

INTERPRETING FOR REFUGEES: “WHERE PRACTICABLE AND NECESSARY ONLY?”

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Abstract

Legal interpreting is a highly specialized profession, not simply a function that any bilingual person can perform. Countries that have laws and regulations on court interpreting have them on the basis that everyone (including linguistic minorities) has the right to due process. In South Africa legal interpreting takes place in a variety of state institutions and the Refugee Reception Offices of the Department of Home Affairs is one such setting. The present study investigates legal interpreting at asylum determinations and hearings. The focus is on two stages of the asylum application, which are crucial for determining refugee status. This paper aims to explore the right of an asylum seeker to an interpreter at these stages of the status determination procedure. It will also compare this right to the existing right in international law and assess whether South Africa has met the minimum requirement to enable a due process.

Résumé

L'interprétation juridique est une profession hautement spécialisée, et non une simple fonction que toute personne bilingue peut effectuer. Les pays qui ont des lois et des règlements sur l'interprétation juridique les ont développés en raison d'une reconnaissance que tous (incluant les minorités linguistiques) ont droit à une procédure régulière. En Afrique du Sud, l'interprétation juridique est pratiquée dans une variété d'institutions d'État, et le Bureau de l'Accueil des Réfugiés du Département des Affaires Intérieures en est un exemple. Cette étude examine en particulier la pratique de l'interprétation juridique lors des décisions et des audiences liées aux demandes d'asile. L'étude se concentre sur deux étapes de la demande d'asile,

cruciales dans la détermination du statut de réfugié. Cet article explore le droit du demandeur d'asile à l'interprétation juridique durant ces deux étapes de la détermination de son statut. On y compare également ce droit aux droits existants dans le droit international, et évalue si l'Afrique du Sud rencontre les conditions minimales nécessaires à une procédure régulière.

Introduction

While court interpreting,¹ often referred to as legal interpreting, is far from a new issue, it is true that it has become a more complex one. With at least a quarter million people from twenty different countries entering South Africa annually for the purpose of seeking asylum² and therefore necessarily having to engage in a highly complex interaction with the government of South Africa at the Department of Home Affairs to acquire a legal status, the need for interpreters has increased tenfold. Whether stemming from a deliberate disregard of this complex status determination process at the Department of Home Affairs or from a failure to understand it, many asylum seekers have had to engage South African courts as well. More attention therefore needs to be paid to the use of interpreters in all legal settings in South Africa and not only at the Department of Home Affairs.

Many asylum seekers do not speak the language of the host country and as a result they depend on the skills of an interpreter. The question of what these skills should include, and the role the interpreter should play, is far from clear even beyond the Department of Home Affairs or South Africa generally. It is also debated internationally, with academic scholars and the United Nations High Commissioner for Refugees (hereinafter the “UNHCR”) favouring a liberal interpretation of the interpreter’s role, while the judiciary, on the other hand, insisting on a restricted role.³ This

debate is based on the inherent problems which interpretation creates.

In 1952 Jean Herbert coined the phrase a 'necessary evil' for interpreters;⁴ the law has progressed since and this 'necessary evil' has developed into a right. Interpretation is not an absolute right or a fundamental basic human right, but rather a procedural one that will be applied when 'practicable and necessary.'⁵ The attitude to this right is obvious from its use and implementation; the research undertaken for the purposes of this paper reflects that it is still largely viewed as a necessary evil.

This lack of enthusiasm around the use of interpreters can be attributed to many factors, such as proceedings taking twice as long,⁶ the difficulty in making a credibility judgment if communication is not direct, the difficulty for the lawyers to cross-examine and discredit witness credibility,⁷ and the delay it causes when interpreters are not readily available. However, the right to an interpreter cannot be ignored.

In 1929 the Irish Chief Justice in the case of *Attorney-General v Joyce and Walsh* expressed the view that giving evidence in one's vernacular was a 'requisite of natural justice, particularly in a criminal trial.'⁸ Waterhouse states that it is doubtful that the Chief Justice anticipated the increased number of non-native tongue speakers in the courts.⁹

This paper emphasises that this right is not the right to use the native tongue but rather as confirmed in international case-law¹⁰ the right is a procedural one to understand and participate in one's own trial. The United Nations Human Rights Committee has been particularly adamant that the use of interpreters is unrelated to the issues of minority language speakers.¹¹ This is mainly the case with refugee matters; refugees are not demanding that their language be recognised in their country of asylum, they merely want to be able to effectively communicate their refugee claim.

In the Canadian case of *Andre Mercure v Attorney-General*¹² the Court held that the right to be understood is not a language right but rather 'one arising out of the requirements of due process.'

South African courts in terms of the Section Thirty-five (three)(k) of the Constitution, Act 108 of 1996, have also had to consider the question of the use of the native tongue as a language right as opposed to a due process right.¹³ The paper aims to address two things: firstly, whether the right to an interpreter has been properly understood and implemented by the Department of Home Affairs as a procedural right and secondly, whether it has reached the minimum standard necessary to safeguard this procedural right. Qualitative research by the UCT Refugee Law Clinic was undertaken to understand how the Department of Home Affairs is approaching this right. Recommendations will

be made on how to safeguard this right by comparing it to other jurisdictions.

In the first section this paper will undertake an analysis of the right to an interpreter as it appears in international law and in South African law. Furthermore, given the importance of context a brief sketch of the Department of Home Affairs' asylum process and the various bodies responsible for determining refugee status in South Africa will be highlighted in section two. Section three discusses of the role of an interpreter, the competences, the necessity and the impact the lack of interpreters has on proceedings. Section four will conclude with an analysis of the research undertaken and reflect on the law and the role of the interpreter in South Africa and compare it to minimum standards set in other jurisdictions.

Overview and Analysis of International, Regional, and Domestic Legal Requirements of the Right to an Interpreter

An overview of the international, regional and domestic requirements of the right to an interpreter will be discussed in this section; and, more importantly, how this right can be extended to asylum proceedings.

