

**THE UNDEFINED ROLE OF COURT INTERPRETERS  
IN SOUTH AFRICA**

by

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## Declaration

Student number: 0610-345-6

I declare that this dissertation, entitled:

THE UNDEFINED ROLE OF COURT INTERPRETERS IN SOUTH AFRICA

is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

\_\_\_\_\_  
SJ Lebese

\_\_\_\_\_  
Date

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## **Abstract**

In South Africa there is no legislation defining the role of court interpreters. This has resulted in legal officials (magistrates and judges) forming their own opinions as to what the role of court interpreters is. As such court interpreters find themselves performing tasks that are outside their scope of duties, for example acting as magistrates, in turn compromising their own tasks in the process. The aim of this study therefore is to determine the degree to which the lack of a definition of the role of court interpreters affects the quality of court interpreting. In the study, the researcher was guided by the Descriptive Translation Studies (DTS) approach. The research procedures that were followed in the study combined the top-down and bottom-up approaches. In the top-down approach, two legislations, namely, “The Magistrates’ Court Act 44 of 1944 (as amended)” and “The Constitution of the Republic of South Africa, Act 93 of 1996 (as amended)”, were examined in order to determine whether the role of court interpreters is defined and, if so, to what extent. In the bottom-up approach, examples of court proceedings were studied in order to determine specific roles that are played by court interpreters during trials. Extracts from transcripts of mechanically-recorded court proceedings were also analysed to establish whether magistrates made any references to the role of court interpreters in these trials. It is hoped that this study will shed more light on the role of court interpreters which could lead to better quality interpreting.

**Key terms:** interpreter, interpreting, constitution, court interpreter, court proceedings, legislation, magistrate, role, translate, trial

## **Abbreviations used in this abstract**

<b>A:</b>	Accused
<b>Adv:</b>	Advocate
<b>CA:</b>	Contrastive Analysis
<b>CD:</b>	Compact Disc
<b>DTS:</b>	Descriptive Translation Studies
<b>L:</b>	Lawyer
<b>M:</b>	Magistrate
<b>OALD:</b>	Oxford Advanced Learner's Dictionary
<b>P:</b>	Prosecutor
<b>PP:</b>	Public Prosecutor
<b>SAPS:</b>	South African Police Services
<b>SL:</b>	Source Language
<b>ST:</b>	Source Text
<b>TC:</b>	Tertium Comparationis
<b>TL:</b>	Target Language
<b>TT:</b>	Target Text
<b>W:</b>	Witness

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1. Case Study Tables 1-13 consists of extracts of court cases

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# CHAPTER 1

## INTRODUCTION AND BACKGROUND TO THE STUDY

### 1.1 Introduction

This study examines the degree to which the lack of a definition of the role of court interpreters affects the quality of court interpreting in South Africa. Presently there is no legislation defining the role of court interpreters in the country which has resulted in legal officials (magistrates and judges) forming their own opinions as to what the role of court interpreters is. As such court interpreters find themselves performing the tasks that are outside their scope of duties, for example acting as magistrates in turn compromising their own tasks in the process. In the light of this information, the researcher will begin by providing a background to the study, research problem, aims and methodology used in the study. The researcher will then go on to present the limitations of the study and lastly an overview of the study.

### 1.2 Background to the study

In addressing issues pertaining to court interpreting in the South African courts, Judge Williamson in the case of *The State versus Naidoo* 1962:631 (in Hoexter et al. 1962(2)) stated that:

It is surprising that in relation to the Courts of this country where interpretation of evidence and statements forms such an important and vital element in the placing before judicial officers and jurors evidence from so many persons who speak in tongues strange to the Court and jurors, that there appears to be no statutory provision, Rule of Court or regulation governing the position of interpreters. Act 56 of 1955 also contains no provision regarding interpreters.

From the above statement, it appears that in South Africa there is no legislation that defines the role of court interpreters. This view is also held by Moeketsi (1999a:150) who adds that “the interpreter’s role is not well-defined and protected by the law.

It is therefore misinterpreted, willingly or inadvertently, by legal officials”. If the two statements are true, the questions that need to be asked are: what then guides court interpreters in carrying out their duties?

If there are guidelines regulating the position of court interpreters, where are these guidelines? Are judges and magistrates aware of such guidelines? Do court interpreters themselves know about these guidelines and do they follow them when carrying out their duties? The researcher will make an effort to address these questions in a bid to determine the role of court interpreters in South Africa.

The questions that are presented above, emanate from the assumption that the presence of a statutory provision, a regulation governing the position of interpreters or a Rule of Court will ensure that the role of court interpreters is clearly defined. Unfortunately, the case is not true of the South African legal system. In South Africa, legislation does not define the role of court interpreters, and this situation usually leads to legal officials (magistrates in this case) forming their own views and opinions on what their role should be. This is so because according to law, magistrates have a mandate to ensure that all court participants follow and participate fully in court proceedings. For instance, where it is evident that the accused cannot follow or participate in the court proceedings due to a language barrier, the law requires that the magistrate conducting the proceedings should employ the services of a court interpreter. In the absence of legislature that clearly defines the roles of the interpreter, the magistrate can easily take advantage of the situation and make certain impositions on the court interpreter such as performing tasks which do not fall within the ambit of interpreting, as will be shown later in the study. Such a situation can easily compromise the role of the interpreter in turn have a detrimental effect on the quality of court interpreting, hence the need to have clearly defined roles for interpreters.

By carrying out this study, the researcher hopes to highlight the importance of having legislation that clearly defines the roles of interpreters in South African courts. Clearly defined roles will help to curb instances of exploitation whereby court interpreters find themselves carrying out duties that are outside their scope. This will in turn improve their quality of work as their energies will be focused on providing the best services to their clients.

### **1.3 Research Problem**

As stated above, court interpreters in many instances find themselves performing tasks of other court officials such as administering oaths to witnesses, explaining the accused's rights to cross-examination of the state witnesses and explaining the accused's rights to mitigation of sentence and appeal among other things. This cross-over in terms of duties by court interpreters leads to the question: What are the roles of court interpreters in South African courts and how do these roles impact on the quality of their work? This question is asked because some of the duties that are performed by court interpreters belong to other members of the court such as magistrates. Thus, if court interpreters are performing magistrate duties, is this an abuse of power or a simple case of no guiding parameters as to what the duties of an interpreter are? Other question that emerge from the main question are: Do magistrates understand the duties of court interpreters? If they do, what is the source of this information? In other words, do they refer to any legislation that defines the roles of court interpreters? If so, which legislation defines these roles?

### **1.4 Aims of the study**

In view of the research problem, this study aims to:

1. Investigate whether there is any legislation in South Africa that defines the role(s) of court interpreters.
2. Determine the role of court interpreters in South African courts.
3. Make recommendations on the role of court interpreters in South Africa.

From the above stated aims, one key term emerges: **court interpreter** and this term needs to be defined. According to Gonzalez et al (1991:296), a court interpreter is a language mediator or a language conduit whose presence and participation allows an individual who does not speak or understand English to meaningfully participate in the judicial proceeding. Although Gonzalez defines a court interpreter as a mediator and conduit, it is important to explain that there is no consensus in the way interpreters are defined. In other words, the term interpreter is a debatable one and the researcher will also provide a definition of the term in the last chapter. This definition will take into account the everyday roles of court interpreters in South Africa and also the legal system of the country. In order to fulfil the above stated aims, a methodology is required. Thus, the subsequent section explains the steps followed to answer the research question.

## **1.5 Methodology**

This section presents the procedure followed to achieve the above stated aims. Firstly, the researcher will provide a theoretical framework, then go on to outline the method used to collect and analyse data.

### **1.5.1 Theoretical Framework**

This study is guided by the Descriptive Translation Studies (DTS) approach. According to the DTS framework, interpreting and translation practices are observational facts and phenomena which have actual existence in the world irrespective of any prior theoretical consideration. They are not merely speculative outcomes of facts (Toury 1980:80). Because translation and interpreting are observational facts, descriptive translation theorists do not prescribe how translations ought to be done, but rather they observe how translations are done. Working in line with the DTS framework, this study examines the role that is played by court interpreters during trials in South Africa. This will be done through analysing documents that are functional in the real world, such as the the Magistrates' Court Act 44 of 1944 (as amended) and the Constitution of the Republic of South Africa, Act 93 of 1996 (as amended). This approach will help give insight into the roles of court interpreters in South Africa.

A detailed description of the DTS framework is provided in Section 3.2. The next section presents the method used to collect data.

### **1.5.2 Data collection and analysis**

The researcher used a three-pronged approach to collect data, namely: collecting legal documents, observation and collecting and transcribing court proceedings in a bid to understand the role played by court interpreters in South Africa. In the top-down approach, legal documents and related texts were examined while in the bottom-up approach, extracts of actual transcripts of mechanically-recorded court proceedings were collected and analysed to investigate whether magistrates make any references to the role of court interpreters.

The two pieces of legislation which were collected are; the Magistrates' Court Act 44 of 1944 (as amended) (in Baker *et al.* 1980) and the Constitution of the Republic of South Africa, Act 93 of 1996 (as amended). These documents were selected in the study because they deal amongst other things with issues of the administration of justice. The Magistrates' Court Act 44 of 1944 (as amended) regulates the proceedings in the magistrates' or lower courts and it also explains the duties of different court officials. The Constitution of the Republic of South Africa, Act 93 of 1996 (as amended) is the highest law in the country and deals amongst others with issues of human rights including the linguistic rights of the accused and the duties of various court officials. Document analysis will be done to determine if these two documents say anything about court interpreters.

In the bottom-up approach, some court proceedings were observed in order to determine the specific roles played by court interpreters in real court situations during trials and to determine how these roles affects the quality of interpreting. The proceedings were recorded in long-hand. The researcher chose the Brits Magistrates' Court because he was employed in the Department of Justice and he held a position of senior court interpreter at this particular court from 1996 until 2010.

However, at the time of writing of this dissertation, he was no longer serving as a court interpreter although he maintained good relations with the court personnel. He was thus granted permission to access the court recordings and to sit in the courtroom to observe proceedings for purposes of research.

For the purposes of this study, extracts from mechanically-recorded court cases where English and Setswana were also used. These were obtained from the Brits Magistrates' Court in the North West Province during 2010. These cases dealt with various offences committed between 2007 and 2010 in the magisterial district of Brits. The researcher requested permission from the court's management to have access to the CDs (compact discs) on which the recordings were stored and he personally transcribed extracts from each case of the recorded proceedings. The first two cases were personally observed by the researcher himself during the court sessions. These court cases were analysed using a comparative and contrastive approach. A detailed description of the method used to analyse data is given in Section 3.4.

### **1.6 Limitations of the study**

The extracts of mechanically-recorded cases used for this study were obtained from the Brits Magistrates' Court in the North West Province only and not from any other provinces in South Africa, owing to financial constraints. The study, therefore, relies on the data collected from one court and one province only. If data was collected from more courts from all provinces of South Africa, this would have provided a wider perspective of the role played by court interpreters in those provinces during court proceedings, and whether these court interpreters understand their function in court. It would have also revealed whether most magistrates know and understand the role of court interpreters and what their attitudes are towards interpreters during trials.

### **1.7 Organisation of the study**

This study comprises five chapters. Chapter One introduces the study and contains the background to and rationale behind the study, the research problem, aims, limitations of the study and methodology.

Chapter Two reviews literature on interpreting both local and international. In the chapter, various definitions from different scholars will be explored to determine how court interpreters are generally viewed. Chapter Three explains the methodology used in the study and the research procedures, data collection and methods of analysis.

Chapter Four analyses and interprets collected data. Extracts of mechanically-recorded cases will be analysed with the aim of examining the role played by court interpreters during trials. The cases were conducted in English and Setswana. The aim of the analysis is to observe whether court interpreters perform interpreting tasks or whether they deviate from this task. Where they are found to deviate, why they are doing so and whether magistrates are addressing such issues, will be investigated. Included in the investigation is whether court interpreters themselves understand their role during the court proceedings and whether in performing their tasks, they adhere to such a role throughout their interpretation and whether there are instances where court interpreters are impelled to deviate from their role of interpreting to perform other tasks. If this is found to be the case, this study will examine how such practices affect the outcome of cases and the quality of interpreting.

In the final chapter, that is chapter Five, conclusions will be drawn from a discussion of the research results. Recommendations on the importance of the definition of the role of court interpreters will be given. These will include suggestions of what the definition of the role of court interpreters should include.



## **CHAPTER 2**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

The previous chapter introduced the study, by providing a background, research problem, aims and methodology of the study among other things. This chapter goes further to review literature on the role of court interpreters in South Africa. In the chapter, definitions of key terms such as the “interpreter” and “court interpreters” as defined by scholars nationally and internationally are provided. From the beginning, it is important to note that court interpreters are viewed differently by different people. Some court officials and professional interpreters view the interpreter as a conduit, analogous to a photocopying machine. However, many scholars are of the view that the court interpreter’s role should not be viewed prescriptively, but rather descriptively. That is, court interpreters should be considered as facilitators, mediators, coordinators of three-party talk exchanges, and - for some scholars - as advocates (Berk-Seligson 2006). Following are the various definitions of interpreting.

#### **2.2 Definitions of interpreting**

Interpreting emerged as a professional endeavour in the twentieth century and individuals sought to define interpreting in different ways. Traditionally, interpreting was subsumed under translation, which, in its broadest sense, was defined as a transfer of thoughts and ideas from one language (source) to another (target) (Roy 1993 in Pöchhacker & Shlesinger 2002). Proceeding from this general definition of translation, practitioners created a distinction between spoken messages and written messages. Translation was then defined as an act of converting a written text into another text, while interpretation was defined as an act of converting an oral message into another oral message (Roy 1993 in Pöchhacker & Shlesinger 2002).

Brislin (1976:1), realising that the above distinction neglected to include the act of interpreting between signed and spoken language, suggested the following clarification:

Interpreting is the transfer of thoughts and ideas from one language to another, whether the languages are in written or oral form; whether the languages have established orthographies or do not have such standardization; or whether one or both languages are based on signs, as with sign languages of the deaf.

According to Roy (1993 in Pöchhacker & Shlesinger 2002), although Brislin (1976) made mention of signed languages, which was something new at that time, the definition still retained the distinction between written messages as translation and spoken or signed messages as interpretation. Pöchhacker and Shlesinger (2002), thus went on to define interpreting as interlingual, intercultural oral or signed mediation, enabling communication between individuals or groups who do not share, or do not choose to use the same language or languages. This view is concurred by Kohn and Kalina (1996 in Lee 2009) who state that interpreting refers to communicative interaction between members of different language communities mediated by interpreters, and is by definition a form of cross-linguistic and cross-cultural communication.

The interpreter thus searches for linguistic and cultural equivalents to ensure that speakers from different linguistic and cultural backgrounds receive the same message as was conveyed by the original utterances (Kohn & Kalina 1996 in Lee 2009). As such, interpreting requires proficiency in the languages involved and a detailed knowledge of their respective cultures (De Jong 1991 in Lee 2009). In the light of this information, interpreters therefore must be sensitive to different cultural values, customs, behaviours and beliefs that may influence communication between members of different linguistic and cultural communities (Pöchhacker and Shlesinger 2002 in Lee 2009).

From the above definitions, it is apparent that the word “interpret” is not without its problems as scholars define it differently. To the uninitiated, “interpreting” and “interpretation” sometimes evoke an imposition of meaning by someone who may expand, omit or otherwise filter the speaker’s intention (Pöchhacker & Shlesinger 2002 in Lee 2009).

However it is necessary to note that there is more to interpreting than this, as shown by the changing definitions of the term interpreting in the next section.

### **2.3 General roles of the interpreter**

Interpreters are often seen as all-round court employees who carry out a number of varied and diverse functions in addition to their interpreting task, that is why the role of interpreters has remained characteristically fluid. Not surprisingly, the issue of the interpreter's role was – and still is – a central concern to practitioners in other domains pushing for greater professionalization (Roy 1993 in Pöchhacker & Shlesinger 2002).

### **2.4 A brief history and description of the roles of the interpreter**

Most definitions of interpreting concentrate on clarifying or describing the role of the interpreter. As such, practitioners and researchers of both spoken-and signed-language interpreting have begun to place greater emphasis on the elusiveness and complexity of the interpreter's role in the cross-linguistic interaction (Roy 1993 in Pöchhacker & Shlesinger 2002). The following sub-sections therefore explain how Roy (1993 in Pöchhacker & Shlesinger 2002) examine the ways in which various scholars and practitioners describe the process of interpreting and the role of the interpreter. These scholars and practitioners use metaphor in their descriptions of an interpreter which assists in our understanding of the general roles of an interpreter.

#### **2.4.1 The interpreter as a helper**

According to Clifford (2004) deaf people have long relied on “helpers” to communicate with the hearing world. These helpers were frequently hearing friends and family members who had some knowledge of both signed and the spoken language in question. Helpers were free to act as they saw fit and many offered advice, made decisions for the deaf person, shared confidential information with authorities if they thought it was in the deaf person's best interest, and selected and edited the information they interpreted according to their perception of the deaf person's understanding. The helper's behaviour underscored an attitude that the deaf were incapable of making decisions and taking care of themselves and this attitude was sometimes internalised by the deaf themselves, with obvious negative repercussions (Roy 1993 in Clifford 2004).

The helper role allowed extreme personal involvement of interpreters. More recently, this role has been declared inappropriate because it denies the people involved any control over their lives and responsibilities. This led to the view that there is no distinction between a helper and an interpreter (Roy 1993 in Pöchhacker & Shlesinger 2002). However, as interpreting began to be recognised as a profession, there was a sharp move away from the helper model. Two key events were cited as the hallmarks of this transition:

- the founding in 1964 of the “Registry of Interpreters for the Deaf” (RID), which was the principal professional organisation that represented sign language interpreters in the US;
- the publication in 1965 of the Registry’s first manual for interpreters, called “Interpreting for Deaf People” (Roy 1993:348 in Pöchhacker & Shlesinger 2002).

These two events signalled the advent of a new level of professionalization, one that was incompatible with the inequality underscoring the notion of the helper. According to this Registry (1964:1), the relationship between interpreter and client had to be a relationship between equals and there were calls to reject the emotional and personal involvement of the helper model, and to strive instead to be neutral, invisible and uninvolved. This led to the interpreter being described metaphorically as an inanimate device or a machine such as a “telephone wire that serves as a conduit for information flow”. The result was that the profession of interpreting had to consider other models of professional behaviour and this led to the origin of the “conduit model” (Clifford 2004), which is discussed below.

#### **2.4.2 Professionalism and the emergence of the conduit description**

Changing expectations of consumers and the profession’s own need to see itself as rendering professional services, brought about the second description of interpreting, the conduit model (Roy 1993 in Pöchhacker & Shlesinger 2002).

According to this model, interpreters portrayed themselves using the concept of a machine in order to disassociate themselves from the “helper” view. It clarified a wish for the interpreter to be seen as rendering a professional service while refraining from taking over the decision-making responsibilities of either party involved in an interpreting event. An example of this was the RID Code of Ethics of 1965 from Registry of Interpreters for the Deaf, which stated that interpreters “shall maintain an impartial attitude during the course of his interpreting and that he shall remember the limits of his particular function and not go beyond his responsibility” (Roy 1993 in Pöchhacker & Shlesinger 2002).

#### **2.4.3 The interpreter as a bridge for communication**

This definition regards the interpreter as a bridge between communicators. According to Hwa-Froelich and Westby (2003), the interpreter acts as a bridge for communicative interactions between persons from different cultures because when such a communicative interaction takes place, it involves an intricate weave of cultural styles, values, beliefs and attitudes. The interpreter therefore must communicate a complex web of messages accurately and objectively.

#### **2.4.4 The interpreter as a communication-facilitator**

As the machine description began to fail, interpreters and interpreter-educators turned to academic arenas to find alternative views as a result they moved to a description of the interpreter as a communication facilitator. The “channel” now became a “language and communication-mode expert” who made communication easier by adapting to the particular system desired by each individual.

The description of the interpreter as a facilitator was built upon the basic notions of the communication theory that defines a basic communication event as consisting of a sender, a message and a receiver (Roy 1993 in Pöchhacker & Shlesinger 2002). Using this concept, the interpreter is viewed as a “channel” which facilitates the transfer of messages from the sender to a receiver when they do not speak the same language (Ingram 1974 in Pöchhacker & Shlesinger 2002).

According to Wadensjö (1998 in Lee 2009) recent models of the interpreting process which have drawn on interactional, sociolinguistic and discourse analytical theories highlight the cultural and interpersonal aspects of interpreted communication and view the interpreter as a facilitator of cross-cultural communication and a co-constructor of interactions. The interpreter is expected to play an active and discretionary role, taking into account the cultural dimensions of communication between members of different ethnic, cultural and linguistic communities (Laster & Taylor 1995 in Lee 2009). However, the institutional settings of courts and tribunals, with their asymmetrical power distribution and distinct institutional culture, influence the interpreter's decisions, performance and professional norms which may be in conflict with the implicit or explicit expectancy norms imposed by these settings (Shlesinger 1989 in Lee 2009).

#### **2.4.5 The interpreter as a bilingual, bicultural specialist**

Roy (1993 in Pöchhacker & Shlesinger 2002) amongst other scholars, defines the role of the interpreter as one of a bilingual and bicultural specialist. This definition derives from the fact that an interpreter works in two languages, that is, the source language (SL) and the target language (TL). Culture is embedded in language and an interpreter needs to understand the cultures of both the SL and TL. This definition acknowledges that interpreters must be sensitive to the fact that they are communicating across cultures as well as across languages. Description of cultural sensitivity include being aware of regional or dialectal differences in language, non-verbal differences, different attitudes towards time, different forms of personal address, and other differences (Roy 1993 in Pöchhacker & Shlesinger 2002).

The discussion above shows that interpreters are viewed differently as helpers, conduits and bilingual specialists among others. The different perspectives of interpreting put boundaries on what an interpreter can or cannot do.

The subsequent section specifically defines the role of court interpreters as presented by various scholars.

## **2.5 The role of court interpreters**

Court interpreting refers to interpreting provided by professional interpreters at various stages of court proceedings. Court interpreters therefore are professional interpreters engaged in court proceedings involving witnesses and defendants from culturally and linguistically diverse backgrounds (Lee 2009). According to Mikkelsen (1999) the role of the a court interpreter is a function of the legal system within which that interpreter operates. Similarly to general interpreters, court interpreters are also viewed differently by different people.

### **2.5.1 Theme 1: The court interpreter as a “conduit”**

The definition of the role of a court interpreter as a conduit came about because the court interpreter was expected to interpret everything that a court participant said without being personally involved (Lee 2009).The expectancy norms in court interpreting or the expectations of the law regarding the role of court interpreters is found in the Australian case law of Gaio versus R (1960) 104 CLR 419 (Lee 2009) is often cited as defining the role of the court interpreter as a translation machine.

This mechanically and non-participatory role does not necessitate the interpreter’s intervention to ensure effective communication. It means, therefore, that the conduit interpreter is not expected to request or provide clarification. High Court judges defined the interpreter in this way in order to avoid hearsay when obtaining evidence through the interpreter. In this case, the court was wary of alterations that were made by the interpreter to the original evidence of the witnesses and as a result, the conduit model of interpreting seemed to be a fitting way of preventing the interpreter from assuming a potentially-intrusive role (Lee 2009).

Berk-Seligson (1990, 2002) believes that the court interpreter should not exist as a distinct verbal participant in his or her own right but should be an instrument through which one language (the SL), enters and another (the TL) exits.

Judges and attorneys in South Africa like the interpreter to be merely a conduit, akin to a mechanical device which converts all speech that is not English into English for the benefit of the judge, attorney and the court record. However, Mikkelson (2008) is against this view and mentions that scholarly research on the role of the interpreter has revealed the shortcomings of the argument that interpreters are mere conduits transferring verbal messages from one language to another.

The interpreter-as-conduit model has been challenged by courts and tribunals as well as by interpreting scholars and practitioners. Researchers have been critical of risks arising from formal adherence to the conduit model, which may result in distortion and miscommunication (Lee 2009).

The severely restricted role of the court interpreter is based on the notion that the interpreter, compared to a conduit, is engaged in linguistic transfer, namely linguistic encoding and decoding. This mechanical and non-participatory role does not necessitate the interpreter's intervention to ensure effective communication. Thus the conduit interpreter is not expected to request or provide clarification (Morris 1995 in Lee 2009).

Dean and Pollard (2005 in Lee 2009) observe that in most interpreting settings, interpretation may warrant additions or explanations. However, in court interpreting provision of opinion or extra information is generally regarded as overstepping the bounds of the court interpreter's role (Lee 2009). Lee (2009) notes that while some scholars such as Barnett (2006); Barsky (1996); Eades (1996); Kelly (2000) and Mildren (1999) support cultural intervention for the sake of effective communication, others take a more conservative position, mainly to protect the professional identity of the court interpreter and to avoid ethical problems (e.g. Fenton 2001 in Mikkelson 2008); Gonzales *et al.* 1991). They argue that the court interpreter should not assume the role of an expert, or attempt to explain cultural concepts or beliefs which may have a bearing on the case (Gonzales *et al.* 1991).



Nevertheless, when it comes to cultural information that is neither significant nor controversial, many maintain that the interpreter who is aware of cultural differences should point out any information pertinent to the case at the proper time in the proper manner. A lack of cultural sensitivity on the part of the court interpreter may produce untoward consequences. Lee (2009) observes that a lack of consensus on the role of the court interpreter can be found in court interpreting literature where the term “facilitator of communication” is used as the appropriate role descriptor for the court interpreter in some literature, for example, the Commonwealth Attorney General’s Department (1991), Steytler (1993) and Laster and Taylor (1995). On the other hand, some researchers, for example Hale (2008), consider any facilitative role to be inappropriate and they liken this to filtering or embellishment.

