

**The Translation and Certification of Legal Text: Parliament of the
Republic of South Africa as a Case Study**

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ABSTRACT

This study looks at the translation process, certification and assent of legislation after it had followed the Parliamentary legislative process as required by the Constitution of the Republic of South Africa and the Joint Rules of Parliament. This was done against the background of the history of South African languages, South African Parliament, legislative framework and the history of legal language translation. The study emphasised the fundamental role played by second-language translation in the legislative process. Even though the indigenous languages are still not awarded an equal status in Parliament, a lot has been done in ensuring that most of the new Bills and Acts are translated into the South African indigenous languages. An overview of translation strategies is highlighted to provide a contextual understanding of the functionalist approach to translation. In terms of legal translation, there is a great need that legal language translators be fully trained in the language of the law to be able to deliver an error-free translated legislation. Through observations and interviews, the study showed that Parliament needs to use all indigenous languages on a rotational basis when translating Bills, Acts and on all its internal daily papers to promote equality. Certification in English and one other second language translation will assist in creating a working relationship between legal advisers who draft legislation and translators who translate the drafted Bill. This process can lead to the birth of co-drafting in Parliament.

The study found that there is a lack of dedication and vision in interpreting and enforcing the provisions stipulated in the Constitution and the legislation governing languages. Parliament of the Republic of South Africa is used as a case study to shed some light on what is happening in the translation unit and the problems that are faced by non-legal translators when translating legal documents. Recommendations are offered, among others, the need for Parliament to develop a training model that dwells more on the use of plain language in legislative drafting and translation. The study concluded by indicating the importance of working hand-in-hand with tertiary institutions in translator training as this will assist in keeping up with some of the developing trends in the legal language field.

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ABBREVIATIONS AND ACRONYMS

ANC	African National Congress
ATC	Announcements, Tablings and Committee Reports
BA	Bachelor of Arts
BT	Back translation
MEC	Member of Executive Council
LLB	Legum Baccalaureus
MEC	Member of the Executive Council
NA	National Assembly
NCOP	National Council of Provinces
OCSLA	Office of the Chief State Law Adviser
PanSALB	Pan South African Language Board
PMG	Parliamentary Monitoring Group
SLT	Source language text
TLT	Target language text

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CHAPTER 1: INTRODUCTION

1.1 Introduction

Translation plays an important role in the process of communication in all the units in the Parliament of the Republic of South Africa. It is used during the process of legislative drafting and certification and in the units of Legal Services, Language Services and Public Education. When the Bills Office sends an act to the president for assent, it must be submitted in two languages, namely English and a translation in any other official language.

Thornton (1996:375) defines legislative drafting as the drafting of binding rules of law for the regulation of society that are to be enacted by the government bodies with legislative powers. Legislative drafting is the art or science of writing normative acts. Certification is when a legal adviser and a legal translator certify that a bill is technically correct, that its provisions are legally sound and that the bill is approved. Assent refers to a process whereby the bill is sent to the president to be checked and signed. These bills are discussed during plenary in both houses of Parliament, namely the National Assembly and the National Council of Provinces. When parliamentary committees exercise their oversight functions, for assent, and throughout committee deliberations, translated legislation is utilised (Rules of National Assembly, 2016:156).

The Joint Rules of Parliament (Parliament of the Republic of South Africa, 2011:106) require an Act of Parliament to be published in two languages in the *Government Gazette* and that all legislation that is forwarded to the president for assent must be in two languages, namely English and any other official language as chosen by the department initiating the legislation. If any discrepancy in meaning is found between the versions of any bill in the different official languages after such a bill has been passed by the Assembly, but before it is presented to the president for assent, such discrepancy must be reported to the Assembly. Rule 220 on language requirements for bills states:

a Bill introduced in either the Assembly or the Council must be in one of the official languages. The Bill in the language in which it is introduced will be the official text for purposes of parliamentary proceedings. The official text of the Bill must be

translated into at least one of the other official languages and the translation must be received by Parliament at least three days prior to the formal consideration of the Bill by the House in which it was introduced. The cover page of a Bill must specify which language version is “the official text and official translation”.

In parliamentary proceedings, only the official text of a Bill is considered, but the Secretary must ensure that all amendments to the official text are reflected in the official translation or translations before the official text is sent to the President for assent. (Parliament of the Republic of South Africa, 2011:106)

1.2 Background

1.2.1 History of South African Parliament

Before 1910, the Parliament of the Union of South Africa, now referred to as the Parliament of the Republic of South Africa, was known as “Parliament of the Cape of Good Hope” and it was a bicameral legislature (*Union of South Africa Act, 1909:s19*). The *Collins English Dictionary* (2011) defines *bicameral* as a legislature that consists of two houses. The House of Assembly, also known as the lower house, and the Legislative Council, sometimes known as the upper house, composed this legislature. It was elected pursuant to the multi-racial Cape Qualified Franchise system, which applied suffrage criteria equally to all males, regardless of race, from the beginning of Cape independence in 1853.

Between 1910, when the Union of South Africa was formed, until 1961, Davenport (1991:267) claims that the Parliament was likewise bicameral, consisting of the king or queen, the Senate, and the House of Assembly, known in Afrikaans as the Volksraad. The senators were nominated by the governor general and the four provinces, namely Cape, Transvaal, Orange River and Natal. The senators had to choose a president to chair the Senate. Members in the House of Assembly were elected by voters and each member of Parliament represented an electoral district, which is now referred to as a constituency. The chairperson of the house was the Speaker, and this practice is still the same today. It must be noted that only white men qualified to be members of Parliament during those years. Only white men were awarded the right to vote in all the four provinces. This did not mean that black or African people were not there, but they were not recognised at that time. White

women could cast their votes and to serve as senators and members of parliament on the same footing as white men from 1936. Parliament was awarded legislative sovereignty powers over the Union. Black and coloured voters were introduced in 1937 and were separated from other races. Black voters were only represented by four members in the senate. This privilege was short-lived, however, as representatives of black voters were removed in 1960.

The Republic of South Africa was founded in 1961, and the makeup of Parliament was changed to include the state president instead of the queen (Constitution of the Republic of South Africa, 1961:s1). Only white voters were represented in the Senate and the House of Assembly. The Senate was dissolved in 1981, and Parliament was converted from a bicameral to a unicameral legislature. A unicameral legislature consists of one house or a single legislative chamber (*Collins English Dictionary*, 2011). The 1983 Constitution of the Republic of South Africa, in section 52, gave coloured men and women as well as the Indian population the power to vote, which then changed Parliament from a unicameral to a tricameral parliament. This meant that coloured, white and Indian communities were given a voice, but the Black majority were still excluded. The House of Assembly was retained for white people, the House of Representatives was established to represent the coloured people, and a House of Delegates for the Indian people, making Parliament a tricameral legislature. The black majority were still not given the right to vote, and even the two other groups (coloured and Indian) that were given the opportunity to vote indicated that the new voting system that was introduced lacked legitimacy, and many of them boycotted the elections (Davenport, 1991:267).

The reform process that ended apartheid was voted for by a majority of the white voters in 1992, which led to the introduction and certification of the 1993 Interim Constitution of the Republic of South Africa by the tricameral Parliament. The Interim Constitution took effect in 1993, and it was the first piece of legislation that introduced the use of the eleven South African languages. The Interim Constitution took effect on the 27th of April 1994, which was the same day as the first non-racial elections. The current Constitution was adopted on the 8th of May 1996, it was promulgated on the 18th of December 1996 and the date of commencement was on the 4th of February 1997. The Interim Constitution and the current Constitution

introduced South Africans, irrespective of gender, colour or creed, to all the rights that are enshrined in the Bill of Rights (Chapter 2 of the Constitution), including the right to language and culture mentioned in clause 30.

1.2.2 History of South African languages

The issue of language has been a challenge in the contemporary history of South Africa. Du Plessis (1999) refers to the evolution of the modern South African state as the conversion of political victories into language victories. The Anglo-Boer war (which ended in 1902) led to the defeat of Boer republics during the era of the Union of South Africa. The Anglo Boer War is defined in the online *Collins Dictionary* (2011) as either of two conflicts between Britain and the South African Boers, the first (1880–1881) when the Boers sought to regain the independence given up for British aid against the Zulus, and the second (1899–1902) when the Orange Free State and Transvaal declared war on Britain. The war was over the sovereignty and commercial rights in these lands. The British came out victorious in these wars. The *Union of South Africa Act* of 1909 united the Cape, Natal, Transvaal and the Orange River colonies in the Union of South Africa. This act already regulated the official language status for the newly unified Union of South Africa. Section 137 of the act states:

Both the English and Dutch languages shall be official languages of the Union, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights, and privileges; all records, journals, and proceedings of Parliament shall be kept in both languages, and all Bills, Acts, and notices of general public importance or interest issued by the Government of the Union shall be in both languages. (*Union of South Africa Act*, 1909)

Brenzinger (2017:41) indicates that after King Edward VII assented the act and afforded Dutch and English official status, Afrikaans-speaking students were taught in either English or Dutch, both languages that were not what these students spoke daily. The attempts by the Afrikaans speaking community to replace Dutch with Afrikaans in the Constitution failed until when the National Party joined the Pact Government of the Union of South Africa in 1924. The National Party prioritised the recognition of Afrikaans when it passed the *Official Languages of the Union Act* (1925). Developing a clear understanding of the history of Afrikaans requires

thinking about its origins, development and implementation. Afrikaans was a language of the few that was basically used for communication, especially with slaves and uneducated workers, but it was later adopted by a broader spectrum of the population. Afrikaans was used as a way of discriminating and distinguishing the English speakers and Afrikaans speakers during those times. The speakers of the Afrikaans language regarded themselves as superior to speakers of English and indigenous languages in South Africa, which, according to them, gave them the right to control the land and the people who lived in it (Webb & Kriel, 2000:42).

It was proclaimed by the National Party that the word “Dutch”, which appears in section 137 of the *Union of South Africa Act* (1909) and anywhere else that the word occurs in said act, was to include Afrikaans. C.J. Langenhoven, a member of the Cape Provincial Council, also proposed that Afrikaans should replace Dutch as the medium of instruction in all primary schools up to standard four. His proposal was unanimously adopted by three provinces but rejected by Natal. On 8 May 1925, the *Official Languages of the Union Act* (1925) was passed at a joint sitting of the House of Assembly and the Senate. By this act, Dutch was replaced by Afrikaans. Both Afrikaans and English enjoyed equal status and rights (Giliomee, 2003).

In 1961, South Africa left the Commonwealth, and the South African Constitution (1961) was passed. This act no longer mentioned Dutch as an official language of the Republic and only referred to English and Afrikaans as the two official languages of the Republic. Section 108(1) and (2) of the Constitution declared:

English and Afrikaans shall be the official languages of the Republic, and shall be treated on a footing of equality, and enjoy equal freedom, rights and privileges. All records, journals, and proceedings of Parliament shall be kept in both languages, and all Bills, Acts, and notices of general public importance or interest issued by the Government of the Republic shall be in both official languages. (*The Constitution of the Republic of South Africa*, 1961)

In the *Constitution of the Republic of South Africa* (1983), the African languages were recognised for the first time in section 89(3)(a)(i), (ii) and (b). This section states:

(3) Notwithstanding the provisions of subsection (1), an Act of Parliament or a

proclamation of the State President, issued under an Act of Parliament, whereby a Black area is declared to be a self-governing territory in the Republic, or a later Act of Parliament or a later proclamation of the State President (which in the absence of any other empowering provision may be issued under this subsection) may-

(a) provide for the recognition of one or more Black languages for any or all of the following purposes, namely-

(i) as an additional official language or as additional official languages of that territory; or

(ii) for use in that territory for official purposes prescribed by or under that Act or later Act or by any such proclamation; and

(b) contain provisions authorizing the use of any such Black language outside the said territory for such purposes connected with the affairs of that territory and subject to such conditions as may be prescribed by or under that Act or later Act on any such proclamation (*The Constitution of the Republic of South Africa, 1983*).

The 1983 Constitution led to the introduction and usage of the African languages in the media, even though English and Afrikaans continued to be the dominant languages in the country (Mesthrie, 2002:23).

Du Plessis (2000:103) believed that the recognition of the eleven official languages in the 1993 Interim Constitution set a precedent for many countries. The historic speech by the then President F.W. de Klerk marked the end of apartheid in South Africa, which saw Nelson Mandela being elected as the new president in 1994. In his first inauguration speech, former President Mandela promised the people of South Africa that there would be a social order that respects completely the culture, language and religious rights of all sections of their society and the fundamental rights of individuals. These socio-political developments in South Africa had an impact on the development, formulation and adoption of the 1993 Interim Constitution. It was in this constitution where the section on the eleven languages was included for the first time. The announcement that this Constitution will establish eleven official languages for the Republic surprised many people and sparked a lot of political controversies among organisations. The ANC held a workshop in Harare, at the end of March 1990 with the title "Towards a language policy for post-apartheid South Africa". This workshop saw the establishment of

the ANC Language Commission, which was to serve as a think-tank on language issues.

The language provision of the Interim Constitution of 1993 served as a forerunner to the language clause in the 1996 Constitution. There is a slight difference between these clauses, but they both moved South Africa from being a bilingual country to being a state that embraces eleven official languages. After the first democratic elections, which took place on the 27th of April 1994, the final *Constitution of the Republic of South Africa* (1996) was approved by the Constitutional Court and took effect on the 4th of February 1997. This Constitution recognises the eleven official languages with equal status, and several other languages are also mentioned as needing to be considered for future development.

In Chapter 1, section 6, the Constitution of the Republic of South Africa, 1996, addresses languages extensively and indicate those languages that still need to be developed.

6. (1) The official languages of the Republic are Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.

(2) Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages.

(3) (a) The national government and provincial governments may use any official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned; but the national government and each provincial government must use at least two official languages.

(b) Municipalities must consider the language usage and preferences of their residents.

(4) The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. Without detracting from the provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated equitably.

(5) A Pan South African Language Board established by national legislation must

- (a) promote, and create conditions for, the development and use of—
 - (i) all official languages;
 - (ii) the Khoi, Nama and San languages; and
 - (iii) sign language; and
- (b) promote and ensure respect for—
 - (i) all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu and Urdu; and
 - (ii) Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa (Constitution of the Republic of South Africa, 1996).

In a media briefing that took place on the 3rd of December 2002, Dr Ben Ngubane, as the Minister of Science, Technology, Arts and Culture, expressed appreciation for the change that happened to the country by affirming that

a person's language is in many ways a “second skin”: a natural possession of every normal humanbeing, with which we use to express our hopes and ideals, articulate our thoughts and values, explore our experience and customs, and construct our society and the laws that govern it. It is through language that we function as human beings in an ever-changing world. The right to use the official languages of our choice has therefore been recognised in our Bill of Rights, and our Constitution acknowledges that the languages of our people are a resource that should be harnessed (Ngubane, 2003).

All government structures, as well as institutions exercising a public power or performing a public function in terms of legislation, are bound by South African legislation to implement the National Language Policy Framework in South Africa. These legislative instruments governing the development, use and promotion of South African languages have been adopted by Parliament and will be discussed comprehensively in this study. Parliament, as a government institution, answered the call made in the Language Policy Framework by establishing a fully-fledged Language Services Section. This section has four units: The Translation Unit, the Interpreting Unit, the Reporting Unit (Hansard) and the Editing Unit. These units render translation, interpreting, reporting and editing services to Parliament in all

eleven official languages and South African Sign Language. The state, as the guardian of the nation's interests, requires the most reliable legal services possible to meet its objectives. Parliament performs a variety of functions, which include the drafting, scrutinising, tagging and passing of legislation, and the provision of legal advice. The Language Services Section in Parliament comprises 108 language practitioners, forty senior language practitioners, twelve controllers, four unit managers and one section manager (all official languages – English, Afrikaans, Siswati, isiZulu, isiXhosa, isiNdebele, Xitsonga, Tshivenda, Sesotho, Sepedi and Setswana are represented). They provide translation services, interpreting services and quality assurance to both houses of Parliament. They also edit, report the house proceedings and proofread all legislative documents that come to the section (Ntuli, 2012:2).

The Language Services Section in Parliament was established in response to the constitutional imperatives that recognise the historically diminished use and status of the indigenous languages of South African people, by compelling the state to take practical and positive measures to elevate the status and advance the use of the eleven official languages, namely English, Afrikaans, Siswati, isiZulu, isiXhosa, isiNdebele, Xitsonga, Tshivenda, Sesotho, Sepedi and Setswana. As inherited from the past regime, the letter and spirit of these words are that all are equal. As a result, the state is required to take remedial action to restore equality to formerly suppressed languages. The requirement that a Pan South African Language Board (PanSALB) shall be created by national legislation and must promote and provide conditions for was made with the aforementioned viewpoint in mind. The development and use of all official languages, the Khoe and San languages and South African Sign language, and promote and ensure respect for all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu, Urdu, Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa (Prah, 2006:12).

Therefore, it is the duty of all government institutions to ensure that all these African languages enjoy parity of esteem and are treated equitably as far as translation of legislative documents is concerned. The main aim of establishing this unit was to have practically all proposed legislation reach all sections of the population in their

respective mother tongues, especially legislation that affects or tampers with their deeply treasured way of life. An example is the *Traditional Courts Bill*. The bill is intended to increase access to justice services by enhancing the effectiveness, efficiency and integrity of traditional courts in resolving disputes, in keeping with the imperatives and values of the Constitution. If this bill is not translated into all the official indigenous languages, it might be useless, since most of the traditional leaders are not educated and it is only used by the people who are still practising culture in rural areas. The institution aims to produce quality translation and interpreting and error-free Hansard reports, to make sure that it always guards against the pitfall of literalism and maintain consistency (Ntuli, 2012:2).

It is well known that if legislation is not carefully considered and well translated, it may have unintended consequences. The difference in meaning when translating the words “rules, regulations, laws, and legislation” into indigenous languages is sometimes overlooked by translators. If these words and others are not carefully considered and well translated, the correct meaning may be lost. Careful consideration must be given to translating such words in legislation to avoid ambiguity (Van Wyk, 2006: ix).

The South African government required an objective to provide its citizens the freedom to be served in any of the eleven official languages spoken in the country. In this regard, the government encouraged all national, provincial and local government departments, institutions and private sectors to at least provide services to people in the language that they understand better, which is their mother tongue. In its language policy, the government proposed that a principle of rotation should be used when selecting languages for publishing government documents. This rotation principle is clearly stated in this policy to redress the previously marginalised official indigenous languages (National Language Policy Framework, 2002:14). The Constitution also set a new standard for language planning, development and empowerment that must respond to the challenges of language transformation in South Africa.

1.3 Language planning, development and empowerment.

The current status of South Africa's indigenous languages is concerning. The development of the four Nguni languages and other indigenous languages is happening at a very slow pace and there is still a lack of empowerment for those who are trying to develop these languages. Bamgbose (1999:13) confirms this statement when indicating that African languages lost their status coupled with this low status and esteem is the low development status of many African languages. These languages have been reduced in such a way that even the speakers of African languages have developed a negative attitude to their own languages. Since the dawn of democracy, a number of policies have been developed by the National Department of Arts and Culture, language units and provincial departments, all of which aim at introducing and discussing the issues around multilingualism in the country. Language policy and language planning can provide an environment that may be conducive for language growth and awareness. Language policy and language development may, to some extent, determine the degree to which development and empowerment in languages may fail or succeed. Researchers like Dr Munene Mwaniki (2011), Dr Khethiwe Marais (2013) and Du Plessis (1996) have discussed the issues surrounding language policy, language planning and language development. Most of them discovered that the policies that are in place are very good, but what is lacking is implementation. In South Africa, developing and strengthening indigenous languages will remain a necessity, and the government should make a greater effort to finance language development efforts. Mwaniki (2011:42) believes that “language planning practice in South Africa seems keen to force constructs developed and applied in circumstances remote to South African circumstances in the interpretation and application of South Africa’s Constitution language provision”. Practitioners of language planning and language bodies must rise to the task of devising ways that will aid in the realization of the constitution's multilingual dispensation.

Researchers in the development field have put forward the notion that empowerment is an important element necessitated by development (Keheler, 2007:2). In the case of languages, there is a presumption that development and empowerment come directly or indirectly from language policy and planning

mandates, assuming that policies are already in place. Language planning involves ideas, laws and regulations known as language policy, as well as the changes in these rules, beliefs and practices based on the planning for changes in the way language is used in different communities. Kaplan and Baldauf (1997:10) define language planning as an attempt to modify the linguistic behaviour of some communities because of social problems.

Language planning is more than drawing up a list of languages that are regarded as mother tongues and spoken in a defined area or listing the languages' actual domains of use. Language planning is more important because it deals with problems that involve dialects, standardisation and other aspects of language development and language use, as these are areas of concern for language planners. Looking at the history of languages in South Africa, there is a great need for language planning agencies that are empowered to influence language development and reduce conflict and tension.

The South African government saw a major shift after the dawn of democracy, which involved the introduction of eleven official languages to be used in all government communication and in educational settings. Nine indigenous African languages were granted equal status as that of English and Afrikaans. The successful development of Afrikaans in early years was an example of the prospects for the successful development of the major South African languages. However, one cannot really be certain that the indigenous languages will also be developed as successfully as Afrikaans. There is hope that the South African indigenous languages may be developed and reach the level of Afrikaans, but that will take hard work and more involvement from the language bodies. De Kadt (2005:2), in her paper titled "Language development in South Africa", highlights that modern efforts may be less successful in language development. She is of the view that the modern government is not prioritising language development the way the apartheid government did. There is a pressing need for a shift in the approach used by the present government if any of the indigenous official languages are ever to have a status approaching that of English or Afrikaans. Several scholars see development from the point of view of where they operate as language developers. One of them is Sen (1999:3), who believes that "development is a process of expanding the real

freedoms that people enjoy.” Sen’s view pays special attention to the factors that make language development an important factor in that it is seen as playing a prominent part in the development process. The goals of freedom will be fully developed if the development of languages is fully accelerated. Language may be undermined, but it is one of the greatest weapons with which to liberate economic opportunities in our societies. Fully developing languages will accelerate achieving the goals of freedom, and can contribute to the elimination of major sources of poverty, oppression, poor economic opportunities, systematic social deprivation and neglect of public facilities.

Another scholar, Djite (2008:3), believes that language development is perceived nowadays as a way of transformation in the world where new innovations in information and communication technologies are used.

For language development to be successful, language speakers must be part of the process and participate in the policy decision-making process. Their involvement in the process must only be for achieving sustainability and buy-in so that they can participate fully in any suggested language development projects. It will also allow speakers of African languages to be empowered and actively involved, which will make it easy to find out what they need to develop in their languages and to devise methods that might be sustainable in doing so. The South African government owes its people a fundamental level of service delivery to ensure that they can access, understand and participate in its business by using languages that they fully understand. This can only be achieved by making sure that all the policies, legislation and communication that takes place between the government and its people are translated into all the languages that have been afforded official status.

Another important factor that needs to be considered is the issue of language empowerment. Many people in South Africa, especially the speakers of the previously marginalised languages, still do not have access to important and essential resources. Buthelezi (1995:51) supports this statement when he indicates that the government has expressed emphatically the call for the promotion of and use of indigenous languages nationally, but there is no evidence that the policies on language empowerment and multilingualism are in force. In fact, there seems to be

no change at all that is aimed at increasing the development of indigenous languages or to accord them a status equivalent to that given to English and Afrikaans, functionally. People are still not fully empowered with regard to language. As a result, it is critical that their languages be strengthened, allowing people to use them on a variety of vital platforms such as politics, the economy, and education. People's capacities should be strengthened so that they can engage in informed decision-making about everything that impacts their well-being with confidence and dignity. A good example of these platforms is taking Parliament to the people, listening to the proceedings of the House and the Peoples' Assembly where people are always involved in deliberations that affect the way they live. The idea of language development and empowerment will develop human participation in these activities, which are central and fundamental to human life.

Ngugi is of the view that:

If we believe that people are the basis of development, then the language or languages that they speak are the basis of that progress and every language policy and planning should incorporate this premise. African languages must be at the frontline in the discovery and invention of knowledge in the arts, in the sciences and technology (2013:6).

What Ngugi is putting forward above is relevant because this is not supposed to be a question about whether the South African languages that were previously marginalised should be developed. The Nguni languages are being developed but they have not reached the level where one can say they are at the frontlines in the discovery and invention of knowledge in different fields.

Chabata (2008:16) emphasises the importance of raising the status of languages in the communities in which they are spoken. If languages are not spoken fully in communities, they run the risk of dying. During an interview on ENCA, the PanSALB CEO Ms. Nkosi described it aptly when she said, "Languages are like a flowing river, once it stops flowing it means it has run dry." If languages are not spoken or read well and often by speakers of those languages, they run the risk of dying. The young generation will not know their mother tongue and will also see no need to learn it. A number of activities need to be done, which may include language quiz competitions, compilation of dictionaries, development of new

grammar textbooks, funding more research in language development and fast-tracking language standardisation.

The fact about human languages, according to Ngugi (2013: xi), is that they all have roughly the same structural complexity and may allow speakers to describe their surroundings. As true as this assumption may be, giving a language new functions necessitates the development of new concepts to fit the new functions. The indigenous languages of South Africa are not completely developed, but neither are they under developed in the sense that a speaker will be unable to convey whatever he or she wishes to communicate. The truth is that all languages have roughly the same amount of structural complexity and can allow their speakers to explain the world they live in. The challenge arises when technical documents, like legislation, need to be translated. The language used in these documents is different from the language people use on their daily conversations. This is one of the areas where language development is needed. This area requires new concepts to be found to suit the new terminology that is used in this field. Indigenous languages are not incapable of expressing what exists in the universe, but there must be workers in ideas who expand the possibilities of those languages in that and other directions (Ngugi, 2009: xii). Some scholars may argue that African languages are incapable of handling complexities of social thought because they believe that their speakers are plagued with poverty, and that indigenous languages are therefore also riddled with poverty.

For African languages to be fully developed and well empowered, role players who are trusted to develop our languages need to work on these languages with passion and need to display commitment to overcome the hurdles these languages are facing. Ngugi (2013:10) strongly recommends that “African languages need similar commitment from African intellectuals, bearing in mind that no language had a monopoly of cognitive vocabulary, that every language could develop its terms for specific fields.”

Societies are being exposed to modern life, which requires them to learn new things. People are also being introduced to urban life, and this results in exposure to new things that do not exist in their traditional world. These societies are expected to

develop new terminologies that will go hand in hand with the new life they are introduced to. It is always possible to develop new terminology in a language, but the problem will forever lie with implementation. Bamgbose (2011:3) puts it clear when he says:

While it is true that use of language in newer domains requires language development efforts, the commonly held view that certain languages cannot be used to express concepts adequately in certain domains is false. The trite linguistic truism that there is no concept that cannot be expressed in any language provided the need to do so arises holds good today as before.

Languages that were previously marginalised need to be developed and empowered to be used in all domains. Languages are the only tools that are used in the process of communication. Without a language there will be no production in any spheres of government. Therefore, if African languages are not fully empowered, South Africa runs the risk of being a non-productive society. People must be empowered to be able to use their languages in any situation, without the fear of being discriminated against. A language will always be at the centre of human life, and its importance can never be over emphasised. It is a pity that African languages are still taken for granted. South Africa will have reached a stage of importance when people's lives are improved through language and culture, when they can use their language as a medium of instruction, as language of education and when important documents are translated to and from indigenous languages all the time.

The study seeks to close the gap that exist between English, Afrikaans and the indigenous languages, especially Siswati which belongs to the Nguni language group, as far as translation and certification of legislation is concerned. It seeks to ensure that English, Afrikaans and the other indigenous official languages of the Republic are treated on a footing of equality, and enjoy equal freedom, rights and privileges. All Parliamentary records, journals, and proceedings need to be kept in all the official languages, and all Bills, Acts, and notices of general public importance or interest issued by the Government of the Republic shall be in all official languages.

1.4 Statement of the problem

Despite the proposed government efforts, indigenous languages are still marginalised in South Africa and are not treated with parity of esteem. The Joint Rules of Parliament clearly stipulate the fact that, in a case of a dispute, the English text of a bill will be used to resolve any dispute arising due to the translated bill. There is still a vast gap between English, Afrikaans and the indigenous languages. In an address in May (2016), PanSALB Chief Executive Officer Dr Rakwena Reginald Monareng alluded to the fact that indigenous languages and legislative translators are facing numerous challenges, ranging from production of legal texts that are not of good quality, mutilation at the expense of other languages, like English, to threat of extinction in severe cases. He raised the concern that indigenous languages are being undermined and sacrificed to accommodate other languages, especially English (Maseko, 2018:1).

Should the gap between English, Afrikaans and the indigenous languages persist, it will be difficult to achieve all the great objectives of the government and the constitutional mandate pertaining to the use of indigenous languages that is clearly stipulated in section 6 of the Constitution (1996). After observing the persistent pattern of using English as the only official language recognised by law makers or drafters, numerous questions came to mind regarding whether there is a need for second-language dual drafters who are trained to produce quality second-language bills and parliamentary documents that will be afforded equal status to English and Afrikaans.

1.5 Research questions

The study sought to answer the following research questions:

- i. What are the most important aspects of legal language and legal translation?
- ii. What are the problems faced by legal translators in Parliament of the Republic of South Africa?
- iii. Why must certification and assent be conducted in only one official language (English), and are there any alternatives to certification and assent in more than one language?

1.6 Aims of the study

The primary aim of this research is to investigate the process that the Translation Unit follows in ascertaining that it provides proper guidelines for future translation practices. The secondary aim is to ascertain that translators are well trained in executing their duties. The study also aims at investigating the problems that are faced by language specialists working as translators in Parliament. It also aims at looking at legal translation, the legislative process that involves drafting, certification and assent as stipulated in the Constitution of the Republic of South Africa and the rules of the Parliament of the Republic of South Africa.

1.7 Objectives of the study

The objectives are to:

- i. provide an overview of the current legal language practices in Parliament and South Africa in general;
- ii. discuss the characteristics of legal language and investigate its implications for legal translation;
- iii. discuss the significance of plain language in legal contexts such as Parliament; and
- iv. provide and critically discuss the quality of Siswati legal texts translated in Parliament and the need for training;

To achieve the objectives stated above, Parliament's translated Siswati legislation and Parliamentary papers were reviewed. Participant observation as well as interviews were also conducted.

1.8 Research methodology

The study used qualitative research method to respond to the research questions. An in-depth review of the current literature on the subject was conducted, as well as the use of a practical research approach in the form of interviews and participant observations. Interviews were conducted with language specialist from Parliament language services section and others were from outside Parliament. The researcher collected and analysed data on legal translation. The methodology used to analyse the data will be discussed in detail in the chapter on data analysis. The findings and

recommendations will also be comprehensively discussed in the last chapter.

1.9 Ethnographic observation

The researcher has more than 10 years' experience working as a language specialist in Parliament and as a legislative language practitioner for the Department of Justice. Translation, editing and proofreading legislation, parliamentary papers and any other documents as and when required was her daily duties. At the moment, the researcher is working for the Legal Services Department as a Control Editor. She is tasked with editing English and second language legislation, preparing act forms before they are sent to the President for assent. The researcher's experience aided in the addition of her personal experiences and observations regarding legislative translation over the years. Observation of other language specialists was conducted impromptu and as part of the researcher's job. The researcher was given permission by Parliament to conduct the research before lockdown, therefore she was able to do observations. Since the permit was obtained earlier in the year, the researcher had ample chance to watch and collect as much data as was required. There was enough data noticed by the researcher at the time Covid strike. The researcher observed language professionals at the National Parliament in Cape Town, including translators and interpreters. When the researcher was at work, observations were made on a daily basis, especially when both houses of Parliament were in session.