Already in the sixteenth century, laws existed which regulated the judicial interpreting in the Spanish colonies.¹⁶ Similarly, Cassim states, that King Edward III instructed lawyers to use English in the courtroom to address the fact that 'citizens had no knowledge of that which is said for them or against them.'¹⁵ In South Africa, the Magistrates Court Act Thirty-Two of 1944 at Section Six¹⁶ provides for the provision of an interpreter if, in the opinion of the Court, the accused is not sufficiently conversant in the language in which evidence is being given. The same provision prevails in the Supreme Court Act Fifty-nine of 1959.¹⁷ Though both the Magistrates Court and Supreme Court refer to interpreters in criminal matters only, it is apparent that the value and necessity of this has been recognised by the Department of Home Affairs at asylum determinations and hearings. The right to an interpreter, although restricted to 'where practicable and necessary,' is specifically referred to in the Refugees Act¹⁸ as well as in the Regulations¹⁹ to the Refugees Act. This paper will give an overview of the right to an interpreter in criminal proceedings and the reasoning behind this and argue that therefore the right to an interpreter should be extended to refugees at asylum hearings.

International Law

It is important to recognise that the right to an interpreter is an integral part of the right to a fair trial or hearing and that the right to a fair trial is a right recognised in international

human rights law documents outlined below, notwithstanding the 1951 United Nations Convention Relating to the Status of Refugees (hereinafter the "Refugee Convention") and its 1967 Protocol.²⁰

The 1951 United Nations Convention Relating to the Status of Refugees

Article Sixteen²¹ of the Refugee Convention specifically grants refugees and asylum seekers access to courts. Significantly, no reservations to this article are permitted and all refugees are thus granted access to court notwithstanding the length of their stay in the country of asylum. According to Hathaway, although the Refugee Convention fails to eliminate many problems faced by refugees, the drafters of the Convention have helped refugees overcome the practical impediments to accessing courts by assimilating them to the status of nationals.²² They are afforded the same treatment as nationals with regard to *free* access to courts, however, if the state lacks the resources and the judicial apparatuses to extend additional services such as legal aid and interpreting services to its own citizens, then it is not expected to extend it to refugees. The right to an interpreter is not expressly mentioned in the 1951 Refugee Convention but can be inferred there from. Fair trial rights generally would include access to courts and broadly speaking, it would include the right to an interpreter, legal aid etc.

The right to an interpreter is however specifically mentioned in the International Covenant on Civil and Political Rights (ICCPR) and this paper contends that since refugee law is informed by international law, it should not be viewed as an isolated body of law and be denied the benefits there from.²³

The International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights²⁴ expressly guarantees the right to access the services of an interpreter at Article Fourteen (three)(f).²⁵ It however restricts the right to an interpreter to an accused in a criminal charge. The right to the free assistance of an interpreter where he or she does not understand the language of the court is guaranteed. It is mostly by virtue of Article Fourteen (three)(f) that the services of interpreters are provided for and used in several jurisdictions such as in the European Union.

It could be argued that this right is reserved for criminal proceedings, however according to Laster and Taylor²⁶ a more general reading of the ICCPR suggests that it could be extended to civil proceedings. In the 1987 United Nations Human Rights Committee matter of *S.W.M. Brooks v the Netherlands*²⁷ where Article Twenty-six²⁸ was under

discussion, Laster and Taylor argued that it is possible for the right to an interpreter to be extended to all types of matters to ensure "equal protection of the law."

They argue that if Article Twenty-six of the ICCPR stipulates a general principle of equality it could be used to extend the right to an interpreter to all types of matters to ensure fair treatment and to prevent a prejudicial outcome in any kind of matter. This basic acknowledgement of rights should extend to refugee determination proceedings as well.

European Convention on Human Rights

The right to an interpreter or translator during criminal proceedings is laid down in Article Six (three)(e) of the European Convention of Human Rights.²⁹ Pursuant to this article every defendant has the right to free assistance of an interpreter, if he or she does not understand or speak the language of the court. Though South Africa is not bound by the European Convention of Human Rights, the precedents set at the European Court for Human Rights can have persuasive value in South African courts if a similar section or article is adjudicated upon.

According to the European Court of Human Rights there is no fair trial if no interpreter is provided. The decision in *Kamasinski v Austria*³⁰ goes further by remarking on the quality of the interpreter to be provided. In *Brozicek v Italy*³¹ the European Court of Human Rights indicated that the interpreting must be 'adequate.'

Why Criminal Matters Only?

In most jurisdictions it is accepted that not only must interpreters be allowed at criminal trials but they have to be provided by the State because the consequences of not being heard are potentially very harmful. The result could be conviction of an innocent person or a criminal record that could result in very negative consequences for the accused. That logic needs to be extended to asylum hearings because the consequences could potentially be far more harmful; it could lead to persecution or risk to life upon return, the very reason why people seek asylum in the first place.

Whether interpreters are allowed or not should as a "matter of common sense and common humanity depend on the gravity of the consequences."³² Significant fundamental human rights such as the right to life and liberty will be infringed if refugees are erroneously returned to their country of origin.

In addition, the cardinal principle in refugee law, the non-refoulement clause at Article Thirty-three³³ is under attack as a result of a state practice that does not guarantee the use of an interpreter at refugee status determinations. Article Thirty-three of the Refugee Convention prohibits contracting states from returning refugees "in any manner

whatsoever,” to a country where their life or freedom would be threatened.³⁴ Where interpreters are not provided or even where the competences of the interpreters are questionable refolement takes place in a less direct form.

States are guilty of violating non-refoulement by not following fair administrative procedures, which would be the case if interpreters are not allowed or if incompetent interpreting occurs at asylum hearings or determinations. The consequences are therefore as harsh if not harsher than when the right to an interpreter is denied in criminal proceedings.

The South African Refugees Act and Refugees Act Regulations

Section Five (one) of the Regulations to the Refugees Act³⁵ 130 of 1998 states that “... [w]here practicable and necessary,” the Department of Home Affairs will provide competent interpretation for the applicant at all stages of the asylum process. Research³⁶ has revealed that many asylum seekers have been prejudiced in the past because the Department of Home Affairs claimed that often it was not practicable for the Department to provide competent interpretation.

On the other hand, section Thirty-eight (one) (f) of the Refugees Act 130 of 1998 provides for the provision of interpreters at all levels of the asylum process. There thus appears to be a conflict between the Act itself and its Regulations that provide for interpreters only “where practicable and necessary.” The usage of this phrase allows the Department of Home Affairs to decide when it is practicable or necessary.

The terms “practicable and necessary” therefore need further analysis. When the applicant is unable to communicate it is logically always “necessary” for the use of an interpreter. Without an interpreter it is obvious that no status determination interview can be properly conducted. This is typically the scenario at the Department of Home Affairs with a large number of asylum seekers unable to speak English, the language officially and exclusively used at the Department of Home Affairs.