Lee’s (2009) definition of the court interpreter as a conduit fits into the description given by Laster and Taylor (1995), who note that the conduit model of legal interpreting was developed as a technical solution to avoid enormous evidentiary problems associated with the exclusion of evidence as hearsay. Because of this, the role of the legal interpreter was conceptualised as a “mechanical service” and not as a complex human interaction. The concept of narrowing the role of the court interpreter to that of a “mere conduit” expressly excludes the human elements of successful communication and according to the “conduit model”, the court interpreter is not expected to take an interest in proceedings but is required rather to perform in a neutral and machine-like manner. The reason behind this concept was preservation of the lawyer’s traditional control and dominance of proceedings.

Another important advantage of this narrow conception of the role is that it allows the legal profession to impose a seemingly objective standard of good interpreting to which an individual interpreter could be held accountable. The conduit model was also a measure that provided a way of distancing the emerging “professional” interpreter from the unethical and unsatisfactory practice of the “bad old days” (Laster & Taylor 1995). Whilst the scholars in section 2.5.1 view a court interpreter as a conduit, Hewitt (1995) views a court interpreter as a language mediator as shown below.

### **2.5.2 The court interpreter as a “language mediator” or “language conduit”**

According to (Hewitt 1995 in Lee 2009) a court interpreter is a “language mediator” or “language conduit” whose participation allows an individual who does not speak or understand English (or the language of the court proceedings) to participate meaningfully in a judicial proceeding. An interpreter conveys the meaning of a word or group of words from a SL into the TL. Colloquial expressions, obscene or crude language, slang, cultured or scholarly language all have to be conveyed in accordance with the usage of the speaker. A court interpreter’s job is not to tone down, improve or edit any statements but instead, he or she must maintain the same register, or level of language spoken and style of the speaker (Hewitt 1995 in Lee 2009). Some scholars were not in agreement with this definition, hence they defined a court interpreter as an invisible pipe.

### **2.5.3 The court interpreter as an “invisible pipe”**

Morris (1999) observes that attitudes of different participants in legal proceedings convey conflicting messages about the role expected of interpreters. In her study, she examines three aspects which lead to a predicament in court interpreting. The first aspect being the practice of interpretation between different languages in a court of law may be controlled by certain codes of ethics on how the court interpreters should conduct themselves when carrying out their daily tasks. The second aspect relates to the codes of ethics which may be laid down by the judicial system or by the professional bodies. The third aspect is the professionalism and experience that can help to provide a second set of guidelines which help to determine the court interpreters’ behaviour.

The law and legal officials perceive the interpreter to be an “invisible pipe”, with words entering in one language and exiting completely unmodified, in another language. In regard to the perception above, the law views the interpreter as a mechanical instrument that can be used as the court sees fit. In the contrasting situation, defendants who have no command of the language by court officials as language of the record, relate to interpreters as their saviours.

They regard the court interpreter as someone with whom they can communicate readily and who represents home. Although court interpreters have attempted to correct this misconception, they often do not succeed. As such court interpreters are now caught up between these two extremes and these extremes have been likened by interpreters themselves as being a piece of gum on the bottom of a shoe, which is ignored for all practical purposes but almost impossible to remove and refer to the above situation as the “gum syndrome” (Morris 1999).

Morris (1999) draws a definition of the role of the court interpreter which is contained in a document called “Policies, Procedures and Practices Governing the Operation of the Office of the Court Interpreter 1992” which gives the following classic definition of the court interpreter’s role:

A court interpreter is an officer of the court trained to listen in one language and interpret into another during courtroom and related judicial proceedings. The interpreter’s job is to minimize language obstacles between the court and all parties to a legal proceeding (Morris 1999: 7).

The above definition of the role of the court interpreter has led to Morris (1999) asking the following questions: What is the hapless court interpreter to do? To what extent, if at all, is a court interpreter at liberty to elucidate, to “make explanation” of the concept in a question? Where a “literal” rendering will be meaningless in the TL, is the interpreter not more of a “traitor” if no clarification is provided?

In responding to the above questions, she mentions that interpreters are in a ‘no-win’ situation because the process by which they undertake to convey the meaning from one language into another involves gaining an understanding of the intentions of the original speaker and attempting to convey illocutionary force for the original utterance. Failing to do so, the interpreter runs the risk of betraying the meaning of the original message. The understanding of the speaker’s message will thus be personal, to some extent, which will be subjective. The judicial circles, however, do not wish to be presented with pre-processed material. Where ambiguity or polysemy exists, the triers of facts wish to be presented with all the linguistic options.

Whilst the court interpreter is expected to make constant “judgement calls” as to whether it is proper to use the techniques of amplification, explication or compensation, Gonzalez et al. (1991: 314) observes that in case of any doubt, it is preferably to stay closer to a direct translation of the SL message. In respect of what Gonzalez et al.(1991) stated above, Morris (1999) mentions that the interpreter must inevitably exercise judgement in deciding how much latitude to assume and that subjectivism can never be excluded altogether, even if it amounts to a decision not to adopt a subjective approach.

#### **2.5.4 The court interpreter as a traitor and instrument**

According to Morris (1999) the essence of the interpreter’s predicament is that during courtroom situations, to all intents and purposes the jurist seeks to ignore the interpreter’s presence, professing to believe that the interlingual interpreting process consists of purely mechanical factors. The image used to convey this view of the interpreter has been compared to a phonograph, a transmission belt, transmission wire or telephone, a court reporter, a bilingual transmitter, a translating machine, a medium and conduit of an accurate and colourless transmission of questions to and answers from the witnesses, a mere cipher, an organ conveying sentiments or information and a means of communication. Such images equate interpreters with unobtrusive devices or channels, straightforward technical adjuncts.

Berk-Seligson (2006) found that the American legal system and municipal courts in the USA also defined the role of the court interpreter as an instrument. They both prefer that in the USA the court interpreter should not exist as a distinct verbal participant in her own right and that she should rather be an instrument through which one language, the SL, enters and another, TL, exits.

Berk-Seligson (2006) likens this role to the “conduit” role because she mentions that judges and attorneys in the USA prefer the court interpreter to be something like a mechanical device which converts all speech that is not English into English for the benefit of the judge and attorneys. In this way the individuals performing language-mediation activities are depersonalised and denied any personal input or interactive role. Attention is deflected away from them as individual participants in their own right. Hale (2010) in her study found that anecdotal evidence has indicated that court interpreters are often confronted with conflicting expectations from the different parties. These different expectations pressure the court interpreter from all sides to conform to different roles. One extreme case is whereby, the court tends to see them as “robotic language switchers” who perform a task that can be performed by a machine.

Lawyers view the role of the court interpreter as that of a traitor (Morris 1999). The most infamous expression of this attitude, as discussed by Hyde (1964:521 in Morris 1999), is that of Norman Birkett, the British Alternate member of the Nuremberg War Crimes Tribunal Bench, who viewed “translators” as “a race apart touchy, vain, unaccountable, full of vagaries, puffed up with self-importance of the most explosive kind, inexpressibly egotistical, and as a rule, violent opponents of soap and sunlight”. This perception of court interpreting is unjust to say the least because interpreters ensure that communication takes place during court proceedings, as they ensure that justice is served. Nonetheless, this was not the final word on court interpreting. Some scholars view a court interpreter as a “Shangri-La” of communication (Morris 1999).

#### **2.5.5 The court interpreter as the “Shangri-La” of communication**

Morris (1999) states that for the defendants who do not have a working knowledge of the judicial system’s language, court interpreters as individuals play the role of the Shangri-La of communication. In their presence defendants feel that they can finally, without linguistic constraints, express their feelings and thoughts and escape from the isolation to which they are sometimes condemned long before their trial takes place and even before any sentence is passed.

She observes that the interpreters' attempts to explain the strict confines of their role may further reinforce defendants' propensity to cling to them as potential saviours, providing not only a linguistic, but also a cultural and legal haven.

Morris (1999) further observes that courts are aware of the natural tendency for a defendant to feel close to an interpreter and in the case of *State versus Mitjans* the following was said regarding the role of the court interpreter:

Interpreters should be neutral and objective if at all possible... Because of the close relationship and natural empathy between a translator and a defendant dependent on that translator to communicate his thoughts and feelings, a translator should be someone a defendant can place trust in and rely on to protect his interest (Morris 1999: 9).

In one case an interpreter in the United States extricated herself from situations where defendants began to talk to her about their case, and the reply was "I understand your situation. However, I am here just to help you communicate with the court. I have no legal training, and I am bound by the canons of my profession not to give legal advice" (Morris 1999: 5). Some scholars however, were of a different view and saw interpreters as invisible mediators.

#### **2.5.6 The court interpreter as an "invisible mediator"**

Nakane (2009) mentions that legal interpreters are expected to play the role of an "invisible mediator". This view is related to the Australian Institute of Interpreters and Translators' (AUSIT) Code of Ethics. The AUSIT Code states that interpreters are obliged to interpret accurately, and that they shall not alter, make additions or omit anything from their assigned work. Nakane (2009) views this role as that of a "conduit" and states that the interpreter should remain impartial because professional detachment is required, and that the legal interpreters should not let their personal opinions influence their performance.

However, Nakane (2009) observes that legal interpreters shift roles while engaging in various types of discourse management and these role shifts may affect the outcome of the interaction.

Shifts may occur either because the interpreter feels (inappropriately) responsible for not eliciting preferred or relevant responses from the suspect or because the interpreter is unsure of the quality and accuracy of their first rendition. The interpreter would be vulnerable and need to protect his or her reputation as a competent interpreter and thus shift the role of an interpreter to a different role. These role shifts become salient when problem-solving is required or a problem is anticipated. In addressing these role shifts, Nakane (2009) ask the following questions: Can interpreters maintain their invisibility when a communication problem is perceived? What roles do interpreters take in handling communication problems? How and why do interpreters' role shifts occur? What are the practical and theoretical implications of the interpreters' handling of a problem?

In addressing the above questions, Nakane (2009) is of the view that interpreter role shift may sometimes be justifiable and at other instances it may be problematic. It may be justifiable only when the interpreter can intervene to avoid miscommunication due to different cultural assumptions. On the other hand, it may be problematic and unethical when court interpreters initiate repair out of their own accord in order to elicit coherent or preferred responses.

### **2.5.7 The court interpreter as “animator”**

Nakane (2009) further states that there are instances where the interpreter would play a role of “animator”. In this role the court interpreter would speak completely on behalf of the primary speakers. This type of role happens where the interpreter would render the next-turn repair initiator, which is the indication of need for repair by the “trouble source” speaker, treating it as being directed towards the speaker of the “trouble source” and not towards him- or herself.

In this role the court interpreter realises that the person he or she interprets for, would find the question or utterance confusing and the interpreter modifies such utterance so that it becomes specific. Nakane (2009) states that court interpreters are expected to maintain impartiality and accuracy as stipulated by the AUSIT Code of Ethics and that it is not their task to modify any utterance.

### **2.5.8 The court interpreter as “guarantor of defendant rights”**

According to Mikkelson (1999) the role of the court interpreter is described as that of a guarantor of defendant rights by ensuring his presence when his case is heard, by providing a complete simultaneous interpretation of everything that is said in court. She states that the defendant’s right to be present at all times during the court proceedings has long been recognised in the USA in the case of Lewis versus United States (1892), and that linguistic presence was established in the case of Arizona versus Natividad (1974). The notion of “linguistic presence” means that the defendant cannot be present at his trial if he does not understand the language of the proceedings. In the California case of People versus Chavez (1981), it was said that appointing a bilingual defence attorney is not enough to guarantee a defendant’s right to interpretation.

Mikkelson (1999) states that in practical terms, the role of the court interpreter as the guarantor of defendant rights means that the governments and judiciaries must take steps to promote the training, testing and certification of court interpreters, and to ensure proper working conditions for those interpreters so that litigants who do not speak the language of court proceedings can receive fair trials.

In the discussion above, it is clear that there are many definitions of court interpreters and these definitions as stated above determine the roles of interpreters. The researcher is of the view that to view interpreters only as conduits or invisible pipes is limiting as their roles are multifaced as shall be shown in the later chapters. The next section presents data on the exploitation of court interpreters in South Africa.



## **2.6 Theme 2: The exploitation of the court interpreter-role**

In South Africa court interpreting is not yet professionalised and as a result court interpreters are often exploited by other court officials because their role is not protected by law (State v Naidoo 1962 2 SA 631 AD in Hoexter *et al* 1962 (2)). Mikkelson (1998) mentions that in the USA there are still many officials, including judges and attorneys, who do not understand the role of the interpreter and expect him or her to carry out functions that are someone else's responsibility, for example administering an oath to the witness which is the responsibility of the magistrate. Morris (1995) commenting on the practices in the USA, mentions that interpreters are sometimes exploited in the tactical manoeuvres of lawyers who take advantage of current legal views of the interpreter's status and role in court. The next section examines the standards regulating court interpreters.

## **2.7 Theme 3: The lack of standards or professionalism**

According to Mikkelson (1999) legislature has not taken action to impose standards: instead the selection of interpreters has been left to the court's discretion. That is the reason why we see judges formulating their own views and opinions as regards to what the role of a court interpreter should be. The law therefore does not appear to protect the role of the court interpreter hence Mikkelson (1996) believes that court interpreting is characterised by a lack of standards for training and practice, disorganization and disunity among practitioners, lack of recognition of the profession among clients and the public, and poor working conditions. Moeketsi (1999a) concurs with this view that the dismal performance of court interpreters in South Africa is a result of poor training and a lack of proper definition and protection of the interpreter-role by the law. thus in order for circumstances improve, practitioners need to unite and form professional associations to impose discipline and standardisation and to achieve recognition through education, legislation and public relations.

In line with Moeketsi (1999a) and Mikkelson (1996, 1999), Keratsa (2005) observes that the deficiencies of the legal norm in the field of court interpreting place emphasis on the need for a formal system that will establish clearer patterns of interpreting behaviour. The role of the court interpreter therefore needs to be protected by law. Shlesinger and Pöchhacker (2008) confirm the opinions of Keratsa (2005), Moeketsi (1999a) and Mikkelson (1996, 1999), noting that there is a need for legal systems in different countries to respond to demographic changes, along with a heightened awareness of the ethical, political and legal implications of a failure to provide interpreting services or to maintain adequate standards. The next section outlines other roles of court interpreters.

## **2.8 Other Roles of the Court Interpreter**

Besides the roles discussed above, some scholars view the role of a court interpreter differently. Chang and Araujo (1975), for instance, distinguishes between three roles of the court interpreter namely, the court interpreter as the “witness” interpreter, the court interpreter as the “proceedings” interpreter and the court interpreter as the “defence” interpreter. They define these roles as follows:

### **2.8.1 The court interpreter as the “witness” interpreter**

The “witness” interpreter assists at the stand when a non-English speaking witness is giving evidence.

### **2.8.2 The court interpreter as the “proceedings” interpreter**

The “proceedings” interpreter is the interpreter who helps the defendant to hear and follow the colloquy among witnesses, the judge and attorneys.

### **2.8.3 The court interpreter as the “defence” interpreter**

The “defence” interpreter helps facilitate the defendant’s communication with counsel. This interpreter remains at the defendant’s side during all proceedings, providing him or her with simultaneous interpretation of everything that is said in the courtroom.

#### **2.8.4 The court interpreter as a facilitator**

In her investigation of the role of the court interpreter, Berk-Seligson (2006) found that judges and attorneys perceived this role in many legal proceedings to be that of facilitator, intercultural mediator and even an advocate. Steytler (1993) also observes that a court interpreter's formal task is unambiguous and his or her role is to translate accurately, comprehensively, and without bias, all communications in court to a language which the accused understands. The role of the interpreter is thus to facilitate communication where one party is not conversant in the language of the record. As stated above, while the term "facilitator of communication" is used as the appropriate role descriptor for court interpreter in some of the literature, some scholars regard facilitation as as a form of exaggeration (Lee 2009).

#### **2.8.5 The court interpreter as a channel or bridge**

It is not only scholars and judges in the courts of law who have defined the role of a court interpreter. Court interpreters themselves have defined their role and according to Roy (1993 in Pöchhacker & Shlesinger 2002), professional interpreters often describe their role as "the person in the middle" by using a metaphor along with metaphorical language which suggests that they serve as a kind of channel or bridge through which communication between two people can occur.

Court interpreters see themselves as a means to communicate and this is clear in the words "channel" or "bridge". What this channel does is complex: interpreters are required to reproduce a message from one speaker to another faithfully, accurately and without emotional or personal bias entering into the interpretation (Lebese 2011:346). In other words, interpreters must simultaneously render messages without changing the message's intent and they must do so with uncommon accuracy, while maintaining a stance of impartiality and neutrality.

To be specific, interpreters may not introduce topics, change topics, ask questions of their own, interject their opinion or give advice, and, most importantly, they must keep the entire transaction confidential (Lebese 2011:346). The performance of this role has been compared to a machine, a window, a bridge, and a telephone line among other metaphors in trying to compress the complexity of the role to a simple, singular analogy (Roy 1993 in Pöchhacker & Shlesinger 2002). Roy (1993 in Pöchhacker & Shlesinger 2002) believes that the descriptions of the role of the interpreter encourages interpreters to be flexible, which usually means to be involved, for example, by providing clarification when they are supposed to act as conduit and interpret only what was said. While descriptions and standards of ethical practice extensively, sometimes exhaustively, list what interpreters should not do, they seldom, if ever, explain what interpreters can do.

#### **2.8.6 The court interpreter as a replicator**

Another description of the role of a court interpreter is that of a replicator. According to Hale (2010) the interpreter's aim should be to replicate the original SL message in the TL message in a manner that would have the same effect on the listeners.

#### **2.8.7 The court interpreter as a team player**

Court interpreters work with other court officials and are thus team players. Steytler (1993) observes that court interpreters have not interpreted their role as being that of a conduit pipe for verbal information but have often redefined it as one of a team player in the court proceedings in an effort to facilitate the expeditious completion of cases. The interpreter thus plays at various times the role of a court orderly, a lawyer, a magistrate and a prosecutor. These roles are discussed in the following section.

### 2.8.8 The court interpreter as a court orderly

A court orderly is a police official who works in the court room during court proceedings. One of the functions of the court orderly in the district court is the physical management of the accused in and out of the dock during the daily remand and bail proceedings (Steytler 1993). The majority of accused will be in the dock only for a short while, either because it is their first court appearance or because their case will yet again be remanded. The first task of the day is thus the speedy and efficient dispatch of cases which have not been set down for trial. The remand procedure exhibits a great measure of cooperation between the court orderly, the interpreter, the prosecutor and the magistrate (Lebese 2011:347).

The prosecutor will request a remand and it will almost without exception be granted by the magistrate without further discussion. The interpreter will also approach the proceedings in the same expeditious way by interpreting, as a rule, only the court order being the date to which the proceedings were remanded. Neither the application nor the reason for it is interpreted. In case 87 DC, Steytler (1993:209) provides the following scenario:

**Accused:** (Zulu) Please ask for payment so that I will be out.

**Interpreter:** (English) That is not my business. Go down!  
(indicating towards the cells).

According to the conduit model, the interpreter in the above instance should have interpreted what the accused has said and not to give his own answers because the accused was asking the court a question and not the interpreter in his or her personal capacity.

### **2.8.9 The court interpreter as a lawyer**

The duties of a lawyer include, among others, simplifying court proceedings by using simple language so that his or her clients are in the position to understand those proceedings (Lebese 2011:347). Accordingly the function of the lawyer is to translate to his client the charge and formulate a response in terms of the permissible legal pleas. When an undefended accused is involved, the interpreter often plays the role of the lawyer, deviating from literal translation to bridge the gap between legalese and the layperson's language. The interpreter will convey to the accused only what was intelligible to him (Steytler 1993).

### **2.8.10 The court interpreter as a magistrate**

There are instances when the court interpreter takes on the role of magistrate when asked or even instructed to do so. According to Steytler (1993) some studies have shown that the interpreter plays an active role in court "staking out own coercive role" and it has been found that the interpreter has a degree of control over the production of evidence by prompting witnesses to speak and even silencing them when there is an objection to their evidence. The task of controlling witnesses which falls properly within the domain of the presiding judicial officer is thus routinely usurped by interpreters who pre-empt judicial intervention (Steytler 1993).

From the definitions presented above, views vary with respect to what the role of the court interpreter should be. The researcher is of the opinion that, the appropriate role in respect of the South African court interpreters would that of "a facilitator" as discussed by Steytler (1993).

The facilitator role expects the court interpreter to interpret accurately, comprehensively and without bias (Steytler 1993).

From the above discussion it is clear that judges and court interpreters have divergent views on the role of court interpreters and this creates problems for court interpreters who are at times expected to go beyond their call-of-duty. The subsequent section focuses on previous research into court interpreting.

## **2.9 PREVIOUS RESEARCH INTO COURT INTERPRETING**

The following section explores previous research into court interpreting in both South Africa and internationally. The aim is to observe the approach followed and the results obtained in the particular research.

### **2.9.1 International studies on court interpreting**

Lipkin (2008), examined the activities of military interpreters at the Yehuda Military Court near Jerusalem over a period of one year. The aim of the study was to explore the norms and ethical rules guiding the interpreter's work. In this study, in-depth interviews were conducted with eleven interpreters and officers, and court sessions were observed. The questions asked related to the interpreters' powers and duties, the nature of their work, their personal preferences, the rules that guided their work, and the training they had receive.

The findings show that the interpreters' powers and duties covered a range of areas over and above interpreting per se, including translating documents, acting as ushers in the courtroom, and handling logistical matters. The study also pointed to the lack of a clear set of rules in relation to the interpreters' work and revealed that training was provided only after they had begun working. The study therefore suggested the need for a code of ethics defining and providing a framework for the interpreters' powers and duties, which should be limited to interpreting, and should not encompass administrative tasks. The situation at the time of the study caused confusion over the ethical boundaries of the interpreters' work.

This study used a qualitative approach to a data-set derived from fieldwork (primarily observations and interviews) conducted between February and December 2005. Semi-structured interviews were conducted with Hebrew-Arabic interpreters. Questions related to their powers and duties, the nature of their work, their personal preferences, the rules that guided their work, and the training they received.

When asked about their role, their status, their duties and powers, and the nature of their work, some of the interviewees had very clearly-defined opinions, others less so. A particularly surprising finding was one related to the interviewees' perception of their day-to-day duties: the role that they themselves considered most important was that of ushers. In fact, when asked about their standing in the court and their job definition, every single one of the interpreters referred first to their administrative aspects of their job, stating that the work they did was extremely important because they were in charge of maintaining order in the courtroom.

When speaking of the effort they had to invest in their various duties, the interpreters referred first to the administrative aspects of their job, and not the interpreting itself. Some of the interpreters reported that when they sat and interpreted they actually felt as though they were resting. When interpreters were asked specifically about their role as interpreters, they introduced terms such as "connector", "conduit" and "mediator" and expressed a variety of views regarding the boundaries and definition of the job. One of the interpreters, asked to describe his status as an interpreter, replied: "I connect the two sides". Another said: "In my opinion the interpreter is a mediator, a connector, the spine of the courtroom ...You see, the detainees don't know Hebrew, and it is the right of the detainee, by law, to be tried in his language" (Lipkin 2008:90).

The main conclusion Lipkin (2008) reached from this study was that the Yehuda Military Court worked according to accepted but unwritten rules, performing its duties in keeping with norms that have been handed down through "generations" of interpreters. Such norms were in fact an alternative to a code of ethics which, as many have claimed, is necessary in order to ensure that court interpreters will act properly in performing their duties during legal proceedings. These norms provide interpreters with some sort of framework within which to function, but since the norms are handed down by word of mouth, there are many grey areas (Lipkin 2008). Another conclusion arising from this study was that the context in which the court functions has a great impact on the way the work is done.



These findings underline the desirability of drawing up a code of ethics suitable for the Yehuda Military Court – or perhaps for all military courts in Israel if they work along similar lines. Such a code would contain a clear definition of the interpreter's status and duties, as well as guidelines for dealing with exceptional situations that arise during interpreting, e.g. problematic terminology, failure to hear or to understand, excessive speed on the part of the speakers, acoustic problems and so on (Lipkin 2008). When it came to the multiple duties performed by interpreters at Yehuda Military Court, most of them indicated that they did not mind these and in fact preferred the diversity and the responsibility. Yet it seems obvious that interpreters should not be required to perform additional administrative duties in the courtroom setting, since they need to concentrate on interpreting in order to guarantee the best interpretation possible.

Zimányi (2009) revisited the subject of the interpreter's role in community interpreting by examining a case study within a forensic-psychology setting. The aim of the study was not to redefine the role of the interpreter, but to offer a simple representational tool. Such tool could aid the understanding and explanation of abstract notions such as neutrality and impartiality to practising or trainee interpreters. The interaction he investigated took place between a child, aged nine, a forensic psychologist and an interpreter. This scenario was chosen because the professional service provider was a forensic psychologist working in a field which lies at the crossroads of the psychological and legal domains.

Jacobsen (2009) studied the role perception and expectations among users of interpreting services and interpreting practitioners in community interpreting which included court interpreting. He compared community interpreting to conference interpreting. He believes that studies of conference interpreting have traditionally focused on cognitive, neurophysiological and neurolinguistic issues as well as "performance phenomena" i.e. issues such as the interpreter's memory span, the time lag (ear-voice span) between input and output, chunking and anticipation. Research in community interpreting has traditionally focused on role perceptions and expectations among users of interpreting services and interpreting practitioners.

