# Speaking in tongues – A Namibian experience

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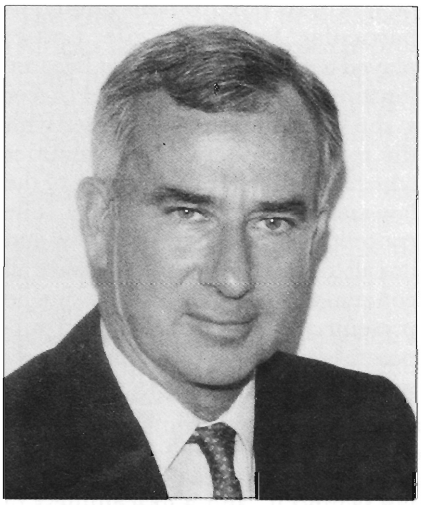

The author has recently had stints as acting judge in the High Court of Nambia.

Constitutional provisions do not change linguistic realities in polyglot countries. Namibia's constitution proclaims English as the national language. The lingua franca of the country has been and remains, Afrikaans. When English is used, it often emerges in a form which local wits have dubbed "Namlish".

The pro's and con's of the constitutional language policy, and the reasons for it, are another matter.

Of interest here is what happens in the courts – and this certainly reflects reality. The courts have been practical in their approach to accommodate this reality. Effective justice has taken precedence over constitutional requirements.

With the exception of an acting judge, the High Court Bench is, at the time of writing, bilingual (Afrikaans and English). However, the interpreters, often fluent in several languages (eg Afrikaans, Wambo, Herero, Kwangali, Diriko, Nama, Tswana, San) are generally not familiar with English.

As a result criminal trials are almost invariably held in Afrikaans. There are of course exceptions; for instance the recent trial of Spanish fishermen. This trial was conducted in English, with a Spanish interpreter. But the "run of the mill" cases are conducted in Afrikaans, with an introductory obeisance to English. Argument is sometimes in English, sometimes in Afrikaans, or both.

As the accused must understand the judgment, this is delivered in the language in which the trial was conducted.

In civil matters, pleadings are in English. Motion court is conducted in English (or sometimes "Namlish"). But evidence in unopposed divorces is mostly in Afrikaans, normally the language the plaintiff understands best.

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A recent experience in the criminal courts deserves retelling. The accused was a Bushman speaking Kung, a San language. An interpreter (who normally did police work) came along from some distant place in the north to act as an occasional interpreter. As such he had first to be sworn in. The clerk read out the oath (in Afrikaans). There was no reaction. The matter was then carefully explained in Afrikaans to the interpreter. Light dawned. His hand went up, two fingers were raised and the oath was

taken with all the clicks characteristic of the Bushman language.

The next (and usual) question was whether the accused desired legal representation. The answer was a total *non sequitur* – it seemed to be some sort of plea, but that was not clear either. It was now apparent that there was a problem. The court adjourned with an instruction to the State Advocate somehow to explain the concept of legal representation to the accused outside court.

This was done and the accused decided that he wanted representation. In the meantime another (court) interpreter was found, who spoke Kao-Hi (? spelling) the dialect or Bushman language spoken in the Gobabis area (ie in the east). Though the court was informed that Kung and Kao-Hi differ, the accused could for some reason largely understand the Kao-Hi interpreter (who incidentally was a Motswana).

A plan was then evolved whereby the accused would be assisted by two interpreters. When the Kao-Hi interpreter felt he wasn't getting through, he would be assisted by the Kung interpreter. The former, however, would do the Afrikaans side.

The next day, however, a new twist emerged. The accused apparently spoke Kwangali, a language spoken in Kavango. He was quite happy to be tried in that language and he confirmed this through an Afrikaans-Kwangali interpreter.

The trial then started. *Pro Deo* counsel (incidentally a German speaker) had prepared a s 112 (of the Criminal Procedure Act 1977) statement, understandably but not usefully, in English. This was then orally translated by counsel into Afrikaans (the court checking this part, at least) and then into Kwangali.

As it happened, after a few questions by the court s 113 was applied, and a plea of not guilty entered. The first witness, a Kung speaker, was called. Once again the Kung interpreter faltered. The Kao-Hi interpreter was called in.

The State Advocate put his questions in Afrikaans. This was interpreted by the Kao-Hi interpreter into Kao-Hi. The Kung interpreter would add his bit. The Kwangali interpreter would interpret for the accused into Kwangali.

The witness' reply was in Kung, which the Kao-Hi interpreter, after some cross checking with the Kung interpreter, would render in Afrikaans. This would then be interpreted into Kwangali for the accused, who had presumably in any event understood the witness' replies in Kung.