The Oxford dictionary defines practicable as “capable of putting into practice, with the available means.”³⁷ The term “where practicable,” therefore allows for the shifting of responsibility by the Department of Home Affairs. The Department of Home Affairs is under an obligation to provide only if it is possible for them. It may not be possible for many reasons, with lack of sufficient resources the most likely. The obligation in this instance is not just to hire interpreters, but to hire competent interpreters, and finding competent interpreters in such a range of languages is in itself challenging.

Kerfoot and de La Hunt³⁸ briefly outlined the pre-2010 practice at the Department of Home Affairs’ Refugee

Reception Offices where the burden was placed on the refugees to provide an interpreter; the Department thus evading its obligation. They refer to interpreters working freelance at the Refugee Reception Offices and the practice of asylum seekers bringing their own interpreters who usually required payment. There was clearly no recruitment policy and no method to test competency; the ad-hoc manner in which the interpreting occurred did not guarantee a fair administrative procedure at all.

The current research reveals that the above procedure as outlined by Kerfoot and de la Hunt has changed at the Department of Home Affairs. The Department now provides interpreters, but these interpreters are not employed by the Department, they are employed by a non-government organisation called Refugee Ministries and placed at the Refugee Reception Offices.

South African Case-Law and the Constitution

The terms “where practicable and necessary” are analyzed in various South African High Court judgments however bearing in mind that these judgments refer to indigenous languages which in terms of the Constitution³⁹ must be protected and their use promoted. Much of the case-law on the right to an interpreter in South Africa has developed through the criminal law.

In the case of *Mthetwa v De Bruin and Another*,⁴⁰ the appellant argued that he did not understand the language of the court sufficiently, being a native isiZulu speaker. It was ruled that because he spoke enough English and that the court staff and judiciary did not speak the isiZulu at all, it was impractical to conduct the court in isiZulu. The court stated that the Constitutional provision is clear, that is, if it is not practicable to use the language in court, the proceedings must be interpreted in that language. The usage of the word practicable gives the court power to determine when it is feasible or not to conduct the hearing in the language choice of the appellant.

If that reasoning is extended to provision of interpreters, that is, the Department of Home Affairs will only provide interpreters if feasible, it leaves the asylum seeker extremely vulnerable. The asylum seekers will have to source their own interpreters, increasing their vulnerability and exposing them to exploitation.⁴¹

Asylum seekers are not demanding that matters be heard in the language of their choice; the purpose of the use of any language with regard to status determinations of asylum seekers is simply to ensure effective communication; therefore it is more akin to a fair trial right as at section Thirty-five (three)(k) of the Constitution⁴² which provides that “every accused has a right to a fair trial, which includes the right to be tried in a language that the accused person

understands or, if that is not practicable, to have the proceedings interpreted in that language.”

Recently, however the High Court⁴³ substituted its decision for that of the Refugee Status Determination officer because fair procedure, which included the right to an interpreter, had been violated.

The Asylum Process in South Africa

The use of interpreters to access justice in South Africa, a country with eleven official languages, is not an uncommon or unexplored phenomenon. In South Africa legal interpreting takes place in a variety of state institutions. The Refugee Reception Offices of the Department of Home Affairs is one such setting. The present study investigates legal interpreting at asylum determinations and hearings. The focus is on two levels of the asylum application, which are crucial for determining refugee status.

Several interactions with the Department of Home Affairs are required before refugee status is granted or denied. It is during these interactions that interpreters are required but are not necessarily provided, or those provided are untrained. The procedure for applying for refugee status in South Africa in accordance with the rules and regulations of the Refugees Act 130 of 1998 is undeniably a complicated legal procedure. Interpreters must therefore have a linguistic understanding of the complex legal concepts within refugee status determination such as alienage, non-refoulement, persecution as opposed to prosecution, and state responsibility, for the interpretation to be effective.

Given the importance of context the paper will provide a brief sketch of the asylum process including all the interactions with the Department of Home Affairs and the various bodies responsible for determining refugee status in South Africa.

The Right to Seek Asylum

The right to seek asylum is enshrined in the Universal Declaration of Human Rights⁴⁴ and regulated under the 1951 Refugee Convention and its 1967 Protocol. According to these documents refugee status is to be granted to anyone who has a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or unwilling to avail himself to the protection of that country.”⁴⁵

South Africa has incorporated the 1951 Refugee Convention definition as well as the definition in the Convention Governing the Specific Aspects of Refugee Problems in Africa,⁴⁶ (hereinafter the OAU Convention) into its national law at Section Three of the Refugees Act, as follows:

A person qualifies for refugee status for the purposes of this Act if that person-

- (a) owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or
- (b) owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere; or
- (c) Is a dependant of a person contemplated in paragraph (a) or (b).

The determination of refugee status in terms of the above definition is a highly complex legal determination and special structures are needed for this determination. Concepts such as “persecution,” “well-founded-fear,” and “membership of a particular social group,” within this definition, require a legal interpretation. Despite the fact that consistent efforts at establishing standard practices for refugee status determinations are made by UNHCR,⁴⁷ it is up to the individual signatory states to create a legal framework and institutional structures and procedures for conducting refugee status determinations under national law.

In terms of its national laws, South Africa has set up such a determination procedure. It is a two-tier procedure as is generally found elsewhere and also typical of most legal processes, a first instance determination and an appeal hearing if necessary.

Refugee Reception in South Africa

The first step in the asylum process is for the asylum seekers to lodge an application in person at one of the Refugee Reception Offices of the Department of Home Affairs. This is done in terms of Section Twenty-one of the Refugees Act, which states that the application for asylum “must be made in person.” The application requires the completion of a nine-page eligibility determination form referred to as the BI-1590.⁴⁸ This form is exclusively in English and it includes questions with regard to the applicant’s personal details, country background and reasons for applying for asylum. This form is issued to asylum seekers on the day that they apply for asylum and it must be completed

on the Department of Home Affairs premises on that day. Applicants with no knowledge of English are therefore unable to complete the application form without the help of an interpreter. Not only must the reception officer receive this form from the applicant, the reception officer is under an obligation, in terms of the regulations⁴⁹ to assist where necessary to ensure the proper completion thereof. At the end of this procedure asylum seekers are issued with a section Twenty-two temporary asylum permit. The issuance of this temporary asylum permit is obligatory; the refugee reception officer has no discretion. This first step in the application process is however very important as it is often used as the basis of the claim at the later determination stage, even if proper assistance was not provided at this initial stage. Countless times the Refugee Appeal Board⁵⁰ and the Standing Committee of Refugee Affairs⁵¹ have also made credibility findings against asylum seekers on the basis of lack of consistency between first and later interviews.