1.10 Anticipated contributions of the study

This study will add value to the field of legal translation and related areas of study, like translation in general and those that have identified the need for developing legal terminology in South Africa. It will also familiarise legal translators with linguistic conventions that apply to legal documents and other documents that arise from them. The study will make it clear to translators that legal language requires knowledge of specialist terminology and knowledge of the linguistic conventions that are used in bills and acts. It will ensure that legal translators maintain a professional standard and make sure that they have full access to the legal team so that they can fully understand the legislation they are translating and the required or relevant legal terminology used in legislation. The need for qualified and

experienced legal translators, and the raising of awareness of such needs, is also addressed. The study will also assist role players in legal language development to be able to see the pressing need for legal terminology development. This includes the publishing of indigenous legal language dictionaries that will address the difficulty and lack of sources during legal translation.

There is a growing need for uniformity guides among all the departments that are tasked with the translation of legal documents, especially bills and acts. At present, the legal translators do not have a uniformity guide that governs the translation of these crucial documents. For example, one language practitioner might translate a cross reference to an act, whereas other language practitioners might not (e.g. “Act 1 of 2020” might be translated as “*Umtsetfo 1 wanga 2020*” in Siswati while in isiNdebele it might be left as “Act 1 of 2020” and simply italicised). These are some of the inconsistencies that this study aims to address. Lastly, the study also makes suggestions for policy regarding legal translation training in South African institutions of higher learning.

1.11 Ethical clearance and considerations

The University of Cape Town, Humanities Ethics Research Committee and Parliament of the Republic of South Africa both granted the researcher an ethical clearance to conduct this research. Ethics considerations should be described and it should be indicated how it will be adhered to (informed consent, right to withdraw, minimizing risk, anonymity/confidentiality). It is critical to constantly guarantee that when conducting research, nothing is done that will be damaging to any individual or have a bad influence on others. There are techniques to ensure that others are not affected or harmed, such as obtaining informed permission from participants, encouraging and informing them of confidentiality and anonymity, avoiding deceptive practices, and not preventing participants from withdrawing from the research project (Mertens and Ginsberg, 2009:185).

Participation in every study should be entirely voluntary, with no compulsion or fraud and Babbie (2017:67) indicates that recognising the participant's right to self-determination is one way to guarantee that they engage gladly and voluntarily. In

this sense, informed consent is critical to ensuring that potential participants completely understand what they are being asked to do and are aware of any potential negative repercussions of their involvement (Lavrakas, 2008:246).

Furthermore, secrecy and anonymity maybe even more vital while doing research. According to Wiles (2012:21), secrecy ensures that the information provided by participants is not shared with anybody who is not directly involved in the research project. As a result, the researchers will guarantee that the participants' right to confidentiality and anonymity is maintained and preserved at all times.

Therefore, participation in this study is voluntary and one can withdraw from participating at any time without explanation. All information provided will remain confidential and will be used solely for the purposes of this study.

1.12 Organisation of the study

This thesis is comprised of the following five chapters:

Chapter One has provided the background and history of South African languages and the studied institution, the Parliament of the Republic of South Africa. It presented a brief discussion that led to the formation of the Language Services Unit. The chapter included the research problem statement, research questions, aim, objectives of the study, research methodology, anticipated contributions of the study, as well as the organisation of the study.

Chapter Two gives a review of the relevant literature on the legislative framework in South Africa and the functionalist approach to translation. It reveals the impact of legal language on legal translation, which leads to the basic need for the legal translator to understand the law and legal language. This chapter also discusses different translation approaches, with special emphasis on the functionalist approach to translation. This Chapter also provides the theoretical aspects of translation.

Chapter Three then provides the research methodology, and Chapter Four contains the presentation and analysis of data collected in this study. Thereafter, Chapter Five provides a discussion of the data. Chapter Six gives a conclusion, research

findings as well as recommendations for proposed solutions and further research on the subject of legal translation.

1.13 Conclusion

This chapter has provided a background of the historical political realities that gave rise to the Constitution of the Republic of South Africa, 1996, which led to the endorsement of the eleven official languages in South Africa. This Constitution was meant to open doors for the previously marginalised South African languages and give people the opportunity to participate in the activities of their country using their mother tongues which have been afforded official status. Nonetheless, English has expanded and it still dominates in most government institutions and other public domains, despite the constitutional provisions made to empower the previously underprivileged African languages.

The chapter also discussed briefly the issue of language planning, development and empowerment. It also highlights the history of South African languages dating back to 1902 during the Anglo-Boer War. The chapter continues to indicate that the State is still concentrating fully on English and the recognition of such a large number of official languages is still impractical. The Constitution has stipulated the equality of the eleven official languages, but there is no full commitment to implementing the country's language policy, which would promote multilingualism rather than only the use of English as a dominant language. Lastly, this chapter concludes by highlighting the problem statement, research questions and the aims and objectives of the study.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

This chapter reviews legislation, articles and books from scholars who have dealt with the topic at hand. In South Africa the introduction, signing into law, proclamation and coming into effect of the *Pan South African Language Board Act*, *Use of Official Languages Act*, and *South African Language Practitioners' Council Act* brought hope and enormous prospects to linguistic communities. Scholars like Prah (2006), Cornelius (2011), Du Plessis and Wiegand(1997), Filson (1992), Moeketsi (1999) and many more have done extensive research and written a number of articles in trying to address issues pertaining to legal translation and the need for competent legal translators. The authors indicate the importance of the right to language in a democratic society. However, one might say that these rights are still denied to the African majority in practice. That is because even though the spirit of the founding provisions of section 6 of the Constitution regards all languages as equal, it is the state's responsibility to take the necessary steps to restore equality to formerly marginalised languages.

The above mentioned scholars discuss translation and legal translation in general, some of them paid much attention to Bible translation, literal translation, translation of contracts and many other documents that are not Bills. Prah (2006:4) recognises the importance of language when he indicates that individuals need language as an important means of human intercourse. Language and cultural rights are central to all considerations of human rights in the contemporary world. Societies regard language as crucial for its development, therefore, its citizens need to understand and master the language of the masses. Cornelius (2011:140) converses about the complexity of legal translation and how specialised this process is yet has received little or no attention in debates pertaining translation theories in South Africa.

Departments and Parliament have placed the issue of legal translation in the spotlight by introducing the legal translation units to assist with the production of translated important legal documents. This development was welcomed and seen as a huge step that could transform the current practice, Cornelius (2011) still believes that South African market is still not ready to supply experienced legal

translators who have received training in both language and law. Wiegand (1997) states in his language policy project that in a democratic multilingual society, language must be treated equally and there must be no favouritism of other languages. Wiegand focused on the usage of the language clause in the founding provisions of our Constitution and whether Parliament was contributing enough towards language development and language rights.

Researchers like Webb et al. (2005:15) predicted that after the implementation of the National Language Policy Framework (2002) and the Constitution, laws would have to appear in more than two languages, that government notices would reflect the multilingual nature of the society and that all languages would maintain the equal status mentioned in the Constitution. What Webb et al. predicted has not been fully implemented, however. The table showing the distribution of languages for acts assented to since 1994 (which is discussed in section 2.9.4) shows that English and Afrikaans still enjoy the privilege of being the preferred languages. Management of the distribution of languages in which bills are to be translated in the Office of the Chief State Law Adviser (OCSLA) and Parliament, therefore, need to be reviewed.

The views of different scholars will be reviewed under the following subtitles, multilingualism, translation, legal translation, public involvement in the law-making process, legal language and its impact on legal translation, plain language as an alternative, contextualising legal translation in South Africa, the need for translation training and the languages legislative framework.

2.2 Multilingualism in South Africa

Cenoz (2013:5) defines multilingualism as “the ability of societies, institutions, groups and individuals to engage, on a regular basis, with more than one language in their day-to-day lives” Multilingualism can also be seen as the ability of an individual to be able to use multiple languages in a society. Most of the individuals who live in multilingual communities in South Africa can be able to speak more than one language. Speaking more than one language does not necessarily mean the person master the language, but, at least one can be able to communicate with others. That is why Aronin and Hufeisen (1984:15) also believe that multilinguals may not have equal proficiency in or control over all the languages they know. It

is also possible to find people who can speak English and other language and stay in traditionally monolingual communities. Ngcobo (2009:113) claims that South Africa as a country and its language policies have been commended for its multilingualism and the use of eleven official languages.

The implementation of the multilingual language policy is still problematic and modern strategies are still required to make sure that the policy is fully implemented. There was great hope that this policy will assist in making sure that all the previously marginalised languages will be adequately considered and fully developed. The speakers of the indigenous languages are also to be blamed since they also use English even in places where there is no need for them to communicate in that language. A modern approach is needed in Parliament to try and address the issues of multilingualism. Parliament need to play a leading role in providing multilingual services to all its citizens. Multilingualism will be fully realised once the colonial language will no longer be used as the official and national language in the business of the institution. For now, all documents are presented in English and translated into any other indigenous language.

Mwaniki (2011:280) proposed that the government need to have organisational multilingual policies and plans at the level of provincial and local government for effective and efficient public service delivery to be realised and delivered in local indigenous languages. People use indigenous languages in their communities for daily communication when they require services from their local governments. Mwaniki continued to disclose that majority of provincial and local government offices have not implemented the idea of having operational multilingual policies and plans integrated into public service delivery at the local government spheres. Marais (2013:57) concurs with Mwaniki when she affirms that most provincial and local governments operate and conduct all of their business in English, which does not work well for effective and efficient service delivery at these levels. Regarding the above, Mwaniki is supported by Du Plessis (2000:22) who claims that "municipal monolingualism is an impediment to participatory democracy." He further asserts that changes in language usage patterns toward multilingualism

at national, provincial and local government levels can contribute to effective governance as well as to effective service delivery.

Du Plessis further suggests that functional multilingualism must be followed by the National government for communication purposes. Functional multilingualism means that any communication by the government should consider the function, the audience, and the message to be transmitted. Du Plessis's suggestion means that the national government will have to communicate with its people on their preferred provincial languages and continue to provide other languages as and when required to do so. Legislation introduced in Parliament for communication of information that is intended for the general public should be made available in all the indigenous languages, and where such communication or information cannot be made available in all the indigenous languages, it should be made available in at least the languages of that provincial government.

The introduction of the language services section indicated that Parliament has tried to deliver services on people's preferred languages and expand the delivery of multilingual services to its people. This section has assisted in making sure that different communicative goals are met in different languages of the country. Different environments have been created for multilingual practices among speakers in which such individuals are able to combine and generate new identities, values and practices through different languages (Munoz-Basols, 2019:302). The researcher indicates how the second language documents that are translated in Parliament are limited to informal domains of use. She further highlights that the indigenous languages are treated as unsuitable to be used as the official text when drafting legislation because as language speakers we believe that they do not meet the demands of the modern world. Therefore, translation must be used as a tool to continue promoting multilingualism to change the perception of English as the only language of communicating legislation.

2.3 Translation

As one of the main objectives of the study is to investigate legal language and its implication for legal translation, the definition of the word translation will be

important. In his study of “Translation and Interpreting”, Almarri (2012:15) indicates that translation focuses on social, cultural, and communicative practices, on the cultural and ideological significance of translating and of translations, and also looks at the eternal politics of translation. He emphasises on the importance of understanding the meaning of translation to conduct a well-rounded study on translation and to observe its influence on societies, their cultures and its politics. Therefore, it means, translation is a way of changing words from one language to another.

Nida and Taber (2004:12) describe translation as a way of reproducing with words in the receptor language the closest natural equivalent of the source language message. This is done, firstly, by finding the correct meaning and, secondly, by finding the correct style. During the process of translation, the words of the source text are transformed to represent the target language. Nida’s definition indicates that during the process of translation the translator may use the closest word to arrive at the required translation:

If there exists a closest natural equivalent, any translator is to seek for it to his/her best, and if he/she does realise the goal, the translated text is the ultimate translation, which never changes, that is, there is no possibility to re-translation. However, any translator is characteristic of his/her personal subjectivity (Nida, 2004: 45).

The above definition suits this study best since when legislation is translated and submitted for assent, there are no possibilities for re-translation or re-submission. Huang (2007:142), meanwhile, is of the view that when any sense-maker understands the objective content of an object, in fact, it is never avoidable that his/her personal subjective factors are infiltrated into it. Newmark (1981:33) holds that translation is a craft consisting of the attempt to replace a written message or statement in one language with the same message or statement in another language. Nida’s definition lays more emphasis on functional equivalence, whereas Newmark’s definition is text-centred. Both Nida and Newmark provide enlightenment about translation, considering equivalence in different languages and cultures, and making it possible to reproduce an informative document. As a result, for the purposes of this study, translation will be defined as a process of converting words in documents from one language to another while maintaining the original

meaning and high-quality standards.

Robinson (2019:149) views translation as an activity that requires specialised knowledge, skills and experience. He maintains that people who are not translators view translation as a normal text that needs to be changed to another language and they believe that it can be done by anyone who is a speaker of that language. However, translation is a most important activity that involves research, networking, translating words, phrases and registers, editing the translation and delivering a final high-quality product to the client. Robinson further looks at the different ways in which a translator thinks of a translation project and the way in which a non-translator perceives the project. In his observation a translator thinks and speaks about translation from inside the process, knowing how it is done and having a practical, real-world understanding of the issues involved. A translator then considers solutions to those difficulties as well as their limits. A skilled and experienced translator understands that no translation can ever be a perfect match for the original. A non-translator, on the other hand, thinks and talks about translation from the outside, but has no understanding of how it is done or how the result should appear. This demonstrates that a translator must possess the necessary abilities and information to comprehend how a reliable translation project should be carried out which is what is lacking in the South African Parliament. Hence this research will investigate the expertise that language specialist from Parliament applies when translating legal documents in South African Parliament.

A good translation, according to Robinson (2019:150), is one that users will be able to trust. Users must be able to trust the translation as a credible source of information and think that it will provide them with the information they require about the original. The translation must not fail the users by providing a translation that is nowhere closer to the original. The users need to trust the translator because each time he/she approaches a translation project, he/she acts in a reliable way and delivers a reliable translation that seeks to inform in a reliable manner. Processing a text for translation and delivering a reliable translation requires some degree of interpretation and creativity on the side of the translator. For the text to be reliable, the translator needs to know the aim and the subject of translation. This will enable the translator to choose a method and type of text reliability to be used in that

particular text. Robinson (2019:150) lists a number of important types of text reliability, namely literalism, foreignism, fluency, summary, commentary, summary-commentary, trans-mediation, encryption and adaptation.

The authors of literalist translation follow the original word for word, or as near to it as feasible, but this study differs since it uses a functional approach that sees the source text as what determines the nature of the target text. The translation or target text reflects the original text's syntactic structure. This type of text reliability is mostly followed by translators of legal documents because they are trying their best to reproduce the original. Therefore, legal translation is often presented as literal because the translators try to get as close to the original as possible. The next section looks at legal translation, its complexities and how it is processed.

2.4 Legal translation

Schäffner and Adab (2000: viii) sees legal translation as a complex interdisciplinary field that includes law, translation, linguistics and intercultural communication. This section provides an overview of the law-making process, public involvement in the process and legal translation, followed by the development of legal language and an explanation of the possible value of plain language. This is followed by a contextualised discussion of translation and interpreting in the South African legislative framework.

2.4.1 The legislative process

Waterhouse (2014:9) points out that the end of apartheid led to the crafting of the new Constitution that was adopted in 1997, this adoption led to South Africa being an innovator in parliamentary processes which gave its citizens opportunities to participate in the legislative process. According to Waterhouse (2015), the Constitution of the Republic of South Africa is specific about the criteria for participation in the legislative process, and the standards laid forth there have been questioned by the courts. Our courts have decided that South Africa's representative democracy must include direct involvement mechanisms as well as further guidance on how participation should be carried out. These guidelines and processes are also fully discussed in Chapter 13 of the Rules of the National

Assembly. Johnson and Talbot (2007:6) outlined how Parliament is formed and also gave a brief knowledge and insights of Parliament's work and its involvement in the legislative process. They indicate that Parliament is made up of two houses, namely the National Assembly and the National Council of Provinces. Because the law lays down binding rules that apply to all institutions, Parliament is also governed by those rules that they are required by law to introduce, process and pass. The Green Paper is a discussion paper that is used to start the process of drafting legislation. The Green Paper is written by the ministry or department in charge of the topic to be enacted to demonstrate the ministry's or department's position on a policy. The Green Paper is then made public, allowing anybody with an interest to provide feedback, recommendations, and ideas. The comments are usually received from the public, juristic people and non-governmental organisations. Johnson further explains that the Green Paper is followed by a White Paper, which is a more polished discussion paper and a broad declaration of government policy. He notes that the relevant department or a task team appointed by the minister of that department drafts this. By publishing the paper in the Government Gazette, interested parties are once again encouraged to submit public comments. Language specialists from RSA Parliament are therefore, involved in this process as they are required to translate these papers before they are made public.

Waterhouse (2014:14) says that the Constitution is not clear on the issue of participation but it is clear when it comes to the involvement of committees on amendments to be done on the policy paper. He maintains that the appropriate parliamentary committees may offer modifications or other recommendations, and then send the policy paper back to the ministry for additional debate and final choices to create a bill, according to the National Rules of Parliament.

These parliamentary committees are established as instruments of the houses in terms of the Constitution to facilitate oversight and monitor the government. These committees are the "engine rooms" of Parliament's oversight and legislative work. Committees scrutinise legislation, oversee government action, and interact with the public. Therefore, from Waterhouse's observations it shows that one of the most important aspects of the oversight function is the consideration by committees of annual reports of organs of state, and reports of the auditor general.

The legislative process as discussed by Selebalo (2011) is a process that the introduction of all English legislation follow from inception until completion. Selebalo believes that there are primary factors that hinder the effectiveness of this process which include the socio-economic conditions of a large proportion of South Africans, language barrier and the way these initiatives are implemented. This process is illustrated here to show the importance of having second language translation of the types of Bills that are introduced in Parliament. The section 76 Bills affect provinces and some of them are supposed to be sent to the National House of Traditional and Khoi-san Leaders for deliberations and review. As Selebalo proposes, one may argue that it is important to have translation of all legislation from the draft stage to assent. Selebalo's proposition can see legislation being translated from draft stage which will assist the committees of Parliament to have the full translation of Bills when doing oversight visits or public hearings. Again, the public will be able to engage with the members of Parliament in their languages. This process shows the gaps in the legislative process when it comes to second language translations. The translation of Bills is only required towards the end of this process which again shows that there is a gap that still need to be filled regarding second languages as far as this process is concerned. Selebalo (2011) continues to argue that disadvantaged communities are often marginalised during these processes because they are unable to be part of the decision-making processes or deliberations due to these factors that include limited access to second language documents, lack of education and language barrier.

2.5 Public involvement in the law-making process

As a member of the Bills Office in Parliament, one is aware that Parliament has different ways in which it involves the public when laws are made. People are allowed to communicate with Parliament in the language of their choice. The language specialists employed by Parliament become involved to translate and interpret during these meetings. Discussed below are the methods Parliament uses to communicate with the public and to ensure that democracy is practised.

2.5.1 Taking Parliament to the People

De Vos & Freedman (2015:119) enlightens that sectoral parliaments are held in Parliament to bring attention to issues affecting certain groups, such as youth, women, labour, and persons with disabilities. Despite the fact that these have not been evaluated, Parliament maintains that sectoral parliaments are successful. De Vos & Freedman (2015) further highlight that the civil society organisations, on the other hand, have questioned their usefulness, raising concerns about their failure to interact with marginalised communities, as they prefer participation by elite stakeholders from government, political parties, and better-resourced Non-Governmental Organisations; insufficient or non-existent follow-up on procedures; and the high costs associated with hosting these major one-time events. Taking Parliament to the People and Taking Legislatures to the People have also been emphasised by the legislatures. De Vos & Freedman point out that sectoral parliaments aims to promote engagement between Members of Parliament and Members of Provincial Legislatures and rural residents through various initiatives. These have had some success in bringing diverse domains of government together in one room with residents to solve service delivery challenges and improve cross-departmental collaboration. The main challenge of these processes is that they have little impact and are little more than workshops with insufficient follow-up procedures.

This democratic system of government was established by the Constitution of the Republic of South Africa whereby everyone is represented and allowed to participate. Part of the participatory aspect of democracy is the requirement that the National Assembly and National Council of Provinces should facilitate public involvement in the legislative and other processes of Parliament. Parliament can therefore not pass legislation or engage in other important processes without considering the need to facilitate some form of public participation. Democracy can only function optimally if members of the public are informed about the activities of parliament and if they are provided with an opportunity to get involved in those activities in some way or another (De Vos & Freedman, 2015:119).

Parliament can only involve the public effectively by conducting these public

hearings in the languages that the people understand in the respective provinces. Therefore, the Taking Parliament to the People programme requires the provision of interpreting and translation services. The bills that are discussed in these public hearings and any other matters are translated so that the public can take part in the making of decisions that affect them.

DeVos and Freedman (2015:120) indicate that public participation is a voluntary activity by which members of the public directly or indirectly engage with members of the legislature to provide meaningful input to the legislature during the law-making process. The contributions solicited from a broad section of the population can thus be incorporated to enrich the bills, improve lives in general and remedy the imbalances of the past. Parliament has a programme called “Taking Parliament to the People” that is done by the National Council of Provinces on a rotational basis. The province to be visited is informed about the time by using radio advertisements, flyers and different methods of alerting the public. The National Council of Provinces introduced this annual Taking Parliament to the People programme in 2002 to conduct oversight and to facilitate public participation in Parliament’s processes.

Waterhouse (2015:49) believes that these initiatives have the potential to improve citizens' access to legislatures, but they are currently beset by substantial obstacles that limit their efficacy. Most notably, they are frequently characterised as one-time activities that fail to include adequate follow-up on the topics highlighted between participants. The recent committees strive to work with legislators and executive branches, as well as individuals who participate through various channels. The lack of follow-through on many of these activities is a risk because of poorly implemented participation processes, when there is no proof that they have an impact on outcomes, tend to increase dissatisfaction, helplessness, and mistrust in elected officials.

What Waterhouse is saying is a true reflection of what is happening in Parliament where elected officials are mandated by the Constitution of the Republic of South Africa (1996) to be accountable to the people of South Africa and acting on their

interest. In Parliament, parties are elected based on their values, and party members should be prepared to explain how they have carried out their responsibilities. The elected members are accountable in the sense that they may not be re-elected if they are not excellent public representatives or if they do not deliver on party pledges since party mandates are transitory and elections are conducted every five years. Members of Parliament are also accountable to their own parties and are monitored by the whips of the various political parties who ensure that they maintain internal party discipline in Parliament. The very same members of Parliament are the ones who are expected to visit provinces and listen to the views of the people of South Africa on issues relating to governance. One of the mandates that these representatives might emphasise during these parliamentary gatherings is the use of language as a means of transmitting their mandates to the people.

During the Taking Parliament to the People programme, delegations consisting of members of Parliament, provincial legislatures, local municipalities and language services section visit sites related to the chosen theme. The visit culminates in a public meeting, where members of the public are given the opportunity to draw the executive's attention to challenges they experience regarding service delivery and matters relating to the theme. Even though people are given these opportunities, Ben-Zeev and Waterhouse (2012:60) argue that the civil society's efforts to influence legislative decisions are currently dominated by scholarly and technical techniques, which are intended at providing committees with reliable knowledge on which to base their conclusions. As a result, they fail to reach all the people participating in the decision-making process, particularly more senior party members due to language barrier.

The literature discussed above has revealed that sectoral parliaments are useful and are always successful in communication with marginalised communities. One of the aims of Taking Parliament to the people is that the public does contribute good discussions that can be utilised. The issue is that not all the deliberated ideas and views based on the given theme are formally drafted and translated to be included into the Green Paper that will later be processed into a White Paper. What is lacking in this process is that the drafted bill is only published in English which still creates a gap in multilingualism. The process of drafting a White paper must also involve a

lot of consultations between drafters, policy makers and language specialists. What is lacking in this process is that translators are only involved towards the end of the process, which makes it very difficult for them to fully understand the language used during this process. This research therefore intends to respond to these challenges by investigating the processes followed when translation legal documents to be used during taking Parliament to the people. The next section deals with written submissions to Parliament.

Written submissions are the result of what individuals submit during the Taking Parliament to the People to communicate their thoughts to Parliament, which then becomes a bill. Waterhouse (2014:19) points out that when a full bill is published in the Gazette, it must be accompanied by an invitation to the public to submit written comments, with deadlines stated. Again, the Rules of Parliament state that if a bill has been published for public comments, the relevant committee must organise its work in such a manner that interested people and institutions have an opportunity to remark on the bill, and that is called written submissions.

In a presentation made by Taylor (1998), she mentioned that written submissions are another way of getting involved in the law-making process as to allow the public to voice their concerns to Parliament. A submission is a representation of opinions or ideas on a topic or piece of legislation that is being considered by a committee of Parliament. People may present a written submission using the language of their choice. Submissions are in written form, but they can be reinforced through oral representation to the committee when they are sitting, if the person or the concerned group who has made the submission is invited to make an oral presentation in Parliament. Making submissions gives any member of the public or a group the chance to make amendments or recommend actions to ensure that the laws approved by Parliament, or any other items under consideration by Parliament, accomplish their goals.

Taylor continues to affirm that Parliament does not give the public a format for how their submissions to a committee should be written. Nevertheless, it should be well thought out and easy to read. There are suggestions on Parliament's website for how these submissions can be written, but that does not mean that if they are not followed

a submission will be disqualified. Some people do have access to the website since they do have the resources, therefore, people who do these submissions are those who have the necessary resources and this means only limited numbers can have their voices heard.

While there is some variance in how a bill submission is drafted, there are certain fundamental concepts that apply. Respect must be shown in the language used. A submission that uses slanderous and disrespectful language is not considered. Elmes (2011) concurs when he says language is part of culture, and it plays a very important role in people's way of life and thinking. He continues to maintain that the culture of people finds reflection in the language they employ when writing. The submission also needs to be relevant and should get straight to the point. The submission must be pertinent to the topic at hand. A committee may refuse to consider a submission if it is irrelevant. Therefore, it is important that these submissions are submitted in all official languages to avoid the use of languages that people do not understand or that they are not familiar with.

In its website, The Parliamentary Monitoring group (PMG) indicates that sentences must be arranged clearly and paragraphs must be in a logical order. It further requires that the person making the submission must always try to present a clear and logically developed argument. A submission that leaps from one problem to the next and back again, or combines unrelated issues together, may be confusing, and its effect may suffer as a result. The group also indicates that a submission must be simple and direct. It is not essential to write more than is required. A too lengthy submission may dilute the importance of the issues being addressed. The committee wants to know what a person thinks and the evidence or arguments the person has that supports that view. Accurate and complete information should be given. Information gathered and researched must be thorough and relevant. The person making the submission must also make sure that the facts are correct. A submission with many errors will have a greatly reduced impact.

PMG guidelines continue to indicate that the key elements of the suggestions should be summarised or listed in a conclusion at the end of the submission or in an executive summary at the beginning. Upon arrival, the submission will be translated from the

official language in which it is written to English for easy processing in the committee. This is another way of allowing the public to take part in Parliament in their own languages. The information on written submissions are made available to the public in all official languages on Parliament's website. Waterhouse (2014) concluded by saying that, despite the number of literatures deliberating on South Africa's legislatures, especially in terms of their independence, performance and in terms of holding the administration to account, and are quality of law-making; and despite a large body of research on public participation in municipal government in South Africa, there is significantly less on public engagement in legislatures. The researcher agrees with Waterhouse because in all honesty, legislation that is processed without proper public engagement does not entirely benefit everyone. Public involvement helps people to consider different perspectives and give the opportunity to listen to other people's views. Public engagement can aid the development of common understanding and gives directions for moving forward. Failure to involve the public or listening their views decently results in the number of service delivery protests that the government experience almost daily.

The People's Assembly Ntuli (2012:52) highlights that the People's assembly is when both houses of Parliament congregate and invite the public to discuss issues that concern them. In the website of the Peoples Assembly its purpose is indicated as to enhance accountability and close the gap between regular citizens and their elected officials. It aims to increase public engagement in politics by giving information on elected representatives and the institutions they represent, as well as allowing South African residents to submit criticism. As more parties are formed, there is a growing disconnect between citizens and their representatives.

People often do not know who their members of Parliament are and do not have the means of contacting them. This platform gives them an opportunity to know their representatives, find out how to contact them and learn what is it that they do at Parliament. This is partially due to the political structure in place in South Africa. Instead of a constituency-based election system, South Africa employs proportional representation. One argument is that proportional representation gives smaller parties "fair" representation, in the sense that a party that receives 10% of the vote receives

10% of the legislative seats, which is not the case under a first-past-the-post system. The disadvantage of proportional representation is that elected officials tend to be far from the people on the ground. To combat this, following the elections, political parties allocate each of their elected MPs to a constituency. Language specialists need to be deployed in these offices so that mother tongue speakers are assisted in their languages. The process described by Ntuli might look fair and smooth but there are constituencies that are faced with problems. Some of the local offices do receive people who speak a different language from the Member. Municipalities should implement multilingualism in their communication to ensure that all residents have access to information and municipal services in the language that they understand better.

February (2006:135) highlights that constituency offices have been established to improve local communication between elected officials and citizens. Legislators schedule time for Members of Parliament and Members of Provincial Legislatures to undertake constituency work in their programs. The constituency to which members are assigned are places they come from. People can visit the constituency offices and voice their concerns about what is happening in Parliament. This is another way in which the public get involved in the law-making process. It is also easy for them to express their views, since the language used in these offices is the local language. Furthermore, people are given the right to report to Parliament whether their constituency offices are working well or as expected. The People's Assembly not only gives information about representatives but also shows what each Member of Parliament has been saying in Parliament. Members of the public have the right to request Hansard reports (proceedings of the House) in the languages of their choice. The Reporting Unit, working together with the Translation Unit, ensure that all these speeches are translated, recorded and archived for accessibility when they are needed. February's views point out the importance of indigenous language use when involving the public in the law-making process. Hence it is crucial to accommodate the public when developing and translating legal documents.

2.6 Legal language and its impact on legal translation

Fanon (1994:3) affirms that a basic understanding of the nature of law and legal

language and the impact it has on legal translation is a very important skill and an important piece of theoretical knowledge that a legislative translator needs to acquire to be able to successfully execute a translation assignment in the legal field. Moreover, Fanon (quoted by Dingwaney & Maier, 1994:3) says that “to speak a language is to take on a world, a culture”. By this, Fanon meant that language cannot be isolated from the culture to which it is connected. People express their culture through language and this can be extended to various situations.

Dingwaney and Maier (1994) believe that translation is a way of transporting words, sentences and texts from one language to another, because the translator cannot merely search for equivalent words in the target language to render the meaning of the source text. Dingwaney and Maier maintain that translators need to take into consideration the culture these words come from and what they evoke and express in that culture. It is very important for translators to know the culture of the people for whom they are translating. They continue and attest that knowledge of the language only is not enough to produce a document that will be accepted by the community for whom one is translating. One must remember that translation is a method by which texts written in one language are translated for various groups of different cultures who have different ways of living. Therefore, one concurs with Dingwaney and Maier that basic understanding of the law, legal language and the culture of the language will thus assist in delivering a successful translation that do not only transport words.

In the next section, a brief outline is provided of the characteristics of legal language. This is followed by the development of legal translation, the use of plain language in translation and the right to information in plain language. The chapter continues with further elaboration on the legislative framework for languages and the importance of adhering to this legislation when dealing with language matters. The chapter concludes by indicating the statistics of South African legislation translated into all eleven official languages from the dawn of democracy until the end of 2019.

