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THE CHANGING ROLE OF THE COURT INTERPRETER-TRANSLATOR IN AFRICA: THE CASE OF ZAMBIA

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Abstract: The paper gives a historical account of the negative effects of poor interpreter-translator service providers to the development of the justice system in countries of Africa generally and Zambia in particular. It recommends various practical solutions to the challenge of access to interpreter-translator service providers generally and legal interpreter-translator services in particular. These include definition of target group; mobilization of funding; building a network of experts to serve as advisors, consultants and resource persons; establishment of a statutory body to guide government on language policy generally, including translation-interpretation services (e.g. Translation and Interpretation Commission); organization of thematic seminars and workshops; media panel discussions; moving a private motion in parliament; curriculum review for consideration by Ministry of Education; and submission of a draft bill for consideration by parliament and/or Ministry of Justice.

Key words: Africa; Justice; Court; Interpreter-Translators; Zambia

L'ÉVOLUTION DU RÔLE DES TRADUCTEUR-INTERPRÈTES DE TRIBUNAL EN AFRIQUE: LE CAS DE LA ZAMBIE

Résumé: L'article donne un récit historique des effets négatifs occasionnés au développement du système judiciaire par les fournisseurs des services de traducteur-interprètes incompetents dans les pays d'Afrique en générale et en Zambie en particulier. Il propose certaines solutions pratiques pour remédier le manque d'accès aux fournisseurs des services de traducteur-interprètes généralement et de traducteur-interprètes juridiques plus particulièrement. Parmi les défis, sont remarquables la définition d'un groupe cible ; la mobilisation de fonds ; la création d'un réseau d'experts pour servir comme conseillers, consultants et animateurs de projet ; la création d'un organisme d'état pour guider le gouvernement en matière de politique linguistique, y compris les services de traducteur-interprètes (ex. Commission Nationale de Traduction et d'Interprétation) ; l'organisation des séminaires et ateliers thématiques ; l'organisation des conference-débats ; l'introduction d'un projet de loi privé au parlement ; la révision du curriculum par le Ministère de l'Education Nationale ; et l'introduction d'un projet de loi au parlement par le Ministère de Justice.

Mots-clés: Afrique; Justice; Tribunal; Traducteur-Interprètes-; Zambie

ZMIANA ROLI TŁUMACZA SĄDOWEGO W AFRYCE NA PRZYKŁADZIE ZAMBII

Abstrakt: Artykuł naświetla tło historyczne dla negatywnych rezultatów w rozwoju systemu sądownictwa a wynikłych w związku z niedostatkami umiejętności tłumaczy w Afryce, a w szczególności w Zambii. Wskazuje on różnorakie rozwiązania praktyczne w ogólności dla tłumaczy, trudniących się przekładem oraz dla usług tłumaczy sądowych w szczególności. Obejmuje to sprecyzowanie grupy docelowej; gromadzenie funduszy, stworzenie sieci ekspertów służących jako konsultanci i doradcy, powołanie do życia instytucji wspomagającej rząd w pracy nad polityką językową w ogólności, w tym nad usługami tłumaczeniowymi (np. Komisja Tłumaczeniowa); organizaowanie seminariów i warsztatów tematycznych; dyskusje panelowe; wzniesienie prywatnych inicjatyw w parlamencie, przegląd planów studiów do rozważenia przez Ministerstwo Edukacji; zgłoszenie wniosku pod głosowanie parlamentu i/lub Ministerstwo Sprawiedliwości.

Słowa-klucze : Afryka, sprawiedliwość, sąd, Zambia, tłumacz

1. Introduction

In Zambia and other multilingual countries of Africa, lack of standard interpretation-translation services in the judiciary remains a daunting challenge (Kasonde 2015; 2012; 2008; 2000; Kasonde & Miti 2013). Paradoxically, justice delivery (or miscarriage of it) is one of the areas in which well qualified and efficient interpretation-translation staff ought to play a critical role. With globalization, the need for quality judicial interpretation-translation services is bound to remain on the rise rather than on the decline.¹ At the end of this study, readers will be able to understand why the current state of judicial interpretation-translation services in the country is pathetic, analyze its causes and consequences and also identify effective remedial interventions.

2. Historical Background

Studies of evolution of the judiciary in Zambia and most countries of Africa generally recognize three distinct periods. These are, precolonial, colonial and postcolonial periods.

2.1. Precolonial

The precolonial social system came to an end at a time when monolingual kingdoms and empires were in the process of formation or disintegration. These political entities included Ancient Ghana and Ancient Mali in West Africa. In Southern Africa the Nguni under Emperor Shaka and the Luba-Lunda of Mwata Yamvwa in Central Africa are well documented (Ki-Zerbo 1981; Mohktar 1981). In terms

¹ The main focus of this study is judicature. However, the study is also pertinent for legislature and executive. For indeed, a study of governance is doomed to failure if it does not recognize the interdependency of legislative, executive and judicial powers of government according to *De l'esprit des lois* (Montesquieu, 1748).

of jurisprudence, court the interpreter-translator received informal training based on apprenticeship model (Gluckman 1965).