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My experience in this matter, and others, leads me to a few reflections. The first is that pre-conceived notions about what language should be spoken in court must obviously give way to considerations of justice. Under that heading I think one should list firstly that the accused must understand what is going on. But so must the court, the prosecution and defence counsel. Secondly, the language used in court should be an adequate vehicle for the purpose. Thirdly, it must be a language in which transcription services are readily available. Fourthly, nobody should feel disadvantaged because of the use of any language.

The need for a properly trained and skilled interpreting service is therefore obvious. Far too little seems to be done in South Africa (probably Southern Africa too) to ensure the availability of skilled interpreters. There should be a special college for training interpreters (as for instance many exist in Europe) so that the requirements of justice can be served in a polyglot country.

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The administration of justice is not the only field where skilled interpreters are needed. At international conferences, in business negotiations, in fact in any situation where people who do not speak the same language meet, skilled interpreting is essential. Secondly, interpreters should be trained in various fields. For instance, someone who has the qualifications to interpret at a conference of engineers, may not have the same familiarity with terms used by criminal lawyers. Ideally there should thus be interpreters who have special skills in certain fields. They should be available to the courts.

Interpreting is a field of study on its own. This seems an area where the Technikons could usefully become interested.

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But my interest is of course primarily what is done in our courts. There seems to me to be room for considerable improvement, even in my experience.

I have, in the course of practice, sometimes heard mistranslations in European languages. Such mistranslations may possibly occur with even greater frequency where the various Bantu or Khoisan languages are used. Obviously one should attempt to obviate this. The answer seems to me to lie in training interpreters.

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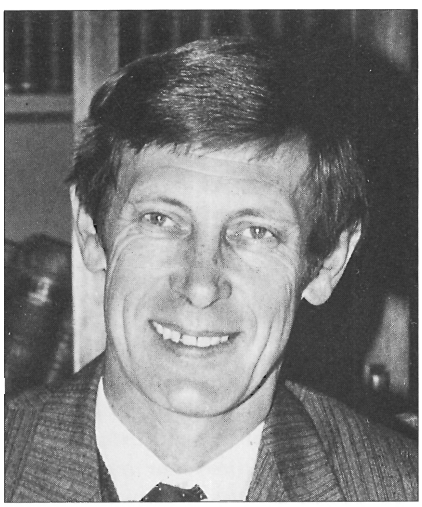
But apart from proper training, I believe there should be some sort of supervision (even of a random nature) of what is happening in the courts. This could be provided by senior interpreters employed by the translation service who could sit in, listen, check and even where necessary interrupt interpreting in court proceedings. The judge or magistrate can seldom understand every language spoken in his court. It would be comforting if he knew that someone was looking over the interpreter's shoulder. I am sure many judicial officers have shared the frustration of hearing a long debate between witness and interpreter, and eventually getting a brief rendering in English or Afrikaans. Often it is too time-consuming (and possibly confusing) to enquire what has been debated.

Furthermore, as our interests converge ever more with those of the rest of Africa, we will have to cater for this by providing interpreters both in court and without. ■

# New Attorney-General of the Transvaal Division of the Supreme Court Pretoria



**Dr Jan Adrian van Schoor d'Oliveira SC**, (BIuris (Pta), LLB (*cum laude*) (SA), LLD (SA)) was appointed Attorney-General of the abovementioned Division from 1 May 1992. He started his career as a public prosecutor in the Pretoria Magistrate's Court in 1969; lecturer, Department of Justice Training Section from 1972-1976; Senior State Advocate, staff of the Attorney-General, Transvaal from 1977-1980; Deputy Attorney-General, Transvaal from 1980-1986 and Attorney-General of the Eastern Cape Division of the Supreme Court, Grahamstown from 1 April 1986-30 April 1992.

Dr d'Oliveira's further activities included: Part-time lecturer and External Examiner, University of Pretoria, 1976-1984 and External Examiner, Rhodes University, 1986-1992.

He received the following awards: International Visitors Grant, USIS, USA as participant in a programme on Crime and Justice in the US 1989; a scholarship from DAAD; grants from HSRC, Attorneys Notaries and Conveyancers Fidelity Guarantee Fund for research in Germany at the University of Heidelberg and the Max Planck Institut für Ausländisches Öffentliches Recht und Völkerrecht in 1974-1975.

He is the author of a thesis "State Liability for the Wrongful Exercise of Discretionary Powers" 1977; Joubert's Law of SA (vol 10) "Group Areas and Community Development" 1979; co-author of "State Liability" in Joubert's Law of SA (vol 25) 1991; and contributor to various legal periodicals, eg 1976 *THRHR* 211.

He is married to Renée Valerie Ann Roux and they have two sons and two daughters. For recreation Dr d'Oliveira enjoys road-running.