2.6.1 Characteristics of legal language

Standard English differs from legal language in that it is simple to comprehend and lacks the technical aspects that govern legislation. Filson (1992:8) agrees with Dingwaney & Maier when he indicates that a law lays down binding rules that must apply in general, and it must fit into an existing legal framework. Accordingly, a law uses a form and style as well as terminology, but no special rules of grammar. Beveridge also claims that legal language is one of the oldest technical languages in history (Beveridge, 2000:4). Certain terms included in standard language are used to create legal language. Lane (1982:221) is also of the view that a standard language is one that is taught in school and includes the whole vocabulary used by the majority of individuals who speak that language. It constitutes “the base on which the various technical languages are built up” (Lane, 1982:221). Lane (1982:221) mentions that standard language is an entity in itself, whereas specialised technical languages are derived from and dependent on standard languages. Wroblewski (quoted by Khalaf, 2003:403) defines legal language as “the language in which legal rules are formulated, and in which one can speak about legal rules”. The simple understanding of standard language, according to Wroblewski, is insufficient for the creation of legal documents. A legal document's creator is required to be well-versed in legal and administrative jargon. The researcher concurs with Khalaf when he says legal language is an entity on itself because a person who have the knowledge of standard language cannot simple interpret and translate documents drafted in legalese.

Cao (2007:13–20) classifies legal language according to the nature of its use as normative, performative and technical. In the normative case, the language of law is used to impose rights and obligations and is thus largely prescriptive. The law's basic function is to regulate human behaviour and human relations. When legal language is classified as performative, speech is not only words but also actions. By uttering certain words, facts may be changed. Legal effects and legal consequences are commonly brought about by merely uttering certain words. The language of law is also used by legal practitioners to pass a judgement or grant permission (e.g. “you are guilty of an offence” or “you are dismissed without notice”). Furthermore, the question of the technicality of legal language is not perceived in the same way by

everyone, but legal language is viewed as technical language. The success of law lies in the use of the language and in the type of language used. The language can be technical or plain (Cao, 2007:14). This means that the success of the translated legal text can be judged by its constant use in public gatherings and in courts. As Cao states that the use of legal language determines its success, one can assert that the public, Members of Parliament and magistrates cannot continue to use Acts and legal documents that are poorly translated. If the translated documents are constantly requested for public use, this gesture is an indication that the translation is assisting the second language speakers and the administration to run their daily business in an effective manner.

Cao (2007:14) explains that laws are made because of needs that develop in society. An issue may emerge or a problem may grow to such proportions that public pressure is brought to bear on the government to adopt legislation on the matter. Legislation is a tool that a government uses to communicate rules to society through the medium of written language. That is why the South African Government has given the go-ahead for legislation to also be published in all eleven official languages. Therefore, Thornton (1996: viii) believes that legislative drafters need to “develop an obsession to draft laws” so that they will be readily understood. Legislative translators need to develop the same skills since the translated legislation is the tool the government will use to communicate the rules to the members of society who do not understand the language of the source text. Cornelius (2011:129) mentions knowledge of other languages coupled with a practical understanding of the law or a legal qualification as a required recommendation, therefore, one believes that there is still a need for legislative translators to be trained in co-drafting in order for them to have the necessary obsession and skills to draft laws in other official languages.

Cornelius (2011:141) observes a shortfall on the importance of having role-players and stakeholders to open a debate and discuss to explore all aspects pertaining to the work of legal translators. In his observation he highlights that there is also an urgent need to identify role players at different levels, including at diplomatic level (lawyers working together with language specialists), as these people will be instrumental in assisting in the equal distribution of languages when legislation is

translated. He mentioned that these shortcomings of the present situation must be illustrated to all the role players. In support of Cornelius' idea, it will be critical to avail the list of bills to be introduced as soon as it is made known to the departments and Parliament, and the role players need to be involved in determining the languages in which these bills are to be translated or amended. This process will aid in achieving the study's objectives, which include certifying, translating, and assenting in a variety of indigenous languages. Rule 222 of the Joint Rules of Parliament allows a bill to be amended in a language different from that of the principal act, which provides the opportunity for legislation originally translated into Afrikaans to be amended in the other indigenous languages, according to the *National Environmental Laws Act*(1998):

If an Act passed after the adoption of joint rule 220 is amended, the official text of the amendment Bill amending that Act may be in any of the official languages. If the official text of the Bill is not in the same language as the signed text of the Act that is being amended, then one of the official translations of the Bill must be in the language of the Signed text.

Legal translation, according to Cornelius (2011), is a complicated and highly specialised job that has received little or no attention in South African translation theory discourse and debates too far. The present study will add to the theory of legal translation and will also provide a detailed description of the factors influencing indigenous language legal translation. The Department of Justice and Constitutional Development has created new posts for legislative language practitioners, putting the field of legal translation in the limelight, and this study supports and encourages the establishment and hiring of skilled practitioners.

Filson (1992:8) advances the related notion of legislative drafting as a process of converting ideas into language that will effectively carry them out. Filson (1992:9) explains that legislative drafting describes the entire process of taking raw ideas, refining them, developing the language to carry them out and then organising language to achieve the sponsor's objective exactly. Legislative drafting is seen in many ways as the central element in law-making, whereas legal translation is seen as transferring laws to the broader society.

Furthermore, Cornelius (2011:121) states that lawyers are often criticised for

unnecessarily using a complex style of language. In recent times, legal students have been taught or advised to draft in plain language which would convey a clear and effective message to the public and to avoid legalese (cf. section 2.6 for a discussion on plain language). Legal translation, according to Cornelius (2011:121), serves as a bridge between nations, allowing for the resolution of critical human concerns. Linguists and jurists alike should recognize the importance of such a powerful instrument.

Cornelius urges for higher institutions to respond to present deficiencies in the training of translators by revamping current credentials and courses to incorporate training in both fields, notably language and law, in his paper "The Curious Case of Legal Translation." When the two official languages of Canada were given equal status in 1847, the Canadian government made the same call. Following concerns about the quality of French translations, a task team was formed to investigate the problem of increasing the quality of French translations, and the team proposed the following drafting methods:

- bilingual drafting (which is also called double entry drafting): the same person drafts both texts where one text serves as a source text for the other language;
- shared drafting: the same as alternate drafting with the exception that each co-drafter draws up half of the text, then translates the other half or has it translated;
- alternate drafting: the combination of drafting and translation; and
- parallel drafting: simultaneous drafting (Šarčević, 1997:101).

In agreement with Cornelius views on translation training, the nature and scope of legal training must be thoroughly studied to determine which parts of the law should be included in legal translator training. To do this, the discussion should be expanded to include law schools, since their opinion will be important and extremely significant. This study seeks to serve as a call to all tertiary institutions in South Africa, law clinics and government departments to appoint role players that will look at the issue of vocational training. These role players need to work together

with other countries that have already advanced in terms of legal translation and training of legal translators, to investigate the models used for the successful implementation of their language policies. There is also a need for Parliament to ensure that they comply with their own rules relating to language, which is what will also be addressed in this study.

2.6.2 The development of legal translation

Legal translation is essential for making complicated legal sources accessible to persons who are unfamiliar with the law. As a result, the legal translator is expected to have a fundamental understanding of the law as well as legal language and its effects on legal translation.

Nida (1964:163) indicates that when it comes to the translation of legal language, the translator therefore needs to apply translation skills, using the required language to translate and transfer elements of the legislation to the target language. When doing this, the translator must not compromise the quality and style and should avoid difficulties for those who must use the documents to interpret and apply laws, and for those who will need to make rulings using the translated laws (i.e. during sittings or in public hearings). The medium of communication for both the legislative drafter and the translator is language. Language is the tool with which they transform legislation. Language is, however, an imperfect and sensitive medium of communication when it comes to conveying complex concepts like the rule of law. Ambiguity, vagueness and generality cause various interpretation and communication problems.

Furthermore, Cao (2007:8-9) concurs with Nida when she reveals that legal translation is a type of specialist or technical translation, a translation activity that involves language of and related to law and legal processes. Legal translation refers to the rendering of legal texts from the source language into the target language, and the translation of legal documents therefore becomes an immense responsibility. The consequences of an inadequate translation may range from losing a client to being sued. It will not be possible for a translator to produce an acceptable translation of a legal document if the translator does not understand

legalese, which includes the legal concepts behind the terms. The style used in the document can also be an obstacle to the translator's understanding.

Kruger (1997:84) also avows to the fact that the sensitive nature of legal texts and their translation carries with it similar, if not greater sensitivity than that which is required for the original text. He informs that a mistranslated phrase or a grammatical error should not determine a person's or a nation's fate. Although it is widely acknowledged that a legal translator's primary responsibility is to provide content, the translator cannot disregard the reader because the success of a translation is decided on the readers' ability to comprehend the text. Kruger continues to affirm that the translator is the only person who will be able to judge whether the transfer process has taken place satisfactorily. Therefore, the translator need to do this with the requirements of the initiator's brief in mind. The translator of legal texts should also be sensitive to the fact that in most circumstances, the source text is binding rather than informative, and the target text is designed to inform the target reader about events that took place in the source culture (Khalaf, 2003:142). One agrees with Khalaf because as per the rules of Parliament, the source text is always the official language to be used when a dispute arises, and it is also the one that is signed and certified as law by the President.

Schäffner (1997:137) also attest to the fact that the sensitivity of a document is also determined by its function, since a legal text has multiple functions depending on its status and purpose. However, sensitivity is not limited to the function of the messages. There may also be sensitivity around the circumstances and norms of the uses to which political texts are put, such as traditions of referring to certain pieces of information during talks or a recognition of the need for similar phrasing. The sensitivity of the legal documents that translators work on in the South African Parliament is not usually clearly communicated to them. Which is a problem this study intends to address.

Anderman and Rogers (2003:57) see legal translation as a unique instance with significant restrictions. They claim that legal papers necessitate a unique sort of translation due to the translator's limitations, which are greater than in any other type of translation. Translating a legal text requires the translator to be precise and accurate, and to deliver what is required in the legal text.

The translator must know that the aim of translating a legal text is to have the same document available in the target language. At the same time, these documents must have the same interpretation and application in practice. That is why Cao (2007:8) maintains that legal translation falls under a special category of technical translation. It involves the use of special language, that is, language for special purposes in the context of the law, or language for legal purposes. The researcher is also of the view that the issue discussed above indicates that the use of plain language in legal writing and translation can create a shift in the way documents are drafted or translated. This study suggests that there is an increasing demand for specialised language practitioners in the Parliament. Therefore, training of specialised translators is required to address the need for precise and accurate translation of legal documents to avoid complications during application and interpretation of legislation.

Šarčević (1997:23) agrees with Rogers when he divulges that the translator's main task in translating legal documents isto translate a text as reliably as possible, as required by a specific department or parliamentarycommittee. This puts pressure on the translator because he/she must find linguistic equivalents that, in their legal relevance, correspond to both the original text and the requirements of the translated text. He further discloses that both legal and religious texts are normative and it is therefore not surprising that the early history of legal translation is closely related to that of Bible translation. The first challenge to literal legal translation came in the twentieth century, when translators of lesser- used official languages in Egypt demanded equal language rights, paving the way for the transition from literal to near-idiomatic, idiomatic, or linguistically pure translation. Šarčević (1997:23) further mentions the various phases in the development of legal translation, namely strict literal, literal, moderately literal, near idiomatic and co-drafting.

The literature discussed above indicated that legal language is a sensitive, technical and specialised language, therefore it requires that people who translate legal documents need to be precise and accurate. This research seeks to ensure that the vision of the Parliament of South Africa of having a transformed and accessible justice system that promotes and protects social justice and the rule of law is achieved. As the mission of the above-mentioned institution is to provide

transparent, responsive and accountable justice for all, this study will ensure that Parliament adheres to that. The next section explores plain language as an alternative to the current trend of a more literal (word-for-word) translation of legal texts, specifically in the South African context.

2.7 Plain language as an alternative

Korneeva (2018:247) defines legalese as a special legal language that have a special way of constructing phrases and sentences, which for those ignorant of the intricacies of English legal terminology often seems devoid of meaning. He states that legal English is ironically legalese which means it may be regarded as a foreign language. Hunt (2002:24) argues that to reduce the use of legalese when drafting legislative documents, there has been a call for the use of plain language. This call transcends many disciplines and is implemented at all levels, but emphasis has been placed on the need for legislation to be drafted in plain language. Hunt maintains that plain language is vital in drafting because it simplifies the language of the law and helps the public understand the legal documents they are required to sign, for example lease agreements, insurance contracts, marriage contract and bond agreements. He confirms that such documents may be difficult to understand if drafted in legalese. The language used in the document is therefore simplified or written clearly so that it can be easily understood by the target readers. In agreeing with Hunt about plain language, Hashim (2013:424) came out with a definition that indicates plain language as a language that is direct and straightforward. He said in the *National Credit Act* and the *Consumer Protection Act*, a document is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the document is intended, with average literacy skills, could be expected to understand the content, significance and import of the document without undue effort. Hashim declare that plain language is designed to deliver its message to its intended readers in a clear and effective manner. It is important for drafters to use plain language so that the drafted legislation is simple, straightforward and uncomplicated for the recipient (Dabideen, 2005). Therefore, both scholars agree that plain language can be used as a tool to simplify the language of the law.

This is one aspect that is missing in legislative drafting which can be successfully employed when drafting legislation in Parliament. Schane (2011:9) is also of the view that plain language combines content and format to create documents that can be understood by most people who can read and write efficiently. Plain language can be used as the language of law and can be a bridge between legislation and the target audience. It is an approach that can help readers understand what they are reading. Schane (2011:9) writes, “Lawyers write long and vague sentences only to express simple ideas. These sentences are usually wordy, unclear and dull.” He further maintains that these long and vague sentences tend to confuse people who do not know legal language.

In most cases, the sentences are long and are divided by subsections and items, as in example 1 below. Specialised vocabulary and unusual sentence structures contribute to the peculiarities of legal writing. Plain-language sentences consist of short words and one-clause sentences; it is not simplified or reduced English. The following examples are taken from the *Criminal Law (Sexual Offences and Related Matters) Amendment Act* (2007; Laws of Guyana, 1998):

Example 1: “A person who—
 (a) obstructs the police; or
 (b) otherwise interferes with their function, commits an offence.”

In the example above, the words “commits an offence” do not apply in both (a) and (b), but only to (b). The drafter was supposed to out-dent the words “commits an offence” so that they would be in line with the introductory words of the provision, and the current format makes it difficult to understand the paragraph. The difference between the first and second example is that the second contains a sandwich clause that causes the words “commits an offence” to apply to both (a) and (b), whereas in the first example it only applies to (b) (cf. the well-drafted paragraph below).

Example 2: “A person who—
 (a) obstructs the police; or
 (b) otherwise interferes with
 their function, commits an offence.”

The two examples above indicate how a well-drafted sentence can be easily understood by readers and easily translated by the translator. Example 1 is supposed to end with a sandwich provision so that it can be understood by the readers, but in its current form, can be confusing to the readers because the words “commits an offence” are supposed to apply to both paragraphs (a) and (b). A well-drafted paragraph is shown in the second example. The golden rule in plain language drafting is to write keeping in mind those for whom the law is intended.

According to Mico (2013:436), using simple language in legal writing may revolutionise the way papers, forms, rules, and even legislation are written. This kind of legal writing results in papers written in a language that is suited for the reader's needs. The document is written in such a way that information can be found quickly, that it can be comprehended on first reading, and that it is legally binding. Plain language drafting does not necessitate the use of specialised terminology, but rather the same language used in other types of formal writing to create clarity.

Mico further maintains that most legislative sentences are addressed directly to persons or groups of persons, and this needs to be done in a clear and consistent way. For example, section 175(1) of the *Constitution of South Africa, 1996*, reads as follows:

Example 3: The President may appoint a woman or man to be an acting judge of the Constitutional Court if there is a vacancy or if a judge is absent.

Mengameli angabeka umfati noma indvodza kutsi abe libambela lelijaji leNkhantolo yeMtsetfosisekelo uma ngabe kunesikhundla noma uma ngabe lijaji lingekho

This example confirms what Mico (2013:436) suggests because it clearly indicates that the president is the one who holds the authority to appoint any person who is supposed to act as a judge. A translator can therefore find it easier to translate the example above, labelled as sub-section (1), than the one below, labelled as sub-section (2). In the example above, the drafter used specialised language in a formal and understandable way to achieve clarity, but the example below is complicated, and the translator would have to rearrange the sentence for it to be understandable:

Example 4: The President may, if there is a vacancy or if a judge is absent, appoint a woman or man to be an acting judge.
Mengameli anga, uma ngabe kunesikhundla noma uma ngabe lijaji lingekho, beka umfati noma indvodza kutsi abe libambela lelijaji.

A Siswati language speaker will find it difficult to follow what the drafter was trying to say in example 4 than in example 3 because of its complexity. Duckworth & Spyrou (1995:4) observes that one of the advantages of plain language is that it is flexible for all those who use it. Readers always take priority in plain language because the language used is simple and easily understood. However, lawyers use Latin words which are not easily translated into indigenous languages, and some of these words (e.g. *inter alia*) have become part of the type of English used by lawyers because they believe that Latin is more precise than English. This method seems to be favouring English more than the indigenous language. Kimble (2006:173) also agrees that people who have not studied law do not understand this jargon, and it only has value when used among legal professionals, such as when one lawyer is writing to another. To justify on the use of plain language Bhatia (1987:13) emphasises that, "Plain words are eternally fresh and fit." More than that, they are capable of great power and dignity. He explains that the use of plain language leads to clear statements and makes it as easy as possible for people to understand the intended meaning of a text. Mico (2013:437) is also in agreement with Bhatia that plain language is not just for drafters. It also aims to offer access to information about the law through legal assistance, public legal education initiatives, government information services, advocacy services, and volunteer efforts, to enable ordinary individuals, understand and appreciate the law's message.

Furthermore, Mico asserts that documents such as contracts, bills, acts and legal opinions need to be written in such a way that they are clearly understood by the stakeholders, public and consumers who must use them. The writer should only use a technical word if he/she feels that there is no substitute for that word, or if it is a shorter version of a complicated word and will be understood by the reader).

Newman (2012:637) also agrees with Mico when he alludes to the fact that plain language provides clear statements when he writes, "Commonly contracts are

unreadable both typographically and linguistically.” In such cases, consumers seldom read the contractual documents they sign and tend to ignore important notices drafted using legal jargon. He believes that people sign or enter into contracts they do not understand and sometimes do not bother to read because they may simply believe that they will not be able to understand the terms and conditions. One of the reasons that people do not take the trouble to read contracts is that they are written in a manner that is unattractive and unintelligible, for example the font size, type of font used and colour of the paper and print may be dull and unattractive.

2.7.1 The importance of using plain language

Cornelius (2010:171) stipulates that drafters of South African legislation are also requested to use plain language, especially when drafting legislation that affects the public and will be used daily. Example of such legislation is the *Employment Equity Act* and the *Labour Relations Act*. These acts were drafted in plain language and translated in all eleven languages of South Africa. He mentions that other government departments have also followed by writing plain-language summaries of their White Papers and developing regulations and forms in plain language. In so doing, the departments are fulfilling the right to access to information by all citizens, as encouraged by the Constitution. What Cornelius mentioned above is true as Parliament still faces challenges in developing plain language guidelines and documents in all eleven official languages, but a lot has been done to ensure that documents produced by the institution are drafted in plain language. Using plain language in Parliament will open the doors of communication in South Africa’s educationally, linguistically and culturally diverse society.

Former Minister of Justice and Constitutional Development Hon Dullah Omar once said, “Clear simple language is an absolute and critical necessity for democracy. People have the right to understand the laws that govern them, to understand court proceedings in matters that affect them, to understand what government is doing in their name” (quoted by Sachs, 1994:8). Indeed, one of government’s main roles is to provide people with information so that they can participate in the democratic process. People are also expected to participate in the law-making process.

Therefore, it stands to reason that Parliament, which is the seat of government, should communicate plainly with the people so that all people can understand. The use of plain language is not new, though. When the *Constitution of the Republic of South Africa* was drafted, the drafters tried their best to use plain language to make the new Constitution understandable to as many people as possible. The drafters of the Constitution were requested to use plain language.

Therefore, it is evident that there is also a great deal of legislation in South Africa that requires the use of plain legal language. Chisholm (2011:11) is of the view that legislation is drafted for ordinary people, not for lawyers only, so it makes sense for documents to be drafted in plain language to serve the communication purpose for which they are drafted. Clause 22 of the *Consumer Protection Act* gives consumers a “right to information in plain language and understandable language,” which is a specific requirement in this act. What is also interesting is the indication made in the *Companies Act*, in section 6(4)(b), which provides that “the producer of a prospectus, notice, disclosure or document must publish it in plain language, if no form has been prescribed for that prospectus, notice, disclosure or document”. Section 6(6) indicates that the commission may publish guidelines for methods of assessing whether it satisfies the requirement of plain language. If all acts had these plain-language clauses, the issue of finding it difficult to translate bills and acts might come to an end or be eliminated in the legal translation field.

Though scholars have indicated the importance of using in plain language, but this is not the case in legislation drafted in Parliament. There is no research that has been done regarding the use of plain language in legal text when drafting legislation in the Parliament of South Africa.

2.8 The need for translation training

Viaggio (1992:2) is of the view that translators play a crucial role in the translation process; they occupy a very special place in communication. Translators act as mediators between intended meaning and understanding. Viaggio believes that oral or written texts are vehicles of communication that are not simply understood by voicing or writing messages. He further indicates that those messages need to be understood for the purpose to be achieved. He is of the view that a translator needs

to understand to make the text understandable for the target readers. These are the specific tasks and expertise that go far beyond regular or even outstanding linguistic and thematic competence.

When commenting on translation training Pöchhacker (2004:189) affirms that it was proposed early on that training in translation and interpreting should be designed and taught by practising or subject specialists. Subject specialists have deep understanding and knowledge of the content and what is required by translators and they deliver according to their critical needs. Managers try to send language specialists for training, but the language specialists are against the idea of being sent to formal training courses, as they are of the idea that in-house and on-the-job training, mentoring and coaching are effective at producing better-quality language specialists. Translators know that although knowledge of their working languages is crucial, it is far from enough and that knowledge of the subject matter and its terminology is equally or even more important. A translator is not only someone who has completed training, understands the language proficiently, and writes and speaks other languages competently. Translators are distinguished from other people (professionals) by their being familiar with different terminologies from different fields. Therefore, they need to be trained in different fields and their training should be ongoing. However, this is not always the case as Tari (2020) maintains that people believe that any bilingual or multilingual person can be a translator and translation is nothing but intelligent reading followed by competent writing. Viaggio (1992) disputes Tari's notion by emphasising that translation is not that simple and suggesting that the boldness to let go of the original, the distance between the weight of the primary text and the text and structure of the translation, necessitates something additional between reading and writing (1992:2).

Lesch (2010:57) is also of the view that one should not necessarily doubt an individual's linguistic talents, but that individual functional abilities to translate should be developed and strengthened. He agrees with Ntuli when he says being a speaker of a language one has mastered does not on its own necessarily make one a good translator. One also need the experience, knowledge and skills. Lesch reveals that translator must be able to use all the required linguistic tricks to put thoughts into words clearly, elegantly and naturally.

In a given text there are many things a translator can improve (e.g. through formatting, using short sentences or using simple sentence structure). He therefore asserts that translation is a core functional area and translators need to be trained to acquire such skills for the better delivery of quality of translated documents.

Additionally, Gile (1995:3) supports Viaggio when saying that formal training is necessary to help those who wish to become professionals improve their performance and reach their full potential. According to the assertions of these theories, training combined with professionalism would result in a higher- quality translation service delivery in an institution. In the context of South African Parliament, Ntuli (2012:3) points out that majority of language specialists were educators from education department with no experience and translators or interpreters. This means a large number of language specialists in Parliament have joined the institution without any translation skills. Ntuli (2012:89) continues to support the importance of training when he indicates that 65 percent of the interpreters in his study did not have any interpreting experience since they were mostly recruited from the Department of Education, where their major responsibility was language instruction. Though his study focused on training of interpreters, his study will also inform the need for translator training in Parliament. After entering the Parliament, the same 65 percent of interpreters got no professional training in interpreting, translating, or editing. He indicates that language specialists found themselves in a strange environment and a foreign field of specialty, 90% of the entire population of interpreters thought it would be ideal to be trained before taking on interpreting responsibilities in Parliament. A total of 96% of the total sample of 90 language specialists in Parliament believed that formal training was going to empower them to deliver quality services.

Ntuli (2012:28) continues to highlight that translators employed by Parliament are not offered a formal course or training in translation, but they are expected to develop their skills along the way and learn from colleagues who have been doing the job for a long time. He maintains that this kind of training is extremely dangerous since the skills that are learned must be implemented and it becomes difficult to change them, irrespective of whether they are right or wrong. He

indicates that translators are expected to deliver quality services even though they never received formal training in translation while they are employed in Parliament. Stellenbosch University and other informal training institutions offered training in aspects such as copy editing, indexing and proofreading, all of which did not have much to do with the improvement of translation and interpreting service quality.

Basic training is needed to provide and build up a solid and systematic body of declarative knowledge which should serve as the basis for an efficiently instilled procedural knowledge. Viaggio (1992:15) also agrees with Ntuli that declarative knowledge ought to cover several key areas, like language, culture, encyclopaedic knowledge, and communication and translation theory. He believes that translators will be judged by their procedural knowledge.

Intensive training of translators will enable language specialists to deliver quality translated documents. Before beginning translation responsibilities in Parliament, translators must be sent for training. The following sections contain discussions of the various sets of legislation that have been passed to govern the use of languages in South African institutions, including the equitable treatment of all eleven official languages of South Africa as required by the Constitution.

2.9 Languages' legislative framework

This section looks at the legislative framework as discussed by different scholars. Parliament, working in collaboration with the Department of Justice has introduced two sets of legislation that govern the issues of rendering language services in South Africa, more especially in all the State institutions. The *Use of Official Languages Bill* was introduced on the 7th of June 2012 (passed and assented to as Act 12 of 2012) and the *South African Language Practitioners' Council Bill* on the 18th of June 2013 (passed and assented to as Act 8 of 2014). In addition to these two, there is also the *National Language Policy Framework* (2002), the *Constitution* (1996) and the *Pan South African Language Board Act* (1995).

2.9.1 Pan South African Language Board Act (1995)

PanSALB was established according to the *Constitution of the Republic of South Africa*, 1996. Thornton (1996:19) indicates that one of the main aims of the

establishment of the board was to promote multilingualism and to provide translation and interpreting facilities. He further alludes that the Board was established to bring civil society into the picture and to ensure that language questions are looked at in a non-competitive and holistic way. He indicates that PanSALB is expected to make sure that a balanced development of languages and exercising of language rights is maintained. This body needs to ensure that it promotes active participation by a multitude of language speakers in the linguistic sphere. PanSALB is one of the organisations tasked with promoting multilingualism and ensuring that all languages are represented in official translations, including legal documents.

When it comes to monitoring equal use of historically marginalised languages, the Board has not yet reached the point where it should have been. Beukes (2004:5) reveals that the transition of historically marginalised languages is also addressed in the Constitution. Beukes points out that language development is afforded high priority, therefore “practical and positive measures” are to be put in place to advance these languages. He says this focus is reflected in the formation of PanSALB, a specialised language development organization tasked with developing and promoting the use of all South African languages, including the ancient indigenous languages of South Africa's "first people," the Khoe and San. As the above scholars have correctly indicated, Parliament as an official body that oversees PanSALB and other legislative bodies, they are still battling on advancing these languages for equal usage in legislative translation.

Section 8(9)– (11) of the act, indicates that the board is also expected to make recommendations regarding any proposed or existing legislation, practice and policy dealing directly or indirectly with language matters at any level of government, and with regard to any proposed amendments to or the repeal or replacement of such legislation, practice and policy (*Pan South African Language Board Act, 1995*). It may also request any organ of state to supply it with information on any legislative, executive or administrative measures adopted by it relating to language policy and language practice. This section is in line with what Thornton indicated as the Board may, in furtherance of its objects and for the purpose of the exercise of its powers and performance of its functions, make rules and issue

notices and publish such rules and notices in the *Gazettes*.

2.9.2 National Language Policy Framework (2002)

Though the intention of the National Language Policy Framework is to act as an enabling framework for promoting South Africa's linguistic diversity and the respect for language rights within the policy framework of building a united democratic South Africa, very few scholars have written on this subject. In his study on quality of interpreting services in Parliament, Ntuli (2012:94) claims that efforts are being made to expand the capacity and effectiveness of the Language Services Section to implement what is required in the Language Policy Framework. On the official launch of the National Language Policy Framework, Ngubane, in his address, he acknowledged that it is important to note that the implementation of the Language Policy Framework would increase the demand for translation and editing work and interpreting services, especially in the African languages.

Marais (2013:56) agrees with the Minister about the core of translation expertise in these languages would have to be expanded in government departments and structures. More specifically, the number of skilled freelance language practitioners, such as translators, editors and interpreters, would have to be increased. Ngubane (2003) continues to acknowledge the growing need for the services of professional language practitioners which will also create a demand for further training and educational resources. Ntuli and Marais identified a gap in the execution of the national language policy across all departments; the current study aims to highlight the relevance of policy implementation in ensuring the use of indigenous languages in all legal translated documents.

2.9.3 Parliamentary Language Policy (2003)

Wiegand (1997:5) emphasises the need of having a language policy in place in all institutions that deal with language issues. He maintains that a language policy can be altered or repealed if it does not suit the needs of an institution. Therefore, all institutions have the freedom to develop policies the way they think is best, as long as it is done within the limits of constitutionality. Parliament as a government institution is also required by law to develop its own language policy that will

indicate how they plan to deal with language rights and any other issues pertaining to languages. In response to this call, Parliament drafted a language policy which will assist in dealing with languages. This language policy describes how official languages are supposed to be used when conducting the business of Parliament. The policy deals with the use of languages during House debates and committee proceedings, and the use of language when writing official records of parliamentary proceedings known as Hansard and committee reports. This policy also contains provisions on the use of language in writing parliament daily papers and during external communication (Parliamentary Language Policy, 2003:1). The policy will also assist in ensuring equal language rotation when allocating official second languages of Parliamentary legal documents to be translated.

Ntuli (2010) explains that the Parliamentary Language Policy allows members of Parliament to use any of the eleven languages that have been given official status in South Africa, and this includes South African Sign Language. This policy allows the members to use these languages during their sittings in the National Assembly, National Council of Provinces and committee meetings, and during debates of the extended public committees. During these sittings, the Language Services Unit is expected to provide interpreting in all official languages, including Sign Language.

The policy also provides that interpreting services and simultaneous translation be available in the public gallery to visitors, former members of other houses who are now visitors in Parliament, and the media (Parliamentary Language Policy, 2003:1). The researcher has noted that Parliament still does not provide full language services in committee proceedings, however. These services are only provided if one of the members prefers to speak his/her own language, and then only consecutive interpreting is provided, or the speech is translated at a later stage, because simultaneous interpreting is not yet available in the committees due to a lack of capacity. The researcher observed an incidence in 2014, when the Economic Freedom Fighters arrived in Parliament, they insisted on having language services in the first meeting at Parliament. This incidence resulted in the meeting being halted to wait for these services to be rendered, as one of the members of this party did not want to communicate in any language other than isiZulu. This incident exposed Parliament for still not having implemented, after so many years of

democracy, their language policy and the national language policy in full.

The Parliamentary papers record the full business of Parliament that has already taken place or that is yet to take place in Parliament. These papers consist of the committee reports, Hansard reports, question papers for both houses, and written replies to questions and motion statements. All legislative documents must be published in the original language in which they were presented or submitted, according to the Parliamentary Language Policy (2003:3). These parliamentary records will be translated and made available online in all other official languages, according to the policy. The provisions of this policy have still not been realised in Parliament because not all these papers are published in all eleven official languages of South Africa. Hansard reports and committee reports are still published in English. The announcements, tablings and committee reports bulletin published daily in the Parliament website is still published in two languages, namely English and Afrikaans. The policy is still not implemented to date and there is no indication of when this policy will be fully implemented.

Parliamentary Language Policy (2003:2) provides that a member of Parliament who wishes to exercise his/her language preference will be allowed to do so in the publications that appear in the daily papers of Parliament, which are the order papers, announcement, tablings, committee reports and minutes of proceedings of both houses. The policy further makes provision that members of Parliament will receive these papers in the official language registered as language of their choice.