The findings of this study revealed that there was an increased focus on quality in interpreting. Jacobson states that the topic of role perceptions and expectations still dominates the field.

The above presented studies showcase that the problem of defining interpreters is not unique to South Africa, and that in some instances interpreters themselves are not clear about their roles, putting administrative duties over and above their interpreting duties. The next sections explore research into court interpreting in South Africa.

### **2.9.2 Previous research on court interpreting in South Africa**

Du Plessis (1997) investigated the definition of interpreting in South Africa. He states that “interpreting is a clearly-defined, well-established profession operating within a structured context in many countries of the world, but in South Africa the profession still has a long way to go to attain the same status” (1997:1).

Du Plessis goes further to look at the misconceptions harboured by the general public regarding the skills required for interpreting and the profession itself. One example is that the general public believes that any bilingual or multilingual speaker can automatically be an interpreter. He clarifies this misconception by mentioning that apart from knowledge of at least two languages, other specialised skills and techniques are essential to be a successful interpreter. He believes that one cannot merely take any mother-tongue speaker off the street and expect him/her to interpret.

In defining interpreting, Du Plessis (1997:2) mentions that “interpreting is a complex phenomenon, the complexities of which have to be understood if one wishes to discuss it without misunderstandings arising”. He then discusses two interpreting modes namely, consecutive and simultaneous. He also discusses types of interpreting namely, conference interpreting, court interpreting and community interpreting.

In his study, Du Plessis (1997) used a comparative approach comparing court interpreting to other types of interpreting such as conference interpreting, telephonic interpreting, South African Sign Language interpreting and media interpreting, as well as the training involved in these types of interpreting. He concluded that interpreting is still a relatively young profession in South Africa and that in order for it to grow into a fully-developed activity and a provider of work for language practitioners, real commitment was required, not least from state institutions.

Hertog and Lotriet (1997) conducted a survey of Belgian and South African law to gain a better understanding of the legal status and provisions made for court interpreters interpreting. The problems faced by interpreters in these two countries during interpretation were investigated against the background of a comparison with international - mainly European - law precedents. The aim of this study was to take a closer look at the operational training models for court interpreters in South Africa and to compare them to those of other international countries such as the Netherlands, the United States and the United Kingdom. The findings revealed that every interpreter, simply by the very act of interpreting, by code, language and culture switching, affects the transfer of meaning.

Hertog and Lotriet (1997) noted that in South Africa, apart from a short six weeks course provided by the Department of Justice, there was no formal training available in the field of legal interpreting. Much discussion around the issue of court interpreters led to the realisation that a coordinated training initiative was needed. The union of court interpreters together with representatives of the Department of Justice consulted with a number of academic institutions regarding the possibility of a more comprehensive training program.

This led to some universities in South Africa introducing training programs for court interpreters. The University of North West (former Potchefstroom University for Christian Higher Education) started to offer a University Diploma in Legal Interpreting in 1998. This program was discontinued in 2006. In the same year, WITS University started to offer a Diploma in Legal Interpreting. This diploma is still offered at WITS. The University of Port Elizabeth also introduced an undergraduate Diploma in Legal Interpreting. The researcher contacted the university and spoke to Dr Hilda Israel who is the head of the Linguistics Department. Dr Israel said that she joined the department 10 years ago and that no one in her department seems to remember as to when this diploma discontinued. In 2000, the University of South Africa (UNISA) began offering the BA in Court Interpreting which was discontinued in 2009 because of poor response from court interpreters to register for this program.

There are other academic institutions in South Africa who began offering in programs to train court interpreters and translators, such as the Durban University of Technology, Tshwane University of Technology, University of the Free State, University of Pretoria and many more. These institutions offer different programs from National Diploma up to Doctorate level. These programs still exist.

Moeketsi and Wallmach (2005) conducted a study on the profile of the court interpreter and the quality of the services rendered. In this study, the communications made by magistrates were analysed to determine whether the court interpreters had correctly interpreted these communications. The findings reveal that African languages lack linguistic equivalents of crucial words used in the court room. In instances like these, interpreters are obliged to go beyond the surface meaning of what has been said, to the values embedded in the language and culture of the discourse participants. The interpreter becomes a “cultural broker” whose participation involves “mediating ideas, laws, customs and symbolism” (Moeketsi 1999b:4). The study concluded that the role of the South African court interpreter must be redefined and that court officials must be provided with rigorous training in the nature of court interpreting.

The reviewed studies show that in South Africa there is a problem not only of defining court interpreters but also of training. There is need therefore train interpreters so as to equip them with necessary skills to carry out their duties professionally.

## **2.10 Conclusion**

This section revealed that scholars have offered various definitions of interpreting and of the role of interpreters and court interpreters, among them, the interpreter as a conduit, as a bridge, invisible pipe and as a magistrate among others. Clearly, there was no consensus among interpreting scholars as to the exact role of the court interpreter and this creates problems of exploitation in South African courts. Interpreters find themselves doing duties that are beyond their call-of-duty. The lack of a clear definition of the role of interpreters has a capacity to affect the very quality of interpreting because court interpreters would not know which model definition to follow during interpreting.

From the reviewed studies, it is also clear that the problem of defining the role of court interpreters is not uniquely South Africa, nonetheless, South Africa needs to establish clear guidelines as to what the role of court interpreters is so as to avoid miscarriage of justice. The next chapter will present the methods followed to collect and analyse data.

## **CHAPTER 3: RESEARCH METHODOLOGY**

### **3.1 Introduction**

This chapter discusses the research methodology that was followed in this study and its relevance to the study under investigation. The study followed the qualitative method of investigation and the DTS theoretical framework in order to collect and analyse data. The chapter further discusses the research procedures followed in this study, methods of data collection and the data analysis and closes with a conclusion. Following are notes on the theoretical framework selected in this study.

### **3.2 Theoretical framework**

This section focuses on the DTS framework which was selected as a guiding approach in this study. DTS as its name suggests is a descriptive approach that emerged in early eighties when translation studies moved away from normative and prescriptive approaches to translation, which were used to evaluate translation as good or bad, according to a fixed theory of what constitutes equivalence between two texts (Kruger & Wallmach 1997). According to Toury (1980:80), the aims of the DTS are threefold, namely:

- to describe and explain empirical phenomena, and as a result lead to the accumulation of knowledge;
- to put to the test models supplied by the theory, in whose framework the studies are conducted;
- to involve the selection of facts to be described and explained as well as their organisation for descriptive and explanatory purposes.

In other words, a descriptive study is always a goal-oriented activity, devised to answer certain questions within a specific theoretical framework (Toury 1980).

DTS therefore describes or explains the specific characteristics of a translated text in terms of the constraints or norms reigning in the target system at a particular time which may have influenced the method of translating and the product (Kruger & Wallmach 1997). That is, translations are studied within their socio-cultural environment in order to understand how they function in that environment.

According to Toury (1980:80), translation practices are observational facts. That is, these phenomena have an actual existence in the “world”, irrespective of any prior theoretical consideration and that translation and translation practices are not just mere speculative outcomes of factors which form the basis for translation studies. As such this study explores “real life” interpretations that transpired in real life situations; that is South African courts. The researcher thus collected thirteen court cases; two observed courtroom proceedings and eleven recorded cases and these were analysed within their socio-cultural background using the DTS approach.

The selected interpretations were analysed by means of comparative and contrastive approach, whereby source utterances were compared with target interpretations by the court interpreter. This comparative approach, falls within the DTS methodology that requires a *tertium comparationis* (TC) which will serve as the basis of comparison between the source text and its translation (both at macro- and micro-levels) (Kruger 2000:11). Toury (1985) explains this concept further that the compared source and target utterances will comprise an independent, constant set of dimensions in terms of which segments of the target utterances and source utterances can be compared or mapped on to each other. In the study, it is important to note that SL can be the language of the judge, lawyer, attorney or the the person standing trial and the TL comprises of the language used by the court interpreter at the time.

The DTS framework was selected in this study because it gives room to analyse court interpretations within their environment. That is, DTS was selected over and above prescriptive methodologies, because it takes into account the socio-cultural environments of translations and interpretations. Kruger and Wallmach (1997) explain further that some theorists working from literary and theoretical perspectives rejected the prescriptive theories and adopted a descriptive approach towards the study of translated literature because they realised that translations are never produced in a vacuum. Because translations are never produced in vacuum, norms and shifts also play a major role inthe DTS framework, and these are explained in the next section.

### **3.2.1 Theoretical discussion of norms and shifts**

In this study, court proceedings will be analysed to determine which norms influence court interpreters during the process of interpreting. Toury (1980) believes that translation like any other behavioural activity, is subject to constraints of several types and of varying degrees which can be described along a scale anchored between two extremes, the first one being objective, relatively absolute rules and the second being fully subjective idiosyncrasies. Norms do not occupy one point only of the scale. They cover a graduated section of the entire continuum. Norms are operative at every stage in the translation process and at every level of its product which is translation itself (Toury 1980).

The concept of norms is derived from communal living. That is, norms are general values or ideas shared by a community, defining what is right or wrong at a particular circumstance or event. In other words, norms determine what people can or cannot do in particular situations, thus, sanctioning the behaviour of people in a community or a particular culture. In such a manner, norms act as constraints (Ndhlovu 2012:64). According to Hermans (1996), norms are psychological and social entities and have a socially regulatory function. They help to bring about the coordination required for continued co-existence with other people. By doing so, they safeguard the conditions of the collective sphere because they mediate between the individual and the collective sphere, between an individual's intentions, choices, and actions, and the collectively-held beliefs, values and preferences.

Norms contribute to the stability and the uncertainty which springs from an inability to control time and to predict the actions of fellow human beings. The reduction of contingency brought about by norms is a matter of generalising from past experience and making reasonably reliable, more or less prescriptive projections concerning similar types of situations in the future (Hermans 1996).



Hermans (1996) adds that norms are prescriptive rules which have a normative semantic load, and are used to guide, control, or change the behaviour of agents with decision-making capacities. Norms tell individual members of a community not just how everyone else expects them to behave in a given situation, but how they ought to behave. Norms imply that the community has agreed that a certain behaviour or action should be adopted as proper or correct.

In relation to translation studies, the norm system involves a way of looking at translation as a social activity, and this has its origin in empirical studies, perhaps even the behaviourist thrust of descriptive work (Hermans 1999:72). Thus, Toury (1995) uses the term “norm” as a descriptive analytical category to be studied through regularity of behaviour that translators in a given socio-historical context select on a regular basis. According to Toury (1995:54-59), translation is an activity governed by norms and these norms determine the equivalence manifested in actual translations. Toury (1995:54-59) distinguishes three types of norms, that is; preliminary norms, operational norms and initial norms.

Preliminary norms are concerned with policy in a given culture and the directness of a translation or interpretation. Translation policy refers to those factors that govern the choice of text types; or even of individual texts, to be imported through translation into a particular culture/language at a particular point in time.

Initial norms – these govern the translator’s basic choice between two polar alternatives; subjecting himself either to the original text with its textual relations and norms (*adequacy*), or to the linguistic and literary norms active in the TL and the target literary polysystem or a certain section of it (*acceptability*) (Even-Zohar in Kruger 2000:36). In the current study, the researcher will establish if the utterances by court interpreters align with the SL or TL.

Operational norms direct actual decisions made during the translation process. These norms affect the modes of distributing linguistic materials in a text and the actual verbal formulation of a text. The extent to which omissions, additions, changes of location and manipulations of segmentation are referred to in the translated texts (or around them) may also be determined by norms, even though the one can very well occur without the other. Operational norms therefore, are product norms regulating the form of a translation as a final product.

According to Chesterman (1997) Toury views norms as constraints, ignoring their role as templates in offering ready-made solutions to particular types of problems. Although Toury's classification has weaknesses, there is no doubt that, his classification of norms led to a better understanding of norms. In relation to court interpreting, the concept of norms is applicable in that certain norms need to be followed if the interpretation is to be accepted as "proper" or "appropriate". These norms then influence the outcome of the interpretation. For example, when court interpreters are defined as machines, the norm is that as machines they must interpret the SL utterance word for word into the TL.

As a translation machine, the interpreter ceases to exist as his or her own persona and interprets only what has been said without adding, subtracting or modifying anything said by the speaker. An interpreter who acts contrary to the norm is a deviant. In line with this view, the researcher will analyse court interpretations in line with the way court interpreters are defined as these definitions determine how interpreters are expected to behave. Following is a discussion of shifts.

Catford (1965), in a discussion of shifts states that translation "shifts" are changes or shifts which occur in translation. There are two major types of "shifts", namely, level shifts and category shifts. Level shifts occur when an SL item at one linguistic level has a TL translation equivalent at a different level. The four levels involved are grammar, lexis, phonology and graphology. However, in practice the only possible shifts in translation are from grammar to lexis and vice versa. According to Catford (1965), category shifts refer to a departure from formal correspondence where the SL and the TL equivalences are set up at a rank that is appropriate. Category shifts are divided into four types namely: structure-shifts, class-shifts, unit-shifts and intra-system shifts. Structure-shifts involve a grammatical change between the structure of the ST and that of the TT. Class-shifts occur when a SL is translated by a TL item which belongs to a different grammatical class. This happens, for example, where a verb is translated with a noun.

Unit shifts involve departures from formal correspondence in which the translation equivalent of a unit at one rank in the SL is at a different rank in the TL. This is where the SL item has no equivalence in the TL and is translated by a phrase. Intra-system shifts occur when the SL and TL possess systems which approximately correspond formally as to their constitution, but the translation involves a selection of a non-corresponding term in the TL system. This is where the SL uses the singular and the TL uses plural, for instance.

Leuven-Zwart (1990) believes that shifts are a very important analytical tool in DTS. These refer to differences in the TT when compared with the ST. As stated above, the SL utterances and the TL utterances are not compared with the aim of judging whether the interpretation is right or wrong, rather in order to consider the role played by the court interpreters during the trials. The comparison will involve looking at the interpretations rendered by court interpreters to see whether they have followed the conduit model of interpreting which requires them to render a word-for-word translation of the SL utterance. The study will investigate “obligatory shifts” and “optional shifts”.

Toury (1995:57-59) explains “obligatory shifts” as the necessary changes that are caused by the systemic formal differences between the ST and TT, while “optional shifts” are those changes which are optional and thus should be considered to reflect the interpreter’s decision-making processes and strategies of choice. In other words, the interpretation was analysed to determine whether it is a word-for-word translation of the SL utterance or whether there are any types of shifts involved. Other aspects which were investigated in the study are shifts of simplification, explication (where explanations are provided), additions, omissions, substitutions or paraphrasing.

The investigation of these shifts helped to ascertain the role played by court interpreters during trials. This was done by comparing the English version to the Setswana version to determine whether, in interpreting the English utterance, the court interpreter used additions, omissions or substitutions. The comparison of the English text and Setswana text was on structural shifts, class shifts, unit shifts and intra-system shifts. In the study, the ST refers to the English utterances by the speaker and the translations refer to the interpretations rendered into the Setswana language by the court interpreter.

The next section outlines the procedures used to collect and analyse data.

### **3.2.2 Qualitative research method**

This study is of qualitative nature because it consists of the analysis of extracts of two observed court cases and extracts of transcripts of eleven recorded cases as well as observing court proceedings as they happen. According to Wray et al. (1998), a qualitative approach entails a description and an analysis and the data collected is usually stated in words. That is, collected data is described and explained through words in order to present the experiences of the research participants.

Creswell (1998) adds that qualitative research is an enquiry process of understanding, that is based on distinct methodological traditions of enquiry that explore a social or human problem. The research builds complex, holistic pictures, analyses words, reports detailed views of informants and conducts the study in natural settings. Participants therefore are studied in their natural environment in order to understand a particular phenomenon, in this case, the roles played by interpreters in courts in South Africa.

Hillinger and Leu (1994) explain further that a qualitative research method in interpreting studies explores how language, power, and history shape human views of reality, truth and knowledge, aiming to uncover multiple realities. Shank (2002) holds the same view and uses two metaphors to describe qualitative research methods involving the observation of cases. The first metaphor is of a “window”, because the researcher looks through a window to get an accurate view of a subject. The second metaphor is of a “lantern”, and this suggests that these methods are like a lantern which sheds light on dark corners. The researcher is in effect a discoverer and reconciler of meaning where no meaning has been clearly understood before. According to Meulenberg-Buskens (1993), in a qualitative research study, the researcher tries to relate directly to phenomena in reality.

The qualitative method is an inquiry that is grounded in the assumption that individuals construct social reality in the form of meanings and interpretations, and that these constructions tend to be transitory and situational Gall et al. (1996). The aim of this methodology is to discover these meanings and interpretations by studying cases intensively in natural settings and subjecting the resulting data to analytical induction. Gall et al. (1996) adds that generally speaking, qualitative research is oriented towards the understanding of a natural world and is highly interpretive in nature. The purpose of qualitative research is not to verify a causal relationship by falsifying a non-relationship hypothesis. Instead, it recognises the multifaceted interpretations of human experience, and the relation within social and cultural systems. The focus of qualitative research is on understanding how people make sense of their world, by exploiting different aspects and different expressions and it provides both the researchers and the participants with a discovering experience.

Creswell (1998) categorises five traditions of qualitative research namely, biography, phenomenology, grounded theory, ethnography and case study. In biography, the life of an individual is explored. In the present study, the life of court interpreters is explored. The aim here is to look at how court interpreters fulfil their interpreting role during trials in court. Phenomenology is about understanding the essence of experiences of a phenomenon. In this study, court cases were observed in order to form a clearer understanding of what they actually do when interpreting. The gathered information was then analysed to answer the research question.

### **3.3 Research Procedures**

As stated in Section 1.5.2., the research procedures followed in this study are a top-down and a bottom-up approach. In the top-down approach, legal documents and related texts were examined whilst in the bottom-up approach, abstracts of proceedings in the courtroom were analysed. Pöchhacker (2004) refers to this research procedure as a multi-method case study approach because it includes a thorough description of the situational and interactional variables, inter-textual as well as intra-textual discourse-based analysis. Followed is a detailed explanation of the methods used to collect data.

#### **3.3.1 Data collection**

In collecting the required data, the researcher used three methods: collection of legal documents from the field; observation and transcription of court cases.

Firstly, the researcher approached the Brits Magistrate's Court in Brits to seek permission to use the Magistrate's Court Act 44 of 1944 5<sup>th</sup> ed (as amended)" and "The Constitution of the Republic of South Africa, Act 93 of 1996 (as amended)". Permission was granted by the Court Manager and the two legal documents were obtained.

Secondly, the researcher once again sought permission to observe court proceedings in order to determine the roles of interpreters and this was also granted by the Court Manager. The researcher observed two cases as they transpired. The languages used during the court proceedings were English and Setswana. The English SL utterances were recorded in writing as the speaker was speaking;

- The interpretation as offered by the court interpreter in the Setswana TL, was written down;
- The verbal and non-verbal reply given by the speaker for whom the interpreter was interpreting, was written down in Setswana, which was the language that the speaker was using; and
- The interpretation from Setswana offered by the court interpreter into English was written down in English.

In other words, each utterance by a particular speaker was recorded in the language used by that particular speaker. The observation was a non-participatory one because the researcher's role was only that of an observer and he did not take part in any activities of the courtroom during observation. One of the advantages of observation, whether participatory or non-participatory, is that the study takes place in the natural setting of the activity being observed and can thus provide data that is rich in detail and subtlety (Wray et al.1998).

Lastly, the researcher was granted permission to use recorded court proceedings by the same Court Manager. These cases dealt with criminal offences committed between 2007 and 2010. The cases were transferred from the court recording machine to twenty compact discs (CDs). The researcher used only eleven of these discs for this research. The researcher copied the recordings and transcribed them before analysing.

### **3.4 Data analysis**

As stated in section 3.2 the court interpretations were analysed within the DTS framework using a comparative and contrastive approach. The basis of comparison used in the present study is the one suggested James (1980:169):

How does one set about comparing anything? The first thing we do is make sure that we are comparing like with like: this means that the two (or more) entities to be compared, while differing in some respect, must share certain attributes. This requirement is especially strong when we are contrasting, i.e. looking for differences, since it is only against a background of sameness that differences are significant. We shall call this sameness the constant and the differences variables. In the theory of contrastive analysis (CA) the constant has traditionally been known as the *tertium comparationis* or TC for short.

The selected interpretations were compared at micro-textual level. That is SL words, terms, phrases and sentences were compared with their corresponding TL utterances to ensure that the researcher is comparing like with like. One genre, namely: criminal law was used. In the analysis, the researcher observed the different roles played by court interpreters in carrying out their duties. The researcher also observed the constraints imposed on court interpreting.

The TC in this study looked at SL utterances to determine whether what the court interpreter interpreted is what was actually said originally or whether there have been some additions. Jacobsen (2002) explains that additions in court interpreting refer to information that is extra or new and brought into the TL utterance by court interpreters altering the original meaning.

These additions constitute a violation of interpreting ethics (Jacobsen 2002). The TC will therefore be used to establish whether court interpreters used any shifts and whether these shifts led to any difference between the SL utterances and the TL utterances. Have court interpreters deviated from their role by making these additions and if so, what role have they played by making these additions? The additions that were considered are paraphrasing, explanations, expansions and simplifications.



The researcher went on to investigate shifts involved in the interpreting of the SL utterances into the TL utterances. These were structural shifts, class shifts, unit shifts and intra-system shifts. The shifts were investigated in terms of interpreting norms which are to be followed in order to accept the interpretation as “proper” or “appropriate”. The aim was not to judge the court interpreter’s interpretation as being good or bad. The aim was to look as to whether in interpreting, the court interpreters played the role(s) of interpreting as expected, or whether they assumed any other duties and if so, to try and understand why they were doing this.

In addition, the TC investigated instances where the court interpreter omitted information from his interpretation. Pym (2008) explains that omission means leaving out certain information. In this case information which was contained in the SL utterance. Pöchhacker (2010) refers to omission as one of the classic interpreting errors. According to Pym (2008), there are two kinds of omissions namely, low-risk omission and high-risk omission. Omissions that are low-risk occur in a constant background mode without ST stimuli and are found in repeat performances with similar frequency but in different places. Omissions occurring with a high level of risk are those that form the core of an utterance and when such information is omitted, the interpretation changes the meaning of what was said in the SL (Pym 2008).

The following shifts in court interpreters’ utterances were investigated when analysing the data in this study:

**Additions:** There are two types of additions which are explanations or explications and expansions (Jacobsen 2003).

These were investigated in comparison of the SL utterance and TL utterances in the helper role, to find out if the court interpreter added information by means of explanations, explications or expansions, which was not present in SL utterances during interpretation. The aim of this investigation will be to find out whether the court is sticking to the role of interpreting or whether the interpreter is deviating from this role and taking up the role of other court officials.

**Omissions:** These were investigated to determine if the court interpreter leaves out information which was present in the SL during interpretation (Pym 2008). This is done in order to investigate if the court interpreter follows the “conduit” model of interpreting. According to this model, the court interpreter is expected to interpret everything said by the speaker.

**Substitutions:** These were investigated to determine if the court interpreter in playing the role of a bicultural specialist has substituted SL cultural aspects with TL cultural aspect (Moody 2011). In carrying out research, issues of validity and reliability are important and these are explained below.

### **3.5 Validity and Reliability**

Reliability and validity have always taken precedence in quantitative research, however they are now being reconsidered in the qualitative research paradigm. Patton (2001) explains that validity and reliability are two factors which any qualitative researcher should be concerned about while designing a study, analysing results and judging the quality of the study. Although some qualitative researchers have argued that the term “validity” is not applicable to qualitative research, they do realise the need for some kind of qualifying check or measures in their research (Golafshani 2003). To ensure reliability in qualitative research, examination of trustworthiness is crucial. Therefore the question is, is the information collected trustworthy?

In order to ensure that the study is trustworthy, the researcher observed the research proceedings personally and recorded the outcomes immediately. Recordings from the courts were requested and transcribed to ensure that the utterances were verbatim.

### **3.6 Conclusion**

In this chapter, an overview of the methodology used in this study was provided. The DTS framework was to guide this study because it describes translations and interpretations as they occur in their particular environments. DTS also takes into account the socio-cultural factors that impact on translations and interpretations. In line with the DTS framework, a comparative and contrastive approach as suggested by James (1980) was selected to analyse court interpretations. The qualitative approach was selected and its instruments used to collect data. These included: collecting legal documents such as the Constitution and the Magistrate's Court Act; observing court proceedings as they took place and lastly, listening to and transcribing court cases. The collected data will be analysed in the next chapter in order to determine the role of court interpreters in South Africa, and to explore the norms that influence court interpreters during interpreting.

Following in the next chapter is data analysis.

## CHAPTER 4

### ANALYSIS OF CASE STUDIES

#### 4.1 Introduction

The aim of this chapter is to examine the function or functions that are performed by court interpreters during trials. This will be done by analysing extracts of court cases where interpreting is involved; analysing the Magistrates' Court Act 44 of 1944 (as amended) and the Constitution of the Republic of South Africa, Act 93 of 1996 (as amended) as well as analysing comments made by judges in South African High Courts.. The chapter will also investigate whether the court interpreters themselves understand their role and whether they keep to this role throughout their interpretation and whether there are cases where court interpreters are made to perform duties outside those of interpreting and how such practices can influence the outcome of the case, as well as the quality of interpreting. The languages involved in these cases are English and Setswana. Court cases will be examined to determine the actual role played by the court interpreters during the trial, with the emphasis on whether they perform the role of interpreting or whether they deviate from this role. In instances where deviations occur, the study will investigate why this happens and whether the judicial officers are addressing these issues<sup>1</sup>. Utterances in English made by the magistrate, prosecutor and lawyers or advocates are the original words of these speakers. These speakers are not English mother-tongue speakers.