Refugee Status Determination

Following the issuance of the asylum seeker permit after the applicant completes the BI-1590 form, the asylum seeker must have a status determination interview with a Refugee Status Determination Officer. The Refugee Status Determination Officer is empowered in terms of section Twenty-four (three) of the Refugees Act to make a decision with regard to the status of the applicant. The applicant may be granted status or may be denied status with the right to appeal the decision at the Refugee Appeal Board. The applicant may also be rejected as manifestly unfounded with the right to have the decision reviewed by the Standing Committee for Refugee Affairs.

The Refugee Status Determination Officer, when considering the application must have due regard for the rights set out in section Thirty-three⁵² of the Constitution and in particular ensure that the applicant fully understands the procedures, his or her rights and responsibilities, and the evidence presented.

The Refugees Act Regulations refer to the interaction between the asylum seeker and Refugee Status Determination Officer as a non-adversarial interview. The Refugee Status Determination Officer conducts the hearing “to elicit information bearing on the applicant’s eligibility for refugee status.”⁵³

Hence, the Refugee Status Determination Officer must be able to communicate with the applicant and again where the Refugee Status Determination Officer is unable to communicate with the asylum seeker, the use of an interpreter is necessary. The research conducted for this paper has reflected a number of irregularities at this stage, which will be highlighted and discussed later.

In addition to the interview that must necessarily be done via an interpreter, it becomes compulsory for the Refugee Status Determination Officer to explain the procedure once rejected whether as manifestly unfounded or unfounded.

Appeal and Review

The review by the Standing Committee of Refugee Affairs and the appeal by the Refugee Appeal Board are the final stages of the determination in terms of the Refugees Act. It is particularly at the appeal stage, where legal counsel is allowed to represent appellants, that interpretation is one of the aspects scrutinised. In the author’s experience the discrepancies between the BI-1590 and the interview with the Refugee Status Determination Officer largely occur as a result of inadequate interpretation. Often these discrepancies are remedied at the appeal stage as recognised in the unreported case of *Van Garderen v Refugee Appeal Board*.⁵⁴

Inadequate interpretation has also been used as a basis for review in the High Court in the *Matter of Deo Gracias Katshingu*⁵⁵ where the applicant stated that the Refugee Status Determination Officer failed to provide competent interpretation in circumstances where it was plain that this was necessary. Bozalek J held that:

... the applicant did not enjoy the hearing he was entitled to in terms of the relevant provisions of the Refugees Act, the Regulations framed pursuant thereto and the provisions of the Constitution. The most egregious shortcoming in this regard, was the second respondent’s failure to provide an interpreter competent in English and French, in the absence of which no hearing or process, it seems to me, could have taken place.⁵⁶

The Interpreter’s Role, Competences, and Qualifications

Legal interpreting is a highly specialised profession⁵⁷, and not simply a function that any bilingual person can perform. Countries that have laws and regulations on court interpreting have them on the basis that everyone, including linguistic minorities, has the right to due process.

Waterhouse, following a literature review, lists the necessary skills of interpreters as those including “linguistic ability, memory, sensitivity, ability to build rapport and inspire confidence, objectivity, diplomacy, patience, tolerance, cultural, social and political awareness, the ability to listen, analyse and repeat a message, good hearing and clear speaking, physical stamina and strong nerves as some of the many qualities needed to be a competent interpreter.”⁵⁸

Competency

As stated by Judge Bozalek in the matter of *Deo Gracias Katshingu*⁵⁹ competent interpreters are necessary, not only so that applicants can state their claim, but also to safeguard procedural rights.

Regulation Five of the Refugees Act states that the "interpreter must be competent to translate a language spoken and understood by the applicant, to a language spoken and understood by the Refugee Reception Officer or Refugee Status Determination Officer."⁶⁰ The Regulation however fails to address the manner in which competency could be measured and there is not a mechanism to address the issue of incompetent interpreters.

Addressing the competency of interpreters has, however been accomplished effectively in other jurisdictions. For example, Holland's Sworn Translators and Interprets Act⁶¹ that came into operation on the first of January, 2009, states the necessary competences for interpreters. Firstly, this Act established a Quality Institute, which advised on the necessary competences. Secondly, it listed the actual competences that the interpreter should have such as: at least a secondary education in the language and be a native speaker, a certificate or a sub-certificate for an interpreter, and course work experience in the region of the foreign language for the person involved.

Similarly the European Union has devised a framework on the right to interpretation⁶² by adopting common minimum procedural standards. Article Six of this framework allows for interpretation to be free of charge in criminal proceedings when the suspect does not understand the language of the court. This right extends throughout the proceedings. At Article Eight member states are expected to ensure sufficiently qualified interpreters to provide accurate interpretation. If this fails there should be a mechanism in place to replace the interpreter. At Article Nine the Framework states that proceedings should be recorded to facilitate verifying the accuracy of the interpretation.

Role and Function of the Interpreter

The role of the interpreter has been extensively examined by academics, with Mickelsohn⁶³ asking whether interpreters should be "invisible, neutral, participative, active, a member of the investigating team or team with the applicant?" Granger and Baker⁶⁴ have found evidence of role conflicts amongst interpreters themselves in their study. According to these authors, while most interpreters considered direct language translation their primary goal, in practice the study revealed that interpreters have found themselves in situations that required careful balancing. Some interpreters considered it part of their job to be a "cultural broker, technical explainer and advocate."⁶⁵

Berk-Seligson's⁶⁶ study on court interpreting began with the premise that "interpreters should be physically invisible and vocally silent." In fact, she found that the impact of interpreters on legal proceedings was far greater than had been imagined. Interpreters can manipulate language to shift blame and structures and affect sympathy, and change speech style in terms of politeness, formality and verbally more active than realised which strongly affects the court's power relations.⁶⁷ The research undertaken at the Department of Home Affairs by the Refugee Law Clinic corroborates these findings of Berk-Seligson.

According to Steytler, an interpreter's function is unambiguous: "to translate accurately, comprehensively, and without bias, all communications in court to a language in which the accused can understand."⁶⁸ The role of the interpreter is thus to facilitate the communication where one party is not conversant in the court language. He or she should deliver an expert service and assume a neutral position in the context between the parties.

