and faithful (*'juis en getrou'*) translation" and that "the very necessity for an interpreter arose because the linguistic competence of the court and the accused did not coincide."

Interpretative services also play an important role in the observance of a core legal principle: that justice must be seen to be done. Where these services are of excellent quality, justice is promoted and seen to be done by especially those who are not intricately involved in the legal process. Unfortunately, the converse is also true: where these services are lacking or sub-standard, justice and the way it is meted out by our Courts is severely hampered.

The Constitution is unambiguous: the right to a fair trial in South Africa includes the right to be tried in a language that the accused person understands. A pre-condition for access to justice is the proper functioning of the justice system *itself* - and its various mechanisms.

It is in the public interest that all those involved in the multilingual administration of justice in South Africa - from the Department of Justice and Constitutional Development, which is responsible for the provision of interpreters, to the judges and magistrates who preside over our courts - address the issue of poor interpretative services in order to afford this important principle the respect it deserves.