The language was not edited because the researcher wanted to reflect these utterances in their original form.

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<sup>1</sup> Note that some of the cases used in the study are an extended version of cases appearing in S. Lebesse (2012) a paper published by the same author based on the pilot study for this dissertation.

The following symbols are used in the case studies:

Backtr (in green): Back-translation

+ (in red): Additions

- (in blue): Omissions

\_\_\_\_\_ (in black): Non-utterance

#### 4.1.1 Case study 1 Table: Theft – First appearance in court

In this case the accused was an adult female person charged with theft, appearing in court for the first time. In this matter, the following was said:

Magistrate/Prosecutor/ Lawyer/Advocate	Interpreter	Annexure
<b>P:</b> Your worship, this is a first appearance.	_____	_____
<b>M:</b> Mr. Interpreter, please explain the accused's rights.	_____	_____
_____	<p>O a simolla go tlhagelela mo kgotlatshekelo kajeno. O ka ipatlela lloyara e o tla e ipatellang yona. Ga o se na tšhelete, o ka kopa lloyara mo legal aid, yona ke mahala, ga o e patele, kgotsa o ka nna wa ipuella.</p> <p><b>Backtr:</b> You are appearing in court for the first time today. You may seek a lawyer whom you will have to pay yourself. If you do not have money, you may ask for a lawyer from legal aid, it is free, you do not pay</p>	<p>You are entitled to be represented by an Attorney or Advocate of your own choice whom you have appointed out of own funds.</p> <p>If you cannot afford a legal representative, you may apply to the Legal Aid Officer for assistance.</p> <p>If your application is successful an independent legal representative will be appointed for you by the Legal Aid Officer.</p> <p>Rights to the insight of</p>

	for it or you may speak for yourself.	the docket explained to the accused.  Do you understand?  What do you wish to do?
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Extracted from Lebesse (2011:348)

Firstly, the court interpreter omitted to interpret the first sentence by the prosecutor, namely, “Your worship, this is a first appearance.” This is in breach of an Oath of Office of Interpreter in terms of Rule 68 (1) of the Magistrate’s Court Act 44 of 1944 (in Baker *et al* 1980)as amended as shall be shown later. However, this is not a serious omission because it does not change the meaning of SL utterance and it will not prejudice the accused. This kind of omission is known as a “low-risk” omission (Pym 2008).

Considering what is stated in the Oath of court interpreters, omission of parts of a rendering here indicates that the interpreter in this case did not interpret truly and correctly as required. According to the Oath, the interpreter swears to interpret truly and correctly. The Oath calls upon the interpreter to interpret accurately.

Secondly, the magistrate himself did not explain the accused’s rights, which in terms of the law is his task; instead, he delegated this duty to the interpreter. The magistrate in this particular case seems to be giving the court interpreter a free hand and this conduct may lead to a miscarriage of justice. Mikkelson (1998) mentions that court interpreters should limit their activities strictly to the practice of interpreting. She is of the view that a judge or lawyer would be the best person to explain legal procedure and concepts.

Erasmus (2009) is of the same opinion and believes that from the first appearance of an undefended accused in court until the imposition of a sentence in the event of a conviction, explanations should be directed at the accused by the presiding officer. Erasmus (2009) cites the case of S v Kester 1996 (1) SACR 461 (B) and states that the court held that:

...it is the duty of a judicial officer to diligently, deliberately and painstakingly explain the rights of an unrepresented accused and to ensure and confirm that it was understood. This duty should not be delegated to an interpreter, but it is the duty of the presiding officer (Erasmus 2009: 16).

In the case of *S v Mbonani* 1988 (1) SA 191 (T), it was held that there was a duty upon judicial officers to inform unrepresented accused of their right to legal representation. It is therefore not the correct procedure for the magistrate to ask the interpreter to explain the accused's rights. According to the "conduit" model the interpreter's task is to interpret the communications taking place between the parties, making communication possible. In the case being discussed here, the interpreter did not object to taking on a task that was not his own. He could have objected to it, and this is a clear indication of what was noted by Du Plessis (1997) who explains that some interpreters themselves often have misconceptions in respect of their role and function in different contexts.

In dealing with the issues of redefining the role of interpreters, Roy (1993 in Pöchhacker & Shlesinger 2002) observes that interpreters often appear as all-round intermediaries carrying out a number of varied and diverse functions in addition to their translational tasks. This is the position in this case because the court interpreter was asked to explain the accused's rights, which he did. When one considers what happened in this case, it is clear that interpreters are often naturally cast in a helper role which extends to whatever needs to be done (Roy 1993 in Pöchhacker & Shlesinger 2002).

In clarifying the role of the court interpreter, Berk-Seligson (1990:53) states that:

...the court interpreter in theory is not an official speaker in the proceedings of the court but he or she ought to replicate the speech of others who in fact are entitled to hold the floor. The court interpreter should not exist as a distinct verbal participant in her own right but she should be an instrument through which one language (source language) enters and another (target language) exits.

The court interpreter's duty is to interpret to the accused person the communications made by the magistrate. The practice in the present case, confirms what Mikkelsen (1998:1) mentioned: "there are still many officials, including judges and attorneys, who do not understand the role of the interpreter and expect him or her to carry out functions that are someone's responsibility". It can also be argued that the court interpreter, by taking over someone else's duties, has overstepped the boundaries of his role. The role of the court interpreter is to facilitate communication between court participants who do not share or choose to speak the same language (Lee 2009).

Another aspect in this case is that it is not clear whether the interpreter has knowledge of these rights and whether he can explain them on his own fully and correctly. When one compares the explanation of the accused's rights given by the court interpreter and what appears in the annexure, there is a difference.

The table below provides a comparison between what the interpreter explains and what is written in the standard form used by judicial officers to explain these rights:

<b>Contents of the standard form</b>	<b>Interpreter's explanation</b>
1. You are entitled to be represented by an Attorney or Advocate of your own choice.	1. You are appearing in court for the first time.
2. If you cannot afford a legal representative you may apply to the Legal Aid Officer for assistance.	2. You may seek a lawyer which you will have to pay yourself.
3. If your application is successful, an independent legal representative will be appointed for you by the Legal Aid Officer	3. If you do not have money, you may ask for a lawyer from legal aid, it is free, you do not pay for it or you may speak for yourself.
4. Rights to the insight of the docket explained to the accused	4. NO INTERPRETATION
5. Do you understand?	5. NO INTERPRETATION
6. What do you wish to do?	6. NO INTERPRETATION

Extracted from Lebesse 2011:349



The first sentence of the interpreter's explanation contains the words "you are appearing before court for the first time today" but the annexure does not contain these words. The court interpreter made some additions or expansions in his interpretation by including words which do not appear in the annexure. The sentence "you are appearing in court for the first time today" may not be correct because the accused might have appeared before another court or courts on other offences.

Therefore, the accused would not be appearing in court for the first time. Another possibility is that the accused might have appeared before the same court facing the same charge and that the case might have been withdrawn. In this instance, the danger is that the accused might object to the comment that he is appearing before court for the first time.

According to Erasmus (2009) section 73 of the Criminal Procedure Act affords no guidance as to the contents of the procedural explanation of the right to legal representation. The court interpreter would therefore not be a suitable person to deal with legal issues as set out in this Act. Taking this case as an example, it is clear that legal issues should be left to the presiding officers who are versed in the law and qualified to deal with such issues.

Words contained in the second and third sentence of the interpreter's explanation do not appear in the standard form. The interpreter's second sentence mentions a lawyer while the standard form makes mention of the Legal Aid Officer. It is worth pointing out here that a Legal Aid Officer is not a lawyer, but a clerk who works for the Legal Aid Board.

His duty is, among others, to take down applications by the accused for legal assistance. This officer has a roster of local attorneys and one of Legal Aid Board attorneys. If the applicant's request is successful, that is, if the applicant meets the requirements to qualify for legal assistance, the Legal Aid Officer will appoint a local attorney or advocate or one from the Legal Aid Board, who will represent the accused during the trial.

The interpreter in this case informs the accused that he may ask for a lawyer from Legal Aid while according to the standard form, the accused may apply to the Legal Aid Officer for legal assistance. The interpreter in this case is explaining things differently from what the law requires according to the standard form. It is the duty of the presiding official to pay more attention to the due-process rights of accused persons and to ensure that legal concepts are accurately and intelligibly conveyed (Steytler 1993). The explanation of rights to the accused by the court interpreter, which is in contrast to what the law prescribes, is an indication that the interpreter is not qualified to explain the accused's right and his role should be limited to interpreting only.

In the case of *S v Mpata* 1990 (2) SACR 175 (NC) (in Erasmus 2009), the court held that an explanation or an incomplete explanation of the accused's rights to legal representation amounts to an irregularity which might warrant the setting aside of a conviction and sentence if the accused was convicted.

Steytler (1993), in dealing with the issue of the undefended accused, mentions that those who are not conversant in the court language are almost exclusively dependent on interpreters for their understanding of their rights and participation. However, where the interpreter explains their right inaccurately or incorrectly, their life is at stake as they may not be in a position to receive a fair trial. It is therefore important that court interpreters do not become involved in the task of explaining legal procedures because they are not legally qualified to do so.

According to Martinsen and Dubslaff (2010), one of the key concepts in the model of translation is loyalty. The court interpreter has to be loyal to the person whom he or she interprets for by rendering the correct interpretation.

This was not the case in this instance because the interpreter included some additions in his interpretation. He did not comply with the translational norms, namely to act as a conduit. Extra interpretation can lead to problems because the accused person may make wrong choices which may lead not only to a miscarriage of justice but also to dire consequences for the accused.

In this case, there is no indication that the magistrate understood the language in which the interpreter explained to the accused his rights to legal representation. If he did, he would have corrected the interpreter or pointed out to him that he was not explaining these rights correctly. It may be assumed that the magistrate inferred that the rights were correctly explained to the accused, which was not the case. The accused's right to a fair trial was compromised in conflict with the Constitution which states that the accused has the right to a fair trial. One cannot measure the interpreter's competency because there was no record of the original language from which the interpreter was interpreting. The court interpreter's quality of interpreting was compromised in the sense that he was not interpreting, which is his duty, but was instead performing the duties of a judicial officer.

#### 4.1.2 Case Study 2 Table: Assault – Trial

The following case was a trial which involved two adult male persons, one being the accused and the other the complainant, where the accused was facing an assault charge. In this matter, the following was said:

<b>Magistrate/Prosecutor/ Lawyer/Advocate</b>	<b>Interpreter</b>	<b>Accused/Witness</b>
<b>P:</b> The state calls the first witness, Mr Tshepo Baloyi (not real name). <b>[ST1]</b>	_____	_____
<b>M:</b> What are your full names? <b>[ST2]</b>	Maina a gago ka botlalo ke mang? <b>[TT2]</b> <b>Backtr:</b> What are your full names?	_____
_____	Tshepo Baloyi, your worship. <b>[TT3]</b>	<b>W:</b> Ke nna Tshepo Baloyi. <b>[ST3]</b> <b>Backtr:</b> I am Tshepo

		Baloyi.
<b>M:</b> Mr. Interpreter, please swear him in. <b>[ST4]</b>	_____	_____
_____	A o tla bolela o ikanne kgotsa go na se se ka go thibelang go ikana? <b>[ST5]</b> <b>Backtr:</b> Will you speak under oath or is there anything that will prevent you from speaking under oath?	_____
_____	_____	<b>W:</b> Ke tla ikana. <b>[ST6]</b> <b>Backtr:</b> I will swear.
_____	O ikana gore o tla bua nnete, nnete yotlhe, nnete fela? Bua o re Modimo nthuse. <b>[ST7]</b> <b>Backtr:</b> Do you swear that you will speak the truth, the whole truth, only the truth? Say, so help me God.	_____
_____	_____	<b>W:</b> Modimo nthuse. <b>ST8]</b> <b>Backtr:</b> Help me God
_____	(- Help me God) (+Sworn in.) <b>[TT2]</b>	_____

Extracted from Lebese (2011:349)

In this particular case the interpreter is asked to administer the oath. This task does not fall within the ambit of the court interpreter's duties (Erasmus 2009). The magistrate expects the interpreter to perform extra tasks over and above the task of interpreting. In discussing the roles of the interpreter and some hypotheses about his behaviour, Anderson (1976 in Pöchhacker & Shlesinger 2002) points out that situations like the one in this case are an indication that the interpreter's position is characterised by role overload because the interpreter is frequently expected to do more than is objectively possible.

According to the provision of the Magistrates' Court Act 44 of 1944 (as amended), swearing in of witnesses is the responsibility of the magistrate and the interpreter is required only to interpret the communications made during the administration of the oath.

The circumstances in this case are similar to those in Case 1 where the court interpreter was asked or instructed to explain the accused's rights. In our South African courts, it seems to be a normal practice for interpreters to be requested to perform the duties of presiding officials (Lebese 2011). Conduct such as this by magistrates can be said to constitute exploitation of court interpreters. Morris (1995:32) comments on situations like these that "interpreters are sometimes exploited in the tactical manoeuvres by lawyers, who take advantage of current legal views of the interpreters' status and role in court".

In Case 2, it can be argued that it is not only the lawyers who exploit court interpreters but the magistrates as well. Asking someone who is not legally qualified to perform legal tasks is equal to exploitation and in law this amounts to an irregularity and to the miscarriage of justice. A practice such as this can compromise the role of court interpreters in that they will not perform the role of interpreting but that of the magistrate.

If the interpreter agrees to do this, it means that he or she does not interpret his role as being that of a conduit for verbal information; rather, such an interpreter is redefining his role as a team player in the court proceedings to facilitate the expeditious completion of the case (Steytler 1993).

### 4.1.3 Case Study 3 Table: Murder – Trial

In this case, the accused was an adult male person who was charged with murder of an adult male person. In this matter, the following was said:

Magistrate/Prosecutor/ Lawyer/Advocate	Interpreter	Accused/Witness
<p><b>P:</b> After the accused stabbed the deceased, how far did the deceased walk before he fell? <b>[ST1]</b></p>	<p>Morago ga gore molatofadiwa a tlhabe moswi, moswi o tsamaile sekgala se se kana kang pele a wa? <b>[TT1]</b></p> <p><b>Backtr:</b> After the accused stabbed the deceased, how far did the deceased walk before he fell?</p>	<p>_____</p>
<p>_____</p>	<p>(+Your worship) the deceased walked from here to there (+before he fell). (+ It is about three meters). <b>[adds words]</b> <b>[TT2]</b></p>	<p><b>W:</b> O tsamaile go tloga fa, go fitlha fale (witness indicating a distance). <b>[ST2]</b></p> <p><b>Backtr:</b> He walked from here to there (witness pointing a distance)</p>
<p><b>M:</b> Yes, but that is not the evidence before this court. Mr. Prosecutor, what is the distance which the witness has pointed out? <b>[ST3]</b></p>	<p>_____</p>	<p>_____</p>
<p><b>Pros:</b> It about three metres, your worship. <b>[ST4]</b></p>	<p>_____</p>	<p>_____</p>
<p><b>M:</b> Advocate, are you in agreement?</p>	<p>_____</p>	<p>_____</p>

[ST5]		
<b>Adv:</b> Indeed so, your worship. <b>ST6]</b>	_____	_____
<b>M:</b> Thank you. You may proceed PP (Public Prosecutor). <b>[ST7]</b>	_____	_____

Extracted from Lebese (2011:349)

In this case, the witness did not mention the distance in metres but indicated the distance. The interpreter added “three metres” which is an alteration of the witness’s evidence. It is important to remember that the judge or the magistrate will be relying entirely on the interpreted version of testimony to draw conclusions about the credibility of witnesses and the relative weight of their testimony (Lebese 2011:349).

Therefore, the interpreter must retain every single element of information that is contained in the original message (Mikkelson 1998). It is important that the court interpreter should not add anything to the message he or she is interpreting. According to Lee (2009), the High Court judges in the Australian case of Gaio versus R (1960) defined the court interpreter as a translation machine because they were wary of alterations that could be made by the interpreter to the original evidence.

Such an addition made by the interpreter in Case 3 may have repercussions which impact negatively on the demeanour of the witness in that later during the trial he may be confronted with the issue of a distance of “three metres” which he did not mention before (Lebese 2011:350). It could then be argued that the witness has deviated from his evidence in chief and the court may declare him an unreliable witness.

In the present case, the interpreter should have interpreted exactly what the witness said and it was the duty of the magistrate to ascertain the distance in metres.

The court interpreter is expected to be a “conduit” or “mechanical device” that transfers what was said from one language to another without any intervention to ensure effective communication (Lee 2009). The interpreter in this case did not follow the “conduit model” which expects the interpreter to be a “faithful conduit”, because he brought in evidence that was not mentioned in the original words.

The interpreter’s role is to interpret verbal and non-verbal communications from the SL into the TL. The situation in this case was that the magistrate did not agree with the estimation of the distance made by the interpreter. This is indicated by the fact that the magistrate says “Yes, but that is not the evidence before the court” (Lebese 2011:350). The explanation for this seems to be the fact that the witness himself did not make mention of “three meters” but only indicated the distance with a gesture. The magistrate did not openly mention that he was objecting to what the interpreter said, but the fact that he asked the prosecutor what the distance was, is an indication that he did not accept the interpretation.

#### 4.1.4 Case study 4: Assault – Trial

This case involved two adults. The accused was a male person who assaulted a complainant who was a female person. In this case the following was said:

<b>Magistrate/Prosecutor/ Lawyer/Advocate</b>	<b>Interpreter</b>	<b>Accused/Witness</b>
<p><b>P:</b> Where did the accused assault you with a golf stick? <b>[ST1]</b></p>	<p>Molatofadiwa o go otlile fa kae ka golf stick? <b>[TT1]</b></p> <p><b>Backtr:</b> Where did the accused hit you with a golf stick?</p>	<p>_____</p>
<p>_____</p>	<p>He assaulted me (- here) (+ on the shoulder) <b>[leave out words and adds other words]</b> <b>[TT2]</b></p>	<p><b>W:</b> O ntšhpile mo (witness indicating on the shoulder). <b>[ST2]</b></p> <p><b>Backtr:</b> He hit me here (witness indicating on the shoulder).</p>



<p><b>P:</b> How many times did he assault you with a golf stick? <b>[ST3]</b></p>	<p>O go otlile ga kae ka golf stick? <b>[TT3]</b></p> <p><b>Backtr:</b> How many times did he hit you with a golf stick?</p>	<p>_____</p>
<p>_____</p>	<p><b>(+ Only)</b> once. [add word] <b>[TT4]</b></p>	<p><b>W:</b> Gangwe. <b>[ST4]</b></p> <p><b>Backtr:</b> Once.</p>
<p><b>P:</b> And did you sustain any injuries? <b>[ST5]</b></p>	<p>A o ne wa bona dikgobalo? <b>[TT5]</b></p> <p><b>Backtr:</b> (- And) did you sustain any injuries?</p>	<p>_____</p>
<p>_____</p>	<p>No. <b>[TT6]</b></p>	<p><b>W:</b> Nnyaya. <b>[ST6]</b></p> <p><b>Backtr:</b> No.</p>

Extracted from Lebesse (2011:350)

In this case, the interpreter failed to interpret the words of the witness namely, “he hit me here” instead, he mentioned the body part that the witness had indicated (Lebesse 2011:350). There are instances during the court proceedings when words might lack the capacity to carry the whole weight of a conversation or speech, that is, all the messages encoded in the course of it, because our lexicons, our “dictionaries” are extremely poor when compared to the capacity of the human brain to encode and decode an infinitely wider gamut of meaning which we refer to as “ineffable” (Poyatos 1983 in Pöchhacker & Shlesinger 2002).

The role of non-verbal communication is in replacing, supporting, repeating or contradicting what is being said verbally. It can provide additional information to what is said verbally, by repeating what is said in words, by supporting this or by contradicting it (Poyatos 1983 in Pöchhacker & Shlesinger 2002).

Hand gestures are used by witnesses in court for various reasons. It may be that the witness wants to convey a message that he or she is unable to transmit verbally as a result of nervousness or because of a lack of eloquence or because this form of nonverbal communication is culturally linked to language (Mikkelson 1998). However, one needs to bear in mind that non-verbal messages pose great difficulties for an interpreter when trying to reproduce a gesture made by a witness.

According to Mikkelson (1998) the court interpreter might misrepresent the testimony by pointing to a slightly different part of the body or by making a gesture that has a different meaning in the TL culture. She cautions interpreters to refrain from imitating gestures and suggests that they should simply interpret the witness's words. She argues that the judge and jury can see the witness themselves.

The interpreter in this case, as in Case 1, decided which utterance he would interpret and which he would not. Unlike in Case 3, the interpreter was not criticised by the magistrate. Instead, the magistrate wrote down what the interpreter said.

#### 4.1.5 Case Study 5: theft - Plea

In the following case the accused was an adult male person who was appearing in court on a charge of the theft of fifteen sheets of corrugated irons. In this case, the following was said:

<b>Magistrate/Prosecutor/ Lawyer/Advocate</b>	<b>Interpreter</b>	<b>Accused/Witness</b>
<p><b>P:</b> The accused is charged with theft. In that on or about the 7<sup>th</sup> day of July 2009 at Majakaneng, in the district of Brits, the accused did unlawfully and intentionally, steal the following items, to wit 15 corrugated irons, the property or in the lawful</p>	<p>Jaanong, o bolela sekae? Molato o o pharwang ka ona ke wa go utswa. O bareng ka di 7 tsa July 2009, ko Majakaneng mo Brits, o utswutse ditshipi tse tsa Moses Phiri (not real name). O a o utlwisisa? O a dumela</p>	<p>_____</p>

<p>possession of Moses Phiri (not real name). [ST1]</p>	<p>kgotsa o a phega? [TT1] <b>Backtr:</b> (+ Now, what language do you speak?) The charge against you is one of theft. (+ Which they say) on the 7<sup>th</sup> of July 2009, at Majakaneng (- district of) Brits, (- the accused did unlawfully and intentionally) steal (- the following items, to wit 15) irons belonging to Mack Phokela. (+ Do you understand the charge? Do you plead guilty or not guilty?)</p>	
<p>_____</p>	<p>(-I plead) Not guilty, (+ your worship). [TT2]</p>	<p><b>A:</b> Ke a o phega. [ST2] <b>Backtr:</b> I plead not guilty.</p>
<p><b>M:</b> In terms of section 11 of the Criminal Procedure Act, yo may explain to the court why you plead not guilty. You are not obliged to do so. If you give an explanation, the court may ask you questions to establish what is in dispute between you and the state. You are also not obliged to answer questions. Do you understand? [ST3]</p>	<p>Jaanong, go ya ka molao wa 115 wa Criminal Procedure Act, ka gore o re wena ga o dumele molato, o tshwanetse gore o tlhalose gore ke eng o re ga o dumele molato. Le gore motlhamongwe go na le se e leng gore wa se dumela le se e leng gore ga o se dumele. Ene court ba ka go botsisa dipotsiso gona moo. [TT3] <b>Backtr:</b> (-Now) interms of section 115 of the Criminal Procedure Act, because you plead not guilty, you must explain to the court why you plead not guilty. (+And perhaps there is something that you admit and that you do not admit.) And the court</p>	<p>_____</p> <p>_____</p>

	may ask you questions regarding that.	
_____	_____	<b>A:</b> Nka bua? <b>[ST4]</b> <b>Backtr:</b> Can I speak?
_____	Ja bolela. <b>[ST5]</b> <b>Backtr:</b> Yes, speak.	_____
<b>M:</b> And you must also understand that you are not obliged to make any statement. You may exercise your constitutional right and remain silent and wait for the state to call its witnesses. <b>[ST6]</b>	Jaanong ga o gapeletsege gore o bolele. Ga ke re? O ka te kgethela gore o didimale, o se ke wa tlhalosa gore why o sa dumele molato. E be e ba prosecutor a pruvang case ya gage ntle le gore wena o tlhalose. Wa utlwisisa? <b>[TT6]</b> <b>Backtr:</b> (+Now) (-And you must also understand that) you are not obliged to (-make any statement)	_____
_____	(-You may exercise your constitutional right. and wait for the state to call its witnesses) (+and the prosecutor will be the one proving her case without speaking). Do you understand?	_____
_____	_____	<b>A:</b> Eya. <b>[ST7]</b> <b>Backtr:</b> Yes.
_____	Jaanong o nyako tlhalosa kgotsa o nyako didimale? <b>[ST8]</b>	_____