Channon, states that "a good court interpreter must have the ability to translate faithfully without adding to the questions asked or the answers given."⁶⁹ He also notes that the interpreter must be "completely impartial and take no personal interest in the outcome of the case" and the interpreter must "remain unaffected by anything he sees or hears."⁷⁰ This approach has been adopted by the Asylum and Immigration Tribunal in the United Kingdom in the matter of *AA and the Secretary of State for the Home Department* where the Adjudicator held that "... it was in the highest degree undesirable for the interpreters as Court official to be asked to contribute in any way to the determination of a contested issue. In his task of comprehension and communication, the interpreter needs to have and maintain the confidence of all those with whom he deals, including the witness evidence whose is being interpreted, the representatives of both parties and the judge."⁷¹

The authors cited above (Berk-Seligson, Channon, and Steytler) have all illustrated how important interpreters are in guaranteeing one's right to due process by ensuring one's 'presence' in court. This notion of linguistic presence (i.e. the defendant cannot be present at his/her trial if he/she does not understand the language of the proceedings) was established in the 1974 matter of *Arizona vs Natividada*.⁷²

Type of Interpreter: Legal Interpreters, Community Interpreters or Active Intermediaries?

Fenton sees the debate surrounding the rights and obligations of community interpreters as a concurrence of two positions: interpreting and advocacy. According to her, interpreting means a "close rendition of what is heard with cultural adjustments strictly limited to linguistic elements,

while advocacy includes interventions by the interpreter on behalf of the clients and for their perceived benefits.⁷³ Legal interpreters have set themselves apart from community interpreters with their own set of professional principles.

Barsky pleads for the role of the interpreters in asylum matters to be extended to one of an active intermediary.⁷⁴ He proposes strategies ranging from intervening with questions and clarifications to adding unsolicited supplementary information on the historical political and social situation of the claimant's country. Barsky is clearly arguing to use the interpreter to compensate for inadequate status determination techniques. The research conducted for the purposes of this paper reveals that even though interpreters are aware of how the incompetence of Refugee Status Determination Officers fails claimants they nevertheless report in trying as far as possible not to play this extended role. Asylum claimants have been unable to comment on whether interpreters played a more active role than they ought to.

Measurement Standards and Research Conducted

It has been highlighted above that the right to an interpreter is essentially a procedural right that derives from the right to a fair trial. The aim of the research conducted for this paper was to establish whether the procedural right has been adequately extended to refugees and asylum seekers in South Africa and thereafter to measure whether this right has been fairly applied at all stages of the status determination process by comparing it to minimum standards as identified in other jurisdictions.

Establishing the appropriate criteria for interpreting proficiency is a difficult task; however this has been done in a number of jurisdictions in Europe and in the United States of America. These countries have given effect to legislative provisions, which state that competent interpreters should be provided, by adopting certification programs to ensure that interpreters used in courts and tribunals are qualified. The Holland Sworn Translators Act, the European Union framework and the Federal Courts Act of 1978⁷⁵ in the United States are all examples of programs adopted to establish measurable criteria for qualifications and competency. According to Mikkelson, it is evident that these programs were developed because where interpreters were used on an ad hoc basis, the consequences were disastrous.⁷⁶

Research Statistics and Analysis

The University of Cape Town Refugee Law Clinic has been representing large numbers of rejected asylum seekers before the Refugee Appeal Board and before the Standing Committee of Refugee Affairs over the past fifteen years.⁷⁷ The Refugee Law Clinic is often informed by rejected asylum seekers that they were rejected because they were not able

to relate their claims effectively because of language constraints or because interpreters put words in their mouths or significantly filtered what they said. Thus rejected asylum seekers are claiming that ineffective interpretation has been a cause in their rejection.

Rejected asylum seekers and interpreters have been interviewed to ascertain whether lack of proper interpretation could have been a factor in their rejection both at the initial stages by the Refugee Status Determination Officers, and at the final review or appeal stage before the two quasi-judicial bodies.

Interviews with Asylum Seekers

Qualitative semi-structured interviews were conducted with asylum seekers covering topics including: their experience of the status determination process at the Department of Home Affairs' Refugee Reception Offices; their expectations of the interpreters; whether they understood the processes through which they were taken; whether they thought they were treated fairly; the problems they faced; and, whether it was dealt with to their satisfaction.

Interviews were conducted with a total of 124 rejected asylum seekers from the twenty-sixth of September 2011 until the fourteenth of December 2011. All of these asylum seekers were assisted to lodge an appeal with the Refugee Appeal Board. Lodging an appeal necessitates the completion of an appeal affidavit in terms of rule four (two) of the Amended Refugee Appeal Board Rules.⁷⁸ Of the 124 rejected asylum seekers assisted, it was established that eighty-six asylum seekers needed the assistance of an interpreter at the application stage as well as at the determination stage. It was also established that interpreters were provided by the Department of Home Affairs at both these stages; to assist with the BI-1590 form (mentioned above) as well as at the status determination interview, and in most cases it was the same interpreter. The author asserts that having the same interpreter at both stages in itself became problematic as the interpreter did not have a clear understanding of his or her role. A further factor was the evident inadequate interview skills of the Refugee Status Determination Officers.

The overview provided is based on the eighty-six asylum seekers that needed the assistance of an interpreter. It is apparent from this statistic that a very large percentage of asylum seekers need the assistance of an interpreter and it is clear that the Refugee Reception Office will not be able to function without the assistance of interpreters. The research established that interpreters were provided by the Department of Home Affairs for all asylum seekers who needed assistance at all stages of the status determination. Not a single applicant interviewed was allowed to bring their own interpreter; in one instance a minor was forced

to use the services of the interpreter provided by Home Affairs and the family member was not even allowed to be present.

The asylum seekers who were interviewed believed the interpreters to be employed by Department of Home Affairs. All asylum seekers were pleased and relieved to have someone present that could understand them and assist them to communicate with the Department of Home Affairs. Not a single asylum seeker even in direct response to the question "did you trust the interpreter?" responded by saying that they did not. Generally, the interpreters provided were viewed in a positive light and it is evident that the asylum seekers felt a kinship with the interpreters; interestingly, they seemed to view the interpreters as community interpreters rather than professionals; meaning they believed the interpreters to be present for their assistance rather than for the benefit of status determination process.