2.2. Colonial

In Zambia the protectorate version of the British colonial system (1890-1964) passed through its three distinct administrative phases. These were, British South Africa Company (BSA), British Colonial Office and Federation of Central Africa. Throughout this period, the process of professionalization, including standardization of qualifications and entry requirements for training did not take place (Way 2014). BSA company rule of Cecil Rhodes was primarily concerned with exploitation of rich minerals resources. To achieve that objective, the Royal Charter authorized a certain degree of control over local chiefs and their subjects. The British sphere of influence in the territory was within the parameters of the Berlin Conference of 1884–1885, also known as the Congo Conference (German: Kongokonferenz) or West Africa Conference (Westafrika-Konferenz). The country was initially divided administratively into North-Western Rhodesia and North-Eastern Rhodesia followed by amalgamation into Northern Rhodesia. The British Colonial Office took over direct control from the BSA in response to basic demands of the time, including the respect of minimum standards of good governance and rule of law. Between 1953 and 1963 the British Colonial Office established a federal system that brought together Northern Rhodesia, Southern Rhodesia and Nyasaland. Like other arms of the colonial state, the judiciary in the country did not necessarily devise permanent structures to cater for different multilingual needs of the Africans. Ad hoc choices were limited to Bemba, Nyanja, Tonga and Lozi in the European court or a local speech form at African local court level.

2.3. Postcolonial

The postcolonial era in Zambia commenced in 1964 as one in a series of British postwar initiatives aimed at lessening what was ostentatiously referred to as the “White Man’s Burden”.



Figure 1. The British John Bull and the American Uncle Sam bear The White Man's Burden (Apologies to Rudyard Kipling), taking the colored peoples of the world to civilization. (Judge magazine, 1 April 1899)

Other cases of decolonization included Ghana (1957), Nigeria (1960) and Kenya (1963). Successive postcolonial regimes in the country, including First Republic (1964-1971), Second Republic (1972-1990) and Third Republic (1991- to date) have not done enough to address past injustices with regard to development of multilingual judiciary.

3. Resources Audit

3.1. Available

The introduction of language clause in the Republican Constitution (1991) marked the start of a new era for interpretation-translation services in the judiciary. By designating English as the “official language”, the language clause in the Constitution of Zambia ironically fell short of expectations of supporters of the multilingual clause found in the Constitution of neighboring Zimbabwe (2013) and South Africa (1997), respectively. The Republican Constitution of Zambia (2016) retained the same English language clause from the Republican Constitution of Zambia (1991). It also made specific mention of Sign Language and the seven national languages (Bemba, Nyanja, Tonga, Lozi, Kaonde, Lunda, and Luvale) without recognizing them as equal in status to the English language.

3.2. Required

Amendment of the existing one-language clause in the Constitution of Zambia (2016) is required in order to bring it line with multilingual clause in the region. That is, placing the selected languages on the same footing along South Africa (1997) and Zimbabwe (2013). The central argument is that all human languages are equal and the respect of linguistic rights necessary for democracy to flourish in Africa. Apart from that, an Act of Parliament is needed for the establishment of a regulatory framework for the professional practitioners in interpretation-translation services in the judiciary. The entry requirements for diploma and degree programs in interpretation-translation services in the judiciary and the curriculum need to be approached jointly between Ministry of Justice and Ministry of Higher Education. In this regard, the Zambia Institute of Advanced Legal Education (ZIALE) where advocates are trained after successful completion of Bachelor of Laws (LLB) at University of Zambia and other accredited institutions is a viable starting point. The creation of a

specialized Department of Legal Interpretation-Translation (DLIT) separate from advocate is all that would be needed. The ZIALE-DLIT could then subsequently be transformed and upgraded to an autonomous Institute of Legal Interpretation-Translation (ILIT). To operate effectively, it is also necessary for ILIT to maintain a professional register of individuals and bodies, including companies competent to provide professional Legal Interpretation-Translation Services. In this way, any form of amateurism and charlatanism would be a thing of the past. Standard disciplinary proceedings would be instituted whenever flirting professional regulations would be detected. Various Institutions of Higher Education in the country, including Evelyn Hone College of Applied Arts and Commerce (EHC), University of Zambia (UNZA), Copperbelt University (CBU) and Mulungushi University (MU) must join forces as soon as possible. The Ministry of Higher Education through Higher Education Authority (HEA) would continue to play its usual role of Quality Assurance in staffing, syllabus, training and accreditation.