	<b>Backtr:</b> Now do you want to explain or do you want to keep quite?	
_____	I want to (+make a plea explanation) [TT9]	<b>A:</b> Ke batla go tlaolosa. [ST9] <b>Backtr:</b> I want to explain.
<b>M:</b> In the plea explanation the court does not expect you to tell the story of what happened. Yours is just to explain if you stole the items or how did you come to be in possession of the items. And you must also be informed that if the state does not prove the case of theft, the state may apply that you be found guilty of competent verdicts. The competent verdicts are attempted theft, possession of stolen property knowing it to be stolen and section 37. [ST10]	Jaanong, ga ba batle go itse tse tsothle. Wa utlwisisa? Ba nyaka gore o ba tlhalosetse gore wena o di tshwere ditshipi tseo, di mo wena le gore o di kereile jang na. Wa utlwisisa? Ge ba se na ba utlwa setori sa gago ba ka tšhentšha, motlhomong ba ka bona gore dilo tse ga o a di utswa. O di tshwere mo wena ka gore motlhomong o di beile mo wena. Oro, o di file ke motho. Wa bona dilo tse di jalo. [TT10] <b>Backtr:</b> (+ Now they do not want to know everything. Do you understand?) (+They want you to explain to them) <b>as to where you got the irons from.</b> (+ Do you have them, and how did you get them from? Do you understand? (+after hearing your story, they can change maybe they may be of the opinion that you did not steal these things. You have them in your possession because somebody kept them at your place. Or someone gave them to you. You	_____

	see? Things like that).	
_____	_____	<b>A: Ja. [ST11]</b> <b>Backtr:</b> Yes.
<b>M:</b> And you must be informed again that if the state does not prove the case of theft, the state may apply to the court that you be convicted of stolen property. <b>[ST12]</b>	Ba nyaka go itse gore ge e le gore wena ga o a di utswa, a re re ka gongwe wena o re ne ke di tshwere ditshipi tseo, ga o a di utswa, prosecutor a ka kopa court gore ba go kereye o na le molato. Ke gore motlhomong o ne o di tshwere, o di kereile mo mothong e le gore wa itse gore motho oo o tlhaga go di utswa, or o di kereile mo mothong... <b>[TT12]</b> <b>Backtr:</b> (+They want to know if you did not stel them, let's say maybe you say you had those irons in your possession, the prosecutor may ask) <b>court to find you guilty</b> (+because maybe you had them in your possession and you found them from another person knowing that that person had stolen them or you found them from a person ...	_____
_____	Eh, competent verdict your worship ... <b>[ST13]</b>	_____
<b>M:</b> Attempted theft, possession of stolen property and receiving stolen property. <b>[ST14]</b>	O lekile go di utswa, o di amogetse e le gore ba go file tsona o ntse o itse gore di utswitswe. Motlhomong ba di beile	_____

	<p>mo wena e le gore wena wa itse gore di utswitswe. Wa utlwisisa. <b>[TT14]</b></p> <p><b>Backtr:</b> You tried to steal them, you received them and they gave them to you and you knew that they are stolen. Maybe they put them at you place and you knew that they are stolen.</p>	
_____	<p>Understood, your worship. <b>[TT15]</b></p>	<p><b>A:</b> Eya, ke a tihaloganya. <b>[ST15]</b></p> <p><b>Backtr:</b> Yes, I understand.</p>
_____	<p>Ja, ka bokhutswane fela. <b>[ST16]</b></p> <p><b>Backtr:</b> Yes, just in short</p>	_____
_____	<p><b>[TT17]</b> I bought 7 corrugated irons from a person.</p>	<p><b>A:</b> Ke rekile masenke a 7 mo mothong. Fela. <b>[ST17]</b></p> <p><b>Backtr:</b> I bought 7 corrugated irons from a person.</p>
_____	<p>O di rekile fela wena? <b>[ST18]</b></p> <p><b>Backtr:</b> You only bought them?</p>	_____
_____	_____	<p><b>A:</b> Ee di teng. <b>[ST19]</b></p> <p><b>Backtr:</b> Yes, I have them.</p>
_____	<p>And I have them. <b>[ST20]</b></p>	_____

<p><b>M:</b> Is the person you bought from selling corrugated irons? [ST21]</p>	<p>Motho o o di rekileng ko ena o rekisa masenke? [TT21]</p> <p><b>Backtr:</b> Is the person you bought from selling irons?</p>	<p>_____</p>
<p>_____</p>	<p>No, your worship. He just told me that he is selling corrugated irons cheap and I bought them. [TT22]</p>	<p><b>A:</b> E e. O ne a mpo ditse gore o a rekisa cheap. Ka a reka fela. [ST22]</p> <p><b>Backtr:</b> No he told me that he was selling them cheap and I bought them.</p>
<p><b>M:</b> Were corrugated irons found in your possession? [ST23]</p>	<p>Masenke, ba a kereile mo wena? [TT23]</p> <p><b>Backtr:</b> Were corrugated irons found in your possession?</p>	<p>_____</p>
<p>_____</p>	<p>Yes. [TT24]</p>	<p><b>A:</b> Ee. [ST24]</p> <p><b>Backtr:</b> Yes.</p>
<p><b>M:</b> The state. [ST25]</p>	<p>_____</p>	<p>_____</p>
<p><b>P:</b> The state calls Phiri, Moses Phiri (not real name).</p>	<p>_____</p>	<p>_____</p>

Extracted from Lebesse (2011:351)

The interpreter therefore made some additions to his interpretation by asking the accused whether he was pleading guilty or not. It is the duty of the presiding judicial officer to ask the accused whether he pleads guilty or not, not the duty of the interpreter. The interpreter should have interpreted only what the magistrate said.



The second point of interest is that the court interpreter interpreted in the third person. The interpreter said the following “O ba reng ka di 7 tsa July 2009 ko Majakaneng mo Brits” (In which they say on the 7<sup>th</sup> of July 2009 at Majakaneng in Brits). The interpreter seems to distance himself, making it clear to the accused that what has been said was not said by him. Interpreting in the third person may cause confusion in the court record because it appears as if the interpreter uttered the words and not the speaker.

According to Christens (in Shlesinger & Pöchhacker 2010) the rules and regulations of legal interpreting states that the use of direct rather than reported speech is an established standard in a range of countries, which means that the first person narrative voice and direct speech can be regarded as universal norms. The idea is that if the primary participants in court address each other directly, the directness of the communication may be enhanced. In court interpreting accuracy is seen as a guarantee of the rule of law and therefore the first person is one of the recommended forms of address.

In dealing with the issue of indirect address, Dubslaff and Martinsen (2005 in Shlesinger & Pöchhacker 2010) observes that the switches from direct to indirect address by primary parties are closely related to the form or content of the interpreters’ prior utterance, for example, in response to incorrect renditions. Switches to indirect address may be necessary in order to clarify the authorship of particular utterances. In this instance, this was not the case and the interpreter did not have to use indirect or reported speech.

#### 4.1.6 Case Study 6 Table: Reckless or Negligent Driving - Plea

In the following case the accused was an adult female person represented by a lawyer. She was charged with reckless or negligent driving. In this case the following was said:

<b>Magistrate/Prosecutor/ Lawyer/Advocate</b>	<b>Interpreter</b>	<b>Accused / Witness</b>
<b>P: (ST1)</b> The charge against the accused is reckless or negligent	Ausi, molato wa gago ke wa go kgweetsa botlhaswa,ne.O	_____

<p>driving. In that on or about the 11<sup>th</sup> of October 2008, at or near Letlhabile road, in the district of Brits, the accused did wrongfully drive a vehicle to wit, a Ford Sierra, with registration number FXP 395 GP recklessly or negligently.</p>	<p>latofadiwa gore ka di 11 tsa October 2008, mo Letlhabile mo kgaolong ya Brits, o dirile ka fa go fosagetseng wa kgweetsa sejanaga, e leng Ford Sierra sa plate number FXP 395 GP, mo tseleng e e dirisiwang ke botlhe, wa se kgweetsa botlhaswa. Wa tlhaloganya se go tweng o se dirile? <b>(TT1)</b></p> <p><b>Backtr:</b> (+Sister), the charge against you is one of driving (+careslessly, ne). You are accused that on the 11<sup>th</sup> of October 2008, at Letlhabile, in the district of Brits, you wrongfully drove a vehicle, to wit, Ford Sierra, with (+plate) (-registration) number FXP 395 GP, on the road that is used by everyone, and drove it carelessly. (+ Do you understand what they say you did?)</p>	
<p>_____</p>	<p>I understand (+ the charge) <b>[TT2]</b></p>	<p><b>A:</b> Ke a tlhaloganya. <b>[ST2]</b></p> <p><b>Backtr:</b> I understand.</p>
<p><b>M:</b> How do you plead to the charge? <b>[ST3]</b></p>	<p>A o ipona molato kgotsa ga o ipone molato? <b>[TT3]</b></p> <p><b>Backtr:</b> (- How do you plead to the charge? (+Do you plead guilty or not guilty?)</p>	<p>_____</p>
<p>_____</p>	<p>(-I plead) Not guilty. <b>[TT4]</b></p>	<p><b>A:</b> Ga ke ipone molato. <b>[ST4]</b></p>

		<b>Backtr:</b> I plead not guilty.
<b>L:</b> The plea is in accordance with my instructions, your worship. The accused elect to exercise her rights to remain silent and wait for the state to call its witnesses. <b>[ST5]</b>	Mmueledi wa gago o tlhalosetsa lekgotla gore ke nnete gore ga o ipone molato. Ga o fane ka tlhalose ya go se ipone molato mme o letela motšhotšhisi gore a bitse dipaki. <b>[TT5]</b>  <b>Backtr:</b> Your lawyer explains to the court that it is true that you told him that you plead not guilty. You do not give an explanation but you will wait for the prosecutor to call her witnesses.	_____
<b>M:</b> Do you confirm? <b>[ST7]</b>	Go ntse jalo? <b>TT7</b> <b>Backtr:</b> Is that so?	_____
_____	<b>(-Yes)</b> I confirm. <b>[TT8]</b>	<b>A:</b> Ee. <b>[ST8]</b> <b>Backtr:</b> Yes.

Extracted from Lebesse (2011:351)

The first point is that the interpreter in this case lengthened his interpretation by including linguistic material in his Setswana rendition which was not present in the original. He did this by adding “Ausi” (Sister) to his interpretation. The word “Ausi” (Sister) is used in Setswana culture when you address a woman who is older than you; it is a form of respect and indicates politeness.

In instances such as the one described above, Morris (1989) points out that some interpreters regard themselves as intercultural as well as interlingual mediators by allowing themselves to add “culture-bound” references in order to make communication more effective. According to Berk-Seligson (1990/2002) interpreters add polite forms of address whenever their need for politeness becomes dominant. Jansen (1992) speculates that the addition of the dialogue may be caused by the interpreter’s fear of losing information which might lead to his or her inability to preserve the plausibility of the speaker’s story. He also demonstrates that the interpreter often includes additions to compensate for the different formality levels of the participant’s speech, that is, the formal speech of court officials versus the very informal speech of a particular speaker.

The second aspect of this case is that the court interpreter in this case is taking up the duty of the magistrate. The interpreter asked the accused “Wa tlhaloganya se go tweng o se dirile?” (Do you understand what they say you did?) (Lebese 2011:351). It is not the duty of the court interpreter to ask the accused whether he or she understand. The interpreter is required to interpret what was said and the magistrate is the person who should ask the accused whether he or she understands the charge.

Erasmus (2009) states that presiding officers are obliged to facilitate the participation of the accused in the trial proceedings by advising them of their rights and duties and assisting them in the exercise of their procedural choices. He further adds that in the case of *S v Rapholo and others* (2004) JOL1 3086 (T) 1, it was held that the explanation of the rights of an accused person at various stages of the proceedings must be comprehensive and the presiding officer must be satisfied that the accused has understood the explanation of their rights. It is not the duty of the interpreter to ascertain whether the accused understands his or her rights.

#### **4.1.7 Case Study 7 table: Possession of dagga case: Plea**

In the following case the accused was an adult male who was arrested for being in the possession of dagga. In this case the following was said:

Magistrate/Prosecutor/ Lawyer/Advocate	Interpreter	Accused/Witness
<p><b>P:</b> The accused is charged with possession of drugs. In that on or about the 12<sup>th</sup> of August 2010, at or near Carel de Wet Avenue, in the district of Brits, the accused did unlawfully have in his possession an undesirable dependency-producing substance, to wit 285 grams of dagga. As the court pleases. <b>[ST1]</b></p>	<p>Ja, wena o rweSiwa molato wa go fumanwa o tshwere matekweane. Ka di 12 tsa kgwedi yona e e satswang go feta, mo seterateng sa bitswang Carel de Wet, o ne o tshwere matekweane a a etsang 285 grams. Wa utlwa rra? <b>[TT1]</b></p> <p><b>Backtr:</b> (+ Yes) you are accused of being found in possession of dagga. (- in that or or about) the 12<sup>th</sup> of (+ of this past month) (- August 2010, at or near) (+ on the street called) Carel de Wet, (- the accused did unlawfully) you were in possession of (- an undesirable dependency producing substance, to wit) dagga (+ weighing) 285 grams. (+ Do you hear, sir?) (- As the court peases.).</p>	<hr/>
<hr/>	<p>(+ I understand the charge put to me.) (- Yes, sir) <b>[TT2]</b></p>	<p><b>A:</b> Ee rra. <b>[ST2]</b></p> <p><b>Backtr:</b> Yes, sir.</p>
<hr/>	<p>O ipona molato kampo ga o ipone molato? <b>[ST3]</b></p> <p><b>Backtr:</b> Do you plead guilty or not guilty? (+ Do you plead guilty or not guilty?)</p>	<hr/>

Magistrate/Prosecutor/ Lawyer/Advocate	Interpreter	Accused/Witness
_____	<b>(TT4):</b> I plead guilty.	<b>A:</b> Ke ipona molato. <b>[ST4]</b> <b>Backtr:</b> I plead guilty.
<b>Adv:</b> I have prepared a statement in terms of section 112 (1) (b), May I please read it into the record? <b>[ST5]</b>	_____	_____
<b>M:</b> Yes, you may proceed sir. <b>[ST6]</b>	_____	_____
<b>Adv:</b> I, the undersigned, Theo Matome, <b>[ST7]</b>	Wena o Theo Matome. <b>[TT7]</b> <b>Backtr:</b> (-I, the undersigned) <b>(+You)</b> are Theo Matome	_____
states under oath that: <b>[ST8]</b>	O bua jwale o ikanne <b>[TT8]</b> <b>Backtr:</b> You <b>(+ now)</b> speak under oath	_____
<b>Adv:</b> I am the accused in this matter, <b>[ST9]</b>	Ke wena o qoswang. <b>[TT9]</b> <b>Backtr:</b> <b>(+You)</b> are the one) <b>accused (- in this matter)</b>	_____
<b>Adv:</b> of being in possession of dagga <b>[ST10]</b>	Wa go fumanwa o tshwere matekwane <b>[TT10]</b> <b>Backtr:</b> Of being found	_____

Magistrate/Prosecutor/ Lawyer/Advocate	Interpreter	Accused/Witness
	in possession of dagga	
<b>Adv:</b> I am pleading guilty to this offence [ST11]	O ipona molato nyeweng ena. [TT11] <b>Backtr:</b> (+You) (-I) plead guilty to this charge	_____
<b>Adv:</b> I submit that I plead guilty voluntarily [ST12]	Ga o a gapeletswa go dumela molato ona. O a dumela ka bowena [TT12] <b>Backtr:</b> (-I submit that) (+You are not compelled to plead guilty to this charge.) You plead guilty voluntarily.	_____
<b>Adv:</b> I plead guilty on the following reasons. [ST13]	O re o dumela molato ona ka mabaka a a latelang. [TT13] <b>Backtr:</b> (-I) (+You say you) plead guilty on the following reasons.	_____
<b>Adv:</b> On the 2 <sup>nd</sup> day of September 2010, I was walking in Carel de Wet street in Brits. [ST14]	O re letsatsing leo la di 2 September o ne o tsamaya mona seterateng sa Carel de Wet mo Brits. [TT14] <b>Backtr:</b> (+You say on that day of the) 12 <sup>th</sup> of September, you were walking (+here) on Carel de Wet street in Brits.	_____
<b>Adv:</b> I was approached by the member of SAPS	Jwale e be e re ha o tsamaya, leponisa le be	_____

Magistrate/Prosecutor/ Lawyer/Advocate	Interpreter	Accused/Witness
and he requested to search me. [ST15]	re hei monna ema ke o setšhe. [TT15]  <b>Backtr:</b> (+Now, as you were walking, a police then said, hey man, stop let me search you) (-I was approached by the member of SAPS and requested to search me.)	
<b>Adv:</b> He found dagga in my possession. [ST16]	Wena wa fitlhelwa o tshwere matekwane go wena. [TT16]  <b>Backtr:</b> (+You were found in possession of dagga) (-He found dagga in my possession.)	_____

Extracted from Lebese (2011:351)

First, and above all, a court interpreter must remain neutral and impartial. As an official of the court system, he or she may have his or her ideas and emotions about the case but he or she should never allow them to surface or influence his or her work (Hertog & Lotriet 1997). The NAJIT (2005) Code of Ethics and Professional Responsibilities, states:

court interpreters are to remain impartial and neutral in proceedings where they serve, and must maintain the appearance of impartiality and neutrality, avoiding unnecessary contact with the parties. Court interpreters shall abstain from comment on matters in which they serve.



In this case the court interpreter did not remain impartial or neutral because he took over the duty of the magistrate by asking the accused a question of his own, “Wa utlwa rra?” (Do you hear, sir?). This is overstepping the boundaries of interpreting because it is not the interpreter’s duty to ask the court participants if they understand what has been explained to them (Lebese 2011:353). The court interpreter must interpret what is said and it is the duty of the magistrate to ask the accused whether he or she understands or hears what the charge is against him or her.

This view is emphasised by Berk-Seligson (1990, 2002) when she mentions that the court interpreter should not exist as a distinct verbal participant in his or her own right but should be an instrument through which one language (the SL), enters and another (the TL) exits. It is for situations like the one in Case 7 that the conduit model of interpreting was designed because court interpreters are expected to interpret everything that a court participant has said without becoming personally involved. In this case, the court interpreter became personally involved by asking his own question, thereby practising advocacy. He may have been acting in this way with the aim of satisfying himself that the accused understood his interpretation. However, one may ask why the interpreter did so and whether he was permitted to do it.

In this case there was again an instance of the interpreter taking over the duty of the magistrate. After interpreting the charge, the interpreter made an addition to his interpretation by asking the accused “O ipona molato kgotsa ga o ipone molato?” (Do you plead guilty or not guilty?). Erasmus (2009) mentions that from the first appearance of an undefended accused in court until the imposition of a sentence in the event of a conviction, explanations are directed at the accused by the presiding officer. These explanations are intended to explain the criminal-trial process as it progresses and they are referred to as procedural explanations. In addition the presiding officer should ensure that the accused understands what he has been informed of, by a question or statement confirming the same (Erasmus 2009). It is therefore not the duty of the court interpreter to ensure that the accused understands what he has been informed of.

In this instance, the court interpreter did not follow the “conduit model” because he provided more information by asking the accused whether he understood. The NAJIT (2005) states that court interpreters shall limit their participation in those matters in which they serve to interpreting and shall not give advice to the parties or engage in activities that can be construed as the practice of law.

The accused’s attorney read his statement in the first person but the court interpreter interpreted it in the second person. This is evident in the following interpretations:

“O re o dumela molato ona ka mabaka a a latelang” (You say you plead guilty on the following reasons), “O re letsatsing leo la di 12 August o ne o tsamaya mo seterateng sa Carel de Wet mo Brits” (You say on that day of the 12<sup>th</sup> of August you were walking on Carel de Wet street in Brits).”

The interpreter in this instance is not accurate in his interpretation because he brings in an addition such as “O re” (You say). Additions in interpreting distort the original message (Jacobsen 2003). The court interpreters should be aware that they must be faithful to target listeners and render a faithful interpretation.

#### 4.1.8 Case Study 8 Table: Reckless or Negligent Driving - Trial

In the following case the accused was an adult male person who was charged with reckless or negligent driving. In this case the following was said:

Magistrate/Prosecutor/ Attorney/Advocate	Interpreter	Accused/Witness
<p><b>P:</b> You may proceed, take it step by step. [ST1]</p>	<p>Ja o ka tswelapele wa tihalosetsa lekgotla gore ka lona letsatsi leo go diragetse eng. O thalose slow gore ba kgone go kwala dinoutsu, ne? [TT1]</p> <p><b>Backtr:</b> (+Yes) you may proceed (+to explain to the court what happened on that day. You must explain slowly so that they should able to write notes, ne?) (-take it step</p>	<p>_____</p>

	by step)	
_____	On that day I was driving on the public road. I was on my way to work. [TT2]	<p><b>W:</b> Ka letsatsi leo ke ne ke tsamaya mo N4 ke tla mosebetsing. [ST2]</p> <p><b>Backtr:</b> On that day I was travelling on N4 going to work.</p>
_____	The truck was in front of me. I was following that truck. [TT3]	<p><b>W:</b> Ne ke setse troko morago. [ST3]</p> <p><b>Backtr:</b> I was following a truck.</p>
_____	And the other truck was behind me. The truck that was following me. [TT4]	<p><b>W:</b> Ga ke ntse ke latelana le troko eo, e nngwe e tla ko morago. [ST4]</p> <p><b>Backtr:</b> Whilst I was following that truck, the one came from behind.</p>
<b>P:</b> So you know the driver of the truck that overtook you? [ST5]	<p>A na wa mo itse driver wa truck e e leng gore e ile ya go overtheika? [TT5]</p> <p><b>Backtr:</b> (-So) (+Do you) know the driver of the truck that overtook you?</p>	_____
_____	_____	<p><b>W:</b> Ee, ke driver e ka gore ka nako...(Interpreter interrupts) [ST6]</p> <p><b>Backtr:</b> Yes, it is this driver because at the time..(Interpreter interrupts) [ST2]</p>

_____	(+ Utlwella, Ba go botsa gore a na driver wa truck e e leng gore e go overtheikile, wa mo itse driver wa truck e e leng gore e ile ya go overtheika?) [ST7]  <b>Backtr:</b> (+Listen. They ask you if you) know the driver of the truck that overtook you?	_____
_____	_____	<b>W:</b> Ee. [ST8] <b>Backtr:</b> Yes.
<b>P:</b> Who is the driver of that truck? [ST9]	Ke mang driver wa truck eo? [TT9]  <b>Backtr:</b> Who is the driver of that truck?	_____
_____	It is Mr Themba [TT10]	<b>W:</b> Ke Mr. Themba. [ST10] <b>Backtr:</b> It is Mr. Themba.

Extracted from Lebesse (2011:353)

In this case the court interpreter adds information and interprets in the second person as well. The interpreter says to the witness: “Utlwella. Ba go botsa gore a na driver wa truck e leng gore e go ovatheikile, wa mo itse?” (Listen, they ask you whether you know the driver of the truck that overtook you, do you know him?) (Lebesse 2011:353). The interpreter is becoming emotionally involved instead of remaining neutral.

This is evident when he interrupts the witness before he can complete his sentence. It is not the duty of the interpreter to decide what the witness should say in answering a question, but this seems to be the case in this instance because he interrupts the witness before he can finish. According to the conduit model, the role of the interpreter is to interpret what the witness is saying, nothing more and nothing less. In other words, the interpreter should not add anything or advise the witness. It is also not up to the court interpreter to tell the witness to listen carefully. The interpreter is expected to be a conduit and to interpret the renderings without crossing the borders of the role.

In this case, the interpreter uses the word *-ne* which Wallmach (2004) refers to as a spoken language marker and which according to her, might be a choice related to interpreter's own communication management feature that is used when simultaneous interpreters are under pressure in order to manage their output. Allwood (in Wallmach 2004) mentions that management is necessary to ensure optimal on-line organisation of communication under changeable circumstances in the service of an underlying activity, where both communication and the underlying activity are under certain rational and ethical constraints. She is of the view that language markers allow interlocutors the flexibility to handle "on-line" any unforeseen changing circumstances and the result of this a remarkably robust system of communication.

#### 4.1.9 Case study 9 table: Reckless or Negligent Driving - Plea

In this case the accused was an adult male person who was represented by an advocate. The accused was charged with reckless or negligent driving. In this case the following was said:

<b>Magistrate/Prosecutor/ Lawyer/Advocate</b>	<b>Interpreter</b>	<b>Accused/Witness</b>
<p><b>P:</b> As the court pleases your worship. The charge against the accused is reckless or negligent driving. In that on or about the 16<sup>th</sup> of</p>	<p>A o tlhaloganya se ne o se bolellwa gore ka di 16 tsa June 2007, mo tseleng ya Letlhabile-Maboloka, o draivile koloj ya Nissan Sentra ka</p>	<p>_____</p>

<p>June 2007, and on Letlhabile-Maboloka road, a public road in the district of Brits, the accused did drive a vehicle to wit, Nissan Sentra with registration number CHC 680 NW, recklessly or negligently. [ST1]</p>	<p>botlhaswa le go se tlhokomele. O a tlhaloganya? [TT1]</p> <p><b>Backtr:</b> (-As the court pleases your worship. The charge against the accused is reckless or negligent driving.) (+Do you understand what you were told that) on the 16<sup>th</sup> of June 2007, (-and) on Letlhabile-Maboloka road (-a public road in the district of Brits) you drove a Nissan Sentra vehicle, recklessly and negligently. (+Do you understand?)</p>	
<p>_____</p>	<p>(- Yes) (+ I do understand the charge) [TT2]</p>	<p><b>A:</b> Ee. [ST2] <b>Backtr:</b> Yes.</p>
<p><b>M:</b> And how do you plead? [ST3]</p>	<p>Oipona molato kampo ga o ipone molato. [TT3]</p> <p><b>Backtr:</b> Do you plead guilty or not guilty</p>	<p>_____</p>
<p>_____</p>	<p>(- I plead) not guilty. [TT4]</p>	<p><b>A:</b> Ga ke ipone molato. [ST4] <b>Backtr:</b> I plead not guilty.</p>
<p><b>Adv:</b> As the court pleases your worship. The plea is in accordance with my instructions and furthermore the accused elects to exercise his rights to remain silent. [ST5]</p>	<p>_____</p>	<p>_____</p>

<p><b>M:</b> To shorten the proceedings, does the accused admit that on the 16<sup>th</sup> of June 2007, on Letlhabile-Maboloka road, he drove a Nissa Sentra with registration number CHC 680 NW. <b>[ST6]</b></p>	<p>_____</p>	<p>_____</p>
<p><b>Adv:</b> Indeed so, your worship. <b>[ST7]</b></p>	<p>_____</p>	<p>_____</p>
<p><b>M:</b> Do you confirm, sir? <b>[ST8]</b></p>	<p>O a netefatsa gore ka letsatsi le o ne o driva koloji ya Nissan Sentra, ya registration number CHC 680 NW? <b>[TT8]</b></p> <p><b>Backtr:</b> Do you confirm (- sir) (+ that on that day you were driving Nissan Sentra vehicle with registration number CHC 680 NW?)</p>	<p>_____</p>
<p>_____</p>	<p>(- Yes.) (+ Correct, I confirm) <b>[TT9]</b></p>	<p><b>A:</b> Ee. <b>[ST9]</b></p> <p><b>Backtr:</b> Yes.</p>

Extracted from Lebesse (2011:353-354)

As stated above, the role of the interpreter is to interpret all the renderings made during the court proceedings. Incomplete interpretation is therefore inaccurate interpretation. Accuracy means that the speech should be faithfully rendered into the TL by conserving all the elements of the original message (NAJIT (2005) Code of Ethics and Professional Responsibilities). The NAJIT (2005) calls upon the court interpreter to interpret all the renderings accurately. In this case, the interpreter did not accurately interpret the communications between the magistrate and the advocate representing the accused. The accused is the focus of attention and must be given all information so that he can rebut any evidence with which he does not agree. Omissions can have a negative impact on the accused because he may miss crucial information and this could have disastrous repercussions for him.