It was only upon more in-depth questioning about the role of the interpreter and the competences of the interpreter that the asylum seekers started to focus on areas of the interpretation that were not necessarily to their benefit. For example, not all interpreters spoke the preferred languages of the asylum seekers. Some of the asylum seekers would have preferred to speak, for example, Lingala, a language generally spoken in the western part of the Democratic Republic of Congo (DRC) but were forced to speak Swahili, a language from the eastern part of the DRC, because the interpreter present could not speak Lingala. This would not be reflected on the decision yet it is clearly a procedural element of the interview that may affect the outcome. Rwandan asylum seekers similarly were assisted by Burundian interpreters and though they could largely communicate with the Burundian interpreter they upon reflection highlighted the fact that the Burundian interpreter failed to pick up on the different nuances in the languages.

Upon being interviewed, many asylum seekers were surprised to learn that what they told the interpreter was not reflected in its entirety in the written decision of the status determination officer. Many found that only a fraction of what they said was reflected in the decision. One asylum seeker remarked that he told a lengthy story to the Refugee Status Determination Officer and the interpreter only said a few words. He reflected upon questioning by the researcher that at the time he did not do or say anything; it was only when the lack of information or the minimum information was brought to his attention by the researcher that he realised that the interpreter was not as competent and as helpful as he initially thought.

Some asylum seekers were surprised to find that the decisions of the status determination officer reflected a completely contrary account of their asylum claim to what

they told the interpreter and the status determination officer. Asylum seekers failed to understand the irregularities as reflected in their decisions. This is not an unexpected phenomenon. Abuya⁷⁹ refers to the omniscient interpreter (those who put words in the mouths of the applicants) and the distortional interpreter (those who misconstrue statements made by claimants).

All asylum seekers signed the BI-1590 document, which was filled in with the assistance of an interpreter and took receipt of the status determination officer's decision by signing the decision, without being aware of what they signed. Asylum seekers had no way of verifying their version of what was said at the hearing.

It is clear from the above that safeguards need to be put in place if fair procedure is to be *guaranteed*.

Interviews with Interpreters

Various open-ended interviews were conducted with interpreters for asylum seekers and refugees based at the Department of Home Affairs Refugee Reception Office in Cape Town in an attempt to establish their proficiency, their competences, the manner in which they viewed themselves, how they were viewed by the Department of Home Affairs and by the asylum seekers as interpreters.

The official language at the Department of Home Affairs Refugee Reception office in Cape Town is English according to all the interpreters and the asylum seekers. In the author's experience as a practicing refugee attorney for the past nine years it is evident that the officials at the Department of Home Affairs Refugee Reception Office communicate only in English to all refugees and asylum seekers. This means that the interpreter must be able to speak English and at least one other language. Often however interpreters were roped in to extend their services in their second or third language. For example, the Somali interpreter interviewed attested to being used as an Arabic interpreter (though Arabic is his second language); he was also asked to interpret in Swahili even though it is a language he learnt while travelling through Kenya and Tanzania.

Bearing in mind the competences set out in the Holland Sworn Interpreters and Translators Act and other Acts detailed above, interpreters were asked questions to assess their competences. They were also asked questions with regard to their role perception and their feelings toward their job.

The Level of Education

All the interpreters interviewed had a tertiary education in their first language and at least a secondary education in English. Some of them had tertiary education in English, one of them with an Honours degree in English and French

and an Honours degree in Linguistics obtained in South Africa.

The qualifications of all interpreters were verified through the South African Qualifications Authority.⁸⁰ Though it is apparent that a minimum education standard has been set for the hiring of interpreters none of the interpreters have any specific training in interpretation.

Job Opportunity

Some of the interpreters interviewed have been interpreting for asylum seekers at the Department of Home Affairs since 2008 on an ad hoc basis as outlined by Kerfoot and de la Hunt above. Many changes in the hiring of and expectations have occurred in the past four years with some of the most significant changes taking place during 2011. Most of these earlier positions were voluntary in the sense that the interpreters were not officially employed by the Department of Home Affairs or any other agency. The Department of Home Affairs realizing that it would be impossible for them to operate without interpreters allowed interpreters on their premises to interact with and assist refugees. Any fees earned were as a result of the interpreters own negotiations with the applicants. Despite the fact that it was a voluntary position at the time, the Department of Home Affairs nevertheless expected the interpreters to submit their curriculum vitae, which were scrutinised by the Department officials. They were also received by the Department of Home Affairs and the expectations of the Department were outlined in the initial meeting.

The research reveals interpreters are no longer used on an ad hoc basis; interpreters are in formal employment and refugees and asylum seekers are no longer required to bring their own interpreters or pay interpreters. There is an attempt to bring procedures in line with the law, for instance the nine-page BI-1590 eligibility form is now completed with the assistance of the refugee reception officer⁸¹ and an interpreter.

Role Perception of the Interpreter

The interpreters interviewed were ambiguous about their role, claiming to be both a neutral interpreter as well as a person with strong attachment to the claimants for whom they felt pity and sympathy. This ambiguity in the author's opinion is as a direct result of lack of professionalism and training on the part of the interpreters. Most of the interpreters have felt that it is easy to remain neutral and translate directly if the interviewer is fair and competent and where claimants are easily able to answer the questions posed to them by the interviewer. Interpreters have stated that it became difficult to remain neutral where interviewers have been deliberately misleading and disrespectful to

claimants and where claimants were obviously lying. A case in point would be where interviewers have clearly failed to ask someone from a war torn region about the war but instead asked whether they came to South Africa to seek employment or where a claimant alleged that he or she was from a war-torn area and it was obvious to the interpreter that they were not.

The research has thus revealed the necessity for a formal approach to interpreting and for a definite increasing of standards and awareness creation in this regard.

Conclusions and Recommendations

The brief research undertaken reveals that interpreters have not received any training by the Department of Home Affairs. The only qualification expected of the interpreters is that they are adequately literate in the language they interpret into and from. This is by no means comparable to any recognised skills of interpreters as set out in other jurisdictions.

The meager attempt made by the Department of Home Affairs simply to have interpreters present at hearings does not in any way guarantee the right to a fair procedure as outlined in the Constitution and the Refugees Act. No attempts are made to ensure the competences of the interpreters and neither is there a procedure to remedy the situation if the interpreter is obviously incompetent.

The Department of Home Affairs must set the stage for refugees to be able to effectively communicate their claim, failure thereof, is highly prejudicial as well as unlawful.