Once again, however, Parliament has still not implemented what is written in this policy because these daily papers, committee reports and minutes of proceedings of the House debates are mostly still in English and Afrikaans. The dream expressed in the language policy has still not been realised. This shows that Parliament as an institution has not taken the issue of languages seriously. The researcher has observed that Parliament's daily papers are still published in English or Afrikaans and the minority languages are still not recognised. This is one of the aims that the current study is aiming to address, which is equal representation of languages in parliamentary legal documents.

Regarding external communication, the policy also makes provision for the fact

that any member of the public or any institution or body who wants to address Parliament may address Parliament in the official language of their choice. This provision can be successfully exercised if parliamentary language services can make available to members translated versions of the written submissions in the registered language of preference in terms of clause 3(b) of its language policy, and to make available to members such copies dealing with matters relevant to these submissions. This will require submissions that are written in the official indigenous languages to be translated into a standard universal language, which is English. This will allow such submissions to be accessible to all members dealing with submissions. The policy further stipulates that written public submissions must be submitted by Parliament 21 days prior to the scheduled presentation date to allow for translations and formatting for internet dissemination. This means that the contributions must be translated, edited, and proofread in a global language that is understandable to all members of the committee. Again, it is provided in the policy that any person submitting oral evidence must indicate the language of use within the stipulated hours to enable efficient provision of interpreting services. This implies that any person who will make an oral submission, question, motion, statement or report in his/her language of choice should indicate the start and end time of their presentation. Members speak in the language of their choice without informing language specialists since some of their speeches are strictly confidential. Therefore, it is not possible for them to comply with this clause.

The draft Parliamentary Language Policy was approved by the Joint Rules Committee in 2000. The objectives of this policy are to provide Parliament with a systematic way to activate a strategic language project called the Language Policy Implementation Project, which aims at proceeding with the implementation of the language provisions in Chapter 2 of the Constitution.

Wiegand (1997), who is among those who are entrusted with the gathering of the language project report, states that the implementation of the ideas indicated in the draft Language Policy project commenced on 1 April 2004. As a result, Parliament hired forty-four language practitioners with the goal of ensuring that Parliament has the internal capacity to offer all language services in all official languages, as well as sign language. This was a long-term project that was expected to come to an end

after a period of six years. Parliament was supposed to recruit a number of language practitioners in order for this project to be completed. This was going to include sessional and permanent language practitioners, which was going to ensure that there was sufficient translation, interpreting and editing services in all eleven official languages in Parliament. A pool of permanent language practitioners was hired in Parliament due to the work of this project, and the rollout for language services was a success. Unfortunately, Parliament spent a lot of money conducting interviews all over the provinces, where they were supposed to hire more than 400 language practitioners. The process was finalised and recommendations were made, but the project was never implemented because all the recommended language practitioners were never hired. A lot of money was wasted on this project because sixty sessional language practitioner positions were advertised and interviews were conducted, but nobody knows why they were not employed. The institution did not have a long-term vision for and institutional commitment to this project. The project leader, Mr Wiegand, realised that there was no serious institutional commitment as far as multilingualism is concerned. The money spent on this project was to be re-allocated to ensure that the policy objectives are implemented.

Wiegand (1997:5) acknowledges that policy implementation in Parliament is faced with a number of challenges, resulting in the failure to provide services in all eleven official languages. He further discloses that one of the major problems is that language specialists do not stay in Parliament long because there are many internal challenges, such as a lack of resources. Wiegand suggests that these internal challenges need to be overcome and it should be ensured that sufficient resources are made available to guarantee optimisation of multilingual output. Wiegand maintains that Parliament needs to fully implement its language policy to reduce the problems that lead to a lack of language service delivery in Parliament. The lack of multilingualism implementation strategies and events is a problem because it leads to a lack of growth in all the languages that are offered in Parliament. He further affirms that Parliament needs to take its draft language policy seriously as this might assist in dealing with the shortfalls faced by language specialists in Parliament. These shortfalls cause language practitioners to work under stressful conditions and they eventually resign from the Parliamentary Language Services

Unit.

Webb (1996) agrees with Wiegand when he highlights that the democratic government has made significant efforts in trying to develop and empower the previously marginalised indigenous South African languages. Despite these efforts, indigenous languages are still degraded, marginalised, neglected and oppressed. He states that nothing is being done to financially support language groups, language activists and even politicians to contribute to the development and empowerment of these previously marginalised languages. Many language policies have been developed in institutions, but what is lacking now is implementation and support. Wiegand agrees with Webb and believes that there is a missing link between policy and implementation in Parliament, and the institution can learn from how Afrikaans was developed during the apartheid years and how it was empowered and use that as a starting point. Indigenous languages are still marginalised in Parliament because not all languages have an equal number of legal translated languages which is the gap that this study have noted.

2.10 Conclusion

This section briefly defined translation, discussed legal translation and the impact it has on legal translation. It highlighted the importance of understanding what translation really entails and how it is done to deliver a final high-quality product. The section also looked at legal translation, the law-making process which includes the whole process of the legislative process. The introduction of the last two pieces of legislation discussed above will make a great impact on the enforcement of language policies in the various government departments. Even though there are people in a position to promote these languages and implement the legislation, they still marginalise some languages.

This section further highlighted the great need for translator training which will ensure that South Africans are provided with quality services as far as translation of legislation is concerned and that these services will be rendered by well-trained, qualified, skilled and accredited professional language specialists.

Theoretical Aspects of translation

2.11 Introduction

This section discusses the theoretical aspects of translation highlighting the functionalist approach to translation studies as the chosen approach. To fully comprehend the functionalist approach to translation, one needs to introduce the surrounding circumstances and to give a brief background of the other approaches and the methods used when following these translation approaches. Such translations include approaches to translation and the cultural background of the translator which will have an impact on final target text. Second, regarding the functionalist approach, the section looks at the role of the translator in the translation process and the role the functionalist approach plays in translating legal documents.

2.12 Translation and culture

Authors like Triandis (1994), Fasold and Connor-Linton (2014), DeJica (2009) and Taft (1981) define culture in different ways. In the present study, culture is looked at as a way of life that members of a community adopt and decide to adhere to.

Triandis defines culture as:

“a set of human made objective and subjective elements that in the past have increased the probability of survival and resulted in satisfaction for participants in an ecological niche, and thus became shared among those who could communicate with each other because they had a common language and they lived in the same time and space.”
(1994:22)

People in a community get used to the way they live, the way they do things and the way they choose to communicate. Language is one of the most important tools that members of a community use to communicate with one another. It is easy for them to identify a new person or a visitor who arrives in their communities through language and the way that person talks. Raising cultural awareness and translating across cultures have become common in translating and interpreting. Kramsch (1998:3)'s focus was on the fact that language is the principal means that people use to conduct their social lives. According to her, what people use in contexts of

communication is bound up with culture in multiple and complex ways. People use language to express cultural realities and create experiences through language. Language is a system of signs which have a cultural value. Therefore, language and culture are inseparable because language is composed of linguistic elements that vary by culture (Crawford Lange & Lange, 1984:258). Fasold and Connor-Linton (2014:367) state that the speakers of different languages use a range of linguistic elements to convey meaning in conversation, but the appropriate ways to use these elements vary from culture to culture. The concept of intercultural communication has become a key concept in everyday communication practices, especially in translation and interpreting (Dejica, 2009:40). Dejica defines intercultural communication as a process of exchanging meaningful and unambiguous information across cultural boundaries, in a way that preserves mutual respect and minimises antagonism.

Dejica's definition above is apt because members of a community show respect by the way they speak to one another. There is a difference in the way they speak to youths and the way they speak to adults. Therefore, it is very important for translators to understand the culture of the people for whom they translate. Such an understanding will enable translators to select a relevant approach to use when approaching cultural elements and relations in pragmatic texts. The concept of culture and translation are closely intertwined and there are cultural peculiarities that are most likely to occur in pragmatic texts.

In order to understand the cultural concept in translation, it is also important to identify cultural relations when coping with cultural differences and similarities in a text. Theorists like Jakobson (1959) sees translators as mediators who work with different languages and who continue to absorb elements from different cultures during the process. These elements may be in different patterns, namely unspoken or explicit. The patterns need to be shared and understood so that communication among people using a common language is ensured. As a mediator, a translator needs to possess a number of competences in both cultures. Taft (1981:73) mentions four such competences. These are knowledge about society, communication skills, social skills and technical skills. Knowledge about society includes the history, traditions, customs and values of people living in the society, among many others.

Communication skills are the translator's written, spoken and non-verbal skills. The mediator's standing necessitates technical abilities such as computer literacy and proper attire. Social skills, on the other hand, comprise understanding of the norms that regulate social connections in society as well as emotional competence. The above-mentioned skills indicate that a cultural mediator is more than a translator, translating being just one of the skills among the many one might need. Therefore, translators need to know the function of the text given to them, that is, whether it is to communicate or (in the case of translation of contracts or legislation) to legislate.

Approaches to translation

This study will look at a number of approaches to translation studies and concentrate on the functional approach as a theoretical framework and investigates the translation of Siswati legal text against this background.

2.13 Functional approach

The functionalist approach to translation was introduced by Vermeer in 1976 as a General Theory of translation. This approach to translation focuses on the functions of text and translation, not on equivalence between texts, seeing translation as a new communicative act that must be purposeful with respect to the translators' client and readership (Nord, 1997: back cover). Vermeer (1984) proposes a framework of general theory which he called a *Skopostheorie* and it was seen as the most important criterion to guide the translator. According to Nord (1997:27), *skopos* is a Greek word for "purpose". According to *skopos* theory, the prime principle determining any translation process is the purpose of the overall translational action. This fits in with intentionality being part of the very definition of any action. In translation, there are three distinct types of purpose: the overall goal pursued by the translator during the translation process, the communicative purpose pursued by the target text in the target circumstance, and the purpose pursued by a specific translation approach or technique. The term *skopos* usually refers to the purpose of the target text. Other words that are used interchangeably with *skopos* are the words "aim", "purpose", "intention" and "function".

Vermeer (1983, quoted by Nord, 1997) draws distinctions between these words. An

agent's goal is the eventual outcome he or she wants to achieve through action, whereas a purpose is a temporary step on the way to achieving that goal. As a result, the ideas of goal and purpose are relative. A function is what a text signifies or is meant to mean from the perspective of the recipient, whereas the aim is the reason for why it is required or expected to be required. Intention is defined as a “aim-oriented plan of action” on both the sender's and receiver's parts, pointing to a suitable method of creating or comprehending the text. Vermeer (quoted by Nord, 1997:29) explains the *skopos* rule in the following way: it says that each text is produced for a given purpose and should serve that purpose. The *skopos* rule thus requires one to translate, interpret, speak and write in a way that enables a text or translation to function when it is used, with the people who want to use it and precisely in the way they want it to function. Translators should be able to justify their choice of a particular *skopos* in a given translational situation.

The *skopos* of a particular translation task may require a “free” or a “faithful” translation, or anything between these two extremes, depending on the purpose for which the translation is needed. What it does not mean is that a good translation should, because of a particular factor, conform or adapt to target-culture behaviour expectations. The *skopos* states that one must translate, consciously and consistently, in accordance with some principle respecting the target text.

The *skopos* often must be negotiated between the client and the translator, especially when the client has only a vague or even incorrect idea of what kind of text is needed for the situation in question. Clients seldom care to provide a clear translation brief to the translator. They frequently don't realize that a good brief leads to a better translation because they are not specialists in international communication. The translator is not told how to approach the work, what translation technique to employ, or which translation type to select in the translation brief. These choices are completely dependent on the translator's duty and expertise. If the client and the translator cannot agree on what type of target text would best serve the intended purpose, the translator may decline the assignment or refuse any responsibility for the target text's function, and just perform what the client requests (Nord, 1997:30).

Nord formulated a systematic model of translation-oriented text analysis that starts

with an analysis of the translation brief and then examines the various extratextual and intertextual factors operating on the source text in terms of the translation brief. The translation method therefore depends not only on the type of text that must be translated, but also on the brief or the set of instructions given by the initiator of the translation, with information on the readership of the translation and the purpose or *skopos* of the translation. Newmark (1981:13) agrees that the average text for translation tends to be for uneducated, middle-class readership in an informal, non-colloquial style. However, the initiator of the translation may also give the translator a radically differing brief from that which is immediately obvious in the normal process of translating the original text.

Those who take the functional approach believe that any action has an aim, a purpose, and their use of the word *skopos* (purpose), which means that any text that must be translated must have a purpose. In the field of translation, Nord (1997:27) distinguishes between three types of purposes: the general purpose pursued by the translator during the translation process, the communicative purpose pursued by the target text in the target situation, and the purpose pursued by a specific translation strategy or procedure.

Reiss and Vermeer's (1984) work in establishing the functional method to translation, often known as the *skopos* theory, influenced Nord's model. Reiss and Vermeer believe that every translation process should be driven by the function or *skopos* the translation is meant to achieve in the target culture, rather than the function of the original in the source culture, according to Nord (1997:6). In their opinion, what counts is if the translation has met the goals of the originator and can operate as an autonomous work in the target culture, rather than whether it is faithful or equivalent.

The initiator, who may be a client, the author of the source text, the target text reader or, in some cases, the translator, initiates the translation process by approaching a translator because he/she needs a certain translation to fulfil a certain function (*skopos*) in the target culture. This *skopos* is contained in the translation brief, which is the set of translation instructions given by the initiator when ordering the translation. The translation brief outlines the type of translation that is required. This

is why, even if the brief may not be explicit about the criteria, the initiator or person playing the role of initiator (who may also be the translator) decides on the translation *skopos* (Nord, 1997:30).

A translation is usually done on assignment, according to Holz-Mänttari (1984) and Nord (1997:30). A customer needs a text for a certain reason and requests a translation from a translator, thereby initiating the translation process. In a typical case, the client would provide as much information as possible about the purpose, including the intended recipients, time, location, occasion, and medium of communication. It's crucial to remember that the translation brief does not instruct the translator how to approach their work, what translation technique to employ, or which translation type to select. These choices are completely dependent on the translator's duty and expertise.

Nord's method is pragmatic in that it assumes that translation does not happen in a vacuum. There is always a purpose for translation, and the reasons for translation are typically distinct from the reasons for the production of the original material. Unlike the creator of the source material, who is generally self-motivated, the translator is usually prompted to begin translating by someone else (the initiator).

The idea of loyalty, according to Nord (1997:123), takes into consideration the fact that the final duty does not lay with the initiator, but with the translator, who is the only person who can assess if the transfer process has gone well. Loyalty may be described as a moral category that allows the functionalist model of translation to incorporate culturally unique conventions. Being loyal requires translators to consider the conventions of the given translation scenario. Conventions, according to Nord, rank below translation rules in that they are not legally enforceable. This implies that the translator may choose to ignore established conventions.

The combination of functionality and loyalty means that the translator can aim at producing a functional target text that conforms to the requirements of the initiator's brief and that will be accepted in the target culture. The translator can therefore focus on particular aspects of the source text and disregard others, if this is required by the translation brief. But loyalty towards both the author and the readers of the translation obliges the translator to specify exactly which aspects of the original

have been taken into account and which aspects have been adapted (Nord, 1997:125).

Nord (1997:39) defines functionalist as a means of focusing on the function or functions of texts and translations. Functionalist approaches view translating as an activity. In this approach, human actions or activities are carried out by agents, individuals playing roles. Language is thus to be regarded as part of culture. Senders and receivers belong to different cultural groups in that they speak different languages. Senders and receivers thus need help from someone who is familiar with both languages and cultures and who is willing to play the role of translator or intermediary between them. Functionalist techniques are not merely descriptive; they employ descriptive methods to find and compare the communicative norms and conventions that exist in different cultures. They are normative or evaluative to the extent that they incorporate the assessment of translations in terms of their usefulness in a certain cultural setting.

According to Nord (1997:2), Bible translators believed that the translation process should include both procedures: accurate replication of formal source text features in one case and adaptation to the target audience in the other. There is a difference between formal and dynamic equivalence in translation, the former referring to a faithful reproduction of source text form elements and the latter denoting equivalence of extra-linguistic communicative effect. In the functional approach, emphasis is on the purpose of the translation, on the roles of both the translator and the receivers, and on the cultural implications of the translation process.

As indicated earlier, it was on the basis of pragmatic and text linguistic insights that various functionalist approaches to translation developed. These approaches focus on the functions of text and translation and not on equivalence between text and translation. They also seek to liberate translators from servitude to the source text, as a way of communication and serving a purpose for the translator's client and readers. By advocating that the function of the translation does not have to be the same as that of the original, the source text as norm and the concept of equivalence are dethroned. Functionalist approaches are thus normative and prescriptive in nature.

Functionalist and communicative translation theories advanced in Germany in the 1970s and 1980s moved translation from a static linguistic phenomenon to being considered as an act of intercultural communication. Reiss's initial work links language function, text type and genre to translation strategy. Reiss's approach was later coupled with Vermeer's highly influential *skopos* theory, where the translation theory is decided by the function of the target text in the target culture. The *skopos* theory is part of the model of translational action also proposed by Holz-Mänttari. Translation is viewed as a communicative transaction involving the initiator, commissioner, producers, users and receivers of the source text and target text. In the functionalist model, the source text is dethroned and the translation is judged not by equivalence of meaning but by its adequacy to the functional goal of the target text situation as defined by the commission (Munday, 2001:87).

When the target text is meant to have a different purpose or function than the original, there is an exception. Another example is when the target content is written for a different audience than the original material's intended readership. According to Reiss, the functional approach takes precedence over traditional equivalence requirements. The translation critic can no longer depend on features acquired from source text analysis; instead, he or she must determine if the target text is useful in the context of the translation. According to her, all types of translation mentioned may be justified in particular circumstances (Nord, 1997:10).

Vermeer, meanwhile, believed it necessary to look at something else since linguistics cannot be helpful when used in isolation, since it has not yet formulated the right questions to tackle the arising challenges. Translation, according to him, is a form of transfer in which communicative verbal and non-verbal signals are transmitted from one language to another. He sees translation as a human action that is seen as intentional, purposeful behaviour that happen in a given situation, and it modifies the situation. Situations are embedded in cultures, so an evaluation of a situation depends on the status it has in a particular culture system (Nord, 1997:11).

Nord (1997) believes that translation cannot be considered a one-to-one transfer

between languages. Any form of translational action may be conceived as an action. Any action therefore has an aim and a purpose. The word *skopos* is used for the aim or purpose of a translation. An action leads to a result, a new situation or event, and possibly to a new object. That is why Vermeer decided to call his theory *Skopos* theory, a theory of purposeful activity. One of the most important factors determining the purpose of a translation in his outline is the addressee, which is the intended receiver or audience of the target text with their culture-specific world knowledge, their expectations and their communicative needs. Nord (1997:12) believes that every translation is directed at an intended audience, since to translate means to produce a text in a target setting for a target purpose and target addressees in target circumstances. The status of the source text in *Skopos* theory is definitely lower than in equivalence-based theories. All things in translation, according to Reiss, are measured by the source text. It is an offer of information that is partially or entirely transformed into an offer of information for the intended audience, according to Vermeer.

Justa Holz-Mänttari, in her theory of translational action, prefers to speak of message transmitters, which consist of textual material combined with other media. In her model, translation is defined as a complex action designed to achieve a particular purpose. The purpose of translational action is to transfer messages across culture and language barriers by means of message transmitters produced by experts. Translators are experts in producing appropriate message transmitters in intercultural or transcultural communication. Her special emphasis is based on the actional aspects of the translation process, analysing the roles of the participants and the situational conditions in which their activities take place. Holz-Mänttari sees translators as experts in their field (Nord, 1997:13).

2.13.1 Basic principles of functional translation

According to Nord (1997:35), the aim of the translation defines the translation technique and approach used. This means that, as experience has shown, there is no one technique or strategy for a given source text, and every selection between two or more possible solutions to a translation problem must be based on some type of inter-subjective criterion or set of criteria. A translation that achieves the intended purpose may be called functional, which means that the text works for its receivers

in a communicative situation. If the purpose is to convey information, the text should offer this in a form comprehensible to the audience. If the purpose is to amuse, then the text should amuse its readers. The text producer therefore must evaluate the audience's capacities of comprehension and cooperation, and anticipate the possible effects that certain forms of expression may have on the readership.

To investigate the research question and main aim of this study, and in line with Nord (1997), a functionalist approach was chosen because it allowed the study to focus on the functions of texts and translations rather than on equivalence between them. The approach also has the potential to liberate translators from servitude to the source text and allows translation to be a new communicative act that must fulfil a purpose with respect to the client and readership. The main difference between the approaches discussed in the previous section is that the descriptive approach describes, explains and understands what translators actually do and does not stipulate what they ought to do (Chesterman & Wagner, 2010:2), while the linguistic approach focuses mainly on equivalence of words and sentences (Snell-Hornby, 1988:16).

The functionalist approach differs from all these other approaches because it regards translation as a communication activity in which the function of the translated text in the target culture is given priority. In this section, a discussion of the functionalist approach is provided. It differs from the approaches discussed above in the sense that it focuses on the functions of texts and translations and not on equivalence. The functions of texts or documents that are translated in Parliament are mainly used to legislate or to inform the public about very important matters. Therefore, the functionalist approach to translation is the best strategy to be used in this institution to ensure that the translated documents serve the communicative role.

In choosing the appropriate approach for this study on the translation of legislation, several factors were taken into consideration. These factors include the intended function of the target text, the target audience, the target culture and the characteristics of the receiver. The target text that is translated in Parliament is sent to the Constitutional Court for safekeeping, following assent. The function of the target text is different from the source text, and the target audience and target culture

are also different from the source audience and source culture. Parliament's translators need to bear that in mind when translating all documents, they are assigned. Translated legal texts are used for various purposes: they can be translated for information only, to produce policies, for evidence or as legislation. Freer approaches to translation will indeed be possible, as in the case of the legal translation in Parliament, because the texts involved are meant to inform the public. Texts about the law may also be translated by focusing mainly on the spirit of the message. For these reasons, a functionalist approach is taken in this study. Below is a detailed discussion of the functionalist approach and the main ideas of *skopos* theory.

2.13.2 Development of functionalist translation

Trosborg (1997:44) indicates that functionalism could be an alternative model with which to address the needs of professional translation, since the equivalence model does not adequately meet the needs of professional translation in modern society, as it is believed to be too limiting. Three scholars in particular, Justa Holz-Mänttari, Hans Vermeer and Katharina Reiss, made major contributions to the development of a functionalist approach to translation studies. Reiss focuses on the development of a model of translation criticism based on the functional relationship between source and target texts. According to her (2000, as stated by Nord, 2014:9), the ideal translation would be one in which the goal in the target language is equivalent in terms of the conceptual content, grammatical form, and communicative function of the source language text. In the section above, it was mentioned that double-entry drafting and shared drafting might be the solution needed to address the challenges translators in Parliament currently face. These methods or strategies are capable of introducing the functional relationship between the source and the target texts.

Holz-Mänttari (1984, quoted by Nord, 2014:13) refers to translators as message transmitters in her theory of translational action. The theory consists of textual material combined with other media. Holz-Mänttari defines translation as a complex action that is aimed at achieving a certain purpose. The purpose of translational action is to transfer messages across culture and language barriers by

means of message transmitters produced by experts. The legislation that is translated in Parliament must be in all eleven languages and it must also accommodate all cultural backgrounds. Therefore, experts must be employed to fulfil the role of transmitting quality translations. According to Holz-Mänttari (1984, quoted by Nord, 2014:13), “Translators are experts in producing appropriate message transmitters in intercultural or trans-cultural communication.” She emphasises the functional aspects of the translation process, analysing the roles of the participants and the situational conditions in which their activities take place. Holz-Mänttari sees translators as experts in their field (Nord, 2014:13). Reiss and Vermeer (1984:101) believe that the objectives of the source text are usually different from those of the target text.

In Parliament and in the South African courts, it is only the source text document that is always used when handing down judgements, and during public hearings the English documents are always used to conduct these meetings. Reiss (2000, quoted by Nord, 2014) refers to this kind of translation as an important communicative process. She knows that real life presents situations where equivalence is not possible and, in some case, not even desired. Her approach to translation criticism thus allows certain exceptions from the requirement of equivalence. These exceptions are due to the specifications of the translation brief (Nord, 2014:9). When the target text is meant to have a different purpose or function than the original, this is an exception. As a result, the target text's objective varies from the original. Another example is when the target content is written for a different audience than the original material's intended readership. Reiss (2000, quoted by Nord, 2014:10) states that “the functional perspective takes precedence over the normal standards of equivalence”. The translation critic can no longer rely on features derived from source text analysis but must judge whether the target text is functional in terms of the translation context. According to Reiss, all types of translation may be justified by circumstances (Nord, 2014:10). Again, the addressee continues to play an important role in determining the purpose of a translation. The addressee is the intended receiver or audience of the target text with their culture-specific world knowledge, what they expect and their identified needs for communication. Nord (2014:12) says that every translation is directed at an intended audience, since to translate means to produce a text in a target setting for a target

purpose and target addressees in target circumstances.

This means that translated texts are translated to be read by a certain audience that has a need for information in a certain language. In this approach, the status of the source text is thus clearly much lower than in equivalence-based theories. The source text is used for information and is usually the most important document in translation since it carries the message that needs to be translated. It is the text that offers information, and this information can be partly or wholly turned into an offer of information for the target audience (Nord, 2014:12). Regarding status, Garzone (2000:4) disagrees with Nord when he says that the translated text may have equal effect and be equally binding, especially when it is legislation. Vermeer (2000, quoted by Nord, 2014:11) considers translation to be a type of transfer where communicative verbal and non-verbal signs are transferred from one language into another. He sees translation as a human action that is intentional and purposeful, and is of the opinion that for a translation to take place, there must be a certain behaviour in each situation that modifies that situation. The purpose will define the intention of both the source text and the target text. Situations are embedded in cultures, so their evaluation in a situation depends on the status they have in a culture system (Nord, 2014:11).

2.13.3 Translation as an action

Considering the discussion above, it is now possible to turn to the work of Christiane Nord (2014:1), who defines functionalism as a theory that focuses on the function or functions of texts and translations. In functionalist approaches, translating is viewed as an activity. Agents are persons who fulfil particular roles and carry out human acts or activities in this method. As a result, language is considered an element of culture. Senders and receivers speak various languages and belong to distinct cultural groupings. This means that in the process of translation, the source text is likely to lose some of its elements because various strategies will be applied (e.g. omission, rewriting, paraphrasing and deletion). This is done to ensure that the translator produces a text that contains the required elements and fulfils its intended function, which is why this approach is adopted.

Nord (1997:2) explains that the functionalist theory in translation studies is not just

descriptive, although it does also make use of descriptive methods to locate and compare the communicative norms and conventions in various cultures or communities. The two approaches come together at a certain point since the descriptive approach helps translators understand the work they are given to do. This means that the functional approach to translation has a lot in common with the descriptive approach. Both approaches are normative or evaluative, but the functionalist approach is also prescriptive to the extent that it includes the evaluation of translations regarding their functionality in each situation-in-culture. Both approaches are primarily based on practice, even though the kinds of practice may be different. Both the descriptive and the functionalist approach are target-oriented, the focus of both is on the translation, and both approaches hold the point of view that just as the source text can have a dominant function, so too can a translation (Nord, 2014:8).

2.13.4 The translation assignment

In translation, senders and receivers belong to different cultural groups, and they speak different languages (Nord, 1997:40). In the case of the present study, the sender of the target text will be from an English culture and the receivers from an African traditional culture (Nguni language speakers).

Senders and receivers thus need help from someone who is familiar with both languages and cultures and who will be able to interpret and convey meaning between the two cultures. In professional settings, translators do not normally act on their own account. They are asked to intervene by either the sender or the receiver, or perhaps by a third person. This third party plays the role of the commissioner or initiator. From the translator's point of view, the third party is the client or customer. The process of translation thus involves a communicative purpose that may or may not be identical to the one that readers from the target cultural group have in mind (Nord, 2014:9).

As mentioned earlier, Nord's model proposes a systematic model of translation-oriented text analysis that starts with an analysis of the translation brief and then examines the various extra-textual and intra-textual factors operating on the source

text in terms of a translation brief. When analysing the translation brief, the translator needs to decide whether the instructions given in the brief are feasible. Translation methods therefore depend not only on the type of text that must be translated, but also on the brief or the set of instructions given by the initiator with information on the readership of the translation and the purpose or *skopos* of the translation (Nord, 2014:30).

This approach can be applied to the case study at hand. Parliament receives its assignments from the national departments (national legislation) and parliamentary committees (private members' bills and parliamentary committees' bills). Assignments are not always stated in an explicit manner, however. Although translation is normally done by assignment, it does not always happen that the office receives such assignments from departments and committees. If a client needs a text for a specific reason and requests a translation from the translator, the client is the one who initiates the translation process. In an ideal situation, the client would provide as much information as possible about the purpose, including the intended recipients, time, location, occasion, and medium of communication, as well as the role the text is to fulfil (Nord,2014:31). The translation brief specifies what kind of translation is needed. Therefore, the initiator or the person playing the role of initiator decides on the translation *skopos*, even though the brief as such may not be explicit about the conditions (Nord, 2014:31). The initiator of the translation often has very different reasons for wanting something translated than those of the original author. Of all the departments that Parliament serves, it is usually only the Department of Justice and the National Treasury that provide translators with explicit instructions.

It is also the case that the *skopos* often must be negotiated between the client and the translator, especially when the client has only a vague or even incorrect idea of what kind of text is needed for the situation in question. This is echoed by Schäffner (2015:3), who mentions that the *skopos* varies according to the text receivers, and thus the *skopos* of the target text and the source text may be different, requiring the translator to select and arrange the content properly. Clients do not normally bother to provide the translator with an explicit translation brief. Not being experts in intercultural communication, they often do not know that a good brief spells a better

translation (Nord, 1997:31).

In addition, most clients are not aware of what is required to produce a suitable translation, and some clients therefore do not always give a translation brief. Some do not even know that a brief is required. Even if a client happens to supply a translation brief, this brief does not tell the translator how to go about the translation job, what translation strategy to use or what translation type to choose. These decisions depend entirely on the translator's competence and sense of responsibility. The translator should be creative to choose the correct strategy that will satisfy the requirements of the translation brief. If the client and the translator disagree as to what kind of target text would best serve the intended purpose, the translator could either refuse the assignment or refuse any responsibility for the function of the target text and simply do what the client asks (Nord, 2014:30).

2.13.5 Functional analysis of translation

In a discussion of a functional typology of translation, Nord (2005a:35) states that the purpose of the translation determines the choice of translation method and strategy. This means that different methods and strategies can be used for a single source text, and any decision between two or more available solutions to a translation problem must be guided by a set of criteria. A functional translation is one that fulfils the desired goal, meaning that the text works for the receivers in a communication setting. If the goal is to give information, the text should do so in a way that the audience can understand; if the goal is to entertain, the text should do so. Therefore, the text producer must evaluate the readers' capacity to comprehend and co-operate, and to anticipate the possible effects that certain forms of expression may have on the readership (Nord, 2005a:35). In terms of the case study under investigation in the present study, a legislative text could be regarded as functional when it achieves the purpose for which it is intended, namely, to inform, legislate and communicate with the public.

Nord (2006:35) says that functionality is not an inherent quality of a text. It is a quality attributed to the text by the receiver in the moment of reception. It is the receiver who decides whether a text is functional. The same receiver may also react in different ways to the same text. Again, readers from different cultural environments, different language groups and different levels of education at

different moments in time will react to the same text in different ways due to these factors. This makes it difficult to ensure that a text achieves the desired function. The result will depend on the co-operation of the audience in each situation, otherwise communication would be impossible (Nord, 2006:35). If all the readers in the target group understand the target text in the same way that the source text readers understand the source text, it means the text would have achieved its purpose. But this is not always the case. The one of the original is defined in terms of its own situation, while the function of the translation must be first defined in terms of the source text. This means that the target text is derived from the source text, and the target text cannot exist without the source text. Translations have been categorised into two types, known as documentary and instrumental translations. A documentary translation is when a sender of the source culture communicates with the receivers of the target culture using the target text but pays more attention to one aspect of the text, which is reproduced in the target language (Nord, 2014:51).