After the court interpreter interpreted the charge for the accused, she asked him the following question: “Wa tlhaloganya?” (Do you understand?) (Lebese 2011:354). It is the duty of the magistrate to ask the accused whether he or she understands a charge, and not the court interpreter. The interpreter interpreted a rendition and thereafter asked the accused whether he understood. There may be two reasons for doing this. Firstly, he may have wanted the accused’s confirmation to judge his own interpretation to make sure that the accused understood what was said to him. Secondly, it may be that the interpreter himself was not sure of his interpretation and wanted to satisfy himself that he had interpreted correctly.

The court interpreter may be doing this for a good cause; however, in practice such conduct is unacceptable because this is going beyond the task of interpreting. The court interpreter’s role is limited to that of being a conduit.

#### **4.1.10 Case Study 10 Table: Assault with Intent to do Grievous Bodily Harm - Plea**

In the following case the accused was an adult male person who was charged with assault with intent to do grievous bodily harm. The complainant was an adult male person. In this case the following was said:



Magistrate/Prosecutor/ Lawyer/ Advocate	Interpreter	Accused/Witness
<p><b>P:</b> The charge against the accused is that on or about the 28<sup>th</sup> day of November 2009, at or near Nkele's tavern at Majakaneng, in the district of Brits, the accused did unlawfully assault the complainant, an adult male person, by hitting him with a bottle with intent to cause him grievous bodily harm. <b>[ST1]</b></p>	<p>O latofatswa ka molato wa go otlala ka maikemisetso a go ntsha dikgobalo tse di masisi mo mmeleng. Go tse ka di 28 tsa November 2009, gona mo Nkele's tavern mo Brits, o ile wa otlala ena mongongoregi, wa mo ntsha dikgobalo tse di masisi mo mmeleng. A na wa utlwusisa molato o e leng gore ba go latofatsa ka ona? <b>[TT1]</b></p> <p><b>Backtr:</b> You are charged (+with an offence of hitting with the intention of causing grievous bodily harm. It is said that) <b>on the 28<sup>th</sup> (- day) of November 2009,</b> (here at) <b>Nkele's tavern in (- the district of) Brits, you did hit the complainant (- an adult male person) and caused him grievous bodily harm.</b> (+ Do you understand the offence that you are charged with?)</p>	<hr/>
<hr/>	<p>I do not understand the charge. <b>[TT2]</b></p>	<p><b>A:</b> Ga ke o tlhaloganye. <b>[ST2]</b></p> <p><b>Backtr:</b> I do not understand it.</p>
<hr/>	<hr/>	<p><b>A:</b> O tlile mo a re nna ke mo tlhabile ka thipa ... (Magistrate interrupts)</p>

Magistrate/Prosecutor/ Lawyer/ Advocate	Interpreter	Accused/Witness
		<p><b>[ST3]</b></p> <p><b>Backtr:</b> He came here and said that I stabbed him with a knife...(Magistrate interrupts)</p>
<p><b>M:</b> Hey listen. Listen and understand what is said. Don't tell us what you want us to hear. You understand? <b>[ST4]</b></p>	<p>Utlwella ne. O seke wa re tthalosetsa se wena o batlang gore rona re se utlwelle. Utlwella gore rona ra reng. Ne? O latofatswa ka molato wa go betha motho ka maikemisetso a go mo gobatsa mo mmeleng wa gagwe. Ka di 28 tsa November 2009 ko Nkele's tavern, gona mo Brits, wena o ile wa betha mongongoregi, wa mtheta ka lebotlolo. <b>[TT4]</b></p> <p><b>Backtr:</b> (- Hey) listen. (- Listen and understand what is said). Do not (- tell) (+ explain to us) what you want us to hear. (+ Listen what we are saying, alright. You are charged with with an offence of hitting a person with an intention of injuring him on the body. On the 28<sup>th</sup> of November 2009, at Nkele's tavern, here in Brits, you hit the complainant; you hit him with a bottle.)</p>	<hr/>

<b>Magistrate/Prosecutor/ Lawyer/ Advocate</b>	<b>Interpreter</b>	<b>Accused/Witness</b>
_____	_____	<p><b>A:</b> Ga ka mmetha <b>[ST5]</b> ... (magistrate interrupts.)</p> <p><b>Backtr:</b> I did not hit him ... (magistrate interrupts)</p>
<p><b>M:</b> Do you understand what is being said? <b>[ST6]</b></p>	<p>O a tlhaloganya se ba go bolellang sona? <b>[TT6]</b></p> <p><b>Backtr:</b> Do you understand what (- is being said?) (+ they say to you?)</p>	_____
_____	_____	<p><b>A:</b> Wa itse ga ke tlhaloganye. <b>[ST7]</b></p> <p><b>Backtr:</b> You know, I do not understand.</p>
<p><b>M:</b> Listen, listen. Either you plead guilty or not guilty. <b>[ST8]</b></p>	<p>Utlwella. Bolela gore o ipona molato kgotsa ga o ipone molato. <b>[TT8]</b></p> <p><b>Backtr:</b> Listen (- listen) (- Either)</p> <p>(+ Say that) you plead guilty or not.</p>	_____
_____	<p>Not guilty. <b>[TT9]</b></p>	<p><b>A:</b> Nna ga ke ipone molato. <b>[ST9]</b></p> <p><b>Backtr:</b> I plead not guilty</p>

Extracted from Lebesse (2011:354-355)

In this case, after interpreting the charge to the accused person, the interpreter added “A na wa utlwisisa molato o e leng gore ba go latofatsa ka ona?” (Do you understand the charge that they accused you of?) (Lebese 2011:355). The magistrate did not ask this question. It is the task of the magistrate to ask the accused person whether he or she understand the charge, and not the task of the court interpreter.

Secondly, the interpreter is interpreting in the second person instead of in the first person. This is clear when the court interpreter says “...molato o e leng gore ba go latofatsa ka ona” (the charge which you are accused of (Lebese 2011:355). This interpretation is not accurate because it differs from what was said originally. The interpreter is not being faithful to the target listener because the interpretation that he delivers is not identical to the original message in the SL.

The interpreter is expected to be a “faithful conduit” and to interpret the message without adding or subtracting anything from the meaning. Additions distort the meaning and this may have negative repercussions to the accused because the accused may make wrong choices based on this misinformation.

The spoken language marker *-ne* is also used by this particular interpreter and it was dealt with in Case Study 8.

**4.1.11 Case study 11 Table: Assault with Intent to do Grieveous Bodily Harm – Bail Application**

<b>Magistrate/Prosecutor/ Lawyer/Advocate</b>	<b>Interpreter</b>	<b>Accused/Witness</b>
<p><b>P:</b> Today is the 11<sup>th</sup> of November 2009. This is B-court, case number B439 of 2007. Presiding officer Mrs Matome (not real name), prosecutor Mrs Molefe (not real name) and interpreter is Mr Mashabe (not real name). The accused name is Sello Kgati (not</p>	<p>_____</p>	<p>_____</p>

<p>real names), accused number 1, Buti Kgomo (not real names) accused number 2 and Alfred Kekana (not real names) accused number 3. The three accused are represented by Mr Kruger (not real name). This is a bail application. It was postponed for further evidence. <b>[ST1]</b></p>		
<p><b>L:</b> Thank you, your worship. May I continue with the next witness, Mrs Masilo (not real names)? <b>[ST2]</b></p>	_____	_____
<p><b>M:</b> Yes. Gentlemen, you may be seated. <b>[ST3]</b></p>	_____	_____
<p><b>M:</b> Your full names. <b>[ST4]</b></p>	<p>Mabitso a gago ka botlalo <b>[TT4]</b></p> <p><b>Backtr:</b> Your full names.</p>	_____
_____	<p>Ruth Martha Masilo <b>[TT5]</b></p>	<p><b>W:</b> Ruth Martha Masilo (not real names) <b>[ST5]</b></p>
<p><b>M:</b> Do you have any objection to taking the oath? <b>[ST6]</b></p>	<p>A go na le se se ka go thibelang go ikana? <b>[TT6]</b></p> <p><b>Backtr:</b> Is there anything that can prevent you from taking an oath?</p>	_____
_____	<p>No (+objection, your worship) <b>[TT7]</b></p>	<p><b>W:</b> E e <b>[ST7]</b></p> <p><b>Backtr:</b> No</p>
<p><b>M:</b> Do you take the oath as binding on your</p>	<p>Ga o ikana o tla bolela se e leng nnete fela? <b>[TT8]</b></p>	_____

conscience? <b>[ST8]</b>	<b>Backtr:</b> When you (-Do you take the oath as binding on your conscience) (+swear, will you only tell the truth?)	
_____	Yes [TT9]	<b>W:</b> Ee <b>[ST9]</b> <b>Backtr:</b> Yes
<b>M:</b> Do you swear that the evidence you will tender shall be the truth, nothing but the truth? Raise your right hand and say “so help me God”. <b>[ST10]</b>	Fa e le gore se o tla se buang e tla nna nnete, nnete fela kwa ntle ga sepe se e leng nnete. Emisa letsogo la moja o re “Modimo nthuse”. <b>[TT10]</b> <b>Backtr:</b> (-Do you swear that the evidence you will tender) If what you will speak shall be the truth, the truth and nothing else, raise your right hand and say “So help me God”.	_____
_____	(-Help me God) (+Sworn in your worship). <b>[TT11]</b>	<b>W:</b> Modimo nthuse. <b>[ST11]</b> <b>Backtr:</b> Help me God.
<b>M:</b> Pleae continue Mr Kruger (not real name) <b>[ST12]</b>	_____	_____
<b>L:</b> As the court pleases your worship. <b>[ST13]</b>	_____	_____
<b>L:</b> Mrs Masilo, on the 8 <sup>th</sup> of June 2007, an incident occurred where the accused were involved. May you tell the court what you witnessed,	Jaanong, ka di 28 tsa June 2007, go na le tiragalo e e diragetseng e e neng e amana le bona banna ba. Jaanong, wena o ka tihalosetsa lekgotla	_____

<p>please? <b>[ST14]</b></p>	<p>se wena o se itseng ... (magistrate intervenes) <b>[TT14]</b></p> <p><b>Backtr:</b> (+Now) (-Mrs Masilo) on the 28<sup>th</sup> of June 2007, there is an incident that occurred (relating to these men.) (+Now) you may explain to the court (+what you know... (magistrate intervenes))</p>	
<p><b>M:</b> In fact it is on the 8<sup>th</sup>. <b>[ST15]</b></p>	<p>On the 8<sup>th</sup>? <b>[ST16]</b></p>	<p>_____</p>
<p>_____</p>	<p>Oh! Ka di 8 tsa June. O ka tlahosetsa lekgotla se wena o se boneng se se neng se amana le borre ba na. Wa utlwa? O ke number 1, wa bobedi ke number 2 wa boraro ke number 3. <b>[ST17]</b></p> <p><b>Backtr:</b> Oh! O the 8<sup>th</sup> of June. You may explain to the court what you saw which was related to these gentlemen. Do you hear? This one is number 1, the second one is number 2, the third one is number 3.</p>	<p>_____</p>
<p>_____</p>	<p>Mpule was not at home, eh, on that particular day. <b>[TT18]</b></p>	<p><b>W:</b> Ka letsatsi la teng Mpule (not real name) o ne a se teng. <b>[ST18]</b></p> <p><b>Backtr:</b> On that particular day, Mpule (not real name) was not there.</p>
<p>_____</p>	<p>When we called her she did not pick-up the phone.</p>	<p><b>W:</b> Ga re mo founela, o ne a sa tshware founu.</p>

	<b>[TT19]</b>	<b>[ST19]</b> <b>Backtr:</b> When we called her, she was not answering the phone.
_____	Two of her friends came. <b>[TT20]</b>	<b>W:</b> E be ditšhomi tsa gae di tla tse pedi. <b>[ST20]</b> <b>Backtr:</b> Then two of her friends came.
_____	I asked them where was Mpule. <b>[TT21]</b>	<b>W:</b> Ka ba botsa gore Mpule o kae. <b>[ST21]</b> <b>Backtr:</b> I ask them where Mpule was
_____	I (-then) told them that (I don't know where) Mpule is and when I (-we) call her she does not pick-up the phone. <b>[TT22]</b>	<b>W:</b> E be ke ba raya ke re Mpule ga a teng. Ge re mo founela ga a tshware founu. <b>[ST22]</b> <b>Backtr:</b> I then told them that Mpule is not present. When we call her she does not pick-up the phone.
_____	I then (-told) (+asked) Mpule's friends to call her because (+each time) (-when) they call her she answers the phone. <b>[TT23]</b>	<b>W:</b> E be ke raya ditšhomi tsa Mpule ke re ba mo founela ka gore bona ga ba mo founela o tshwara founu. <b>[ST23]</b> <b>Backtr:</b> I then told Mpule's friends that they must call her because when they call, she picks-up the phone.
_____	When they called Mpule, she told them where she was. <b>[TT24]</b>	<b>W:</b> Ge ba mo founela, a ba bolella gore o ko kae. <b>[ST24]</b> <b>Backtr:</b> When they called her, she told them where



		she was.
_____	I asked them if they know where Mpule is. [TT25]	<b>W:</b> E be ke ba kopa gore a ga ba itse gona ko Mpule a leng ko teng na. [ST25] <b>Backtr:</b> I then asked them if they did not know where Mpule was.
_____	They (-then) took us there. [TT26]	<b>W:</b> E be ba re isa. [ST26] <b>Backtr:</b> They then took us there.
_____	When we got there, we knocked (-and knocked) for a long time and the gentleman took time to open. [TT27]	<b>W:</b> E rile ga re tsena ko teng ra kokota, ra kokota. O tsere sebaka go bula mosimane o. [ST27] <b>Backtr:</b> When we got there, we knocked and knocked. He took a long time to open, this boy.
<b>M:</b> Who is Mpule? [ST27]	Mpule ke mang? [TT28] <b>Backtr:</b> Who is Mpule?	_____
_____	(-it is) My daughter. [TT29]	<b>W:</b> Ke ngwanake. [ST29] <b>Backtr:</b> It is my child.
_____	The (-boy) (+gentleman) opened after a long time. [TT30]	<b>W:</b> E rile morago ga sebaka, ke ge a bula ena mosimane o. [ST30] <b>Backtr:</b> After a long this boy then opened.
_____	I then asked him for Mpule. [TT31]	<b>W:</b> Ke ge ke mmotsa gore ke kopa Mpule. [ST31]

		<b>Backtr:</b> I then told him that I was asking to have Mpule.
_____	He said Mpule was not there. <b>[TT32]</b>	<b>W:</b> Are Mpule ga a teng. <b>[ST32]</b> <b>Backtr:</b> He said Mpule was not there
_____	I asked <b>(+the permission)</b> to search and he said he will call the police if I search. <b>[TT33]</b>	<b>W:</b> E be ke re ke kopa go setšha. A ba a re ga nka setšha, o mpiletsa maphodisa. <b>[ST33]</b> <b>Backtr:</b> I then asked if I can search. He said if I can search, he will call the police.
_____	I sent Mpule's sister to the police station to <b>(+go and)</b> tell the police. <b>[TT34]</b>	<b>W:</b> E be ke roma ausi wa Mpule ko police station gore a yo bolella maphodisa. <b>[ST34]</b> <b>Backtr:</b> I then sent Mpule's sister to the police station to tell the police.
_____	Mpule's sister then came with the police. <b>[TT35]</b>	<b>W:</b> Ausi wa Mpule ke ge a tla le maphodisa. <b>[ST35]</b> <b>Backtr:</b> Mpule's sister then came with the police.
<b>M:</b> Where were you when Mpule's sister went to call the police? <b>[ST36]</b>	O ne o le kae wena ga ausi wa Mpule a yo bitsa maphodisa? <b>[TT36]</b> <b>Backtr:</b> Where were you when Mpule's sister went to call the police?	_____

<hr/>	<p>I remained in the premises. [TT37]</p>	<p><b>W:</b> Ne ke setse mo jarateng. [ST37] <b>Backtr:</b> I remained in the yard.</p>
<hr/>	<p>Mpule's sister came with two police (+officers). [TT38]</p>	<p><b>W:</b> E be ausi wa Mpule a tla le maphodisa a mabedi. [ST38] <b>Backtr:</b> Mpule's sister then came along with two police officers.</p>
<hr/>	<p>When she came with the two police (+officers), these two gentlemen, number 1 and number 2, they greeted him and they asked him to bring Mpule. [TT39]</p>	<p><b>W:</b> E rile ga a tla le maphodisa, bo ntate ba ba bedi ba, number 1 le number 2, e rile ba tsena ba mo dumedisa. E be ba mo kopa gore a ntshe Mpule. [ST39] <b>Backtr:</b> Whe she came with the police, these two Gentlemen, number 1 and number 2, they greeted him. They then asked him to bring out Mpule.</p>
<hr/>	<p>He (-denied) (refused) and said Mpule was not there. [TT40]</p>	<p><b>W:</b> A gana a re Mpule ga a teng. [ST40] <b>Backtr:</b> He denied that Mpule was there</p>
<hr/>	<p>They asked him if (-he) (+she) knew that if they find Mpule they will arrest him. [TT41]</p>	<p><b>W:</b> Ba mmotsa ba re wa itse gore ga re ka kereya Mpule, ro go tshwara. [ST41] <b>Backtr:</b> They asked him if he knew that should we find Mpule, he will be arrested.</p>

<p>_____</p>	<p>_____</p>	<p><b>W:</b> A gana gore Mpule ga a teng. Ba tsena, ba setšha ba kereya Mpule a se teng. E rile ka nako e re tswa, nna ke le mo morago ga ntate o... (interpreter interrupts) <b>[ST42]</b></p> <p><b>Backtr:</b> He denied and said that Mpule was not there. They got inside and searched, they could not find Mpule. At the time when we went outside, I was behind this gentleman... (the interpreter interrupts)</p>
<p>_____</p>	<p>Ema pele, ba tsene ba setšha? <b>[ST43]</b></p> <p><b>Backtr:</b> Wait first, they got inside and they searched?</p>	<p>_____</p>
<p>_____</p>	<p>_____</p>	<p><b>W:</b> E rile ka nako e re tswa mo lebating, ntate o, a bula fridge, a kereya Mpule ka mo fridging. <b>[ST44]</b></p> <p><b>Backtr:</b> At the time when we went outside, this gentleman, opened fridge and he found Mpule inside the fridge.</p>
<p>_____</p>	<p>O re ba tsene? <b>[ST45]</b></p> <p><b>Backtr:</b> You say they got inside?</p>	<p>_____</p>
<p>_____</p>	<p>_____</p>	<p><b>W:</b> Ee. <b>[TT45]</b></p>

		<b>Backtr:</b> Yes.
_____	They entered. <b>[ST46]</b>	_____
_____	Searched for Mpule. <b>[TT47]</b>	<b>W:</b> Ba setšha Mpule. <b>[ST47]</b> <b>Backtr:</b> They searched for Mpule.
_____	When they were sure that Mpule is not there... <b>[TT48]</b>	<b>W:</b> Ee. E rile nako e ba leng sure gore Mpule ga a teng, ga re tswa ... (interpreter interrupts) <b>[ST48]</b>
_____	(-By the time we went out, this gentleman) <b>(+Accused number 1)</b> opened the fridge. <b>[TT49]</b>	<b>W:</b> E rile Ga re tswa, ntate o ke ge a bula fridge. <b>[ST49]</b> <b>Backtr:</b> When we went out, this gentleman then opened the fridge.
_____	(-When this gentleman found Mpule inside the fridge, ) The gentleman (-that we found with Mpule) <b>(+of that home)</b> tried to run away and then I grabbed him. (-we all grabbed him) <b>[TT50]</b>	<b>W:</b> E rile ga ntate o a kereya Mpule ka mo fridging, mošimane o re mo kereileng le Mpule, ke ge a re o a tshaba, e be ke mo tshwara. Ke ge re mo tshwara ba botlhe. <b>[ST50]</b> <b>Backtr:</b> When this gentleman found Mpule inside the fridge, the boy that we found with Mpule tried to runaway and I grabbed him. We all grabbed him.
_____	<b>(-These gentlemen)</b> Number 1 and number 2	<b>W:</b> Bo nate ba e be ba nthusa re mo tshwara.

	helped me and then we apprehended him. [TT51]	<b>[ST51]</b> <b>Backtr:</b> These gentlemen then helped me and we grabbed him.
_____	We grabbed him (and tried) to put him in the van. [TT52]	<b>W:</b> Ra mo tshwara re re re mo lokela mo veneng. [ST52] <b>Backtr:</b> We grabbed him in order to put him in the van.
_____	He was fighting, refusing to get into the (-van) (+bakkie) [TT53]	<b>W:</b> Na a lwa, a sa batle go tseba ka mo veneng. [ST53] <b>Backtr:</b> He was fighting and he did not want to get into the van.
_____	Police (-men) (+officers) phoned the police station (-and asked the police to come and help them) (+for back-up) [TT54]	<b>W:</b> Bo ntate ba maphodisa ba founela ko police station gore maphodisa batlo ba thusa. [ST54] <b>Backtr:</b> The police men called the police station and asked other police to come and help them.
_____	(-When the police arrived) (Once the police were in,) there was a (+a lot) of havoc because he was refusing to get into the van. [TT55]	<b>W:</b> Ee. Maphodisa a le ge a tla, go sa le gwa nna le tlhakatlhakano. Go se tlhole go bonala pila gore go iragalang. Ke ge e setse e le mashata, a gana go namela ka mo veneng. [ST55] <b>Backtr:</b> Yes. When those police came, there was havoc. One could not see clearly that was happening. The was a lot

		of noise. He refused to get into the van.
_____	When (+other) police came, there was a lot of (+commotion, fighting eh) (-he did not want to get into the van) (+that gentleman) refusing to get into the van. [TT56]	_____
_____	That is (-what I saw) (+all) [TT57]	<b>W:</b> Ke sona se ke se boneng. [ST57] <b>Backtr:</b> That is what I saw.

In this case, the interpreter omitted the first part of the case as indicated on the case table because it was not interpreted. There are other omissions by the interpreter which have been indicated on the table.

The case also comprises a number of the interpreter's additions. The interpreter in other instances made some additions in his interpretation. For example, the witness was asked if he had any objection in taking the prescribed oath. The witness's reply was "No". The interpreter after translating the reply of the witness, added the words "objection, your worship" and his rendition became "no objection your worship". However, the meaning is the same, with the addition of "your worship".

The aspects of omissions and additions were discussed in other cases above and they cannot be overemphasized in this case. The Court Interpreters' Oath discussed in detail in Case 1 and in other cases as well, states that the interpreter shall interpret truly and correctly. This is not the case regarding the interpreter in this case. Pym (2008) observes that any significant gap in the output is likely to be high risk because the listener is not receiving information contained in the TT.