4. Discussion

Individuals accused of breaking the law in Zambia must appear before one of the six recognized courts² in the country. These are Supreme Court, High Court, Industrial Relations Court, Land Tribunal, Magistrate Court and Local Court. In general terms, Supreme Court is the highest court of appeal in the country. High court resolves conflicts in interpretation of the law in the country. Industrial relations court deals with labor disputes in the country. Land tribunal adjudicates matters relating to land disputes. Magistrate court determines cases of statutory law. Local court hears traditional

² The Constitution of the Republic of Zambia enacted in 2016 made significant modifications to the existing court system, including the introduction of Constitutional Court. This led to the recruitment of additional judges to service a newly expanded judicature. With regard to the need for the state to improve the provision of Interpreter-Translator Services in the judicature, the introduction of the Constitutional Court does not have any direct bearing even though language rights fall within the domain of fundamental human rights.

and customary cases. Failure to appear before court on the part of any accused person is contempt of court, an offence that normally requires mandatory prison custody. The paper puts the court in the context of the legal framework in Africa south of the Sahara generally and Zambia in particular. It draws a distinction between the pre-independence and post-independence periods in order to explain the origins of the present court system. It places the court in the country against a background of a multiplicity of competing social institutions claiming to represent the course of justice. These competing social institutions include families, clans, ethnic groupings and regions of Zambia. The competing social institutions also include agencies of law and order, such as police. In addition, competing social institutions include various disciplinary committees at association, trade union and political party level. The list of competing social institutions also covers different disciplinary tribunals at statutory body level where universities belong. The right to a fair trial guaranteed under the Republican Constitution and various other pieces of subsidiary legislation requires that any accused person be also provided with appropriate interpreter-translator services according to her or his language needs (Kasonde 2000). The paper argues that access to a court interpreter-translator remains a pipe dream and thus one of the daunting challenges pertaining to institutional structure and procedure in need of reform action to curtail miscarriage of justice and improve the image of the judiciary in the country.

The first major reform priority relates to the establishment of an official register of qualified providers of interpreter-translator services competent to practice their profession in the country. The register ought to be maintained in a secure and dignified manner and updated regularly along the lines of existing professional bodies in accountancy, engineering, journalism, legal and medical professions. With professionalization, the quality of service in the interpreter-translator sector is expected to improve tremendously, so is administration of justice. The improvement would be achieved by the removal of any unqualified and incompetent individuals from the official register. Improvement would also be enhanced by the admission of interested qualified new entrants to the interpreter-translator service providing community.

The second major reform priority concerns a critical examination of qualification and training of interpreter-translator service providers. For any individual to provide interpreter-translator

services in the country, it is necessary for that particular individual to hold the requisite certificates, diplomas and degrees from recognized training institutions of higher education. To meet quality needs of the market, training providers in interpreter-translation from both public and private sectors ought to complement each other. In this regard, public sector could be represented by Evelyn Hone College of Applied Arts and Sciences and University of Zambia. Other public training institutions that can make a difference include National Institute of Public Administration where various courses for magistrates are conducted and Institute of Advanced Legal Education which provides specialized training for advocates in the country. Similarly, private sector could be represented by various institutions, including Catholic University of Zambia, Cavendish University and Zambian Open University. The issue of curriculum, syllabus and teaching standards could also be adequately addressed by relevant government departments and ministries, such as Technical Vocational Educational Training Agencies and Ministry of Education in collaboration with Ministry of Justice.

The third major reform priority arises from qualification and training, namely specialization. In order for the interpreter-translator service providers to perform their professional duties effectively, it is essential for them to operate in well-defined professional domains. These include legal and medical professions. The legal interpreter-translator ought to be an individual that holds the requisite specialized qualification from a recognized training institution. The training expertise in the area of legal translation ought to be dispensed by a combined team of legal practitioners and interpreter-translator practitioners. The training team ought to be furnished with the necessary tools, including computers, dictionaries, terminologies and any other recommended and prescribed textbooks required for effective training. When the task is approached professionally, then it becomes apparent that in actual fact, there is also a dire need for authors of specialized dictionaries and terminologies in various African languages.

5. Conclusion

The study surveyed the changing role of the court interpreter-translator in Africa in general and Zambia in particular. It described the conditions affecting the provision of Legal Interpretation-Translation Services in the country. It identified an institutional deficit characterized by lack of professionalization in the sector. Lack of specialized training facilities for Legal Interpretation-Translation providers was placed within a historical context. Inertia and resistance to innovation in the country was not unique in the region. It was comparable to the fate of the legal professionalization of dental assistants by mandatory maintenance of a register with the Health Professions Council of South Africa (Sunday Mail South Africa, February 14, 2016, p.17).

6. Recommendations

For Zambia to join other progressive democratic countries in the provision of high quality professional Legal Interpretation-Translation Services, the study recommends that:

- a) a multilingual provision replaces the existing one-language clause in the Republican Constitution of 2016;
- b) professionalization of Legal Interpretation-Translation Services is achieved through a piece of legislation;
- c) Zambia Institute of Advanced Legal Education (ZIALE) opens a specialized Department of Legal Interpretation-Translation (DLIT);
- d) ZIALE-DLIT is subsequently transformed and upgraded into an autonomous Institute of Legal Interpretation-Translation (ILIT);
- e) ILIT maintains a professional register of providers of professional Legal Interpretation-Translation Services;
- f) a National Commission of Translation and Interpretation is established;
- g) a Task Force to study all matters incidental to the foregoing is established.

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