A documentary translation is seen as a kind of meta-text marked as a translation, whereas an instrumental translation is a text that can perform any function a non-translated text can perform. These fundamental concerns of text function may be applied to instrumental translations as well as original texts. Documentary translations, on the other hand, frequently have a meta-textual purpose, educating the target reader about various features of the original text and its communicative context (Nord, 2014:52). A documentary translation gives readers a bird's eye view of the source text, which, because of prior knowledge they may have, can put them in a position to understand the origins of the original text and the reason for its existence. Nord (2014:58) explains that in a documentary translation there are certain aspects of the source text that are reproduced in certain instances, for the sake of the target receivers who observe a communication process of which they are not part.

2.13.6 Translation problems

According to Nord (2014:59), pragmatic translation issues emerge because every source text may be translated into any target language for a variety of purposes, and the translator is faced with two different communication circumstances in each scenario (the source text and target text). The contrast between these situations

gives rise to pragmatic translation problems (e.g. culture-bound terms and space restrictions), even in those cases where the individual factors do not differ. The second type of problem a translator may encounter is intercultural translation problems. They are due to the fact that each culture has its own habits, norms and conventions of verbal and non-verbal behaviour. Intercultural translation problems arise from the different conventions in the two cultures involved, such as measuring conventions (e.g. Africans measure their trousers using an arm), text type conventions and the conventional forms of address and salutation formulae (e.g. a child may not address an adult by name in an African culture, but that is not a problem in a Western culture), which are always a problem when translating from English into most of the African languages (Jacobs and Jucker, 1995:25).

The second issue is that structural variations in vocabulary, grammar, and suprasegmental characteristics between the two languages cause translation issues in interlingual translation. The use of comparative grammar and various approaches to a didactic translation grammar can help solve these difficulties. Finally, there are issues with text-specific translation. They are issues that occur during the translation of a single text and whose resolution is not generalisable, despite the fact that it is based on functional criteria. Metaphors, similes, puns, rhetorical figures, and other literary devices are all included in this category (Nord, 2014:61). The translation of similes and figures of speeches sometimes causes conflict among language groups because the translated simile or figure of speech might be regarded as an insult in the target culture.

2.13.7 The role of the translator within a functionalist approach

Nord (1991:10) states that translators act as a middleman in the translation process, which means that they act as the recipient of the source text as well as the producer of the required target text. Translators also take part in both the source text and the target text situation. Consequently, translators are no ordinary participants in the communication process. In their capacity as translators, they do not actually belong to the group of recipients addressed by the source text sender in an ordinary communicative situation.

Translators may be compared to ghost writers, who are not affected by the contents of the text but are expected to produce a text when requested to do so, and for the use of somebody else. Even though translators may be considered ghost-writers, they need to translate with the target text readers in mind to produce a text that will fulfil the desired purpose. Translators often translate a text they do not understand and for an audience they do not know, and at times this practice makes it difficult to always produce a text that will fulfil the necessary purpose. This is a frequent occurrence in the life of translators in Parliament. The leaflets, pamphlets and legislation they translate are used in areas with which they are not familiar and at times they do not understand the audience. Yet they need to make sure that the text they produce fulfils the intended purpose.

Nord (1991:10) says that translators are a special kind of recipient, not only from the sender's point of view but also because they receive the text in a particular situation and must make an effort to convert that text according to the requirements of the initiator. Translators do not read the text for their own purposes (to be informed or amused or to get instructions from a manual) but to understand and analyse it according to the instructions provided in the brief. Translators have no personal need to read the text. They read the source text on behalf of the initiator or some other recipient who belongs to the target culture, which may be quite different from the source culture. The translator reads the text and conveys the message by means of a translation, that is, a certain piece of information from or about the source text.

The translator is regarded by Nord (2014:21) as the expert in the translation process and should be responsible for both carrying out the commissioned task and for ensuring the result of the translation process, including formatting and layout, taking into consideration that these aspects might be assigned to other agents. It is the role of the translator to analyse the acceptability and viability of the translation brief in legal, economic or ideological terms; to check whether the translation is really needed; to specify the activities required for carrying out the brief; to perform a translational action, which may result in a target text, (perhaps a short summary of the source text); and, in special cases, to advise the client not to have the source text translated because a translation would not serve the intended purpose.

Translators' reception of the source text is determined by their competencies. Kelly (1979:86) says translators are bicultural, which means they have a perfect command of both the source and target culture. Translators are also competent and possess the skills of text reception, text production and research, as well as the ability to synchronise source text reception and target text production.

Translators' command of the source culture must enable them to reconstruct the possible reactions of a source text recipient, whereas their command of the target culture allows them to anticipate the possible reactions of a target text recipient and thus verify the functional adequacy of the translation they produce (Nord, 1991:11).

Neufeld (2008:3–4) supports the above mentioned idea, saying that language cannot be isolated from the social context or world in which it is embedded. Thus, when seeking to transport the meaning of words and sentences from one language to another, the translator cannot simply search for words' equivalents in the target language to render the meaning of the source text. The translator must attend to the cultural and social context from which the words and sentences arise. That is why it is very important for a translator to have a good command of both languages and knowledge of both cultures. Neufeld (2008:4) mentions that translation then becomes an act of cross-cultural transfer where the translator must be both bicultural and bilingual. In the case of legal translators, they face certain challenges when translating legal documents. They are not asked to draft their own legislation but are supposed to transfer and translate the ideas of more than five drafters, who are from different cultural, social and religious backgrounds, into another language. Therefore, to transport the meaning of words, terminology must be in place, but terminology, specifically legal terminology, is a problem for indigenous languages in South Africa.

2.14 Phases of the translation process

According to Nord (2005a:35), the translation process is usually represented by models, namely the two-phase and the three-phase models of translation. Nord (2005a:36) shows that the translation process is closely linked to the person of the translator, who is the central figure in the process of intercultural text transfer. This

means that the translator acts as a mediator between the two texts and cultures. Nord introduces her own model of translation, called the looping model, because she believes that the translation process is not linear (where A leads to B and B to C) but circular (meaning that A leads to B and B to C and then goes back to the starting point). The circular process is a recursive one that consists of an indefinite number of feedback loops that allow the translator to return to the earlier stages of the translation process.

2.14.1 Translation models

The two-phase model

The two-phase model represents the translation process as consisting of two chronologically sequential phases, namely analysis and synthesis. In the first phase, the translator reads the source text and analyses all its relevant aspects, following the translation instructions. In the second phase, the source text meaning is re-verbalised in the target language. The translator will use meaning and sense as a *tertium comparationis* to compare and then choose the corresponding target language signs (words) to match the source language signs. The two-phase model assumes that translating is a code-switching operation on a sign-for-sign basis (Nord, 2005a:31).

The three-phase model

In the three-phase model, the translation process is divided into three steps, namely analysis, transfer and synthesis. The comprehension phase is the first of the three phases in the three-phase model, and it entails a thorough examination of the text's grammatical, semantic, and stylistic aspects. This step guarantees that the translator fully comprehends the information provided in the text, both directly and implicitly. The next step is to identify the intention of the target message and transfer it into the target language, either based on an equivalence relationship between lexical items or, if the text function is to be changed, according to the target text function. At this point the translator will have to decide on a translation plan. In the three-phase model, the third phase is the same as the second phase of the two-phase model. In this phase the translation aim is based on the realisation of verbal

communication between people who speak different languages (Nord, 2005a:36). The two models discussed above differ from one another because of the phases or stages they follow in the translation process. The model discussed below is the looping model, which consists of three steps, namely analysis of target text *skopos*, analysis of source text and final structuring of target text. These steps keep on recurring.

The looping model

According to the looping model, every source text is supposed to carry its own translating instructions telling the translator how it should be transferred. This is a useful process that every initiator of a translation should follow. Unfortunately, translators in Parliament still do not receive these instructions with all the documents they receive for translation.

This study thus aims to also address the issue of a translation brief, which clearly stipulates the purpose and function of each document sent to the unit for translation. It is common practice for every translation to have its own purpose, and the target audiences always differ, which is why the instructions will depend on the type of translation needed. The translating instructions are the only means of checking the results of how translators receive the source text and of subordinating their decisions to a higher criterion. The first step in the translation process, according to the looping model, is the analysis of the target text *skopos*. The target text *skopos* should be formulated in such a way that its importance for the processing of the various source text elements and aspects is apparent.

The second step is the analysis of the source text, which is divided into two parts. In the first part of the analysis, the translator only needs to form a general idea about whether the material provided by the source text is compatible with the requirements stated in the instructions. In the second part, the translator proceeds to a detailed and comprehensive analysis of all ranks of the text, focusing mainly on the text elements that, according to the target text *skopos*, are considered important for the target text production (Nord, 2005a:33). According to Nord (1991:33), after the source text analysis has been carried out, the translator will be

able to identify relevant source text elements that can be adapted to the target text *skopos* and matched with the corresponding target language elements. Keeping the target audience in mind, the translator must decide which of the potentially appropriate target language elements will be suitable for the intended target text function.

The final stage is to structure the target text, which completes the circle. Between the source text situation and the source text, the target text situation and the target text, the individual steps of analysis, and the source text analysis and the target text, the circular path of the translation process contains several smaller circular movements or loops that keep recurring. This means that after each step, the translator will look back on the factors that have already been analysed, and every piece of knowledge gained during analysis and comprehension may be confirmed or corrected by later findings. Nord (2005a:38) continues by stating that the circular part of the translation process has several smaller movements that keep on recurring between the source text situation and another source text, and between the target text situation and another target text. This means that when taking each step forward, the translator should look back on the analysed factors and the knowledge gained during the process of analysis.

To conclude, Nord (2005a:38) states that the conceptualisation of translation as a circular movement can therefore be like a modern hermeneutic concept in which the circle of comprehension is a metaphor for the interdependence of the movements made by the translator in the process.

2.14.2 Translation process

Source text analysis

Nord (2005b:1), Newmark (1981:89) and Venuti (1988) believe that before beginning any translation, the translator must do a thorough analysis of the original text, since this appears to be the only method to ensure that the source material has been comprehended completely and properly. These researchers think that a model of source text analysis is required that is relevant to all text kinds and specimens

and can be applied to any translation activity. The purpose of the components or traits noticed in the content and structure of the source text should be understood by translators using such a model. Based on this functional concept, translators can choose the translation strategy suitable for the intended purpose of the translation on which they will be working.

Nord's model of text analysis in translation (the looping model), including the many implications for text analysis, is a holistic model since it overlaps in many ways with other approaches. Therefore, it is the most appropriate one for the purposes of this study. Nord's model is not restricted to any specific text type, it does not contain any references to specific characteristics of any source or target languages and it is independent of the translator's level of competence (Nord, 2005a:42).

The text function is established in and by the communicative situation, and this applies to both the source and target text (Nord, 2005a:32). There is no such thing as a source text with a text immanent function, according to Nord. Rather, a larger or lesser diversity of various source text versions, each with a purpose, must be assumed. Because the translator is simply one of many potential recipients of the source text, her/his assessment of the source text function cannot be taken as conclusive. This means that the translator can also make mistakes in the translation process, and that is why it is very important to loop back and forth to produce a definitive text.

The source text is the source of information. Nord (2005a:25) divides source text analysis into two parts (cf. section 3.7.1.3). In the first part of source text analysis, the translator forms a general idea about whether the content of the source text is compatible with the requirements of the translating instructions, while the second part consists of a detailed and comprehensive analysis of those elements of the text that are of importance to produce of the target text. The analysis of the source text guides the translation process by providing the basis for decisions regarding the feasibility of the translation assignment and which source text units are relevant in a functional translation that meets the requirements of the translation brief.

According to Nord (2014:62), when analysing the source text, various text

linguistic models can be used. The most important requirement is that the chosen model should include a pragmatic analysis of the communicative situations involved and that the same model be used for analysing both the source text and the translation brief, thus making the results comparable. A comparison of the source text-in-situation with the translation brief leads to the conclusion that the two texts differ regarding their addressee and the hierarchy of text functions. After comparing the source text-in-situation with the target text-in-situation, the translator should be able to decide on optimal transfer procedures. Comparing the intended functions of the source and target texts leads to the conclusion that the brief can be carried out by means of a hetero-functional instrumental translation.

Nord (2014:63) avers that a comparison of the source and target text addressees leads to two conclusions. First, the difference in cultural knowledge may require an adjustment of the relationship between explicit and implicit information in the text. Second, the difference in culture-specific genre expectations may require an adaptation of the text's form to target culture textual and stylistic conventions. For both texts, the time of reception is limited to the year in which they were initiated. The occasional differences regarding the phase of reception by any receivers abroad may be ignored because these people are not the primary addressees of the text. The medium is the same for the source and target texts. The translator should be careful not to exceed the space limitations set by the layout. The reason for text production and reception is the same for source and target texts. This justifies the priority of the informative over the appellative function. Therefore, in what follows, the translation brief is analysed according to the looping model.

Translation brief analysis

Nord (1991:7) explains that a translation brief is a set of translating instructions providing as many details as possible about the purpose (*skopos*), occasion, medium, time and place of text reception and motive for the production or reception of the text. These instructions accompany a translation assignment and include the specific communicative purpose and context in which the text is used, the intended uses of the translation and what it aims to accomplish. The first step in the process of analysis, the translation brief of the translated text, is provided in Appendix 3.

It is from one of the many legislative texts the researcher has translated in the past when she was working as a translator. Translators begin by analysing the translation *skopos* contained in the initiator's brief. This is done to obtain the gist of the source text to determine whether the given translation task is feasible. A good translation brief helps the translator answer the questions mentioned in the previous section. Nord (2014:30) refers to the brief as translating instructions to highlight its pedagogical aspect. The term "brief" implicitly compares translators with barristers who receive the basic information and instructions but are then free to carry out those instructions as they see fit and as the responsible experts. Normally clients do not give translators an explicit translation brief. Since they are not experts in intercultural communication, they often do not know that a good brief leads to a better translation.

The translation brief does not tell the translator how to go about their translation assignment, which translation strategy to use and which type of translation to choose. The decisions surrounding these factors are the translator's responsibility and depends on her/his competence, and the translator has the right to refuse an assignment if an agreement cannot be reached with the client, especially regarding the target text's intended purpose. It is also important to mention that the translation brief does not always contain all the instructions about how the text should be translated. Translators thus always need to be creative when translating the provided text. They can add or omit information but only with the initiator's approval. According to Nord (2014:78), translating without clear directions is like to swimming without water. This is because a functionally acceptable translation can only be made by someone who is familiar with the target culture's communicative practices and knows the target scenario for which the text is intended. All this information is contained in the brief provided in the Appendix.

Translation strategies

Baker (1992:26) defines a translation strategy as a "procedure for solving a problem encountered in translating a text or a segment of it". Ordudari (2007), in his article "Translation procedures, strategies and methods", defines a translation strategy as a "translator's potentially conscious plans for solving concrete translation problems in the framework of a concrete translation task". As stated in this definition, the

notion of consciousness is significant in distinguishing the strategies used by learners and those used by professional translators. During the process of translation, the translator has the task of choosing the correct translation strategy and to develop a method for the translation. The chosen strategy needs to be flexible to allow the translator to make amendments if the need arises but should still adhere to the necessary translation norms.

The categories of translation include the following (Marais, 2011:46): the first is transference, where a source language item remains unchanged in the target language text, and the source language item then becomes a loan item in the target language. The second strategy is indigenisation or domestication and is used when an item is adopted from the source language with slight modification to remove some of its foreignness. Cultural substitution is the third method. This approach entails substituting a target language item for a culture-specific item or term that may or may not have the same propositional meaning but is likely to have a similar impression on the target reader. The fourth strategy is generalisation. It involves the use of a culturally neutral, less expressive or even more general item to translate a culture-specific source language term. The fifth strategy is specification, and in this strategy the translator uses a more culture-specific, more expressive or even more specific item to render a culture-specific source language term. The sixth strategy is mutation. This strategy involves translation by deletion or addition. Translation by deletion is when the source text item is not included in the target text at all, whereas translation by addition is when the target text eventually contains linguistic, cultural or textual items that did not occur in the source text. The seventh translation strategy is transposition. It involves a change in grammar from the source language to the target language. The last strategy is translation couplet, which combines transposition and mutation.

Producing the final target text

The final stage in closing the circle is to structure the goal text. The target text will be consistent with the target text *skopos* if the translator has succeeded in generating a functioning text that meets the initiator's needs. Nord (1991:91) believes that the function of the target text is the most important factor to consider in the translator's

decisions. What the translator needs to remember is that it is very important to keep the target audience in mind throughout the process of translation. The final target text must show that the translator understood the translations norms. In producing the final target text, the source text will lose some of its foreign qualities and be endowed with some new qualities from the local culture. Translation is to a large extent influenced by the political ideology of a period. The target text is thus also expected to meet the expectations of the target readers. This means that the success of the translation is measured by the criterion of functions, that is, whether the translation serves its purpose in the target culture (Nord, 1991:91).

The approaches to translation contributed greatly to translation research, especially the functionalist approach. These approaches have showed the underlying conceptions of the nature of translation and how translated texts are used. These approaches will assist the researcher in identifying the best method of translating all text type, particularly legal texts. The skopos theory will be used in determining the skopos of a text and how translation of legal texts is done for future translation of legislation. The approaches will also be used in describing and explaining the translation processes, tools and products used by translators when doing translations.

2.15 Conclusion

This section of chapter 2 highlighted the functionalist approach to translation. The chapter discussed in detail functionalist approach to translation which includes a wide range of translational situations like the *skopos* theory which is a theory that highlights clearly the aim of the translation. The *skopos* theory indicates that when an initiator requires an assignment to be carried out, the assignment sometimes comes with instructions that need to be followed by the translator.

This section also looked at the translation process and the models that are involved the process, namely the two-phase and three-phase models of translation. These phases indicate that sometimes it seems only logical that the function of the source text is specific to the original situation and is not something attached to or inherent in the text.

CHAPTER 3: METHODOLOGY

3.1 Introduction

Chapter three discussed the literature review and the theoretical aspects of translation that will guide the study. This chapter offers a more in-depth discussion on research design and methodology in general, and the specific design and methodology used in this study. The selection of methods and their application always depend on the aims and objectives of the study. Babbie and Mouton (2010: xxv) mention the three broad methodological paradigms that have dominated the scene in recent social research, namely qualitative, quantitative and participatory action paradigms. These methods present an outline, steps or a process that a researcher follows to produce a research report. These methods are discussed briefly in this chapter. This research adopted a qualitative research approach for collecting and analysing data. The chosen method of collecting data involved conducting structured interviews, ethnographic observations and document analysis of Siswati translated bills. The researcher is also employed at Parliament as a Control Editor in the Bills Office and was advantageous to conduct observations with ease. Due to COVID-19 restrictions, the interviews were conducted via the online platforms and questions were also sent via email to those who did not have access to the internet. Questions were sent to participants via email before the interviews. Pieces of legislation (Reform of Customary Law Bill, Skills Development Bill and the Trafficking in Persons Bill) and Parliamentary papers that were previously translated were also reviewed using content analysis. People were interviewed online to show how the previous and current translations were carried out, issues concerning training and to determine if guidelines can be established for using plain language and language that people understand best in future translations.

3.2 Origins of qualitative research

The origins of qualitative research can be traced back to the ethnographic fieldwork as first advocated by Frans Boas. Boas (1911) emphasised the importance of getting to know indigenous cultures first hand. This is what the present study does, as the researcher touches on one of the sensitive subjects that involves culture, namely languages. The origins of qualitative research can also be traced back to the first

work of sociologists in the 19th century. Qualitative research is a natural method through which a researcher focuses on complex phenomenon within a specific context.

It involves an interpretive, naturalistic approach to its subject matter, it attempts to make sense of, or to interpret, phenomena in terms of the meaning people bringing to them (Denzin and Lincoln, 2000). Qualitative researchers investigate to discover issues about existing problems whereby there are uncertainties about dimensions and characteristics of the problem. Glicken (2003:23) believes that the researcher should maintain as much objectivity as possible, and that the research should be conducted in such a way that prejudice does not effect the findings. Therefore, it is imperative that researchers eliminate their personal opinions and biases and ascertain that they remain objective. The qualitative research approach will be the appropriate approach for this study since it will make data collection and analysis to be a success. It will also enable the researcher to obtain a better understanding of the language specialists' daily experiences, allowing the researcher to find some unexpected facts from them.

3.3 Research design

In this study, a qualitative research design has been adopted. A case study design is the most appropriate form of design for this study, since Babbie and Mouton (2010:278-279) explain that it is frequently employed when the researcher is interested in a clearly defined entity (such as a specific household, family, institution or organisation). In the present study, the entity being studied is the Language Unit of the Parliament of the Republic of South Africa in Cape Town. Qualitative studies, according to Babbie and Mouton, are used to gain access to research subjects through qualitative data collection methods (e.g. participant observation, structured interviews, or the use of personal documents to construct life stories) and qualitative data analysis methods (Babbie & Mouton, 2010:270).

Babbie and Mouton explain qualitative research design as a method where the researcher attempts to study human action from an insider's perspective. The emphasis in qualitative research is on the methods of observation and analysis that stay close to the research subject. The observation methods used in this design are

structured interviews, participant observation and personal documents. Qualitative data analysis is mainly used in grounded theory and a number of inductive analytical strategies. Domegan and Fleming (2007:24) refer to qualitative research as a method that aims to explore and discover issues about the problem at hand because little is known about the problem. Therefore, it uses collected data to try and solve the problem or recommend methods to assist in solving the issue at hand. The authors also state that there are a number of terms that are used as synonyms of qualitative research, namely “ethnography”, “field research” and “naturalistic research”.

Babbie and Mouton (2010:270) indicate that in qualitative research, the researcher plays a key role. The researcher is expected to collect and analyse the data. Sometimes the process is done through face-to-face contact with the participants to gain experience and observe what the participants are going through. For the present study, the researcher was supposed to conduct face-to-face interviews but, as mentioned above, the process was interrupted. Qualitative research is descriptive and explorative by nature. The researcher does not use numbers to gain insight into what is required but instead must explore, collect information through verbal communication and record the information to be able to support the research findings.

What distinguishes qualitative research from quantitative research, according to Babbie and Mouton, is that qualitative research is performed in the natural environment of social actors, and the attention is on the process rather than the outcome. A qualitative researcher is also seen as the main instrument in the research process. However, it should be noted that while the researcher is considered the main instrument in the process, this does not necessarily mean that the/she should influence the research by being biased and misrepresenting information. For the success of the research project, the researcher should rely only on the data provided by the respondents (Babbie & Mouton, 2010:270).

In this study the research design employed is the exploratory research design. This design is used to conduct research when one wants to explore a topic or to provide a basic familiarity with that topic. The main reason for using exploratory design is

when a researcher examines anew interest or when the subject to be studied is relatively new. It is also appropriate for a more persistent phenomenon (Babbie & Mouton, 2010:79). The present study is done to obtain additional knowledge on the field of legal translation and to provide valuable information that can lead to change in the use of indigenous languages. The study might lead to future investigations on the field of legal translation.

3.4 Data collection

The following data collection methods were used: ethnographic observation, interviews and content analysis. The researcher will use content from Parliament, participant observation to gain a deep understanding and familiarity with the translators and drafters' work, their values, beliefs, and the way they conduct their work. structured interviews were conducted with language specialists to obtain information regarding translations that were carried out in Parliament. Although a list of questions was prepared, the researcher followed up on open-ended answers during the interviews. The researcher used all these methods because she expected that the interviews would help her get firsthand knowledge from the participants, while participant observation would help her substantiate some of the information she had gotten from them. Content analysis will also help to improve the research by providing more information on what should be done differently than in prior years.

3.5 Participants

3.5.1 Age and sex of participants

The ages of the people who were observed and those who participated in the study ranged between the ages of 23 and 60. There were both male and female participants. They are from different cultural backgrounds and speak one of the four Nguni languages. Most of the participants work in Parliament and some are language specialists from outside Parliament. The table below indicates the number, sex and age of participants.

Table 1: Age and sex of participants

Age	Female	Male
20–29	5	6
30–39	4	3
40–49	2	4
50–59	3	1
60–69	1	1
Total	15	15

3.5.2 Experience and qualifications of participants

Table 2: Qualifications of participants

	Grade 12	Bachelor's degree	Honour's degree	Master's degree	Doctorate
	N	N	N	N	N
Total	3	10	10	6	1

The participants had experience and qualifications in the followings fields: linguistics, sociolinguistics, applied linguistics, language planning and management, law, terminology, translation and editing, language training, language policy development, language policy implementation, language controlling and general language office management. This shows that the study benefitted from several people with a wealth of information in languages, translation and interpreting in South Africa.

3.5.3 Language profiles of participants

Table 3: Languages of participants

Participants	Mother tongue	Additional languages
Participant 1	Siswati	English and IsiXhosa
Participant 2	Siswati	English, IsiXhosa and IsiZulu
Participant 3	Siswati	English and IsiXhosa
Participant 4	Siswati	Northern Sotho, English, and IsiZulu
Participant 5	Siswati	IsiXhosa and English
Participant 6	Siswati	English and Afrikaans

Participant 7	Siswati	IsiZulu, English and Afrikaans
Participant 8	Siswati	Northern Sotho and IsiZulu
Participant 9	Siswati	English and Afrikaans
Participant 10	Siswati	All languages except Tshivenda
Participant 11	Siswati	English, IsiZulu and IsiNdebele
Participant 12	Siswati	English and IsiNdebele
Participant 13	IsiZulu	English
Participant 14	IsiZulu	English
Participant 15	IsiZulu	English and Siswati
Participant 16	IsiZulu	English
Participant 17	IsiZulu	English
Participant 18	IsiZulu	English and isiXhosa
Participant 19	IsiXhosa	Afrikaans, English and Sesotho
Participant 20	IsiXhosa	English
Participant 21	IsiXhosa	English, Afrikaans and isiZulu
Participant 22	IsiXhosa	English
Participant 23	IsiXhosa	English and Sepedi
Participant 24	IsiXhosa	English, Siswati and isiNdebele
Participant 25	IsiNdebele	All languages except Tshivenda and Xitsonga
Participant 26	IsiNdebele	English, Siswati and IsiZulu
Participant 27	IsiNdebele	English and Siswati
Participant 28	IsiNdebele	English, Sesotho and Sepedi
Participant 29	IsiNdebele	English and Sepedi
Participant 30	IsiNdebele	English and some Sotho languages

The participants were all multilingual and most of them spoke most of the official languages of South Africa. There was no one who could speak a European language. Participants came from diverse linguistic backgrounds, and it was assumed that their diversity assisted in bringing balanced perspectives, views, expertise and experience to their responses. All participants were trained as translators and some of them as interpreters. Those who did not have formal training had vast experience in the language field.

3.5.4 Selection of participants

The criteria used for the selection of participants was that they were either language practitioners and/or experts in language matters, or government officials working in language units within government departments. They also had to be able to speak

one of the four Nguni languages. Many of these language specialists worked in Parliament. Managers and controllers were invited to participate in the study because of their experience and the fact that they were going to contribute significantly to the study. Managers and controllers are the ones who receive and distribute the work, so they were expected to be able to answer the question of the translation brief easily. All participants were excited to be part of the study since they were aware that they were going to benefit from the study.

The selection of the participants for the case study was done through sampling and based on their availability and willingness to respond to the questionnaire. Most of the participants reside in Cape Town since they work in Parliament. There were also participants from the Department of Justice who are mainly translators of bills. The interviews were conducted during lockdown and they were conducted via the online platforms. The request to conduct these interviews were done during the early phases of the study.

3.6 Ethnographic observation

Genzuk (1999:2) understands ethnography as a method of social science research. He said when ethnography is used as a method, it usually refers to participant observation carried out by a single investigator who lived with and lives like the people being studied for some time. In most ethnographic studies, three types of data are collected: interviews, observations, and documentation. Genzuk continues to explain that ethnographic research simultaneously blends document analysis, questioning of respondents and informants, direct involvement and observation, and reflection. Participant observation is a field strategy that incorporates the above-mentioned methods.

The researcher work with the participants in Parliament and shares as much of the life and activities of the people in the observed situation as feasible during participant observation. The goal of such participation is to gain an insider's perspective on what is going on during the process of translation. This implies that

the researcher not only observes but also "feels" what it's like to be a member of the group. Genzuk further alluded to the fact that the participant portion of participant observation is necessitated by experiencing an environment as an insider. At the same time, there is an obvious observer component to this process. The goal is to mix involvement with observation in order to have an insider's insight of the experience while also being able to describe it to others.

The study contains sections of individual observation in that the researcher is working at Parliament and have also worked for the Department of Justice and Constitutional development as a Legislative Language Practitioner. As a language specialist the researcher participated in policy development projects, terminology development projects, language development programs, and she is also part of the junior management where she is involved in management decision-making. The researcher sits in Parliamentary Committee Meetings where deliberations on legislation affecting languages are made and how the committee plans to implement the legislation. The researcher interviewed the current manager of the Language Unit at OCSLA to eliminate personal prejudice and subjective views on the chosen topic, so that her prior observations do not provide a whole or holistic view of contemporary development on legislative translation.

The extent to which the researcher became a complete participant in the event was determined in part by the nature of the environment being studied. As a translator working in Parliament, the researcher was also involved in the translation and editing of the second language bills and Acts. Participating in the process as a translator assisted the researcher to gain the perspective of an insider. People's conduct was investigated in ordinary situations, not under controlled environments. The data was obtained through informed talks. There was no specific plan that was followed when gathering the data, the method was structured. Even when interpreting what individuals said, there were no categories used to interpret what individuals said. The researcher was well aware of the ethical consideration when doing the participant observations and eventhough the participants were not informed before the observations started. Informed consent was obtained from the participants to participate in the study prior to the beginning of the interviews.

The researcher benefited greatly from being a part of the study since it allowed her to elicit more information from the participants. To put it another way, the researcher was getting first hand information without interfering with the entire research process. The researcher's experience was also an added advantage, as she has worked for Parliament for more than fifteen years.

3.7 Content analysis

Krippendorff in Drisko (2013:24) defined content analysis as a research method 'for making replicable and valid inferences from text to the contexts of their use'. He mentions that these inferences are used to address the message, sender and sometimes they address the recipients of the message or its impact. Bondas and Turunen (2013:400) mentioned that content analysis and thematic analysis are two commonly used approaches in data analysis and they are being used interchangeably and researchers find it more difficult to choose between them. Content analysis is a strategy used to analyse text where the data is coded and approached using amounts of textual information. Drisko agreed with Bondas when he remarked that a text refers to a wide variety of materials preserved in various formats, in this instance Bills and Acts.

The researcher has devoted significant time to analysing data from translated bills and some Parliamentary papers. The reason for this is that the researcher is the first person to investigate the topic of legislative translation and assent of Siswati bills in Parliament of the Republic of South Africa. The researcher is aware that some research has been conducted about legal translation in other government departments. The researcher read and translated several bills, acts, written submissions and Parliamentary questions that have been translated into Nguni languages with special attention to Siswati. She went on to extract this data from the Parliamentary archives and from other language specialists working at Parliament. The textual database indicates that a number of bills and Parliamentary papers were translated from English to Afrikaans which is one of the contributory

factors to the lack of growth of African languages, not just in Parliament but throughout the government departments. The researcher read them and gathered information. The researcher read through them and gathered information to get people's opinions on the subject.

The researcher was then able to filter through the vast amounts of data with ease utilising a methodical approach due to content analysis of the translated text. Trends and patterns in the documents were examined using this method. The translated bills were utilised to make inferences about the vocabulary used while translating legislation. This included tough legal jargon that was translated into Siswati including the method on how translations were carried on before and how they are now. Because of the progress made since the introduction of translation in indigenous languages, content analysis demonstrated the effectiveness of terminology development and developing uniformity guides.