**4.1.12 Case Study 12 Table: Assault with Intent to do Grievous Bodily Harm - Trial**

<b>Magistrate/Prosecutor/Lawyer/Advocate</b>	<b>Interpreter</b>	<b>Accused/Witness</b>
<p><b>P:</b> Your worship case number C217/2009, the State against Peter Modise (not real names). This case was postponed for the accused witness today. <b>[ST1]</b></p>	<p>_____</p>	<p>_____</p>
<p><b>M:</b> Yes accused. Is your witness here today? <b>[ST2]</b></p>	<p>Paki ya gago e teng? <b>[TT2]</b> <b>Backtr:</b> Is your witness here?</p>	<p>_____</p>
<p>_____</p>	<p>Yes, (+your worship) <b>[TT3]</b></p>	<p><b>A:</b> Ee. <b>[ST3]</b> <b>Backtr:</b> Yes.</p>
<p><b>M:</b> Are you going to testify as well as your witness is also going to give evidence? <b>[ST4]</b></p>	<p>Jaanong, o tlo fa bopaki and then le ena o tlo fa bopaki? <b>[TT4]</b> <b>Backtr:</b> (+Now) are you going to give evidence (+and then) (-your witness) is also going to give evidence?</p>	<p>_____</p>
<p>_____</p>	<p>Yes. <b>[TT5]</b></p>	<p><b>A:</b> Ee. <b>[ST5]</b> <b>Backtr:</b> Yes.</p>
<p><b>M:</b> Take a stand. <b>[ST6]</b></p>	<p>E tla ka mo, ne. <b>[TT6]</b> <b>Backtr:</b> Come in here, right.</p>	<p>_____</p>



_____	<p>Wa se bolela Setswana? [ST7]</p> <p><b>Backtr:</b> Do you speak Setswana?</p>	<p><b>A:</b> E e. [ST8]</p> <p><b>Backtr:</b> No.</p>
_____	<p>Wa se utlwa? [ST9]</p> <p><b>Backtr:</b> Can you hear it?</p>	<p><b>A:</b> Ee. [TT9]</p> <p><b>Backtr:</b> Yes.</p>
<p><b>M:</b> Your full names. [ST10]</p>	<p>Mabitso a gago. [TT10]</p> <p><b>Backtr:</b> Your names.</p>	_____
_____	<p>Emmanuel Maroge. [TT11]</p>	<p><b>A:</b> Emanuel Marole. [ST11]</p>
_____	<p>Marole? [TT12]</p>	<p><b>A:</b> Marole. [ST12]</p>
<p><b>M:</b> Do you have any objection to take the prescribed oath? [ST13]</p>	<p>Go na le se se ka go thibelang go tsea maikano? [TT13]</p> <p><b>Backtr:</b> Do you have any objection to take (-the prescribed) oath?</p>	_____
_____	<p>No (+objection). [TT14]</p>	<p><b>A:</b> E e. [ST14]</p> <p><b>Backtr:</b> No.</p>
<p><b>M:</b> Swear him in please. [ST15]</p>	_____	_____
_____	<p>Jaanong, wa ikana gore bosupi bo o tlileng go bo fa mo court, e tla nna nnete, nnete fela. Go ka se be se seng kwa ntle ga nnete. Ge go le jalo, emisa letsogo la gago la go ja o re “Modimo</p>	_____

	<p>nthuse". <b>[ST16]</b></p> <p><b>Backtr:</b> Now, do you swear that the evidence that you shall give in court, shall be the truth, only the truth. There shall be nothing except the truth. If that is so, raise your right hand and say "So help God"</p>	
_____	_____	<p><b>A:</b> Modimo nthuse. <b>[ST17]</b></p> <p><b>Backtr:</b> Help me God</p>
_____	<p>O buelle ko dimo, ga ke re? <b>[ST18]</b></p>	_____
<p><b>M:</b> Can you tell the court what happened on 21<sup>st</sup> March 2009? <b>[ST19]</b></p>	<p>O ka bolella court gore ka di 21 tsa March 2009 go etsagetseng? <b>[TT19]</b></p> <p><b>Backtr:</b> Can you tell the court what happened on the 21<sup>st</sup> of March 2009?</p>	_____
_____	_____	<p><b>A:</b> Ka bo 4 ne ke le mo Oukasie mo rumung ya ka. <b>[ST20]</b></p> <p><b>Backtr:</b> At about 4, I was at Oukasie, in my room.</p>
_____	<p>Ka 4 ya neng? Vroeg or mantsiboana? <b>[ST21]</b></p> <p><b>Backtr:</b> When at 4? In the morning or in the afternoon?</p>	_____
_____	<p>Around 4 in the afternoon, I was in my room in Oukasie. <b>[TT22]</b></p>	<p><b>A:</b> Ya late. <b>[ST22]</b></p> <p><b>Backtr:</b> At late.</p>

_____	<p>Peter and his wife came and complained that my wife has stolen their items from their room on the... [TT23]</p>	<p><b>A:</b> Peter le mosadi wa gage ba tlile, ba khompleina ba re mosadi wa ka o ba utsweditse dilo mo rumung ya bona ka di 26 tsa January. <b>[ST23]</b></p> <p><b>Backtr:</b> Peter and his wife came and complained that my wife stole their items from their room on 26 of January.</p>
_____	<p>Neng? [ST24] Backtr: When?</p>	_____
_____	<p>On the 26<sup>th</sup> of January. <b>[TT25]</b></p>	<p><b>A:</b> Ka di 26 tsa January. <b>[ST25]</b></p> <p><b>Backtr:</b> On the 26<sup>th</sup> of January.</p>
_____	<p>I then told them that my wife (+only) came to Brits in February. <b>[TT26]</b></p>	<p><b>A:</b> Nna ka mmotsa gore mosadi wa ka o tlile mo Brits ka di ... ka bo February. <b>[ST26]</b></p> <p><b>Backtr:</b> I told him that my wife arrived in Brits on the ... around February.</p>
_____	<p>I (+then) went back to the house and slept. <b>[TT27]</b></p>	<p><b>A:</b> Ka boela ko ntlung, ka ya go robala. <b>[ST27]</b></p> <p><b>Backtr:</b> I went back to the house to sleep.</p>
_____	<p>(+And then) as I was ... <b>[TT28]</b></p>	<p><b>A:</b> Ga ke le busy ke le mo ntlung ka bo past 6, motlakase wa ka mo ntlung wa tima. <b>[ST28]</b></p> <p><b>Backtr:</b> When I was busy in the house, electricity in</p>

		my house went off.
_____	Ne o robetse? <b>[ST29]</b> <b>Backtr:</b> Were you sleeping?	_____
_____	As I was relaxing in the house, the electricity (+was switched off) (-went off). <b>[TT30]</b>	<b>A:</b> Ke be ke ntse fela mo ntlung ke relaxitse. <b>[ST30]</b> <b>Backtr:</b> I was just sitting in the house. Relaxing.
_____	Ne e le nako mang? <b>[ST31]</b> <b>Backtr:</b> What time was it?	_____
_____	Around 6 (+or 6) . <b>[TT32]</b>	<b>A:</b> Ka bo ma 6. <b>[ST32]</b> <b>Backtr:</b> At about 6.
_____	_____	<b>A:</b> Ga ke ya mo ntlung ya Peter, ka kereya go na le le boausi ba bangwe ba babedi. <b>[ST33]</b> <b>Backtr:</b> When I went to Peter's house, I found certain two ladies.
_____	Ge o ya ko ntlung ya Peter? <b>[ST34]</b> <b>Backtr:</b> When you went to Peter's house?	_____
_____	_____	<b>A:</b> Ja. Ko motlakase o leng ko teng. Ke ko RDP. <b>[ST35]</b> <b>Backtr:</b> Yes. Where the

		electricity is kept.
_____	When I went to Peter's house, it is an RDP house, I found two ladies. <b>[ST36]</b>	_____
_____	E le bo ausi ba babedi? <b>[ST37]</b> <b>Backtr:</b> Was it two ladies?	_____
_____	_____	<b>A:</b> Ee. <b>[ST38]</b> <b>Backtr:</b> Yes.
_____	I found two ladies. <b>[ST39]</b>	_____
_____	_____	<b>A:</b> Ba mmotsa gore ga ba na motlakase ko morago ka gore ba tseile motlakase mo rona. <b>[ST40]</b> <b>Backtr:</b> They told him that they do not have electricity at the back because they connected electricity from us.
_____	Ema pele. Ba irang? <b>[ST41]</b> <b>Backtr:</b> Wait first. What are they doing?	_____
_____	_____	<b>A:</b> Ba botsisa ka gore motlakase ko ba nnang ko teng ga o yo. <b>[ST42]</b> <b>Backtr:</b> They enquired regarding the fact that

		there was no electricity at their place.
_____	They were saying that there was no electricity where they are staying. <b>[ST43]</b>	_____
_____	And then I told him that in my house there is no electricity but in ... <b>[TT44]</b>	<b>A:</b> Le nna ga ke tsena fale, ka mmotsa gore ko ke n nang ko teng motlakase ga o teng. Ene mo RDP o teng. Why? <b>[ST44]</b>  <b>Backtr:</b> I also told him that there was no electricity at my place. And why?
_____	Mo RDP motlakase o teng. <b>[ST45]</b>  <b>Backtr:</b> At the RDP there is electricity.	_____
_____	_____	<b>A:</b> Mo RDP o teng. <b>[ST46]</b>  <b>Backtr:</b> It is there in the RDP.
_____	Mo RDP o ra mo ntlung ya gage? <b>[ST47]</b>  <b>Backtr:</b> At the RDP, you mean at his house?	_____
_____	_____	<b>A:</b> Ee. <b>[ST48]</b>  <b>Backtr:</b> Yes.
_____	But in the RDP there is electricity. <b>[ST49]</b>	_____

_____	_____	<p><b>A:</b> Ge re ba botsa Peter le mosadi wa gage ba thoma go omanyana le go rogana. <b>[ST50]</b></p> <p><b>Backtr:</b> When we asked them, Peter and his wife started to shout and swear.</p>
_____	<p>When I was talking to him, his wife gave him a spade. <b>[TT51]</b></p>	<p><b>A:</b> Ge nna ke le busy ke bua le ena, mosadi wa gage a mo fa spade. <b>[ST51]</b></p> <p><b>Backtr:</b> When I was talking to him, his wife gave him a spade.</p>
_____	<p>I (+was standing) (-stood) at the door and I retreated. Backwards. <b>[TT52]</b></p>	<p><b>A:</b> E be ke ema mo monyako. Ka boela morago. <b>[ST52]</b></p> <p><b>Backtr:</b> I then stood at the door and I moved backwards.</p>
_____	<p>(+I then) eh ... <b>[TT53]</b></p>	<p><b>A:</b> Ga ke boela ko morago ka gata kota. <b>[ST53]</b></p> <p><b>Backtr:</b> When I moved backwards, I tripped on a wooden stick.</p>
_____	<p>O re o rileng? <b>[ST54]</b></p> <p><b>Backtr:</b> You say he said what?</p>	_____
_____	<p>He came (+he kept coming) and then I was going, walking backwards. I then tripped on a piece of wood (+and</p>	<p><b>A:</b> O tswile le spade mara nna ga ke boela ko morago ka gata kota. <b>[ST55]</b></p> <p><b>Backtr:</b> He came out</p>

	I fell). [TT55]	having a spade. But when I moved back, I trapped on a wooden stick.
_____	_____	<b>A:</b> Ka ba ke e topa, ka ema. [ST56] <b>Backtr:</b> I then picked it up and I stood there.
_____	Wa topa kota e? [ST57] Backtr: You picked up this wooden stick?	_____
_____	_____	<b>A:</b> Ee. [ST58] <b>Backtr:</b> Yes.
_____	I then take that piece of wood and then I stood up. [ST59]	_____
_____	He then threw the spade to my head and then I blocked it with my hand. [TT60]	<b>A:</b> A ba a latlhela spade mo nna mo tlhogong and then ka se thiba ka letsogo. [ST60] <b>Backtr:</b> He then threw the spade to my head and then I blocked it with my hand.
_____	I then hit him with (+the wooden stick that I was having in my hand) [TT61]	<b>A:</b> Ka mmetha ka mofeng wa peke. [ST61] <b>Backtr:</b> I hit him with a pick steel.
_____	He (-also) hit me with a spade. [TT62]	<b>A:</b> Le ena a ba a mpetha ka spade. [ST62] <b>Backtr:</b> He also hit me with a spade.



_____	_____	<b>A:</b> Ge a boela ko morago, a ba a wa. <b>[ST63]</b> <b>Backtr:</b> When he moved backwards, he fell.
<b>M:</b> So, you say he threw a spade on you and you hit him with the wood? <b>[ST64]</b>	Jaanong, o re o konopetse spade mo wena? <b>[TT64]</b> <b>Backtr:</b> Now, you say he threw a spade on you (- and you hit him with the wood?)	_____
_____	He was hitting me with (- with it, holding it like this) (+a spade). <b>[TT65]</b>	<b>A:</b> Na a mpetha ka sona a se tshwere so. <b>[ST65]</b> <b>Backtr:</b> He was hitting me with it, holding it like this.
_____	E be? <b>[ST66]</b> <b>Backtr:</b> And then?	_____
_____	I then hit him with a wooden stick I was having. <b>[TT67]</b>	<b>A:</b> E be nna ke mmetha ka kota e ne ke e tshwere. <b>[ST67]</b> <b>Backtr:</b> I then hit him with a wooden stick which I was having.
_____	_____	<b>A:</b> Ge ena a re o boela ko morago ... (interpreter interrupts) <b>[ST68]</b>
_____	Should he continue your worship? <b>[ST69]</b>	_____
_____	When he walked backwards, he fell with a spade in his hands.	<b>A:</b> Ga a boela ko morago, a wa a tshwere spade ka letsogo. <b>[ST70]</b>

	<b>[TT70]</b>	<b>Backtr:</b> When he moved backwards, he fell with a spade in his hand.
_____	_____	<b>A:</b> Bo ntate ba babedi ba next door ba nkisa ko ntle. <b>[ST71]</b> <b>Backtr:</b> The two gentlemen from next door took outside.
_____	Ba go isa kae? <b>[ST72]</b> <b>Backtr:</b> Where did they take you?	_____
_____	<b>(+They)</b> took me out of the premises. <b>[TT73]</b>	<b>c:</b> Mo ntle ga jarata. <b>[ST73]</b> <b>Backtr:</b> Out of the premises.
<b>M:</b> Is that all you wanted to say? <b>[ST74]</b>	Ke tsothe tse o nyakang go di bolela? <b>[TT74]</b> <b>Backtr:</b> Is that all you wanted to say?	_____
_____	From there he <b>(-agreed)</b> switched on electricity and I went back to my room. <b>[TT75]</b>	<b>A:</b> Ja. Go tswa moo a dumela go laeta motlakase. Ka ikela ko rumung ya ka. <b>[ST75]</b> <b>Backtr:</b> Yes. Thereafter, he agreed to switch on the electricity. I then went to my room.
_____	<b>(+Police arrived and)</b> they told me that someone has said, told them, that I hit him with the wooden stick, eh a pick stick, in Oukasie. <b>[TT76]</b>	<b>A:</b> Ke ge ke tla utlwa maphodisa ba re go na le motho o mongwe a re ke mmethile ka mofeng wa peke mo Oukasie. <b>[ST76]</b> <b>Backtr:</b> I then heard the

		police saying that someone says I hit him with a pick steel at Oukasie.
<b>M:</b> Is it all? [ST77]	Go fedile? [TT77] <b>Backtr:</b> Is that all?	_____
_____	Yes (-that is all). [TT78]	<b>A:</b> Ja, go fedile. [ST78] <b>Backtr:</b> Yes, that is all.

In this case, like in Case 12 above, the interpreter omitted to interpret the introduction of the case made by the prosecutor. Other omissions done are indicated in the table. The case comprised of additions as well. These were seen where the interpreter provided extra information without being asked to do by the magistrate. In other instances the interpreter would ask questions out of his own accord. As discussed in Case 1 and others that followed, conduct such as the one by this interpreter is in contrast to the interpreters' oath.

#### 4.1.13 Case Study 13 Table: Contravention of a Protection Order - Plea

In the following case the accused is a male person who appeared in court to plead on a charge of contravening a protection order. In this case, the following was said:

<b>Magistrate/Prosecutor/ Lawyer/Advocate</b>	<b>Interpreter</b>	<b>Accused/Witness</b>
<b>P:</b> Case number C1304 of 2009. The State versus Adam Aubrey Claasen (not real names). The 5 <sup>th</sup> day of March 2010. Presiding officer Mrs Mogale (not real names), Prosecutor Mr Pitso (not	O latofatswa ka molato wa go tlola protection order. Wa utlwisisa? Ja, jaanong he, go twe protection order e o e eleditswe ka di 17 June 2009 gona mo Brits. E ne e go bolella gore wena o	_____

<p>real name), interpreter Miss Podile (not real name) and the accused is appearing in person, facing a charge of the contravention of section 17 (1) read with sections 1, 5, 6 and 17 of the Act of Family Violence Act of 1998. In that a protection order was issued on the 17<sup>th</sup> of June 2001 at the Magistrate Brits in terms of which the accused was ordered to refrain from harassing the complainant and her minor children and not to remove the properties and that the protection order was properly served on the accused. The protection order is still valid. That on the 17<sup>th</sup> day of December 2009 at or near Oukasie, in the district of Brits, the accused did wrongfully and intentionally contravene an instruction or an order provision as stipulated in the order in that the accused assaulted the complainant Dinah Sebogodi (not real names) by hitting her with a fist and an open hand, and also the complainant's child, Mary Phiri (not real names), by hitting her with open hands. <b>[ST1]</b></p>	<p>se ke wa tshwenyana kapa wa betha, kapa go lwa le mongongoregi. O se ke wa lwa le ena ebile o seke wa lwa le bana kgotsa go ba tshosetsa. Wa utlwisisa? Ebile ba go bolelletse gore o se ke wa tlosa dilo tsa gago mo ba nnang ko teng. Wena o nnile kgatlhanong le molao oo. Ka di 27 tsa December 2009, ko Oukasie, wena molatofadiwa, o ile wa o tla mongongoregi e leng Dinah Sebogodi. Wa mmetha ka feishi. Wa utlwisisa? Le gore gape wa o tla ngwana wa mongongoregi e leng ena Mary Phiri. Wa mmetha ka mpama mo sefathegong. A na wa utlwisisa molato o e leng gore ba go latofatsa ka ona? <b>[TT1]</b></p> <p><b>Backtr:</b> (-Case number C1304 of 2009. The State versus Adam Aubrey Claasen. The 5<sup>th</sup> day of March 2010. Presiding officer Mrs Mogale (not real names), Prosecutor Mr Pitso (not real name), interpreter Miss Podile (not real name) and the accused is appearing in person,) <b>You are accused with an offence of contravening a protection order. (+Do you understand? Yes, now, they say this) protection order was made against you here in Brits. It said that you must (+trouble) or hit the complainant. (+To fight with the</b></p>	
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	<p>complainant). (+You must not fight with her and you must not fight with children or to threaten them. They also told you that) you must not remove your items from where they stay. You contravened that (+law) . On the 27<sup>th</sup> of December 2009, at Oukasie, you (+the accused) you contravened that (+law) (-order) which was made against you. You hit the complainant namely, Dinah Sebogodi. You hit her with a fist. (+Do you understand?). And also that you hit the complainant's child namely, Marry Phiri (not real name) You slapped her in her face. (+Do you understand the charge against you?</p>	
_____	<p>Yes, I do understand (-it) (+the charge) [TT2]</p>	<p><b>A:</b> Ee, ka o utlwisisa. [ST2] <b>Backtr:</b> Yes, I understand it.</p>
<p><b>M:</b> How do you plead? [ST3]</p>	<p>(-How do you plead?) (+Do you plead guilty or not guilty?) [TT3]</p>	_____
_____	<p>I plead guilty. [TT4]</p>	<p><b>A:</b> Ke ipona molato. [ST4] <b>Backtr:</b> I plead guilty</p>
<p><b>M:</b> Yes, because you plead guilty to the charge, in terms of section 112(1)(b) of the Criminal</p>	<p>Utlwella he. Ka gore wena o ipona molato ka bowena, gona jaanong lekgotla le tla go botsisa</p>	_____

<p>Procedure Act, the court is going to ask you questions to establish whether you admit all the elements of the offence. And if the court is satisfied that you admit all the offence, you are going to be convicted on your plea alone. The state is not going to call any witnesses to prove your guilt. But if the court is not satisfied that you admit all the elements of the offence, a plea of not guilty will be entered on your behalf and the state will be afforded an opportunity to call its witnesses in order to prove that you are guilty. What you must remember is that any admissions that you made during this procedure, is that those admissions will stand against you even if a plea of not guilty is entered on your behalf. Do you understand? <b>[ST5]</b></p>	<p>dipotso. Wa utlwisisa? Ba leka go utlwisisa gore ka lona letsatsi leo go diragetse eng. Ene se o se tlhalosang ga e le gore, ka gore wena o re o ipona o na le molato go raya gore tlhaloso ya gago e tshwanetse e tsamaisane le ya motho o a iponang a na le molato. Ba tlo o tšhentšha gore wena ga o ipone molato. E tlo ba gore wena ga o ipone molato. Wa utlwisisa? Ene motšhotšhusi ena o tla fiwa sebaka sa gore ena a bitse dipaki, di witness tsa gage gore di kgone go tla di tlo fana ka bopaki. Wa utlwisisa? Ene o gopole gore se o tla se tlhalosang ka jeno, ba ka nna ba se berekisa ge go sekiwa molato. Wa utlwisisa? <b>[TT5]</b></p> <p><b>Backtr: (+Now listen.)</b>  Because you plead guilty, the court will now ask you question. <b>(+Do you understand?)</b> (-in terms of section 112(1)(b) of the Criminal Procedure Act, the court is going to ask you questions to establish whether you admit all the elements of the offence.)  They try to understand what happened on that day. Whatever you explain, because you say you plead guilty, must be what a guilty person will say. If not, they will change your plea to one of not guilty. Do you understand? The prosecutor will be given</p>	
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	<p>an opportunity to call witnesses to come and testify. Do you understand? You must remember that what you will explain today, can be used against you when the trial proceeds. Do you understand?</p>	
_____	<p>Yes, I do understand (+that) [TT6]</p>	<p><b>A:</b> Ee, ka utlwisisa. <b>ST6]</b> <b>Backtr:</b> Yes, I understand.</p>
<p><b>M:</b> Yes, you told the court that you understand the charge against you. Not so? [ST7]</p>	<p>O tlhaloseditse magiseterata gore o a o utlwisisa molato o e leng gore o latofatswa ka ona. Ke nnete? [TT7]</p> <p><b>Backtr:</b> You (-told) (+explained) (-court) (+the magistrate) that you understand the offence that you are charged with. (-Not so?) (+Is it true)</p>	_____
_____	<p>Yes. (+that is correct) [TT8]</p>	<p><b>A:</b> Ee. [ST8] <b>Backtr:</b> Yes.</p>
<p><b>M:</b> You plead guilty voluntarily, without any influence? [ST9]</p>	<p>A na o dumela molato ka bowena? Ga go na motho o e leng gore o go gapeleditse gore o ipone molato? [TT9]</p> <p><b>Backtr:</b> Do you plead guilty voluntarily? (-without any influence?) (+There is no person who forced you to plead guilty?)</p>	_____

<p>_____</p>	<p>Yes. I plead guilty out of my free will. [TT10]</p>	<p><b>A:</b> Ee. Ke o dumela ka bonna. <b>ST10]</b> <b>Backtr:</b> Yes. I plead guilty on my own.</p>
<p><b>M:</b> You admit that on the 17<sup>th</sup> of June 2009 in Brits magistrate Court, an order was made against you. Not to harass or assault the complainant, Dinah Sebogodi. <b>[ST11]</b></p>	<p>A na wa dumela gore ka di 17 tsa June 2009 ne o le gona mo court ya Brits. Ba ile ba go eletsa yona order e e go bolellang gore wena o se ke wa otlala kgotsa wa tshwenyana le mongongoregi e leng ena Dinah Sebogodi. <b>[TT11]</b></p> <p><b>Backtr:</b> Do you admit that on the 17<sup>th</sup> of June 2009 (+you were here at the court of Brits). (+They made) an order (+which told you) not to hit or trouble the complainant, who is Dinah Sebogodi.</p>	<p>_____</p>
<p>_____</p>	<p>_____</p>	<p><b>A:</b> Ena o ...(interpreter interrupts) <b>[ST12]</b> <b>Backtr:</b> She ..(interpreter interrupts)</p>
<p>_____</p>	<p>Magiseterata o batla go itse gore a na wa dumela gore ka di 17 tsa June 2009 mo Brits, ba ile ba go fa order e e go bolellang gore o seke wa otlala mongongoregi, e leng ena Dinah Sebogodi? <b>[ST13]</b></p> <p><b>Backtr:</b> The magistrate wants to know whether you admit that on the 17<sup>th</sup> of June 2009 at Brits, an</p>	<p>_____</p>



	order was made against you not to hit the complainant, Dinah Sebogodi?	
_____	(+Yes. I do confirm that) (-Yes. I admit) [TT14]	<b>A:</b> Ee. Ke a dumela. [ST14] <b>Backtr:</b> Yes. I admit.
<b>M:</b> And further that this order is still standing. [ST15]	Le gona gape wa dumela gore yona order e ba go fileng yona e santse e le mo molaong? [TT15] <b>Backtr:</b> And further (+you admit that the order that was made against you) is still valid?	_____
_____	_____	<b>A:</b> Ga ke itse gore a na e ile ya khanselwa. [ST16] <b>Backtr:</b> I do not know whether it was cancelled.
<b>M:</b> If it was cancelled, you could have been called and informed that it is now cancelled. [ST17]	Ge nke be e le gore ba e khansetse, ba ka ba ba ile ba go bitsa ba go bolella gore order e le ya di 17 June 2009, ra e khansela. [TT17] <b>Backtr:</b> If (+they cancelled it) they could have called you and told you that (+the order which was made on the 17 <sup>th</sup> of June) (+we) (-it is) cancelled now.	_____
<b>M:</b> So that never happened. [ST18]	Seo ga sa etsagala. [TT18] <b>Backtr:</b> That never happened.	_____

_____	(-Yes) (+That's correct, that never happened) [TT19]	<b>A:</b> Ee. [ST19] <b>Backtr:</b> Yes.
<b>M:</b> Yes. Do you agree that on the 27 <sup>th</sup> of December 2009 charges were laid against you? [ST20]	Wa dumela gore ka di 27 tsa December 2009 ba ile ba go bulela case? [TT20] <b>Backtr:</b> Do you agree that on the 27 <sup>th</sup> of December 2009. (-charges were laid against you) (+a case was opened against you?)	_____
_____	(Yes. They opened a case against me) (+Yes. That is correct)	<b>A:</b> Ee. Ba ile ba mpulela case. [ST21] <b>Backtr:</b> Yes. They opened a case against me.