Neither the Department of Home Affairs nor the South African courts have set minimum standards for competent and trained interpreters. With so many individuals, not only nationals due to South Africa's eleven officially recognised languages, but also the increasing number of asylum seekers unable to communicate in South Africa's official languages, the need for the setting and implementation of these standards are overdue. Minimum standards and rules and ethics with regard to interpreting must be formalised as a matter of urgency in South Africa and in particular at the Department of Home Affairs.

In South Africa various academics and other interested parties have lobbied for and even established Court Interpreting programs, not only to provide better services but also to raise the profile and status of interpreters.⁸² In South Africa various degree and diploma courses⁸³ are offered by universities but such qualifications are not demanded by the Courts in South Africa for interpreters.⁸⁴

In the United States certification programs were adopted to ensure that the interpreters working in the courts are qualified. The first such program was instituted under the Federal Courts Acts of 1978. Mikkelson⁸⁵ made

recommendations for the European Court for Interpreters on the basis of experiences of colleagues in the United States. She noted that these programs in the United States ran into immediate problems because of the low pass rate. South Africa should bear this in mind and not impose testing on interpreters already working in the system without any training.

In conclusion, having noted minimum standards in other jurisdictions it is recommended that for South Africa to ensure competent interpretation in the asylum process as well as the courts, it must undertake the following:

- *Develop training programs*, that is, provide such training for existing interpreters as well as aspiring interpreters. Such training should necessarily include formal interpreting skills as well as knowledge of the law and ethics with regard to interpreting. Aspirant interpreters should only be admitted to the training programs once proficiency in the languages they are interpreting into and from have been established.
- Ensure that formalized *testing and certifications* take place after the training, conducted by individuals who are trained in language and interpreting techniques.
- *Practice materials* should be developed.
- *Seminars* to acquaint Refugee Status Determination Officers, presiding officers and other court staff with the nature of interpreting must be organised and attendance should be compulsory.
- The interpreters must have *qualifications* with regards to the language they are interpreting from and into.
- *Measures* must be put in place to resolve problems that have arisen as a result of problematic interpreting, that is, for the removal of and replacement of the interpreter.
- A *full recording* of the interpreting should always be available just in case the quality of interpretation is questioned at a later stage.

NOTES

1. Legal interpreting can be distinguished, for example, from medical or community interpreting; this paper will provide clarity hereon.
2. United Nations High Commissioner for Refugees, "UNCHR Statistical Yearbook 2010: Trends in Displacement, Protection and Solutions," (27 December 2011) ISSN 1684-9051. Available at: <http://www.unhcr.org/refworld/docid/4f06ecf72.html> [accessed 27 December 2011].
3. De Jongh, "Foreign Language Interpreters in the Courtroom," 286.
4. Kate Waterhouse, "Interpreting Criminal Justice: A preliminary look at language, law and crime in Ireland" *Judicial Studies Institute* (2009) 42.
5. See, for example, Section 35(3)k of Constitution of the Republic of South Africa, Act 130 of 1996.
6. Discussed in Waterhouse, "Interpreting Criminal Justice," 47. John Gibbons, *Forensic Linguistics: An Introduction to Language in the Justice System* (2003).
7. Discussed in Waterhouse, "Interpreting Criminal Justice" 47. Rachel Tribe, "Working with Interpreters," *Race, Culture, Psychology and Law* (SAGE, 2005).
8. *Attorney General v Joyce and Walsh* (1929) I.R. 526 per Kennedy CJ.
9. Waterhouse, "Interpreting Criminal Justice" 58.
10. *Andre Mercure v Attorney-General* (1988) S.C.R. 237.
11. *S.W.M. Brooks v the Netherlands* Communication No. 172/1984.
12. *Andre Mercure v Attorney-General*, (1988) S.C.R. 237.
13. *Mthetwa v De Bruin and Another* 1998 (1) BCLR 366 (N).
14. Fawzia Cassim, "The right to address the court in the language of one's choice" (2003) 44 *Codicillus* 25.
15. *Ibid.*
16. Magistrates Court Act 32 of 1944, section 6(2) reads:

If in a criminal case, evidence is give 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.
17. Nico Steytler, "Implementing Language Rights in the Court: The Role of the Court Interpreter" (1993) 9 *SAJHR* 206.
18. Refugees Act 130 of 1998.
19. Regulations to the Refugees Act, Vol.418, No. 21075, 6 April 2000 Regulation Gazette No.6779.
20. *United Nations Convention Relating to the Status of Refugees*, (22 April 1954) 189 UNTS 150.
21. Article 16(1) states that "a refugee shall have equal access to courts of law on the territory of all Contracting States."
22. James C. Hathaway, "The Rights of Refugees Under International Law" (Cambridge: Cambridge University Press, 2005), 910.
23. Fatima Khan "Family reunification within the refugee context: Is South Africa meeting its International, Regional and Constitutional obligations toward refugees?" *Working paper Series: No 1/2011* at http://www.refugeerights.uct.ac.za/usr/refugee/Working_papers/Working_Papers_1_of_2011.pdf, accessed 15 January 2012.
24. *International Covenant on Civil and Political Rights*, 16 December 1966 999 UNTS 171 (ICCPR)
25. *Ibid*, Article 14(3) (f) provides the right 'to have the free assistance of an interpreter if he cannot understand or speak the language used in court.'