3.8 Questions that were asked

The researcher created a list of questions to elicit data on current practices pertaining to legal language, legal translation, translation problems, translator training, equitable use of languages, co-drafting and translator's experience in the field of legal translation. Translation as a skill and historical development activities, progress and roadblocks, future planned initiatives, and the efficacy or ineffectiveness of executed language development programs in a certain institution. All language specialists participating in the study were asked the same questions and all the questions were open-ended. All of the interview questions were written in English, and English was also used throughout the interview processes and when communicating with participants. When offering examples of challenges encountered during translations, participants were allowed to present them in their mother tongue because the focus of the study is about the use of indigenous languages.

The following questions were asked:

- What experience do you have in translation, editing, interpreting and

proofreading texts that have legal contexts?

- Are you aware of any problems that are faced by translators assigned to translate legal documents? If yes, clarify.
- Do you think institutions performing legal translations have enough capacity to produce quality legal documents?
- Do you think there is an equitable use of the Nguni languages by Parliament? If not, why do you think this is the case?
- The constitution require that acts are submitted in at least two official languages for assent, the department introducing the bill choose the second language for certification and assent. Do you think the clause of equitable use of languages in legislative translation is fairly applied?
- Are there any training programmes afforded to language specialists who are tasked with legal translation? If yes, please clarify.
- Do you think the introduction of programmes dealing specifically with legal translation training in South African institutions of higher learning can eliminate the translation problems faced by legal language practitioners?
- Do you think the introduction of dual language drafting units can eliminate the poor quality of translated legal documents?
- Is there a need for a legal language translator to have a language qualification coupled with a legal qualification to avoid confusion when dealing with legal text?
- Have you ever read or translated a legal document in your language, were you happy with the quality of the translation? Please also indicate the document that you once read or worked on.
- Do you have any other general comments on translation of legal text?

Follow-up questions that arise from these questions were also asked to the participants and they are not indicated above.

3.9 Data focus

The researcher gathered information using interviews, observations and documents that are used in translation of legal texts, as well as those that could

help to ensure equal use and development of African languages. These documents include bills, acts, Hansard reports and the parliamentary policy that outlines what must be done to improve the usage of indigenous languages in Parliament, as well as the recommendations made to control the use of English and Afrikaans only when translating legal text. The extracted data also focused on language and translation, legal language, terminology development, multilingualism, development of indigenous languages and translator training. This study seeks to find out the important aspects of legal language and legal translation; problems that legal translators in the South African Parliament faces; the reason English and Afrikaans are still the languages that a bill is only assented to and the possibility of using co-drafting to eliminate translation problems.

3.10 Method of analysis

The researcher used thematic data analysis to analyse the data supplied by the interview participants. When comparing thematic analysis to other methods Braun and Clarke, (2006:198), affirm that thematic analysis is a more divergent, compatible, and adaptable research tool. As a result, thematic analysis aids in the creation of a rich, thorough, and complicated narrative of a data set. Thematic analysis, on the other hand, can never be accused of lacking scientific temperament due to its flexibility. Thematic analysis is a method that uses very explicit and clear procedural guidelines to do it, and these procedural guidelines undoubtedly provide the method scientific a vigour. They further indicate that thematic analysis can help as a start up to qualitative research, well compromised with scientific steps and organised which makes it to be highly recommended method. Thematic analysis, according to Caulfield (2019), evaluates the data to uncover recurring themes, subjects, concepts, and patterns of meaning. Caulfield concurs with Braun on the use the method for extracting information from a set of qualitative data about people's ideas, opinions, knowledge, experiences, or values.

To begin, the researcher went over the transcripts to obtain a sense of the major themes that emerged. Secondly, the researcher made notes in the margins of each transcript about the themes that emerged. The third stage entailed compiling a list of recognised themes and arranging comparable items together, as well as assigning

codes to the themes. The researcher applied the list of themes to the data in the fourth stage by labelling data segments with the codes. The researcher utilised this early organising strategy to see if any additional categories or codes emerge. The researcher continued and then gave a descriptive explanation of the themes as well as categorise them. The next step required the researcher to make a final decision on the category and alphabetise the codes. The data material belonging to each category was then classified. Finally, the researcher recoded the current information, if it was necessary. Again, document analysis as a data source in qualitative research was also employed. Document analysis is a systematic procedure for reviewing or evaluating documents which are either printed or electronic. Document analysis was one of the methods used to analyse the Parliamentary documents (e.g. Hansard reports and bills).

3.11 Conclusion

This chapter explored the research design and the methodology used in this study. The qualitative research method and its origins was briefly discussed and it was followed by the participant's profiles. The researcher chose a qualitative research method in order to gain insight on what is happening during the process of translating a document. The researcher chose a qualitative approach to learn about the processes, attitudes, and perspectives of the people who play a role in legislative translation. Interviews were conducted from language specialists working in Parliament and OCSLA. The language practitioners were interviewed by the researcher to clearly understand the way they carry out their duties, the methods they follow and the importance of a translation brief in the translation process. Observations were done and parliamentary papers were examined, studied, reviewed and analysed to get information to determine the status of the use of other languages when translating legislation and other Parliamentary papers in the institution. Questionnaires were sent to respondents from various universities, and some were questioned in person. The researcher also used her experience as an employee of Parliament to gather more information through observations.

CHAPTER 4: DATA PRESENTATION AND ANALYSIS

4.1 Introduction

This chapter presents and analyses the data. The data is based on the functionalist translation strategies that translators use when dealing with the problem of non-equivalence, their strategies for dealing with non-equivalence and the methods they use when solving problems. The chapter also includes several examples of words and phrases from sections of different acts and bills that were identified as difficult to translate during the interview discussion and document analysis. The mentioned documents are all documents that lay people frequently encounter. The analyses show the words these documents contain as well as and how these words or phrases affect the comprehensibility of the documents.

Some phrases and sentences were taken from the bills, which are a piece of legislation that affects everyone in South Africa. This was done to show the seriousness of the documents these translators come across and to stress that they must understand the importance of selecting the best strategy when they are given work. The data collected by using the Parliamentary papers will be presented first. This data will be bills translated from English into Siswati. Extracts from the English bills will be presented in four steps together with back translations followed by analysis.

4.2 Step one: Presentation and analysis of the translation process of legal documents

The researcher used Siswati translated bills and Parliamentary papers. The researcher observed that these documents are mainly produced and printed in English. These documents provide background information as well as a historical insight of what has been happening in the past. Presented below is an extract taken from the *Customary Law of Succession Bill*:

“Property rights in relation to certain customary marriages

(1) A marriage under the Marriage Act, 1961 (Act No. 25 of 1961), does not affect the proprietary rights of any spouse of a customary marriage or any issue thereof if the marriage under the Marriage Act, 1961 was entered into—

(a) on or after 1 January 1929 (the date of commencement of sections 22 and 23 of the Black Administration Act, 1927 (Act No. 38 of 1927), but

before 2 December 1988 (the date of commencement of the Marriage and Matrimonial Property Law Amendment Act, 1988 (Act No. 3 of 1988); and

(b) during the subsistence of any customary marriage between the husband and any woman other than the wife of the marriage under the Marriage Act, 1961 (Act No. 25 of 1961).

(2) The widow of the marriage under the Marriage Act, 1961, contemplated in subsection (1), and the issue thereof have no greater rights in respect of the estate of the deceased spouse than she or they would have had if the marriage under the Marriage Act, 1961, had been a customary marriage”.

The extract mentioned above assisted the researcher to understand the depth of the issues regarding lack of second language translations of Parliamentary papers. What the researcher observed when gathering this data is that, there is a correlation between the information gathered during the interviews, observations and document reviews. These documents are sent to translators with no specific indications about the purpose or target audience. The translator is expected to analyse the content and translate it for its intended purpose, which becomes difficult during the translation process.

Translators indicate that if a translation brief is provided, it usually contains the following information. The Department of Justice and Constitutional Development requires a translation into Siswati of the *Reform of Customary Law of Succession and Regulation of Related Matters Bill*, 2009. This is a legal document that will

need to be translated by someone who has experience in translating legal documents, and must be kept confidential. The source language of the text is English and it must be translated into Siswati. The document is six pages long and is composed of 3 980 words. Below are extracts of an English bill and Siswati translation extracted from the above-mentioned Bill:

Disposal of property acquired and held by traditional leader in official capacity

5. Nothing in this Act is to be construed as amending any rule of customary law which regulates the disposal of the property of a traditional leader who has died and which was acquired and held by such traditional leader in his or her official capacity.

Siswati translation

Kuhlelwa kwemphahla lezuzwe kanye nalebanjwe ngumholi wenzabuko ngekwemandla embuso

5. Akukho kuloMtsetfo lokutawuhumushwa njengalokuchibiyela nobe ngumuphi umtsetfo walomtsetfo wesintfu logunyata lokuhlelwa kwemphahla kwemholi wenzabuko lesekashonile naleyatfolakala futsi iphetfwe ngulowo mholi wenzabuko kuleso sikhundla sakhe lesisemtsetfweni.

Both these source text and the target text will be used for public hearings and sentencing in all the provinces that have traditional courts. Even though the function of the target and source texts will be the same, the texts will be used by different audiences, namely illiterate, semi-literate and literate people. This bill will be used by all age groups, by males and females and by all cultural groups who practise

customary law. They are all from different cultural backgrounds, and the characteristics of the source text and the target text are therefore different. Furthermore, the source text aims at legalising customary laws of succession and to regulate related matters. In addition, the document needs to be translated because most of the people who are affected by laws like this one are situated in rural areas and are illiterate or semi-illiterate. The deadline for the translated, edited and proofread text will be three weeks from the day the assignment is received as the bill needs to be agreed upon by the responsible committee before the week of the public hearings.

The translation brief above does not contain all the instructions the translator needed when translating the given document. However, this does not mean that the translator was not able to undertake the required task. The translator used her/his previous experience when translating such a document. The translator compared the source text and the target text profile defined in the translation brief.

There are two translators who worked at the Department of Justice who were interviewed. The two translators mention that every task can usually be translated in a certain way by default if instructions are not given or are incomplete. The translators indicated that they need to know what they should do in a situation where insufficient specifications are given. This forms part of their in-house training. The translation strategy and how they are expected to carry out the assignment are mentioned in detail below. When mentioning this strategy, they referred to examples taken from three texts that were previously translated to Siswati in the unit. They are, the *Reform of Customary Law of Succession and Regulation of Related Matters Act* (2009), the *Skills Development Levies Amendment Act* (2010) and the *Prevention and Combating of Trafficking in Persons Act* (2013). When these three texts were given to translators, some of them were accompanied by translation briefs and some were not. These translation briefs assisted the researcher to be able to identify the type of translation that was required, what was the target audience, time, intention, place, medium and that who were the recipients of these texts. For the texts that did not have a translation brief, the translators indicated that it was difficult for them to execute the given assignment without a brief, therefore, this also will assist in determining ways that can simplify the duties that are given to translators.

4.3 Step two: Analysis of the source text

The translator needs to check if the information provided in the translation brief is compatible with the requirements of the target text and then analyse the whole text in detail. By checking the information, it becomes possible to determine whether the target text is in line with the requirements provided by the initiator. A detailed analysis also enables the translator to focus on the elements of importance to produce of a target text. The function of the translation must be in line with the request of the initiator and must fulfil the needs of the target audience. Translators mention that in every step the translator takes in translation, it is necessary to loop back to the facts that ariseduring other steps (e.g. source text analysis, translation strategies and the final product), and thus continually consider the implications thereof.

After reading the translation brief and analysing the source text, it became clear that it will befeasible to carry out the assignment even though there would be challenges in translating the supplied document. Translators investigate extra-textual elements byinquiring about the text's author or sender, the sender's aim, and the addressee or receiver to whom the text is addressed. The medium or channel via which the text is sent, the location and time of text generation and reception, and the communication purpose are all investigated. Theinformation gathered about these non-textual variables may offer an answer to the last issue, which is about the function that the text can do.

The translators indicated that some of the source texts are from the Department of Justice and Constitutional Development, which is a government department responsible for constitutional and justice-related matters. The main aim of the documents is to inform people about their rights and to clarify certain matters relating to the law of succession and the law of property in relation to persons' subject to customary law, skills development levies and the prevention and combating of trafficking in persons, respectively. These source texts are legal documents that contain information about the modification of customary law of succession, the interpretation of certain provisions of the *Intestate Succession Act* (1987), the disposition of property allotted or accruing to women in customary

marriage, dispute or uncertainty in consequence of the nature of customary law, disposal of property held by traditional leaders in their official capacity, property rights in relation to certain customary marriages and the amendment of existing laws. The initiator, who is the minister in the Department of Justice and Constitutional Development, identifies a need to introduce legislation that governs several issues that affect the broader South African Republic. The purpose of the translation is indicated in a translation brief for email if there is no brief provided. Below are the extra-textual factors that the researcher took into consideration when translating the legislation presented.

Sender

(a) Skills Development Levies Amendment Bill

The sender of this text is the Minister of Education, who uses the text to convey a message to the South African public about the changes she intends to make to the legislation.

(b) Prevention and Combating of Trafficking in Persons Bill

The sender of this text is the Minister of Justice and Constitutional Development, who uses the text to convey a message to the whole world. This message concerns the prevention of trafficking in persons, and it provides for the protection of and assistance to victims of trafficking, the establishment of an Intersectoral Committee on the Prevention and Combating of Trafficking in Persons and the development of a draft national policy framework.

(c) Reform of Customary Law of Succession and Regulation of Related Matters Bill

The sender of this text is the Minister of Justice and Constitutional Development, who uses the text to convey a message to the South African public. The message is about the modification of the customary law of succession to provide for the devolution of certain property in terms of the law of intestate succession.

Intention

(a) Skills Development Levies Amendment Bill

The text must not be ambiguous and must be as clear as possible. The translator needs to make sure that there are no hidden meanings in the target text.

(b) Prevention and Combating of Trafficking in Persons Bill

The text must not be ambiguous and must be as clear as possible. The translator needs to make sure that there are no hidden meanings in the target text.

(c) Reform of Customary Law of Succession and Regulation of Related Matters Bill

The text must not be ambiguous and must be as clear as possible. The translator needs to make sure that there are no hidden meanings in the target text.

Recipient

(a) Skills Development Levies Amendment Bill

One translator mention that the recipients of the target text and the source text will be different for this bill. On the one hand, the source text recipients will be members of Parliament as well as institutions of higher learning and their students. On the other hand, the recipients of the target text will be the public, and it is always important to remember that some of them have never been to school and cannot read or write. That is why Parliament uses the platform of public hearings and taking Parliament to the people to explain legislation to illiterate individuals during these public hearings.

(b) Prevention and Combating of Trafficking in Persons Bill

The recipients of the source and target texts of this bill will also be different. People within and outside the Republic of South Africa will be affected by this bill, so the receivers of the target text will be people who are first-language speakers of Siswati and people who cannot speak, read or write English or the second language of the bill. Again, the source and target cultures will also be different, so the translator might need to make some adjustments during the translation process.

(c) Reform of Customary Law of Succession and Regulation of Related Matters Bill

The recipients of the source text and the target text will be people who have

different cultural backgrounds, religions, norms, values and beliefs since this bill includes everyone who is married customarily.

Medium

The Siswati texts will be produced in writing and the translator must use plain and simple language. These texts will be published in the *Government Gazette*, which always reaches a many people.

Place

The source text is produced by the national department and the target text is produced by all the provincial departments, depending on the language that is required at that time. This means that the places of the source and target texts differ.

Time

Translators declare that legal documents are produced yearly and are therefore considered modern. A translator must always bear in mind that when translating an amendment bill, even if some of the terminology has changed, it is the responsibility of the drafter to change the language that was previously used in the principal English act before the translator may change the language used in the target language version of the bill.

Motive

(a) Skills Development Levies Amendment Bill

The legislation was produced to enhance the development of skills in institutions of higher learning.

(b) Prevention and Combating of Trafficking in Persons Bill

This bill was drafted after the executive authorities realised the importance of legislating the trafficking of persons into and out of South Africa. The motive was to make sure that people who are trafficked are taken care of, are handed over to the correct family members and are afforded treatment if the need arises. This legislation will also help inform the general public about the seriousness of

combatting and preventing trafficking in the country.

(c) Reform of Customary Law of Succession and Regulation of Related Matters Bill

The text is produced to prevent a woman who is married under customary law from losing her husband's property when the husband dies. The bill was drafted because there was a public outcry about the lack of legislation that protects women in customary marriages.

All three target texts are produced for communication purposes because the main aim of all three bills is to inform. The other purposes of these texts are to exchange information and opinions, to affirm and establish relationships and to keep the readers well informed about the legislation of the country.

Subject matter

The subject of all three texts is law. The translator therefore needs to do research on some of the words, as well as on the relevant cultural and religious backgrounds, especially for texts (a) and (b). Translating documents like these requires the translator to possess the relevant experience and knowledge. The translator needs specialised knowledge to translate these documents. The *Reform of Customary Law of Succession and Regulation of Related Matters Bill* is a very sensitive piece of legislation that concerns a number of cultural aspects such as beliefs, values and norms. This is also the case for the *Prevention and Combating of Trafficking in Persons Bill*, and the translator needs to do thorough research since the bill also addresses the issue of *ukuthwala* (forced marriages), which is regarded as trafficking in terms of the law, but is viewed differently at a cultural level. Translators claim that the Zulu, Siswati and Xhosa cultures regard this practice as a way of building relationships with one another. The family who will receive the daughter-in-law will be required to pay Lobola as a way of acknowledging the relationship with the other family. According to the laws of this country, however, this is considered forced marriage and practising it is an offence. Therefore, as a translator you are required to know these practices as they are also important in the translation process.

Content

To understand the content of the text, the translator needs to read and understand the source texts and then create the target texts accordingly. In analysing the content, the translator should paraphrase the sentences, especially in terms of the sentence structure. However, the translator also needs to be careful when paraphrasing since this process might result in a new text.

Text composition

The three texts mentioned above have macrostructures, meaning they consist of sections 1, subsections (1), paragraphs (a), subparagraphs (i) and items (iA). These structures are very important for the translation-oriented analysis because a text can be made up of smaller text segments with different functions, which may require different translation strategies. The translator agrees with Nord as these three texts above, they all have different segments that perform different functions: The *Prevention and Combating of Trafficking in Persons Bill* addresses issues of human trafficking in general, places of safety, handling and transportation of persons and counselling. The *Skills Development Levies Amendment Bill* amends the *Skills Development Levy Act* by inserting new definitions of the words “Minister” and “Auditor General”. The *Reform of Customary Law of Succession and Regulation of Related Matters Bill* modifies the customary law of succession, provides for the devolution of certain properties in terms of the law of intestate succession and seeks to clarify certain issues related to succession.

4.4 Step three: Planning the translation strategy

The target text determines the choice of method and strategy in the translation process. It is the responsibility of the translator to choose the method or strategies that works best for the supplied text, and this is done through interaction between the initiator and the translator. The translator’s choice is guided by a set of criteria, and in this case, the communicative function for which the text is needed. The translators developed a method they followed when translating the given text. The translation method was broken down into three general strategies: understanding and reasoning, searching and revising. These strategies do overlap and reoccur during the translation process. Three translators indicated that the most obvious part

of this process was understanding and reasoning. During the process of translation, one translator mentioned that they “start by reading and becoming familiar with the text and eventually produced a functional target language text. The text needs to be read and the source text should be compared to the target text”.

The translator consulted with colleagues and other language specialists, read the translated text again and again, compared language structures and worked out acceptable equivalents. The translation strategy ensured that the translator preserved the letter of the law, which means the translated text mirrored the source text as required by the rules of Parliament. The translator might have detected terminological gaps in the target language while doing the analysis. Before commencing the real translation job, the translator responded to difficult lexical elements for which translation counterparts were sought while separating the primary provisional phrase from the qualification.

4.5 Step four: Production of the target text

Translators encounter a number of translation problems when they are given assignments to translation. The problems are present in every translation task, regardless of the languages and cultures involved or the direction of the translation process. The second type is cultural translation problems, which are the result of the differences between the norms and conventions guiding verbal and non-verbal behaviour in the two cultures involved. One translator stated that “Siswati culture has its own habits, norms and conventions, as does the English culture”. These habits, norms and conventions are present in almost every translation task, especially in instrumental translation. Lastly, there are linguistic translation problems, which arise from structural differences between the vocabularies, syntax and suprasegmental features of Siswati and English. Some of these problems are restricted to language pairs, for example, cognates or false friends. These problems can be addressed by translation by paraphrase, as shown in Table 5 below:

Table 4: Translation by paraphrase

English	Siswati	Paraphrased	Siswati
These problems can be resolved	<i>Letinkinga tingasonjululwa</i>	These issues can be resolved	<i>Letingcinamba tingasonjululwa</i>

The above table shows that different words can be used to convey the same meaning in a translation. Although there are some remarkable differences in some cases, but the general meaning can not be distorted. During the process of translating the three bills, the memorandum was translated first. This part of the text contains detailed information behind the introduction of the bill. The information is called the objects of the bill. After reading and translating the memorandum, it was necessary to loop back to the bill to translate some of the clauses differently, since the memorandum provided a better idea of the author’s purpose.

This process also involved the marking of some words that were causing problems to consult another language specialist for the correct terminology to be used. The difficulty in this case is that the text in question is a legal one, and not many language specialists are experts in this field. Translators cannot escape the requirement of having to understand what is conveyed in the source text, even if they are not required to interpret the text legally. Translators who are not trained in law may not be equipped with the higher-order legal skills to conduct a legal interpretation of the source text. They should therefore refrain from any such interpretation. Three translators indicated that when working through the given text, it is also very important for translators to use the experience they have gained throughout their career, especially regarding the syntactic structure of the text. For example, in translating the words in Table 6, experience played a crucial role:

Table 5: Words translated using previous experience

Source text (English)	Target text (Siswati)	Back translation
Wife	<i>Umfati</i>	Woman
Woman	<i>Umfati/Lomsikati</i>	Female
Spouse	<i>Inkhosikati/Umfati</i>	Wife
Partner	<i>Umlingani</i>	Wife

In table 6 above, both the words “woman” and “wife” are translated as *umfati*, but after consultations with colleagues it appeared that the word “woman” could be translated as *lomsikati* (female) to avoid confusion. The translator should search for words, expressions, terms, titles and collocations using a variety of resources, including dictionaries, websites, databases, recently developed terminologies and advice from colleagues who have experience in the field of translation.

When the entire translation of the text is completed, the translators also indicate that they are obliged to revise their translations, by editing and proofreading the translated text. Revision usually takes place throughout the translation process. The strategies that are used when revising a document are reading and re-reading the text, comparing the source and the target text, checking for accuracy, consistency and idiomatic language, verifying and changing lexical choices, checking if there is a need for adjusting the structure of the grammar, making changes in the word order, revising syntax and improving the overall flow of the text. This instance, translators might type their initial thoughts, but as they continue with the translation they might feel that there is a need to change and revise a particular sentence and make it a better Siswati sentence.

For example, they may translate the title of the bill first but later feel that it is necessary to change the title. In the examples below, the second title was translated using plain language. These examples suggest plain language translation as the better option to use in legal translation.

Siswati example 1: *Umtsetfo Wekwentiwa Kabusha Kwemtsetfo Wesintfu Webundlalifa Nekuphatfwa Kwetindzaba Letihambisana Nawo* (back-translation: Renewal of Customary Law of Succession and Regulation of Related Matters Act)

Siswati example 2: *Umtsetfo Wekuguculwa Kwemtsetfo Wesintfu Webundlalifa kanye Nekuphatfwa Kwemitsetfo Lehambisana Nawo* (back-translation: Reform of Customary Law of Succession and Regulation of Related Laws Act)

The changes made in the translations above show that in Siswati there is no equivalent for the word “reform”. Therefore, in the translation the word “renewal” was used, as indicated in the back-translation. The above examples are an illustration of revising and re-reading what one has translated. The translator has at least two translated titles from which to choose and may also consider other ideas from colleagues. The final target text is the final or finished product of the given text. In this case, the final target texts are the translated *Reform of Customary Law of Succession and Related Matters Bill*, *Skills Levies Amendment Bill* and the *Prevention and Combating of Trafficking in Persons Bill*. The short title and

memoranda of these bills are provided in Appendix 4 which contain both the source text and the final target text of each.

4.6 Presentation and analysis of data from interviews and participant observation

The presentation of data and detailed responses from the thirty interviewed language specialists who are members of staff in Parliament and the department of Justice with regard to the processes of translation will follow. Their views on training and the challenges they face when executing their translation duties, the responses from the language practitioners and/or experts with regard to their experience on the language usage in Parliament and their views on the issue of language choice and equal usage will be presented below. The questions posed to the language specialists both in Parliament and OCLSA were specifically directed to their experience in general translation, legal translation, equitable use of the indigenous languages, training and their thoughts on the legislative process. This questions also covered some of the activities around qualifications, terminology development and legislation they have translated, edited or proofread since they joined the institution.

The questions to the language specialists wanted to elicit information on their experiences regarding language usage in translation, personal experiences in the field and whether respondents feel that there is an equitable use of the 11 official languages in Parliament. In broad outline these questions were meant to gather information on the respondents' experience, perceptions and views on the issues involving the legislative process. The focus was also based on the need for language specialists to have a legal qualification or training to be able to work as a legal translator. The interviews with the language specialists were also meant to establish their thoughts on co-drafting and how these methods may assist in eliminating the issues around consistency and poor quality of translated legislation. Their views on legislation governing the use of official languages in South Africa were also gathered.

Responses to questions on equitable use of languages

All the thirty interviewed language specialists were of the firm view that indigenous

languages are not treated equal as the other two official languages (English and Afrikaans). Language specialists explained that they do raise some of these inequality issues with language bodies but there is nothing much that have been done about it. Some of the issues raised with PanSALB and the employer pertaining language use are never resolved and still pending. Language specialists indicated that the introduction of the South African Languages Bill and other bills governing use of languages were viewed as instruments that will bring hope in rectifying the language problems caused by the legislative vacuum. Nothing much has happened in this regard and departments are still dealing with language matters through other measures. One language specialist mentioned the issue of language audit in the various departments and, against Parliament, to see that all legislation is published in all 11 languages on rotational basis and within a reasonable time.

“The participant stipulated that “some Nguni languages like Siswati, IsiXhosa and IsiNdebele are not given the same status, therefore the language audit can assist in making sure that they are used on rotational basis.” One language specialists indicated that Parliament has not yet fully complied with Section 6(4) of the Constitution which provide for the regulation and monitoring of the use of official languages. He indicated that “the use of Nguni languages in Parliament is not convincing at all. But I must applaud some of the members of Parliament who have made sure that our languages are recognised in Parliament. And that most of their speeches are delivered in the Nguni languages”.

Three language specialists indicated that, they feel that government is not treating the official languages equitably. Their views are that the government (national, provincial and local) favors English and Afrikaans over other languages. They are of the view that English is treated as the main official language and does not belong to the group of 11 official languages. “Either the government has no understanding about the laws, regulations and policies it has passed and promulgated about the equitable use of languages or it does not appreciate the significance of such languages”.

To affirm what the translators indicated above, the researcher presented a table of legislation below that shows acts that were assented to since 1994 up to the fifth

Parliament first session. This table is presented in line with the answer to the question of equitable use of languages. The table shows that departments and Parliament have not yet started implementing what is required by the Constitution and other pieces of legislation that govern the use of official languages in South Africa. One translator said “for starters, one can check on just an ordinary correspondence or notice boards and even legal sources (like law books or official government forms)” to see that English and Afrikaans still hold a prominent position. The participant continued to say “The forms are dominated by the two languages, if they happened to use an indigenous language, it will only be one of the four Nguni languages”. He was supported by another participant when she said, “the scale is always tipped towards languages with the majority of speakers. Large amounts of money are spent on translation, it would be a shame if all the money is spent for a handful of readers, sometimes, as is usually the case, to collect dust on shelves”. The total number of bills introduced since 1994 was 1 362, and of that number, 1 330 acts were translated, passed and assented to. Of these 1 330 acts, 1 098 were translated into Afrikaans. The other nine languages share the remaining 232 acts that were translated since the dawn of democracy. Only thirteen pieces of legislation were translated into Siswati during this period, for example. This does not mean that these bills are not translated into other languages.

The researcher observed that these bills are translated but they are not sent to Parliament or to the President for assent, and they remain in the filing cabinets of the OCSLA since the rules require only one translated text to be sent to the President alongside the English text for assent.

Table 6: Statistics on Acts passed by Parliament since 1994

Year	No. of Siswati Bills	No. of Afrikaans Bills	Passed	S74	S75	S76	S77	Assented to	Pages
1994	0	52	52	4	41	N/A	7	52	4
1995	0	89	89	2	81	N/A	6	89	9
1996	0	108	108	2	99	N/A	7	108	16
1997	0	108	108	1	75	26	6	108	25
1998	0	135	137	2	85	40	10	134	34
1999	0	59	60	2	33	19	6	60	45
2000	0	71	70	0	44	20	6	70	50

2001	1	67	69	2	51	11	5	69	56
2002	1	61	75	2	54	9	10	75	62
2003	0	49	61	2	43	8	8	61	68
2004	1	37	40	0	22	11	7	40	73
2005	0	29	39	1	27	7	4	39	77
2006	0	20	28	0	18	5	5	28	80
2007	2	27	44	1	25	10	8	44	83
2008	2	49	80	2	49	17	9	77	87
2009	0	22	24	1	10	9	4	24	94
2010	1	18	26	0	18	5	3	26	96
2011	2	15	28	0	18	7	3	27	99
2012	1	12	25	1	15	3	6	25	102
2013	0	29	48	0	32	10	6	47	104
2014	1	22	44	0	17	22	5	42	108
2015	0	15	25	0	12	5	8	25	112
2016	1	9	18	0	9	3	6	17	114
2017	0	11	18	0	12	2	4	18	116
2018	0	13	23	0	13	5	5	21	118
2019	0	16	23		5	9	2	4	120
Total	13	1143	1362	25	915	263	156	1330	

Breakdown of translations by second language:

IsiZulu	-	64	IsiXhosa	-	34
Siswati	-	13	Tshivenda	-	19
Xitsonga	-	13	IsiNdebele	-	3
Sepedi	-	31	Setswana	-	29
Sesotho	-	26			

This table shows that there is a missing link between policy and implementation of equitable use of languages in Parliament, and the institution can learn from how Afrikaans was developed and empowered and use that as a starting point.

We can see from this table that Afrikaans is still leading the log and this means it is still given the attention that it used to receive. One participant who also work at Parliament has this to say, “having looked at the breakdown of all bills passed and their respective second languages, 260 bills have been translated to Nguni languages. This is at least 48% of bills translated into Nguni languages since 1994. This is more like a reflection of the linguistic representation of the country, which might not be considered fair to languages of the minority”. Parliament need to work on these inconsistencies that are shown in this table so that legislation can be available in all languages on equal basis.

Responses to questions on Parliament language policy

Four of the language specialists interviewed mentioned the issue of language policy implementation. They indicated that the government is not implementing the language policy through legislation as stipulated in the Constitution. One of the participants expressed dissatisfaction with the quality and distribution of second language policies. "I am not comfortable with the present Constitution's translation, and the fact that it is not even circulated to language speakers, how are they going to know about it?" he continued. "My issue is, how widely were these policies given for language speakers' feedback before they were endorsed? Is it even possible to put them into practice?" Another participant said that "language policies in the departments and in Parliament are just there as a requirement as they are not implementing them".

A court ruling made in 2010 in the Lourens case ordered that government need to comply with Section 6(4) of the Constitution which means what the language specialists indicated above have substance. "Language policies are highly essential because they touch people's lives; they rely on the government to ensure that they are implemented," remarked the last one. Parliament must implement its language policy in accordance with the Constitution, as well as ensuring that those who are affected are aware of it. In closing the interviews, the researcher gave the language specialists an opportunity to make general comments on legal language and legal text translation. According to the language specialists, legal terminology continued to be in high demand across departments. Despite the fact that language groups responsible with terminology development meet virtually every month, there is still no tangible legal bank. They all stressed the need of legal training and co-drafting as a tool for the institution to adopt in resolving issues that arise during legal text translation.