The interpreter in this case, after translating the SL utterance asks the accused the following question: "Do you understand?" This is an addition to what was said in the SL. In this case, the interpreter like others in the above discussed cases contradicted the conduit model. The conduit model expects the interpreter to translate word-for-word without omitting or adding anything to the SL utterance.

The interpreter's translation, when compared to the SL utterances as indicated in the table, comprises a number of omissions. In TT1 the interpreter omitted the utterance "Case number C1304 of 2009". This utterance is part of the introduction of the case particulars by the prosecutor. This kind of omission is called "low-risk" omission because it does not change the core of an utterance and when such information is omitted, the interpretation does not change the meaning of what was said in the SL (Pym 2008). Another "low-risk" omission occurs in TT7 when he omitted the word "told" and substituted it with the word "explained". As mentioned in the cases above, it is not up to the interpreter to choose which renditions he or she will interpret and which not.

There is another kind of omission that is called “high-risk” omission. This omission is the opposite of “low-risk” omission in that it changes the meaning of what was said in the SL (Pym 2008). The “high-risk” omission appears in TT9 where the interpreter omitted the utterance “without any influence” and substituted it with the phrase “there is no person who forced you to plead guilty”.

According to Compact Oxford English Dictionary for Students (2006), the word “influence” means “the power to have an effect on someone’s beliefs or actions” or “the power arising out of one’s status”. The OALD (2011) defines “influence” as “the effect that something or somebody has on the way a person thinks or behave” or the power that somebody or something has to make somebody or something behaves in a particular manner”.

Chambers-Macmillian Dictionary (1996) states that you have an influence over someone if they tend to follow your advice agree with your opinion or copy your behaviour or the way you do things. The term “gapeletsa” (to force) in Setswana means that “someone has used their power over you” to make you do what they want you to do. In this case therefore, the interpreter has used a term “gapeletsa” (to force) which carries any of the definitions given by the dictionaries above. “Gapeletsa” (to force) without explaining in what way the person was forced, could be confusing and may lead to the accused not giving a correct answer and it may be very detrimental to him or her.

In TT1 the interpreter substituted the term “harassing” with the phrase “o se ke wa lwa le bana kgotsa go ba tshosetsa” (do not fight with the children or threaten them). The OALD (2011) defines “harass” as “annoy or worry somebody by putting pressure on them or saying or doing unpleasant things to them”. In Setswana “go lwa” (to fight) is not only restricted to physical fighting but it also includes “to argue” and “doing unpleasant things” (like passing remarks). In this case, the interpreter simplified the term “harass” by providing an explanation of what it can mean. This is what Toury (1980, 1995) terms “obligatory shifts” because this change is caused by the systemic formal differences between the SL(s) and the TL(s). The shift may also be an “optional shift” to reflect the interpreter’s decision-making as there is no evidence that this particular interpreter has mastered the ST and the TT which might have obliged him to choose the “obligatory shift” instead of the “optional shift”.

In the above section, the researcher analysed recorded court proceedings with the aim of examining the role that is played by court interpreters during trial. The outcomes were that court interpreters played different roles during interpreting and that there is no one common role among them.

For example, some interpreters added information during interpreting, others took the role of the magistrate and explained the rights to the accused and some omitted information during interpreting. The next section analyses legal documents to determine how they define the role of court interpreters in South African courts.

## **4.2 An analysis of South African legislation**

This section reviews South African legislations to establish whether the role of court interpreters has been defined. It also examines the comments made by judges and whether they have defined the role of court interpreters in any way. Following is an analysis of the the Magistrates’ Court Act 44 of 1944 (as amended) and the Constitution of the Republic of South Africa, Act 93 of 1996 (as amended)

### **4.2.1 The Magistrates’ Court Act 44 of 1944 (as amended)**

Section 6(2) of the Magistrates’ Court Act 44 of 1944 states the following:

If in a criminal case, evidence is given in a language with which the accused is not in the opinion of the court sufficiently conversant, a competent interpreter shall be called by the court in order to translate such evidence into a language with which the accused professes or appears to the court to be sufficiently conversant, irrespective of whether the language in which the evidence is given is one of the official languages or of whether the representative of the accused is conversant with the language used in the evidence or not.

Firstly, the Magistrates' Court Act 44 of 1944 (as amended) mentions a competent interpreter. The use of this adjective in describing interpreters is not explicit enough to determine the role of the interpreter. According to the *Oxford Advanced Learner's Dictionary* (OALD) (2011), competent means "having enough skills or knowledge to do something well or to the necessary standard". However, this meaning does not define the role of the court interpreter although it does describe the quality of the interpreter. Secondly, the Act describes the role of the interpreter as to "translate".

Pöchhacker (2010) observes that there is an expansive and varied theoretical territory of translation on which we might enrich our account of interpreting as a form of translation. Pöchhacker (2010) illustrates this by looking at the definitions of translation given by different scholars.

Rabin (1958 in Pöchhacker 2010) defines translation as a process by which a spoken or written utterance takes place in one language which is intended or presumed to convey the same meaning as a previously existing utterance in another language. Toury (1978/2000 in Pöchhacker 2010) defines translation as any utterance which is presented or regarded as a translation within a culture, on no matter what grounds. According to Pöchhacker (2010) the two meanings provided above accommodate interpreting and that each foregrounds different conceptual dimensions because "whatever is stipulated as an essential feature of translation, will carry over to our definition of interpreting and will have to be accounted for in subsequent efforts at description and explanation" (Pöchhacker 2010:12).

It is not clear to which of the meanings of translate the Act is referring to. This might be confusing to court interpreters because if they look up the meaning of “translate” they will not know which meaning to follow. In other words, the Magistrates’ Court Act fails to explain what it means by the term “translate”. The lack of a clearly defined meaning of this term by the Act could affect the very nature of the quality of court interpreting and compromise court interpreting. Since the Magistrate’s Court ACT 44 does not clearly define roles of interpreters, the researcher will examine the Constitution on South Africa in the next section.

#### **4.2.2 The Constitution of the Republic of South Africa, Act 93 of 1996 (as amended)**

Section 35(3)(k) of the Constitution of the Republic of South Africa, Act 93 of 1996 (as amended) states the following:

Every accused person has the right to a fair trial, which includes the right to be tried in a language that the accused understand, or if that is not practicable, to have the proceedings interpreted in that language.

The first aspect at issue here is that the Constitution does not mention the court interpreter or interpreters. The second aspect is that there is no definition of the word “interpreting”, nor does the Constitution define the role of court interpreters.

This lack of a clear definition of the role of court interpreters in legislation as discussed above may have a negative impact on the quality of court interpreting and this could affect the outcome of a case. Court interpreters are placed in a position where they do not understand exactly what is expected of them when carrying out their duties. In other words, there are no role expectancies and role boundaries that could make their task easier. Without these role boundaries, court interpreters may find themselves performing duties which are outside the boundaries of court interpreting.

### **4.2.3 Comments made by Judges of South African High Courts in Decided Cases**

In Section 1.1 the case of *State versus Naidoo* (1962:631) was used to introduce the study and showcase that in South Africa, there is no legislation governing the roles of interpreters. Outside this case, there are some cases that show how Judges view interpreters as shown below.

#### **4.2.3.1 The case of *State versus Mabona* 1973 (2) SA 614 AD**

In the case of *State versus Mabona* (1973:614 in *Hoexter et al* 1973 (2)) Judge Thompson stated that “the role of an interpreter ought to be that of an impartial conveyer of the words of the maker of the statement, and not the interrogator of him.” In this statement, the interpreter is defined as a conveyor of words. However, court interpreting involves the meaning of words. Conveying words means that court interpreters have to be involved in a word-for-word or literal interpretation which may distort the meaning of the original utterance.

#### **4.2.3.2 The case of *State versus Mpopo* 1978 (2) SA 424 AD**

In the case of the *State versus Mpopo* (1978:427 in *Duncan et al* 1978 (2)) Judge Corbett stated that “the role of a court interpreter is that of translating the words used by the witness into the language of the court”. Judge Corbett mentions “translating the words”, however, as indicated in the case above, interpreting involves translating the meaning of the words and not only the words. It is also not clear where Judge Corbett derived his definition from because he did not quote any reference to his definition.

These cases offer different perspectives of what an interpreter is: as a translator and as a conveyor of words. These definitions prove that there is no one definition of what an interpreter is, as such interpreters are open to manipulation because they are view differently by different people and these perspectives come with expectations.

### **4.3 Summary**

The analysis of the legislation discussed in this chapter reveals that the Magistrates' Court Act 44 of 1944 is vague in its definition of the role of court interpreters and does not clearly define this role. Such a situation may lead to confusion among court interpreters and this may affect the quality of interpreting as there are no clear guidelines regarding their role. The Constitution in turn does not define the role of court interpreters either, nor does it make any reference to court interpreters. Additionally, the judges in the South African High Courts have their own personal, conflicting views on the definition of the role of court interpreters. There is no consensus among them regarding this definition. Each judge had his own definition but none of them disclosed the source of these definitions; no references to legislation or to works of interpreting scholars were made.

### **4.4 Conclusion**

In this study, an analysis of extracts of court cases was carried out with an aim of examining the function or functions that are performed by court interpreters during trials. In the above extracts, court interpreters were observed performing the duties beyond those of interpreting. These include instances where the court interpreter was asked to explain the rights to legal representation to the accused and to administer an oath.

The interpreters did not handle these tasks properly because they omitted information or added certain details which did not appear in the form used to explain the rights to legal representation and the oath. The magistrates could not bring this to the attention of the interpreter because they did not understand the TL. This supports what is stated in the law, that these are not the duties of court interpreters but of judicial officers. In other instances the court interpreter asked his own questions such as whether the accused understood the charge he was facing. The court interpreter's conduct suggests that he was given a free hand by the presiding judicial officer and could do whatever he liked.



In situations where an interpreter did not interpret correctly, and where the interpretation included omissions and additions, Du Plessis (1997:1) states that some translators and court interpreters themselves often have misconceptions with respect to their role and function in different contexts. In other instances the court interpreter was found to be interpreting in the second person instead of in the first person. It is against this background that Roy (1993 in Pöchhacker & Shlesinger 2002) suggests that no one really knows where to draw the line in the involvement of the interpreter. Fritsch-Rudser (1988 in Pöchhacker & Shlesinger 2002) mentions that interpreters do not have difficulties with ethics but with their role, and this seems to be the position in the above cases where court interpreters were involved in tasks other than those of interpreting. One of the reasons for this situation is as a result of the lack of a clear definition of the role of the court interpreters.

The Magistrate's Court Act and the Constitution of South Africa are also not clear on what the role of court interpreters are and this results in a situation where court interpreters are exploited to carry out duties that are beyond their call-of-duty. Unfortunately, court interpreters themselves are not clear on what their duties are, hence, they consent to being used for duties that have nothing to do with interpreting. There is need therefore, for legislation that clearly defines the role(s) of court interpreters so as to set boundaries on what they can and cannot do. This will help to streamline their duties and in turn improve their quality of work.

## **CHAPTER 5**

### **CONCLUSION**

#### **5.1 Introduction**

This chapter provides a summary of the study. It discusses the results and conclusions reached in the study. This is followed by recommendations and suggestions for further research.

#### **5.2 Aims of the study**

As expressed in Section 1.4, the aim of the study was to investigate whether there is any legislation in South Africa that defines the role(s) of court interpreters: if no such legislation exists, how does the lack of a definition of the role of court interpreters affect the quality of court interpreting?

Legislation considered for the purposes of this study was the Magistrates' Court Act 44 of 1944 (as amended) and the Constitution of the Republic of South Africa, Act 93 of 1996 (as amended). The reason for considering these two pieces of legislation for this study was that the Magistrates' Court Act 44 of 1944 (as amended) regulates the proceedings in magistrates' courts and it explains, among others, the duties of various court officials. Court interpreting takes place in a court setting and the Magistrates' Court Act 44 of 1944 is thus relevant to this study. On the other hand, the Constitution of the Republic of South Africa, Act 93 of 1996 (as amended) was included as it is the highest law in the country which explains the Bill of Rights which encompasses the linguistic rights of court participants, the administration of justice and the duties of court officials.

The study further investigated practices where the court interpreters were required to perform duties outside the ambit of interpreting and how this impacts on the outcome of the cases concerned and on the quality of interpreting. The study also investigated court proceedings that were conducted at Magistrates' Courts to establish whether magistrates made any reference to the role of court interpreters during these court proceedings.

In Chapter 2, a review of literature on interpreting, both in South Africa and internationally, was intensively conducted. The aim was to review previous work by scholars on interpreting to see how they defined the role of court interpreters and to determine whether there was consensus amongst them regarding the definition of the role of court interpreters.

This review indicated that internationally, much research has been done on the definition of the role of court interpreters in various countries. These scholars have defined the role of the court interpreter in different ways, among others, as “a conduit”, “language mediator” or “language conduit”, “a translation machine”, “a channel or bridge”. However, their studies indicate that to date, there is still no consensus among them regarding a definition of the role of court interpreters. This is still an issue debated around the world.

In South Africa, although some research on court interpreting has been conducted, no research similar to the study reported on here has been done. Some researchers have mentioned the question of the role of court interpreters in their research but to date, not much has been written on the topic. For example, Du Plessis (1997:1) stated that:

Interpreting may be a clearly defined, well-established profession operating within a structured context in many countries of the world, but in South Africa the profession still has a long way to go to attain the same status. As yet, issues such as the nature of the profession and its role in the new South Africa with its changed language policy still lack a clear definition.

Another example is Moeketsi (1999a:150) who notes that “the interpreter’s role is not well-defined and protected by the law. It is therefore misinterpreted, willingly or inadvertently, by legal officials”.

Chapter 3 dealt with the methodology used for this study. The research framework for this study was based on a DTS approach.

According to the DTS framework, interpreting and translation practices are observational facts and they are phenomena which have actual existence “in the world” irrespective of any prior theoretical consideration: they are not merely speculative outcomes of facts. The aim of the descriptive translation theorists is not to prescribe how translation ought to be done, but to observe how translations have been done in practice. This was the primary aim of this study within the scope of the DTS, that is, to observe the role that was played by court interpreters during trials. The theoretical framework for this study was discussed extensively in this chapter.

The research procedures followed in this study were a combination of top-down and bottom-up approaches. In the top-down approach, legal documents and related texts were examined whilst in the bottom-up approach, extracts of actual transcripts of mechanically recorded court proceedings were analysed to investigate whether magistrates made any references to the role of court interpreters. On the basis of the transcripts, all the utterances of all court participants were examined in order to determine the original utterances in which court interpreters interpreted the utterances of the speakers in the courtroom.

Chapter 4 dealt with the data analysis. The data comprised of 13 cases of which two were personally observed by the researcher and 11 were recorded from the court machine. Extracts of these cases were transcribed and not the whole case. Extracts of recorded court cases were analysed with the aim of examining the role that was played by court interpreters during trial. In analysing the data, the SL utterances and the TL utterances were compared. This was done by investigating shifts involved in the interpretation of the SL utterances into the TL utterances. These were investigated in terms of the interpreting norms which are followed when accepting the interpretation as “proper” or “appropriate”. The aim was not to judge the court interpreter’s translation as good or bad. It was to determine whether in interpreting, court interpreters played a role of interpreting as expected, or whether they assumed other duties and if so, to try and understand why they were doing this.

This chapter also investigated two pieces of South African legislation, namely, the Magistrates' Court Act 44 of 1944 (as amended) and the Constitution of the Republic of South Africa, Act 93 of 1996 (as amended), to establish whether these acts defined the role of court interpreters and if so, to what an extent.

The chapter further examined the comments made by judges of the High Courts in court cases they were involved in, to find out whether they defined the role of court interpreters and if so, how this was done.

The TC used in the analysis of this data was that of comparing one ST, that is, one utterance in English and one particular translation, that is, the translation that was rendered in Setswana. This comparison was done to determine whether court interpreters in their translation used additions, omissions or substitutions. If they were found doing this, the study investigated why they were doing so.

### **5.3 Summary of Findings**

In this section, a summary of the research findings as presented in Chapters 2 and 4 will be given. These findings are based on the analysis of the comments of the judges in the decided cases, recorded cases and courtroom observations.

With regard to research on the role of court interpreters, the study showed that scholars have conflicting views on the nature of this role and there is no consensus among them. Some scholars have mentioned that the question of the role of court interpreters is still a debatable issue around the world. A situation such as this could place court interpreters in the difficult position of not really knowing what their role is. This lack of consensus may have a negative impact on the performance of interpreting and it may affect the outcome of the case and be detrimental to the accused. It may also compromise the quality of court interpreting.

The first legislation investigated was the Magistrates' Court Act 44 of 1944 (as amended) because this is the Act that regulates the proceedings in the magistrates' courts and it also explains the duties of different court officials.

The Act defines the role of court interpreters as "to translate". According to the definition in the OALD (2011), the term "translate" carries multiple meanings which are not sufficient to describe the role of court interpreters.

In order to indicate this, for example, the first meaning in the above-mentioned dictionary relates to “expressing the sense of words or writing in another language”. The second meaning of the above-mentioned says “be expressed or be able to be expressed in another language”. This meaning is not relevant to interpreting because interpreting involves spoken language only and not written language. The meaning of the concept to “translate” or “translation’ translation was not only limited to the dictionary meaning but was further examined in terms of the “interpreting studies” as widely used by scholars.

Rabin (in Pöchhacker 2010) defines “translation” as a process by which a spoken or written utterance takes place in one languages which is intended or presumed to convey the same meaning as a previously existing utterance in another language. Toury (1980 in Pöchhacker 2010) defines “translation as any existing utterance which is presented or regarded as a translation within culture, on no matter what grounds”.

The processes involved in interpreting and translation differ drastically as indicated above. The short-comings in the use of the term “translate” by the Magistrates’ Court Act are that it is not explicit and as a result, may confuse the court interpreters because they may not understand which process to engage in, interpreting or translating. It appears that the Act used this term to refer to the act of interpreting. The Act needs to be more explicit regarding the definition of the role of court interpreters and to spell out the boundaries of this role.

The second legislation that was investigated was the Constitution of the Republic of South Africa, Act 93 of 1996 (as amended). The Constitution is the highest law of the country and it explains among others, the Bill of Rights which encompasses the linguistic rights of court participants, the administration of justice and the functions of the courts and of courts’ officials. However, the Constitution does not define the role of court interpreters.

Judges' comments were also examined. The finding of these comments was that judges gave their individual conflicting definitions of role of court interpreters. The source or sources of these definitions were not clear. One judge mentioned that it appeared as though there was no statutory provision, Rule of Court or regulation governing the position of interpreters and that the Criminal Procedure Act 56 of 1955 did not contain any provision regarding interpreters. This comment makes it clear that the role of court interpreters is not defined by any statute.

Chapter 4 also analysed extracts of two observed cases and eleven which were recorded. The study revealed that court interpreters were asked and even instructed to perform duties belonging to magistrates and it was evident that they could not perform these duties properly. In other instances court interpreters themselves performed the duties of magistrates without being asked by magistrates to do so.

The study further revealed that court interpreters in interpreting the SL utterances, omitted information which was in the original. In other cases, they added information which was not in the original SL utterance.

#### **5.4 Suggestions and Recommendations**

The main objective of this study was to investigate whether the two South African pieces of legislation, namely, the Magistrates' Court Act 44 of 1944 (as amended) and the Constitution of the Republic of South Africa, Act 93 of 1996 (as amended), defined the role of court interpreters and if it was not defined, to investigate how this lack of definition affects the quality of court interpreting. The researcher observed some court cases which revealed shortcomings in the court interpreting process, and others which could improve the general practice of court interpreting as it applies to South African court interpreters.

The data presented in this study revealed that:

- There is an urgent need for a definition of the role of court interpreters by legislation. If court interpreters are to be placed in a position to perform their duties as expected and if they are to provide an interpreting service of high quality, the two above-mentioned pieces of legislation need to define the court interpreters' role explicitly. This definition should be included in both the Magistrates' Court Act 44 of 1944 (as amended) and the Constitution of the Republic of South Africa, Act 93 of 1996 (as amended). Such a legal rule could be of such importance that it could well be included in the Bill of Rights (Steytler 1993).

The Department of Justice, which is responsible for employing court interpreters, should state this definition in the documents relating to their employment and duties. These documents should then be made available to magistrates. One of the facts revealed about magistrates in this study was that they do not really understand the role of court interpreters or the intricacies of court interpreting. This was evident in the finding that in certain instances, magistrates would ask or even instruct court interpreters to explain the rights to legal representation to the accused. The court interpreters carried out this task even if it did not fall within the parameters of interpreting and they raised no objections. The study has shown that the duty of explaining the accused's rights is a task which in law belongs to the magistrates themselves: the role of the court interpreter is to interpret those communications to the accused.

- The study revealed that court interpreters omit information uttered in the original utterance and add information which was not contained in the original utterance as indicated in the chapter on analysis. In other instances, court interpreters asked their own questions to the accused or witnesses without being asked to do so by the magistrate. In doing this, the court interpreter is deviating from his duty of interpreting. The conduit model discussed in this study expects the court interpreter to interpret the meaning and not words, of what was said in the SL without omitting or add anything.



Based on the findings of this study, the researcher's recommendation are:

- The National Standards of Practice for Court Interpreters be included in the Magistrates' Court Act 44 of 1944 (as amended) and in the Constitution of the Republic of South Africa, Act 93 of 1996 (as amended). In this way, the judiciaries will be involved in ensuring that the role of the court interpreter is clearly defined and protected by the law. Judicial officers (judges and magistrates) are in a better position to do this because the law places the onus on them to ensure that every court participant's linguistic rights are upheld. Federal states have done this and South Africa can follow suite. The National Standards will guide interpreters in their duties and this lead to better-skilled court interpreters (Mikkelson 1998). The National Standards of Practice for Court Interpreters should address among others, issues such as roles and boundaries of court interpreting to ensure that court interpreters have a unified and clear understanding of their role, the skills required to interpret and the parameters for professional conduct. The National Standards of Practice for Court Interpreters could lead to better quality interpreting.
- South Africa can follow in the footsteps of most countries which have adopted standards in one form or another to define the role of the court interpreters. For example, in Denmark, guidelines on interpreter ethics were laid down for the first time in 1994 in a document entitled "Instructions for Interpreters". In 2003, the Danish Court Administration, which is responsible for the administration of the Danish judiciary, appointed a task force to examine legal and practical issues associated with interpreting in Danish court proceedings (Jacobsen 2002). This resulted in the Guidelines for Interpreting in Danish court proceedings. These guidelines describe the performance requirements of court interpreters and provide a code of ethics. They include a set of expectancy norms concerning courtroom interpreting. These norms are explicitly endorsed by the Danish legal system. Thus, the guide may be construed as an underlying normative model in terms of what constitutes good interpreting.

The researcher's suggestion for a definition of the role of court interpreters is as follows:

The role of court interpreters shall be that of a neutral, competent, and professional facilitator of communication in the judicial process between court participants who do not speak the same language, by converting the meaning of the verbal and non-verbal communication of the speaker, in an understandable manner, into the language of the listener, whilst taking into account the cultural differences between these participants (Lebese 2011).

"Neutral" implies that court interpreters should not take sides. In other words, they should interpret everything that is said, irrespective of whether it is prejudicial to the party or not. "Competent" means that court interpreters should have the skill to interpret proficiently and expertly.

The term "professional facilitator" means that court interpreters must have undergone formal theoretical and practical training at an institution of higher education and that their performance is guided by a code of conduct. In addition, an interpreter must be a member of an accredited professional body.

The definition of the role of court interpreters suggested above can lead to better quality interpreting in South Africa.

## **5.5 Future Research**

As this study was limited only one to Magistrates' Court from one province, the researcher recommends that a similar research study be conducted in other provinces.

## **5.6 Conclusion**

The aim of this study was to investigate whether the two pieces of legislations in South African, namely, the Magistrates' Court Act 44 of 1944 (as amended) and the Constitution of the Republic of South Africa, Act 93 of 1996 (as amended), defined the role of court interpreters and if not, how this might affect the quality of interpreting. The study further aimed to investigate the practice of making court interpreters perform duties which are outside those of interpreting and the impact of this on the quality of interpreting.

The analysis of the data showed that despite the provision of section 35(3) (k) of the Constitution of the Republic of South Africa, Act 93 of 1996 (as amended), which emphasises the language rights of the accused in the courtroom, court interpreting practices are far from being ideal. The study revealed that the Magistrates' Court Act 44 of 1944 (as amended) is vague in its definition and does not clearly define the role of court interpreters. This has resulted in some magistrates taking advantage of this position by asking or even instructing court interpreters to perform duties which in law belong to the magistrates themselves.

The study revealed that, in addition to taking advantage of the position of court interpreters, magistrates themselves do not understand their role. This was evident in instances where court interpreters were involved in tasks outside the boundaries of court interpreting but these judicial officials failed to point this out to them. Conduct such as this could lead to a miscarriage of justice. The Constitution of the Republic of South Africa, Act 93 of 1996 (as amended), which is the highest law in the country, does not have a definition of the role of court interpreters and does not make any reference to them or interpreters in general.

The study revealed that judges in the South African High Courts have their own personal conflicting views on the role of court interpreters and that there is no consensus among them regarding this definition. They did not disclose the source or sources on which they based their definitions and nowhere in their definitions did they make any reference to the legislature or to the works of scholars in interpreting. Their definitions leave many unanswered questions.

The study further disclosed that South African and international interpreting scholars provided conflicting definitions of the role of court interpreters and that there is no consensus on the role of court interpreters. Some recommendations have been made to mitigate the shortcomings identified in the study, and it is hoped that the achievements of the aims of this study will shed more light on the role of court interpreters and that this will lead to better quality interpreting in South Africa.

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