26. Kathy Laster and Veronica Taylor, "Interpreters and the Legal System," (Sydney: The Federation Press, 1996), 26.
27. United Nations Human Rights Committee, Twentieth session Communication No. 172/1984. Netherlands.09/04/87.CCPR/C/D172/1984
28. Article 26 of the ICCPR: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."
29. Article 6(3) of the European Convention of Human Rights (ECHR) states that "... [e]veryone charged with a criminal offence has the following minimum rights: ... (e) To have the *free assistance of an interpreter* if he cannot understand or speak the language used in court." www.unhcr.org/refworld/docid/3ae6b3b04.html Accessed October 2011.
30. *Kamasinski v Austria* (Inadequate interpretation in criminal proceedings) (Series A, No 168 Application No 9783/82) European Court of Human Rights (ECHR), 74.
31. *Brozicek v Italy* [1989] E.C.H.R. 23; 10964/84 ,46.
32. *Fernandez v Government of Singapore* [1971] 1 WLR 987 per Lord Diplock.
33. Article 33 of United Nations Convention Relating to the Status of Refugees, (22 April 1954) 189 UNTS 150.
34. James C.Hathaway and J. Dent,"Refugee Rights: Report on a Comparative Survey" (1995) York University, 6.
35. Refugees Act 130 of 1998.
36. Lee-Anne De la hunt and Jeff Handmaker (eds) *Advancing Refugee protection in South Africa* (2008)
37. Oxford Dictionary (7th Edition) 2000.
38. William Kerfoot and Lee Anne de la Hunt, "Due Process in Asylum Determination in South Africa From a Practitioner's Perspective," in Jeff Handmaker et al., *Advancing Refugee Protection in South Africa* (New York: Berghahn Books, 2008), 89.
39. Act 108 of 1996.
40. *Mthetwa v De Bruin and Another* 1998 (1) BCLR 366 (N) 338.
41. Kerfoot and De la Hunt, "Due process in Asylum Determination," 99.
42. The Constitution note 39 above section 35(3) k.
43. *Deo Gracias Katshingu v Standing Committee for Refugee Affairs and Others* (Unreported) 19726/2010, Western Cape High Court, 11 November 2011.
44. Universal Declaration of Human Rights (10 December 1948) UNGA Res 217 A (III) (UDHR). Article 14 deals with the right "to seek and enjoy asylum."
45. Article 1A(2) of the 1951 Refugee Convention.
46. Convention Governing the Specific Aspects of Refugee Problems in Africa,1001 U.N.T.S. 45,entered into force June 20 1974, Ratification Found at <http://www1.umn.edu/humanrts/insytrees/ratz2arcon.htm> Accessed November 2011.
47. United Nations High Commissioner for Refugees, "Refugee Status Determination Handbook: Identifying who is a refugee", accessed on 15 July 2012, at www.unhcr.org/refworld/pdfid/43141f5d4.pdf.
48. Regulations to the Refugee Act 130 of 1998 at Annexure 1.
49. Regulations to the Refugee Act, Regulation 3(2)(a).
50. The Refugee Appeal Board is as independent statutory body created in terms of Section 12 of the Refugees Act, 130 of 1998. Section 26(2) confirms that the "Appeal Board may after hearing an appeal confirm, set aside or substitute any decision taken by a Refugee Status Determination Officer in terms of section 24(3)(c) in respect of unfounded decisions."
51. The Standing Committee for Refugee Affairs is an independent statutory body created in terms of Section 9 of the Refugees Act. Section 11(e) of the Refugees Act 130 of 1998 states that "... the Standing Committee must review decisions by the Refugee Status Determination Officers in respect of manifestly unfounded decisions."
52. The Constitution, Act 108 of 1996, Section 33.
53. Regulations 10(1).
54. *Van Garderen v Refugee Appeal Board* (Transvaal Provincial Division) No: 30720/2006
55. *Matter of Deo Gracias Katshingu*, 12.
56. Ibid.
57. De Jongh, "Foreign Language Interpreters in the Courtroom," 285.
58. Waterhouse, "Interpreting Criminal Justice," 48.
59. *Matter of Deo Gracias Katshingu*, 12.
60. Regulation 5(3)(b), Regulations to the Refugees Act.
61. Holland Sworn Translators and Interpreters Act, accessed on 1 August 2012, at http://wetten.overheid.nl/BWBR0022704/geldigheidsdatum_06-03-2010.
62. Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings at www.eulita.eu/sites/default/files/directive_en.pdf, accessed 7 November 2011.
63. Holly Mikkelson, "The Court Interpreter as guarantor of Defendant Rights," found at <http://www.acebo.com/papers/guarantr.htm>, accessed on 7 December 2011.
64. Discussed in Waterhouse, "Interpreting Criminal Justice" 47. E Granger & M Baker, "The Role and Experience of Interpreters," in Rachel Tribe et al. eds. *Working with Interpreters in Mental Health* (2003)
65. Ibid., 47.
66. Susan Berk-Seligson, *The Bilingual Courtroom: Court Interpreters in the Judicial Process*, (The Chicago Press, 2002) 54.
67. Ibid.
68. Steytler, "Implementing language rights," 205.
69. Discussed in Waterhouse, "Interpreting Criminal Justice" 47, quoting O.V Channon, *The Role of the Court Interpreter*, (London: Sweet and Maxwell, 1982).

70. Ibid.
71. *AA and the secretary of State for the Home department* (Language diagnosis: use of interpreters) Somalia [2008] UKAIT00039 para 7.
72. *Arizona v. Natividad* 111Ariz.191, 526P.2d (1974)
73. Sabine Fenton, "Expressing a well-founded fear: Interpreting in Convention Refugee Hearings," at <http://www.refugee.org.nz/Reference/Sabine.html>, accessed on 1 August 2012.
74. Robert Barsky, "The Interpreter as an Intercultural Agent in Convention Refugee Hearings" In *Translator* (1996) Volume 2, 46.
75. U.S. Federal Courts Act of 1978.
76. Mikkelson, "The Court Interpreter as guarantor," 4.
77. Lee Ann De La Hunt, "New Refugee Policies in Southern Africa: Conference paper": (Paper presented at the Oxford Refugee Centre, 5 April 2001.
78. Refugee Appeal Board Rules, as amended (2011), Rule 4(2): "The notice of appeal shall be in the form prescribed by Form RAB(01) and shall include:—
The full name, current address, date of birth and nationality of the Appellant; all the grounds of appeal and the documents or certified copies thereof on which the Appellant seeks to rely; and
The signature of the Appellant and in the case of a minor or a person who is incapable of acting on his/her own behalf, the signature of the Guardian/curator acting on behalf of the Appellant.
79. Odhiambo Abuya "Parle vous l'anglais ou le Swahili?" The role of the interpreters in the Refugee Status Determination interviews in Kenya, accessed on 1 August 2012, at www.fmreview.org/FMRpdfs/FMR19/FMR1922.pdf, 48, 49.
80. SAQA is an official body appointed by the Ministers of Education and Labour to oversee the development of the National Qualification Framework (NQF) in South Africa. See www.saqa.org.za.
81. Section 21 (2) (b) of the Refugees act of 1998—the Refugee Reception Officer must see to it that the form is properly filled in.
82. Rosemary Moeketsi and Kim Wallach, "Forensic Linguistics" in *The International Journal of Speech, language and the Law* (2005), Volume 12(1) 77–108.
83. Ibid.
84. Ibid.
85. Mikkelson, "The Court Interpreter as guarantor," 4.

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