The issue of legalese and the use of latin words in drafting has been raised as one that is causing them problems, and they believe that plain language must be used instead.

Responses to questions on legal translation and the legislative framework

All language specialists are of the view that the South African government managed to put legislation in place to enable language development and policy implementation. Government has approved policies which were later drafted as bills and passed by Parliament acts which enable all language structures to implement them. The Use of South African Languages Act, Pan South African Language Act, South African Language Practitioners' Act and many others were assented to by the President to allow all language bodies to develop their own policies that indicate how are they planning to address the issue of languages in South Africa. Even though the Constitution is unambiguous on languages, language specialists say that there is still much that has to be addressed in Parliament to ensure that all languages are equitably represented as required by law.

A quarter of the language specialists interviewed believe that the body that was formed to monitor and ensure language development through terminology development has not done much in the field of legal terminology. One language specialist highlighted that there is a lot that this body has done as far as terminology development is concerned but the focus is mainly on various spheres and various fields that does not include legal terminology. Terminology lists are mainly developed by National Language Services after receiving terminology from language specialists and experts in those fields, these lists are therefore sent to the body for verification. The lack of field specialists in the legal field continue to create a problem in terminology development. In their responses, their emphasis was that these acts need to be amended to afford institutions of higher learning an opportunity to introduce training or a bachelor's degree in legislative translation. "Sometimes we request translated legislation from the Bills Office so that we may utilise them when they are debated by the house, and in some circumstances, we do not receive them because the departments did not send requests for translation or they were unable to deliver on time due to lack of capacity," one participant concurred. Some of the universities in South Africa already have units designated for terminology development, what the language specialists suggested was that these units can be used for training of legislative language specialists. This profession of a legislative language specialist can then be included in the definition clause of the South African Language Practitioners' Act and be made known and official.

Responses to questions on co-drafting

Twelve language specialists affirm in their response that co-drafting may be the best method that can assist in creating a relationship between them and the legal practitioners. One of them strongly believe that “the introduction of co-drafting can eliminate or reduce poor quality of translated documents only if both parties involved has received the same kind of training. This will assist in that both of them will have an equal understanding of the process and the terms involved. But it is disadvantageous for the translator to have access to the author of the document in question, for clarity seeking questions.” The other language specialist also believe that this relationship can also assist in gaining knowledge of what happens during the drafting process, form the stages of the green paper, white paper and a final draft Bill. What came out as the more important factor was that the legalese that they do not understand when translating, can easily be solved at that stage. The third language specialist also believed that “this process can also reduce the time we take when working on a bill”. The fourth language specialist was of the view that co-drafting can be used as tool to eliminate the issues around consistency and poor quality of translated legislation. It can also assist legal practitioners and language practitioners to work together in creating a uniform document.

Responses to questions on translator training

All the respondents believe that legal training is very important to all translators who are working on legal documents. Legal documents are complex in nature and having to translate them without legal terminology or the correct resources in that language, it becomes difficult for them to deliver. All of the interviewees agreed that translation education is critical in this sector. There was general agreement that there is currently no training going on in the section, and that newcomers are learning on the job because there are no training programs expressly developed for legal translators. They all agreed that proper training will also assist them with terminology development techniques. Terminology assists translators to maintain consistency. Basic knowledge of the law is not helping them at this moment, but they are adamant that training can add value in this process.

Below are some of the responses raised by the language specialist:

“the adverts for the language practitioner’s positions does not require them to even have basic knowledge of the law.”

That might be another factor that create problems for the employer as they are not specific when they recruit. Again, language specialists always find it difficult to work on these documents as they do require one to have experience in legislative translation. “That is why, because we lack experience in what we do and come from the education sector, the bulk of us do not stay in Parliament for long periods of time due to pressure that we find ourselves under.”

All respondents agree that they can only render quality translation if they receive the desired training in legal translation. A participant from OCLSA indicated that institutions like “Wits and Stellenbosch Universities have tailor-made courses that deal with legal editing” which may assist in eliminating translation problems in the field. The participant also mentioned that law evolves, therefore this training must be ongoing to accommodate the changes in the field of law. They are all confident that Parliament will see the need for translator training will ensure that the people of South Africa are provided with quality services as far as translation of legislation is concerned. The respondents are convinced that after proper training, translation of legislation can be rendered by well trained, qualified, skilled and accredited professional language specialists. About a quarter of the participants agreed with the remark on proper training, and one of them even stated that, "one day I was perplexed myself when a member declared there was no translation in the house." I couldn't tell if the member wanted her speech translated before she gave it or if she was complaining about the lack of interpreting in the house. This was clear for me that it is not only the translators that need training but also the members, their training can be an onboard training for new members sothat they can understand the services that we render."

Responses to questions on knowledge and observation of the legislative framework

The researcher also observed the language specialists on how they conducted their

daily business. It appears that there is a degree of knowledge of the legislative process, the work of Parliament and use of official languages. The respondents are not happy about the unequal use of the indigenous languages and how the issue of languages is dealt with. There is over an over-emphasis on English and Afrikaans above the other official languages and again, Parliamentary Papers and legislation are still produced in English and Afrikaans (e.g. the ATC). Members of Parliament try to use their mother tongue in committee meetings but in most cases, there are no translators or interpreters to assist them. The researcher observed a training meeting where a member presented in isiZulu but there was no translation and the meeting was halted to try and find a language speaker to assist the Member.

If the Member did not insist on getting interpretation the meeting could have continued as the Chairperson tried to apologise and promised to render the services the following day, unfortunately the member was uncompromising and it seemed like they were not going to assist her if she was not aggressive. Members and staff are very much aware that the language policy seeks to promote multilingualism and non-discrimination. That is why these services are supposed to be rendered without any fear of favor as and when they are requested.

When concluding the interviews, there is a respondent who was not comfortable of the fact that the questions were asked in English only and the researcher did not even try and translate the questions. She indicated that “interviews and questions about issues relating to languages must be done and presented in all languages as a first step towards understanding the importance of multilingualism. In future, I request that as language specialists we must consider conducting interviews in our own languages, this will be a step forward in realizing the importance of multilingualism in our country.”

Responses to questions and observations on translation problems

All language specialists' emphasised problems of non-equivalence as the main challenge in the translation field. It is common for the target language not always have an equivalent word that can replace a word in the source language. Below are a few responses they gave on translation problems:

The first translator indicated that “translators do not understand that the legal field has its own language which is very different from our normal daily language, some refer to it as the legal jargon, eg. In court when they talk about one being granted *leave to appeal*. That has nothing to do with vacation leave. Instead it refers to being granted permission to appeal.”

The second one said “the most common problems is that in my language we do not always have readily available equivalents, some terms used in legal context originate from Latin. One has to try and find or even google the meaning or the originality of the term used to be able to coin the most suitable term. In some cases, it is not very easy to find a one-word equivalent, because the meaning is sometimes descriptive.” The last one said “supplying equivalents in the target languages for the legal terms from the source text which is mainly English is always a problem.”

The examples indicated below are general problems encountered by language specialists at Parliament and in other translation units. Back-translations of examples have been provided to show how the translators resolve these challenges.

The researcher also looked at how legislation establishes people’s rights and responsibilities on matters affecting their lives, daily work, families, society and children. It also lays down rules people must follow when driving. Legislation influences and regulates many facets of our daily activities, so it is pivotal to translate acts that contain an immense amount of legal jargon as clearly as possible. Section 36 of the Bill of Rights contains the limitation clause, which is important for all people to understand. However, the clauses in the Constitution are vague and contain numerous subordinate clauses. The researcher states that this legislation contains many features that make it difficult to understand, the translator needs to be extra cautious when translating such legislation.

Sixteen of the interviewed translators mention that much of the language used in statutes, including the titles of the acts and bills, is a language with which illiterate people are not familiar with. They highlight that document headings serve a very important purpose by identifying the text that follows, but the short title and the long title of a bill use words that are unfamiliar to an average non-professional. The

heading for this act that is used as an example reads as follows:

English: Reform of Customary Law of Succession and Regulation of Related Matters Act.

Siswati: *Umtsetfo Wekuguculwa Kwemtsetfo Wesintfu Webundlalifa Kanye Nekuphatfwa Kwemitsetfo Lehambisana Nawo.*

The title of the act confuses more than it informs. The word “succession”, in law, refers to the transfer of title to property under family law. However, the complex words and legalese found in the short title and long title make it difficult to ascertain the meaning of the title quickly. They are of the view that drafters need to have the readers in mind when drafting legislation and try to use common words as one of the ways to improve such titles to help lay people understand the law without seeking legal advice. Ambiguous legal terms can be replaced with words that exist in the language and carry the same meaning.

For example, the use of the words “domicile” or “dwelling” in law is something that can be replaced with the words “home” or “property”. Lay people know these words because they are plain alternatives that promote the use of plain language in legislation.

During her observations, the researcher saw that acts bills or any other legal documents can be improved by using plain-language principles and taking an independent approach. The drafters need to be subjective and objective at the same time. They need to be more prescriptive in their approach, and not use lengthy sentences. What is communicated through legislation must be clear and precise. If such a method were followed, the translator would then be able to translate without experiencing any problems relating to the difficulty of the legal terms used in the documents. She further indicated that there is no need for legal drafters to use large amounts of legalese in their documents. After her observations, the researcher has hope that when looking at what is presented by translators, legal drafters might be encouraged to see the importance of using plain language in legal documents so that the documents fit both the translator’s and the readers’ needs.

Observations to questions relating to problems including language and culture were the following

During the observations, it was discovered that translators face a variety of obstacles, and the information offered here may help with these issues. The researcher observed that the source language may express a concept that may be entirely unknown in the target culture. Translating culture-specific concepts always presents difficulties, especially if the cultures are different. It does not make a difference whether the concepts are abstract or concrete. The concept may relate to a religious belief, a social custom or even a type of food to which the people in that particular culture cannot relate. An example they gave of a concept that is difficult to translate in Nguni languages is the word “confidential”. This concept can be translated as “secret” in these languages. This concept of confidentiality is rarely understood by people from a cultural perspective. If these two words appear at the same time in a paragraph, they pose a problem to the translator. These are English concepts that are rarely understood by speakers of Siswati because they are culturally specific. See example below;

Source language text (SLT):	The information contained in the Bills is strictly <i>confidential</i> .
Siswati target language text (TLT):	<i>Lolwatiso lolucuketfwe kuloMtsetfosivivinyo luyimfihlo kakhulu.</i>
Back translation (BT):	The information contained in the Bills is highly <i>secretive</i> .

The translator modified a generic word to solve the problem of a non-specific cultural concept.

Source language concept not lexicalised in target language: Translators also agree that Siswati language is gender neutral. “Him”, “his”, “hers”, “her”, “she” and “he” are words that are well known in the Siswati language but do not have target language words to express them:

SLT: **She** was not with **him** at the time of the incidence.

Siswati TLT: *Bekangasinaye ngalesikhatsi salesehlakalo.*
BT: **They** were not together during the incidence.

The words “she” and “him” are not in the back-translation because they are not

lexicalised. The word used for them is “they” which is a plural word meaning “a number of people”. There is no ready equivalent in all the Nguni languages; it simply means a male and a female.

Source language word is semantically complex: The example below illustrates that this is a word with more than one root in a compound and is semantically complex:

SLT: The story of English **lexicography** is of course a major topic in itself.

Siswati TLT: *Ludzaba lwekwakha luhla lwesichazamagama ngeSingisi vele kusihlokolesikhulu ngekwalo.*

BT: The story of **developing terminology when compiling dictionaries** in English is a major topic in itself.

During observation, it was revealed that, the translator may start translating the main provisional clause into the target language only after researching terminological problems and finding solutions. Individual translations of the qualifications are to be done individually. Once the qualifications have been rendered in the target language, they are placed with the proper syntactical organization and according to the target language's word order norms. Demonstrated in Table 3 below is the translation of section 5(4) of the *Reform of Customary Law of Succession and Regulation of Related Matters Bill* into Siswati, according to the above approach.

Table 7: Translation of target text (Siswati) section 5(4) (Reform of customary Law of Succession and Regulation of Related Matters Act)

Source text (English)	Target text (Siswati)	Back translation (English)
The Master, the Magistrate, or a traditional leader must consider the best interests of the dead family members as well as the equality of spouses entering into customary and civil marriages.	Main provisional clause: <i>Ndvuna, noma mantji noma umholi wenzabuko kufanele kutsi babe nenshisekelo yekusita emalunga emndeni waloshonile kanye nekulingana kwemakhosikati akhe lawashade ngemshado wesintfu.</i>	The Master, or the magistrate or a traditional leader must have due regard to the best interest of the deceased’s family members and the equality of spouses in customary and civil marriages.

	<p>Qualification 1: <i>ekutsatseni sincumo</i></p> <p>Qualification 2: <i>ekwenteni sincomo lesi lesibalwe kulesigaba</i></p> <p>Qualification 3: <i>njengoba kungabe kubekiwe</i></p>	<p>In making a determination in making a recommendation referred to in this section as the case may be</p>
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After the major provisional sentence and qualifications have been rendered in the target language, the translator can make the required modifications and inversions to comply to the grammatical norms of Siswati. Table 7 and 8 provided extracts that indicate that the source language is semantically complex and such complexity are common amongst the problems faced by translators. The words “in making a determination” were translated as “*ekutsatseni sincumo*” which means in “making a decision”, the translator opted for these words because the word determination was too complex and does not have an exact equivalence in Siswati. Such complex words are only realised when one is supposed to translate them. There can be a difficulty when they are used in the same paragraph since the translator must decide which other words to use to distinguish the two (decision and determination). In these two examples the translator used the words “*ekwenteni sincomo*” and “*ekutsatseni sincumo*”. Despite the fact that the word determination had no equivalency, the text's meaning was not lost because the word utilised was more closely related to its meaning.

Table 8: Translation of section 5(4) (Reform of Customary Law of Succession and Regulation of Related Matters Act) (b)

Source text (English)	Target text (Siswati)	Back translation (English)
In Making a determination and a recommendation referred to in this section, the Master or the magistrate or the traditional leader, must have due regard to the best interest of the family members and the equality of spouses in customary and civil marriages, as the case may be.	<i>Ndvuna, noma mantji noma umholi wenzabuko kufanele kutsi babe nenshisekelo yekusita emalunga emndeni waloshonile kanye nangekulingana kwemakhosikati akhe lawashade ngemshado wesintfu noma wesilungu, ekutsatseni sincumo nasekwenteni sincomo lesi lesibalwe kulesigaba, njengoba kungabe kubekiwe.</i>	In reaching a finding or making a recommendation referred to in this section, the Master or a magistrate or a traditional leader, as the case may be, must consider the best interests of the deceased's family members as well as the equality of spouses in customary and civil marriages.

The distinctions between the source and target languages show variance in meaning

There may be fewer differences in meaning in the target language than in the source language. What one language perceives to be a significant difference in meaning, another language may not. For example, “going out”, to speakers of Nguni languages, simply means “going outside” unless one gives details. The meaning in the target text and the source text will differ:

SLT: The family will be **going out** tonight.

Siswati TLT: *Umndeni utawuphuma namuhla*

ebusuku.

BT: The family will be **outside** tonight.

In the example above, if the phrase “going out” is used, it must be qualified. The phrase “going out” would have had the same meaning if it had been used in the sentence, “The family is going to a restaurant tonight.”

Target language lacks superordinate

Another thing that was observed is that it is common for the target language to have a specific word but lack a general word to head the semantic field. The word “law” does not have a ready equivalent in Siswati because it can simply mean a rule, legislation, act or regulation, which means it is a superordinate. Below is an example of hyponyms used in the place of a superordinate due to the lack of a specific word:

SLT: Red **roses** are more beautiful than **tulips**.

Siswati TLT: *Timbali letibovu tihle kakhulu kunetimbali*

temathulipsi.

BT: Red **flowers** are more beautiful than tulip **flowers**.

The target language lacks a superordinate to head the semantic field, so the superordinate word is used as a hyponym in general.

The target language lacks a specific term

The examples supplied in 5.2.5 above is a clear indication that it is common among target languages to lack specific terms and then have words generalised in translation. English has many hyponyms that do not have equivalents in the Siswati, and these present difficulties for the translator. For example, the word “jump” (leap, vault, spring, bounce, dive, clear, plunge and plummet) has specific verbs in English that are not found in vernacular:

TLT: My friend’s house is a **mansion**.

Siswati SLT: *Indlu yemngani wami yinkhulu.*

BT: My friend’s house is **big**.

TLT: Budgets are cut, big-name actors may suddenly **jump ship** and the network will be left scrambling.

Siswati SLT: *Ibhajethi ijutjiwe, badlali labanemagama lamakhulu bangahle bashiye phansi batfole umsebenti kulenye indzawo kantsi lomsakato utawusala utengantenga.*

BT: Budgets are cut, big-name actors **may leave and find new jobs somewhere else** and the network will be left unstable.

Differences in physical or interpersonal perspective

Translators asset that in certain languages, the physical or interpersonal perspective may be more essential than in others. The indicate that relationships between people or things regarding one another or to a place are referred to as interpersonal perspectives. Word pairs like "give/take," "arrive/depart," and others are commonly used to express these interactions. This viewpoint also considers the interrelationships between participants in communication. In Siswati there are several equivalents for the word “give”, and these are dependent on who gives to whom:

Siswati	English
<i>Nika/Niketa</i> (<i>Nika make kudla kwakhe</i>)	Give (Give Mom her food)
<i>Pha/Phani</i> (<i>Niketa bantfwana umsebenti</i>)	Give (Give the children work)
<i>Mikisa</i> (<i>Mikisa lesitja kaMbatha</i>)	Give (Take the container and give it to the Mbatha family)

Differences in expressive meaning

All translators mention that a word in the target language can have the same propositional meaning as a word in the source language, but it can also have a distinct expressive meaning. These differences may cause problems and they may be subtle. It becomes more problematic if the word in the source language is more expressive than the word in the target language. The translators feel that it is easier for them to add expressive meaning than it is to remove it from a word. The same attitude or evaluation may be expressed in differing degrees of politeness. Both “vagina” and “private part” in the example below are inherently expressive, indicating the speaker’s view on the explanation of the condition of the woman’s private part. However, the word “vagina” is stronger, and the word “private part” is a bit more respectful:

SLT: It is normal for a **vagina** to be moist.

Siswati TLT: *Kujwayelekile kutsi **sitfo samake***

sangasese sibe manti.BT: It is normal for a **woman’s private part** to be moist.

Differences in form

It was also observed that it is not uncommon for the target language to lack an alternative for a certain form in the source language, resulting in several suffixes and prefixes in English that communicate propositional and other meanings having no direct equivalents in other languages. Wherever possible, such words are substituted in the target language by a paraphrase. The table below shows suffixes

or prefixes that are added in English words can be difficult to translate in Siswati:

Table 9: English suffixes that are difficult to translate in Siswati

Verb	Noun	Adjective	Adverb
Care <i>Nakekela</i>	Care <i>Kunakekela</i>	Careful <i>Caphela</i>	Carefully <i>Caphelisisa</i>
Clear <i>Cacisa</i>	Clarity <i>Kucacisa</i>	Clear <i>Kucacile</i>	Clearly <i>Ngalokucacile</i>
Act <i>Kwenta</i>	Action <i>Sento</i>	Active <i>Kuba yincenye yalokwentekako</i>	Actively <i>Kuba yincenye yalokwentekako ngalokuphelele</i>

Suffixes have been used in the English words to change the form, but the target language, Siswati, does not have direct equivalents for these words. The contribution that these suffixes make to the language are important in terminology development and standardisation.

Observation of translation strategies were the following:

Translation by a more general word

Looking at the translations done by the language specialists from Parliament and the Department of Justice, there are a number of sentences where the strategy of translation by a more general word was used. Table 8 below shows some of the superordinates found in the translated Siswati bills and acts. The first column consists of the words and phrases used in the English bills and acts, and the second column consists of the words and phrases that have been used to translate those English words. The final column consists of the back-translations of the words and the phrases that are indicated in the second column. The fourth column indicates whether there were alternative words and phrases the translator might have used instead of the ones chosen. The words are only indicated in said column if they are available. If they are not available or there is no alternative word, the column is left empty.

Interviewed translators and the researcher as an observer gave different reasons for why they chose these and not any other words. Their choices were usually based on the grammaticality of some words and phrases, while some were based on their own personal reasons and cultural experience, which may be hard to identify. Therefore,

an explanation is given in the table below so that it is clear why they made these choices. It will thus be easy for a Siswati speaker to understand why the translators had chosen a specific word or phrase rather than an alternative. For this reason, it sometimes happened that the translator chose words or phrases that were ungrammatical in the target text and tried to justify their choice.

Below are some of the responses from the translators:

The first participant said “it is important to choose words meticulously especially when you are translating such important documents.”

The second participant also agreed with the first one when he said, “the problem is there are always no readily available equivalents in my language and I end up preferring superordinates, sometimes the words are closely related in meaning but they are not relaying the exact message.” This applies to all the subsequent tables in this chapter.

Table 10: Siswati superordinates extracted from Reform of Customary Law

	Source text word/phrase	Target text word/phrase	Back translation	Alternatives
(i)	Reform	<i>Kuguculwa</i>	Changing	<i>Kuntjintja</i>
(ii)	Regulation	<i>Umtsetfo</i>	Law	<i>Umtsetfosimiso</i>
(iii)	Bold	<i>Lokumnyama</i>	Black	<i>Lokucacile</i>
(iv)	Solid line	<i>Umugca logcwele</i>	Straight line	<i>Umugca locondzile</i>
(v)	Modify	<i>Kugucula</i>	rectify	<i>Change</i>
(vi)	Spouse	<i>Inkhosikati</i>	partner	<i>Umlingani</i>
(vii)	Deceased	<i>Loshonile</i>	Late	<i>Lofile</i>
(viii)	Status	<i>Simo</i>	State	<i>Indlela</i>

The *Reform of Customary Law of Succession and Regulation of Related Matters Act* is provided as appendix 4 to this study for the sake of comprehension. Full sentences that contain the superordinates provided in table are indicated in the act. The word “reform”, which appears in(i), was translated as *kuguculwa*, which means “to change”. The translator chose a superordinate, *kuguculwa* (change), instead of opting for a hyponym, *kulungiswa*, which is an exact equivalent of “reform”. In (ii) the translator did the same thing and used a more general word, *umtsetfo* (law),

rather than a more specific term or phrase, such as *umtsetfosimiso* (law approved to regulate). The word “law” puts less emphasis on the context in which it is used, and it is more general and lacks emphasis. The word used in (ii), *umtsetfo*, could refer to any piece of legislation, act, by law or rules, to mention but a few. However, it was not always clear why the translator used the word *umtsetfo* as translation for “regulation”, because there is an equivalent (*umtsetfosimiso*) in the target language. The translator is of the view that, even if the word “*umtsetfosimiso*” means to regulate, in this context she felt that the word “*Umtsetfo*” was more appropriate.

Nevertheless, with regard to the word that appears in (i), it may be argued that perhaps the reason why the translator used *kuguculwa* (change) instead of *kulungiswa* (reform) was that the translator understood that when the drafter of this legislation spoke about reforming, it meant making a change the act that was already in place by introducing this new one. The translator in (iii) translated the word “modify” correctly as *kugucula* (change), an equivalent for this word in Siswati.

The translator could also have used a synonym for this word, *kulungisa*, even though the word does not contain the same degree of certainty as “modify” does. To overcome this problem, the translator had to use the general word *kugucula*, which is the nearest equivalent in this context.

As for the word *inkhosikati*, which was used for the translation of “spouse” in the source text, the translator chose an unsuitable word. Even though this cannot be regarded or classified as a mistranslation, since the meaning of the source text has not been negatively affected, the word is seen as representing a particular sex group. The word *inkhosikati* (wife) should therefore not have been used here. A more suitable word, which is also an exact equivalent of “spouse”, would have been *umlingani*, which covers both sexes (i.e. a male or a female spouse). Therefore, the sentence defining the word in question (“spouse”) could have been translated as follows: *Umlingani kufaka ekhatsi umlingani kumshado wesintfu lovunyelwe ngekwesigaba se-2* (spouse includes a partner in a customary marriage that is recognised in terms of section 2).

In (vii) “deceased” has been translated as *loshonile*, meaning “who has died”. This is despite the word “deceased” having an equivalent in Siswati, which is *umufi*. The translator considered *umufi* inappropriate and decided to use the word *loshonile*. However, the translator felt that the word *umufi* is more suitable and the one that is always used for a deceased person. The word *kushona* is also relevant, but the word that should have been used in this act to convey the message in a more culturally appropriate way is *umufi*, because it also carries a connotation of respect. However, the translator opted to use the word *loshonile* because he/she knew very well that the translation would be understood perfectly. By doing so, the meaning of the source text was not changed and the target audience will still be able to understand. In the other examples mentioned in the above table, some of the words had no equivalents.

Translations using a more neutral or a less expressive word

As in this strategy, the translators say the word may have a direct equivalent in the target language and is therefore replaced by near equivalents that are both less expressive and more formal. The table below contains the less expressive words taken from the Siswati translated acts and the full act will also be provided in appendix 4.

Table 11: More neutral or less expressive words in translated Siswati acts and bills

	Source text term/phrase	Target text word/phrase	Back translation
(i)	Fixed	<i>Lokubekiwe</i>	That which has been put in place
(ii)	Administration	<i>Kuphatsa</i>	Govern
(iii)	Does not exceed	<i>Lokungadluli</i>	Not above
(iv)	Woman married to another woman	<i>Umfati loshade nalomunye umfati</i>	Wife married to another wife
(v)	Regarded as	<i>Atsatfwe</i>	Taken as
(vi)	Dispute	<i>Kungavumelani</i>	Disagreement
(vii)	Gazette	<i>iGazethi</i>	Gazette
(viii)	Descendant	<i>Situkulwane</i>	Grandchildren

The first word to comment on in the table is (i). It contains the word “fixed”, which has been translated as *lokubekiwe* (that which has been put in place) because it lacks an equivalent in Siswati. The translator tried to find a word that is closer to the English word and, as a result, opted for the near-equivalent *lokubekiwe*.

However, in the rest of the act, the translator translated several other sentences or phrases in a contradictory way. The word “administration” is translated in some

instances as *kuphatsa* and *kulawula* in other instances later in the act. The latter of these words is neutral or less expressive, but the translator should have maintained consistency when translating this word. The translator can therefore be blamed for failing to maintain consistency because this will result in contradictions between the meanings in the clauses. The words *kulawula* and *kuphatsa* can both be used to define an administration, but in this act, there is a contradiction because in clause 5(1)(c) the translator has not used the same option as in clause 5(5). Instead of translating administration as *kulawula*, the translator used *kuphatsa*, which means “to govern”. The word “to govern” does not convey the same meaning of the clause as “administration” does. Consequently, it may be argued that the translator should have used the same option in all the clauses or in all sentences where the word “administration” appeared. Therefore, one may indicate that clause 5(1)(c) and 5(5) should have been translated as follows:

Indvuna Yenkantolo Lephakeme (Master of the High Court) lenemandla ngekweMtsetfo weteKuphatsa Kwemafa, 1965 (Umtsetfo Nom. 66 wanga 1965), ngekuvunyelwa kusigatjana (2), ingenta sincumo lesinjalo lesitawubonakala kuye sineliciniso nobe silinganisa kute kusunjululwe lokungavumelani nobe kususwe lokungabata. (Siswati).

(the Master of the High Court having jurisdiction under the Administration of Estates Act, 1965 (Act No. 66 of 1965), may, subject to subsection (2), make such a determination as may be just and equitable to resolve the dispute or remove the uncertainty.)

Nobe ngabe ngusiphi sincumo lesentiwe ngaphasi kwalesigaba kufanele sentiwe ngekulandzela imibandzela yeMtsetfo weKutfutukiswa Kwekuphatfwa Kwebulungiswa, 2000 (Umtsetfo Nom. 3 2000).

(Any decision taken under this section must be done with regard to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).)

The word “Gazette” – (vii) in the table – does not have an equivalent in Siswati and therefore wherever it appears in acts it is transliterated so that it cannot lose meaning. Unlike Siswati, isiZulu does have an equivalent for the word “Gazette”, namely *Somqulu kaHulumeni* (a government gazette). This problem of lack of

equivalence is experienced by a number of languages where their terminology is still limited or in the process of being developed.

There are other near-equivalents that can be used to curb the problem of non-equivalence, including the word *kungavumelani* (dispute or disagreement) in (vi), which has been used to refer to “disputes” or “the disagreements that arise during succession”. Again, in the act, the word “descendant”, and the corresponding translation *situkulwane*, has been used throughout and there is also a general word (*umndeni*) that is neutral and more common general. In this instance, the more general word “descendant” has been replaced by the more specific word *situkulwane*, which means “grandchildren”. For this reason, the use of the word *situkulwane* also demonstrates the strategy of translating using a more specific word.

Translation by cultural substitution

The strategy of translating using cultural substitution is used to replace a culturally distinctive item or expression with a target language item that does not have the same propositional meaning but has a similar effect on the target reader. Below are examples for cultural substitution also taken from translated acts and bills:

Table12: Examples of translation by cultural substitution in acts and bills (Siswati)

	Source text term/phrase	Target text word/phrase	Back translation
(i)	Skills development levies	<i>Tinhlawulo tekutfufukiswa kwemakhono</i>	Skills development taxes
(ii)	Will	<i>Incwadzi yekwabiwa kwemafa</i>	Letter of distributing
(iii)	Gazette	<i>Liphephandzaba</i>	News paper
(iv)	Traditional leader	<i>Inkhosi</i>	King
(v)	Rule	<i>Kubusa</i>	Govern

In the table above, (ii) and (iv) respectively contain the word “will” and the phrase “traditional leader”, which are unfamiliar to the Swati people and not known by the traditional communities. Consequently, in the case of (ii), the substitute phrase

incwadzi yekwabiwa kwemafa (letter of distributing) was used. This phrase was used to convey to the target language receivers what the word “will” means or relays. This example illustrates that the translator needs to be an expert or have experience in the field of translation in order not to be fooled by the fact that the word “will” has an equivalent in Siswati. The translator knew that in this context the word “will” does not mean the wealth of a deceased person (that is, their estate), but rather the document that indicates the way the deceased wants his/her wealth to be distributed (*incwadzi yekwabiwa kwelifa*). The literal translation for the phrase in (iv), meanwhile, which would have made no sense had it been used, is *umholi wenzabuko* (traditional leader). The translator therefore considered it fitting to use a phrase that would suit the Siswati language much better than a literal translation. In (iv) it would have been odd for the translator to literally translate the words “traditional leader” as *umholi wenzabuko*.

On the other hand, substitutes are correct in a semantic analysis provided they assist to identify the same element without introducing contradicting or additional qualities that were not originally inferred in the original context. That expertise is also displayed in phrase (i) of the *Skills Development levies Bill*, “skills development levies drove the”, which has been translated as *tinhlawulo tekutfufukiswa kwemakhono*, which means “skills development taxes” (see Appendix 4). This Siswati phrase is less specific compared to the English phrase, especially regarding the change for the word “levy”. Unlike the English phrase, the translation does not make it clear that it refers to the “levies” not “taxes”, because these two words have different meanings in English. Therefore, the message sent to the target readers is slightly different as the translator tried to accommodate cultural issues.

Although the word “levies” has an equivalent in Siswati, it would be inaccurate and meaningless for the translator to translate this word literally as *inhlawulo* instead of translating it as “taxes” because it would have been translated in context, as part of a sentence, not as a single word. The translation of the word “*inhlawulo*” shows the importance of context in a meaning of a word, and it is also one of the reasons why translators that are working out the meaning of what is said have to take into account not only the words themselves as individual items, but also the

circumstances in which they are uttered. Therefore, the translator of (i) was able to understand the importance of translating in context as far as the meaning of the word “levies” is concerned.

The translator’s understanding is also evident in (v), where the word “rules” has not been literally translated as “laws” in Siswati. Although every word in a language can be said to have a range of items with which it is compatible, to a greater or lesser degree. By “range”, this statement refers to a set of collocates or other words that are typically associated with the word in question. Some words have a much broader collocational range than others. “Rules” is included among those that have a vast collocational range. For instance, one may rule an empire, a business, a country, and so on. In addition, “rule” is also associated with words such as “laws”, “acts”, “bylaws”, “bills”, “legislation” and many other words. But for other words, this is not the case. In sentence (v) above, this can be proved, where, the word “rule” has been translated as *kubusa* which means “to govern”.

The word “rule” as indicated above, has numerous collocates, and “establish” is one of them. However, this is not the case in many languages. The equivalent Siswati word for “rule” is *umtsetfo*, but this word does not have as many collocates as “rule” does, and “establish” is not included among those collocates. If one were to describe it as Baker does, this means that “rule” and “establish” are “culture-specific collocations” for English language speakers and not for the Siswati-speaking community. Therefore, it was not as simple as translating the phrase as *kusungula umtsetfo*. The same phrase mentioned above can be used differently and give different meanings in different traditional cultural groups. The context where a phrase or a word is used must be taken into consideration, following the cultural meaning as well. Some collocates give words a different meaning. For example, “establishing rules” is not the same as “laying down rules”, “issuing rules”, or “setting out rules”. In the same way, “remembering someone” is not the same as “honouring someone” or “praising someone”. Keeping in mind the cultural community for whom the translator is translating will help the translator determine the correct collocate to use in a specific context. These collocates show how English differs from the Nguni languages as far as the application of these phrases is concerned.

The translator needs to be creative and use euphemisms if some of the words that he/she comes across are taboo in the target culture. As indicated earlier in the study, translating culture-specific concepts always presents difficulties for the translator. In Siswati, words like “sex” are always translated using euphemisms so that the translation will be acceptable in the target community. The translator needs to use less sensitive words or paraphrase to translate this highly sensitive word. For example, “sex” would be translated as *kuya emacansini*, meaning “to sleep in a traditional mat”. If the above method were not used, the translation would have been labelled as “too sensitive”. The same word “sex” can also be translated using the euphemism *kumbatsisana ingubo*, literally meaning “to assist one another in covering each other with a blanket”.

A number of examples of the use of this strategy were found in the data, which shows the importance of cultural substitutions in Siswati translations. The ones above were only selected to serve as a basis for presenting this strategy. Other examples emerge later in this thesis. The main reason for this is that one focal translation strategy may be used simultaneously with other strategies. A paraphrase may contain a broader term (superordinate), a hyponym, a borrowed word, a cultural replacement, or an omission. Taking this into account, it is apparent that all translation techniques are connected to one another in some manner, and this relationship is essential during the translation process.

Translation using a loan word

Through observations, one understood that this strategy is generally used where culture-specific items and modern concepts occur. Translators in Parliament always use loan words when they experience the problem of non-equivalence. There are many loan words that have been used by translators when translating bills and acts. Some of the loan words were used because of a lack of equivalents in the Siswati, isiZulu, isiNdebele and isiXhosa cultures. Translators sometimes used loan words for no apparent reason or because they were lazy to research the equivalent. If there were no equivalents and a loan word had to be used, an explanation was given by translators to provide clarity to the target reader regarding the choice made and then help them fully grasp the meaning of those loan words. Examples of situations

where loan words were used in the Siswati *Combating and Prevention in Persons Act* include the following:

Table 2: Examples of loan words in the Siswati Trafficking of Persons Act

	Source text term/phrase	Target text word/phrase
(i)	Electronic	<i>Elektronikhi</i>
(ii)	Technique	<i>Theknikhi</i>
(iii)	Republic	<i>Riphabhulikhi</i>
(iv)	Immigration Act	<i>ye-Immigration Act,</i>
(v)	Children's Act	<i>se-Children's Act</i>
(vi)	MEC	<i>i-MEC</i>
(vii)	Gazette	<i>kuGazethi</i>

It is not clear why some of these loan words are used in acts, since no explanations are given. The first reason that can be given when loan words are used in second language acts is that there are no equivalents for the loan words used. Due to this fact, the translator may therefore decide to leave them as they are so that the original meaning would not be distorted.

The other reason that was given by translators when they do not translate the names of the acts is that, if the principal act was not translated into that official language, the names of the acts appearing in the amendment act cannot be translated to another official language that is not the language of the principal act.

Translation by paraphrasing using a related word

Translation by paraphrasing is another strategy that is often used by translators. Translation by paraphrasing entails using a related word, and this is another strategy used by the language specialists when translating bills. Paraphrasing is done due to a lack of an exact match in the target language vocabulary. An example of paraphrasing using a related word in Siswati is given below:

SLT: The number of **utensils** of various kinds found in traditional homes are different from those found in modern homes.

TLT example 1: *Linani **letipunu** teimihlobo lehlukene letitfolakala emakhaya esintfu luhlukilekunaletu letitfolakala emakhaya esilungu.*

BT example 1: The number of **spoons** of different kinds found in traditional homes are different from those in modern homes.

TLT example 2: *Linani letintfo letisetjentiswa ekhishini teimihlobo lehlukene letitfolakalaemakhaya esintfu luhlukile kunaletu letitfolakala emakhaya esilungu*

BT example 2: The number of **things that are used in the kitchen** of different kinds found intraditional homes are different from those in modern homes.

The data presented above show that the words highlighted above are related to each other but have different meanings. In the English sentence the word “utensils” is a superordinate that can be translated by using a hyponym or by paraphrase. As in all the other sentences, the reason for paraphrasing is the lack of an exact match in the Siswati vocabulary. Although the word *tipunu* does not exactly mean “utensils”, it is still related to this English word because it is one of the things used in the kitchen as a utensil, so the meaning is more or less similar to that of “spoon”, and that is the reason it was used here.

Translation by paraphrase using unrelated words

The researcher observed that this strategy is used when a concept expressed in the source text is lexicalised in the target language but occurs in another form. There are a number of examples of this strategy that can be extracted from the Nguni languages used in bills. Translators often relied on this strategy and they believed that it is one of the reliable strategies.

The advantage of using this strategy is that it has a high level of precision, especially when it comes to propositional meaning. The disadvantage is that the paraphrase does not have the same status and neither captures the expressive meaning nor is it able to convey any other meaning. This strategy means a one-item slot must be filled with an explanation that consists of various items. The following is one of the sentences in which this strategy was applied:

SLT: Parliament passed the Criminal Law (**Sexual Offences and Related Matters**) Amendment Act on the 30th of March 2020.

Siswati TLT: *IPhalamende iphase Sichibiyelo Semtsetfo Lolawula Bugebengu (Emacala Nekuhlukunyetwa Ngetemacansi*

Netindzaba Letihambisana Nawo).

BT: Parliament passed the Amendment Act that Administrates
Criminal Matters

The phrases indicated in bold above are an example of words that are unrelated but convey the same meaning. Although there are differences that can be observed in some cases, they do not distort the general meaning of the English utterances. The first line shows the original name of the act, and the second one indicates how the translator has translated it using unrelated words but conveying the same meaning to the target readers. A back-translation has been provided as well to show the differences between the original text and the Siswati translated text. The back-translation reveals how these two phrases in bold are unrelated.

Translation through omission

In the Siswati translations of legislation, the researcher observed that there are innumerable examples of omissions that are done during the process of translation. These omissions are also often for different reasons. One of those reasons is that sometimes an item is not essential to transfer the meaning of the original text and there will not be any changes made to the text even if it is omitted. This entails the omission of minor items and less important words or phrases, as indicated in the examples below extracted from the Bill of Rights:

SLT: Persons belonging to a cultural, religious or linguistic
community may not be denied the right, with other members of
that community-

to enjoy their culture, practice **their** religion and use their language; and

to form, join and maintain cultural, religious and linguistic
associations and other organs of **civil** society.

Siswati TLT: *Bantfu labayincenye yemphakatsi wemasiko, tenkholo noma
lulwimi, angekebancishwa emalungelo, nalamanye emalunga
alowo mphakatsi-*

(a) kutfokotela lisiko labo, kulandzela inkholo

nekusenekusebentisa lulwimilwabo; kanye

(b) *nekwakha, kuhlanyela nekugcina emasiko, tenkholo
nekuhlanyelangekwelulwimi naletinye tinhlango
tasemphakatsini.*

BT: Persons who are part of a cultural, religious or language community may not be denied the right, with other members of that community-

(a) To enjoy their culture, to follow their religion and use their language; and

(b) To build, be part and maintain cultural, religious and language organisations and other unions of the society.

The highlighted words were omitted in the second-language translation of the text provided, but the exclusion of these words does not create any inconsistencies in the meaning of the full clause. This type of omission is acceptable as it does not deprive the target reader of any useful information. The word “that” appears three times in the sentence and the translator decided to omit the second one to avoid tautology in Siswati. There were also cases where unacceptable omission took place, however. Sometimes the most important words or information was omitted or a whole sentence from the source language was left out. That is why consultation with the state law advisers is very important for legislative translators to make sure they understand words they are not sure about, rather than to simply use their discretion and omit them. Lawyers interpret words, punctuation and phrases differently, and that is why, when translating a legal document, one needs to be cautious about deciding to use this strategy as a means of circumventing the problem of non-equivalence. The translator omitted the word “inherent” in the example below, since she felt that the word was not important enough to the development of the text:

SLT: Every person has **inherent** dignity and the right to have their dignity respected and protected.

Siswati TLT: *Wonkhe umuntfu unesitfunti nelilungelo lekutsi sitfunti sakhe
sihlonishwe futsisivikelwe.*

BT: Everyone has dignity and the right that his/her dignity be respected andprotected.

This is an example of a translation where an important word has been omitted in the translated text. This means that the translator omitted the most important information in the text, especially since the word “inherent” is a qualifier. The example shows that concealed information is sometimes omitted by translators when translating legal documents.

4.7 Conclusion

The aim of this chapter was to present and analyse data from legislation translated into Siswati and data obtained from some of the legislation translated by the language specialists from English into Siswati. The data was presented by categorising it according to the different themes used during this process of analysis. Source language texts, target language translations and back-translations were presented as examples throughout the chapter, and the problems of no-equivalence were also discussed. The analysis of the data presented above shows that translation strategies play an important role and are fundamental in Parliament. The role that translation plays is fundamental and central to service delivery. There are many strategies at the disposal of the translator to transfer culture-specific realities from one language to another. These strategies make it possible to resolve most of the problems that translators experience during translation when they choose the correct strategy. The examples of the translation strategies examined above reveal an important role that the translator plays when choosing a strategy.

CHAPTER 5: DISCUSSION

5.1 Introduction

This chapter discusses the data that was presented in chapter 4. The following titles that were presented and analysed in chapter four are discussed, equitable use of languages; legislative process; training of translators; legal and plain language in translation, the functional approach to translation, the legislative framework and observations. The aim of the study was to investigate future translation procedures, language expert training, language specialist challenges, legal translation, and legal instruments certification and assent in the RSA Parliament. The study also sought to find answers to the following questions:

- What are the most important aspects of legal language and legal translation?
- What are the problems faced by legal translators in Parliament of the Republic of South Africa?
- Why must certification and assent be conducted in one official language (English), and are there any alternatives to certification and assent in only one language?

The researcher discussed the data from participants and from the case study in order to attain the above goals as well as to answer the research questions. The anonymised detailed responses from the language specialists with regard to their experiences of language use during the translation process and all the views pertaining legal translation can be submitted on request. Legal translation from English to any second official language poses a number of difficulties for legal translators. The interviews conducted revealed the feelings and ideas of translators who are involved in legal translations. Legal translation of bills, acts and ordinances is a challenge for translators as it involves literal translation coupled with technical terminology precision and, more importantly, the pragmatic awareness of the context. Consequently, the inability of a translator to guarantee the overall communicative process and avoid inconsistencies in legal translation will affect a number of people and institutions that apply the law. In light of the aforementioned, the purpose of the rest of this chapter is to discuss the data collected, presented and analysed in collaboration with the reviewed literature. In doing so, the researcher

will firstly present the case study.

5.2 Case study: Parliament of the Republic of South Africa

The case study was devised to test the suitability of the use of second-language translations and certification of acts in the Parliament of the Republic of South Africa. The aim of the study was to investigate future translation practices, training of language specialist, problems faced by language specialists, legal translation and the certification and assent of legal instruments in Parliament of RSA. The methodology used in collecting and analysing data was interviews, ethnographic observation and document analysis. The study took a functionalist approach to translation as one of the approaches that focuses on the functions of the text and translation. This approach views translation as a communicative act that must serve a purpose to the people reading it. The participants in the research project provided critical insights, especially with regard to the methodologies, strategies and approaches that need to be put in place to facilitate the translation of parliamentary papers into second languages. The language practitioners in Parliament are expected to translate legislation from English into their respective official languages in accordance with the instructions issued by the cabinet and state departments. Legislative language practitioners in the Department of Justice have also been tasked with the same duties of translating these legal instruments. These language practitioners come across some serious problems in carrying out their duties.

Some of these problems include the lack of legal terminology in their respective languages, the use of legal terms with which they are not familiar, a lack of clear instructions (i.e. a translation brief) that accompany the legislation they are required to translate and time constraints for completing the translation tasks. What the researcher observed is that these translators also face the challenge of being the translators, editors, proof-readers and final checkers of their own work. At some point, the final proofs of the translations of the nine translated bills in indigenous languages are checked by one person who cannot do justice to all the bills in the eleven official languages. Parliament therefore works hand in hand with the OCSLA in trying to ensure that quality translated legislation is produced. In

collecting data for this study, the researcher also sourced information from the language practitioners working for the Department of Justice, who are from time to time requested to translate and edit Parliament's legislation.

The OCSLA advertised eleven positions for legislative language practitioners, in line with the demand for competent legal translators in South Africa. The researcher was the first language specialist to work at this office. Various government departments, including Parliament, employ language practitioners, but they do not have legislative language practitioners in their employment. Legal translation, according to Cornelius (2011:121), encompasses a variety of legal languages, legal systems, and legal cultural systems, all of which need specialised knowledge and abilities on the part of the translator. This is evident when comparing the Canadian model and the new system that the OCSLA and Parliament use when translating legislation. This shows that there is a great demand for the training of legal translators in South Africa.

During the recruiting process of the eleven legislative language practitioners, the OCSLA tried to recruit suitable candidates, but it was a daunting exercise to find people who have the knowledge of both legal and standard language. Among all the applications the office received, there was only one applicant who possessed both a qualification in the field of law (LLB) and in translation (BA degree in languages). Even though legal documents carry the force of the law and are the instruments by which the law is applied, it does not mean that a language practitioner who has studied languages cannot translate legal documents. A translator can use the necessary resources like terminology lists and dictionaries to translate such documents. The researcher probed the language specialists through their actions to also acquire more data relating to what they do. These subject's specialists were hired because they possess certain skills and experience. Knowledge of what was required when they were recruited assisted the researcher to gain experience, understand the data collected from the participants and observe what the participants are going through and have to offer on their normal day at work.

Language, culture, self-control, and mental agility are not taken into account in the recruitment criteria for language practitioners in the South African Parliament,

according to Du Plessis and Wiegand (1997:27), because the interviewing panel does not always have a language specialist representing the language for which the candidate is being interviewed. The panel usually consists of the chairperson, who is in most cases the manager of the language section division or a unit manager of that division. Managers are also language specialists, but the challenge is that their mother tongue is sometimes different to that of the person interviewed. Therefore, they rely on the expertise of a senior or a language practitioner who is at the same level as the person being interviewed. Again, Parliament differ from OCSLA because they do not require their candidates to have the knowledge of the law or an LLB degree. Du Plessis and Wiegand (1997:27) outline the criteria the Language Facilitation Programme of the University of Free State agreed on when interviewing language specialists to assist at the Truth and Reconciliation Commission. Some of the conditions that were considered were tertiary education background, age and language combination. The language specialists were interviewed across the country according to the agreed-upon criteria. The interviews were organised based on a profile of language combinations and proficiency, background information and insight into current events, coping with pressure and controversial issues, voice quality, translation skills, knowledge of the indigenous language, and personality, among other factors.

The documents that are translated in Parliament are legislative in nature. A functionalist approach to translation can be used for the translation of such legal documents, but in other instances, strict literal approaches are required, as in the case of normative texts. Such texts, like statutes, pose a dilemma for the translator because they constitute the law. In Parliament, the rules require that a bill introduced in either the Assembly or the Council must be translated into one of the official languages. The bill, in the language in which it is introduced, will be the official text for the purpose of parliamentary proceedings. The official text of the bill must be translated into at least one of the other official languages before the official text is sent to the President for assent.

Section 220(3) of The Joint Rules of Parliament (Parliament of the Republic of South Africa, 2011:106) requires that the cover page of a bill must specify which language version is the official text and which is an official translation. In

parliamentary proceedings, only the official text of the bill is considered, but the Secretary must ensure that all amendments to the official text are reflected in the official translation. This means that in South Africa, all translated versions of a bill do not have equal legal validity and are not regarded as original documents with the same authentic status, because whenever there is a dispute, the text signed by the president prevails, and that is the English text. Šarčević (1997:71) affirms that while lawyers cannot expect translators to produce parallel texts that are equal in meaning, they do expect them to produce parallel texts that are equal in legal effect.

In the *South African Language Practitioners' Council Act*, the language profession is defined as “work related to such fields as language editing, translation, terminology, lexicography, or any other work related to language” (2014). The act goes on to define a language practitioner as a paid occupation that involves the work done by language practitioners including, but not limited to, translators, interpreters, language planners, terminologists, lexicographers, text editors and any other person conducting language-related work, registered as such under this act. When advertising posts for language specialists in Parliament, adverts are sent out to different media houses or on Parliament’s website to lure the desired candidates.

In contrast, the OCSLA in the Department of Justice and Constitutional Development also went on to introduce another profession that is now included in the language profession, namely the legislative language practitioner. The work that is done by this office is similar to that performed by the Parliament practitioners. Rotman (1995–1996:189) believes that a legal translator is more rigidly bound to specialised knowledge than the translator of everyday language or humanities. A translator of humanities or everyday language is exposed to different subject matter, such as commercial, health, education and other fields. On the 18th of December 2009 the Department of Justice and Correctional Development advertised these posts for legislative language practitioners to be employed in the OCSLA, and was looking for people with the following qualifications:

The candidate was required to have a university degree majoring in at least one of the following official languages: Sepedi, Sesotho, Setswana, Xitsonga, Tshivenda, isiZulu, isiXhosa, isiNdebele, Siswati or Afrikaans. A legal background would have been an added advantage.

Other languages were necessary, as well as a practical grasp of the law or a legal qualification for the candidate. The candidate must have worked as a language practitioner in at least one of the official languages or have experience providing translation services. The department also mentioned a number of duties that the prospective legislative language practitioners would be expected to perform, including, among other things: to translate legislation from English into other official languages in accordance with instructions issued by state departments and guidelines issued by Parliament and cabinet; to assist the office to develop legal terminology in other languages for use in legislation; to interact with PanSALB and other organisations, universities and language practitioners involved in promoting the use of all official languages to assist with promoting and developing official languages and thus make legislation more accessible to the broader South African population. The advert also required the individuals to be employed in these posts to have a BA degree in languages or a legal qualification, legal training or a legal background, as well as a practical understanding of the law. The above required qualifications and experience will enable the language specialist to be able to understand the documents that they will be translating. In methodology, these documents that are translated by these language specialists are used to indicate these loopholes that were not seen during this process. Which means, the acts, bills and other legal documents used were translated by these candidates who were recruited using this process.

Only one of the nine practitioners that the department employed met the above requirements. The rest had experience as language practitioners, but not in the legal field. The department failed to maintain a balance between the required legal competence on the one hand, and linguistic and translation competence on the other. Because the translators do not have the flexibility to provide either free or faithful translations, thus missing the overarching point of legal translation, the department still experiences a number of challenges in providing translated documents.

The participants identified for the present research project were the twenty-eight language practitioners who are currently employed at Parliament and two senior legislative language practitioners employed at OCSLA, who are also quality

controllers in this office. All the language specialists were willing to participate in the study and to answer any questions in this regard. As the researcher is one of the employees in Parliament, it was not difficult to contact the participants. To ensure that their responses were reliable and accurate, the language specialists were treated with respect, and the researcher did not pressurise them to obtain favourable answers. The language specialists were protected from judgement to prevent impartiality. Most of the interviews were conducted informally, whenever the translators were available. There were also instances where formal one-on-one interviews were conducted online.

The reason for only interviewing the language practitioners is that they are involved in the translation of legal texts, and each individual has more than ten years' experience in translation. Consequently, they were able to provide more information than was required. Using any other language practitioners would have been a disadvantage because they are not directly involved in the actual translation of legal texts and would therefore not have benefited this study. According to the ethical requirements for research of this nature, the researcher obtained permission to conduct the study from the head of the relevant institution in Parliament.

Ethics has become a cornerstone for conducting effective and meaningful research. Every researcher has a responsibility to protect the participants in an investigation. To do that, there are three ethical principles that should be used as a guide to all research: autonomy, no maleficence and beneficence (Terre Blanche & Durrheim, 1999:66). Consent was obtained from the participants. Consent involves the procedure by which an individual may choose whether or not to participate in a study. The task of the researcher was to ensure that participants have a complete understanding of the purpose and methods to be used in the study, the risks involved and the demands placed upon them as participants. A clearance certificate has also been received from the university board, allowing the study to continue.

The language practitioners were informed that their identities would be protected and their names would not be included in the study. They were also told that they have the right to withdraw from the study at any time and that the study would do no harm to them. The participants were told that their involvement in the study might be of great benefit to them and to society at large. The study's results would

also be made available to any participants who wanted to have access to them. Voluntary consent refers to each individual's ability to exercise the power of choice without the intervention of force, fraud, deceit, duress or other forms of constraint or coercion. This right to exercise choice must be granted throughout the entire research process. It is important that no such constraint or coercion should be either explicit or implicit on the part of the investigator (Boydell, 2007:56).

Despite the challenges experienced (i.e. getting the candidates to answer the questions and be involved in the interviews), the researcher managed to interview all the language specialists from the office. The interviews took place on the online platforms due to the COVID-19 regulations. The platform thus provided a relaxed atmosphere without any disruptions. Furthermore, using this platform ensured the ethical principle of guaranteeing the confidentiality of the participants' responses. Terre Blanche and Durrheim (1999:129) also agree that interviewers must ensure that they will not be unduly disturbed during the interview process. It was also important to ensure that the interviewees planned to put aside the required amount of time so that they would be able to give the interviewer their undivided attention.

It was explained to the participants that the researcher would take notes to keep full records of the interviews. The researcher began each interview with a summary of the proposed project and thereafter commenced with open-ended questions. Even though we knew each other as colleagues, the researcher wanted to establish trust with the participants. Each language specialist was requested to bring a piece of legislation that he/she could use to show the researcher examples of translated legislation for review. The language specialists and the researcher reviewed these documents together and discussed some of the factors that need to be considered in the process of translating a legal text. During these reviews, the idea of using plain language in translating legal texts was introduced, using examples from the legislation that the researcher had already translated and some documents translated by the participants. The reason for discussing this topic was that the literal translation that is used in the institutions at the moment follows the source language very closely. Larson (1998:37) emphasises the fact that it is very important that a translation becomes accurate, clear and natural. This means it should give the exact

meaning as closely as possible to the original message, it should make the meaning easy to understand and it should not sound like a translation but the way the local people talk or write. Discussions of the status of the indigenous languages and its recognition by the departments and language speakers will follow.

5.3 Equitable use of languages

Webb et al. (2005:15) predicted that after the implementation of National Language Policy Framework and the Constitution, laws would appear in the *Government Gazette* in more than two indigenous languages. Webb et al. were hopeful that all government notices, ordinances and any other state documents would reflect the multilingual nature of South African society. About twenty language specialists believed that there was a great need to address the negative attitudes towards indigenous languages. There is a growing need for developing indigenous languages to be recognised as fully-fledged standard languages and for their management to be used as one of the processes in promoting their acceptance in communities, in government offices and in institutions of higher learning. Language speakers and language practitioners therefore need to encourage the widespread use of indigenous languages by providing quality translations. This might change the negative attitudes people have about second language translations.

The value of English and Afrikaans is still far higher in most provinces in the national government departments, including Parliament. Language continues to throw up barriers for already disadvantaged speakers and a lot needs to be done to resolve these problems. Individuals in government institutions still give English prestige status because there is not a lot that is being done that shows that South Africans moved on from being an English colony (de Kadt, 2005:4). This is true because even though we claim our independence as a country, we are still not yet truly independent since we still maintain very close connections with Great Britain by considering English to hold the highest value, even at this time. South Africa still needs to invest more in language development and language empowerment to be able to reach the level of English and Afrikaans. We need to understand that the purpose of developing and empowering a language must not end with the language, but rather that the whole process should aim to equip all human beings to live a

better, more equitable and more democratic life, as promised by the ruling party that currently holds the seat as government.

Afrikaans can be used as a good example. It managed to obtain a status equal to that of English in the apartheid years. Afrikaans was promoted by its speakers and users until it reached the status of English. Afrikaans was at some point used as a mere vernacular and was only used by a few. This is supported by Webb (1996:17), who states that Afrikaans was once used only in the lowest social functions, it did not have a writing system and it had no literature some 150 years ago. Gradually, it later became used as an instrument in the struggle against the imperialism of the British colonial government. Again, it was also used as an instrument against the Dutch-oriented elite's preference for Dutch and English in high-function contexts. This example gives hope that indigenous languages can reach the level of Afrikaans in as far as development and usage in government platforms is concerned.

Language specialists disclose that twenty-four years ago, indigenous languages were not recognised by the apartheid government and no official documents were produced in these languages. The researcher concurs as today we see a great improvement in some of the municipalities where services are rendered in some of the local languages. Government iMbizos are now conducted in indigenous languages with the availability of consecutive and simultaneous interpreting services. This is a huge step and shows that the government is trying their best to introduce the usage of indigenous languages in all platforms. The goals of the National Language Policy Framework are to promote the equitable use of languages to ensure access to all services rendered by the Government, de Kadt (2005:4) claims that as a country, we are still not truly there as English still holds the highest value at this time. Parliament still needs to work harder in ensuring that all languages are fully empowered to be able to reach the stage of Afrikaans and English.

Although Marais (2013), Mwaniki (2011) and other scholars have written a lot about language equity and multilingualism, government institutions need to employ indestructible translation practices to achieve different goals in communication. One of these goals is to realise that translation assists in mediating across languages and cultures, and that translation alone is at the heart of multilingualism.

A table presenting statistics on acts passed by Parliament from 1994 to 2019 was earlier presented on analysis. This table shows that not much has been done to ensure that government departments and Parliament have a solid plan in place to elevate the status of indigenous languages. English and Afrikaans remain the preferred languages. Even today, English and Afrikaans are fully-fledged standard languages used in courts, schools, institutions of higher learning and in some state departments, especially in the Western Cape, Mpumalanga, Free State, Northern Cape and in some parts of the Eastern Cape. There are thus some lessons that indigenous-language specialists can learn from the history on the development of Afrikaans. De Klerk (1996:100) pronounced that speakers of Afrikaans are loyal to their language and culture, and they take pride in their language. Language loyalty among white Afrikaans speakers has always been more intense among South Africans. They do not compromise and their language is never awarded second-place status. Webb et al. (2005:17) agrees with De Klerk as he emphasises the fact that language promotion requires that its speakers fully support it and take pride in it. Therefore, it is very important that the speakers of Nguni languages should take pride in using and reading the translated legislation that is at their disposal.

Cook accurately describes the situation when she argues:

Despite the worthy aims of protecting and supporting the use of previously disadvantaged languages and using language to promote both unity and diversity in the new South Africa, close scrutiny reveals that the language policies of the new government, and the concepts that buttress them, serve instead to symbolically erase fundamental social realities in contemporary South African society (2002:23).

The policies and legislation that are in place are meant to strengthen and support the introduction of multilingualism. These policies are useless, however, if they are not put into practice. The *Use of South African Languages Act* and the *PanSALB Act* are a strong basis for introducing communities, government and schools to fully-used indigenous languages.

Cook (2002) divulge that black students do not usually regard their own languages as being sufficiently developed to be used for advanced-level academic studies. Ngugi puts this statement into perspective when he says, "African languages need

similar commitment from African intellectuals, bearing in mind that no language had a monopoly of cognitive vocabulary, that every language, could develop its terms for science and technology” (2009:xi). Furthermore, their views accorded well with those of Webb et al. when he states that for a variety of reasons, English is generally considered to be a language of high status (Webb et al., 2005). Indigenous language speakers tend to consider people who have a good command of English or Afrikaans to have a higher social status. The translated acts will therefore also assist target language speakers who do not usually regard their own languages as being sufficiently developed to be used at an advanced level in academic studies. Universities like the University of South Africa are already encouraging speakers of indigenous languages to use their primary languages at the highest levels. Study guides in the university are in the process of being translated into all the official languages of South Africa. The researcher was fortunate to be part of the team that was invited in this pilot project of translating study guides for the Faculty of Humanities. All tertiary institutions can thus play a significant role in highlighting the importance of the use of primary languages in the country. Therefore, the schools of law in all tertiary institutions may be in a position to introduce legislative co-drafting. The introduction of co-drafting in tertiary institutions could help eliminate the inconsistencies in legislative translation and elevate equality, the status and quality of legislative translation in South Africa.

5.4 Legislative process that involves drafting, certification and assent to bills

The Joint rules of Parliament (rule 220) indicates that the legislative process is mostly followed by the language of introduction, not the second-language translation. The legislative process is clear that the second language of a bill must only be submitted when the bill is read for the second time. At times, however, the initiators of the bills do not submit the second-language translation when they are required to because this rule is not strictly followed in the legislative process. Translations are sometimes submitted when the bills are scheduled for second reading in the second house, the National Council of Provinces. This clearly indicates that the second language is not given the same status as English. Therefore, Parliament needs to revisit its rules with regard to second-language translations. To indicate that second languages are given the same status as English, joint rule 220

needs to be revisited and should perhaps reads as follows:“a draft bill submitted to Parliament for introduction must be accompanied by a draft second- language translation.” By doing so, Parliament will be indicating that it takes all languages seriously and this can, in turn, be an indicator that the institution is willing to rectify the imbalances of the past. In his thesis, Ntuli (2012:107) concurs with the aforementioned. He found that language services management does not take language development seriously. He recommends that the recruitment of language specialists must be taken seriously by coordinators and panellists.

The legislative process as outlined in the Constitution (1996), also gives Parliament the obligation to involve the public in all laws before they are passed. This process allows people to voice their opinions and to provide input in the process. Parliament also needs to realise that this process affects people’s lives. People need to be afforded more time during these visits sothat they can make valuable contributions. Parliament is for the people, and people must therefore be given sufficient time to be able to communicate with the people for whom they voted, especially when issues of national importance are discussed. The legislative process is not something that must be rushed, so people must be left satisfied and having understood what was discussed during these visits. Above all, the second languages of the legislation that is discussed during these meetings are only summaries. This means speakers of these languages are disadvantaged because they will miss some of the important sections that are not part of the summaries. For that reason, Parliament must also take the complete versions of bills to public hearings. This will afford second-language speakers the same opportunity to be part ofthe full discussions as those who understand English. Again, the complete translation of thesewill assist the illiterate or semi-illiterate to understand the message clearly, since legal language is complicated.

One needs to have basic knowledge of the law to be able to understand the language that is used when drafting bills. Additionally, these bills lay down binding rules that must apply to every citizen as soon as they are agreed to. The needs of the society are taken into consideration when laws are made. The African Charter on Human and People’s Rights emphasises on the fact that modern South African law has binding authority. Again, the Bill of Rights in the Constitution (1996:5) provides

that it applies to all law and binds the legislature, executive and all organs of State. Therefore, bills are meant to address issues that affect citizens, and citizens have a right to know about the full contents of the bills in languages they understand as these bills legally bind them. This will allow citizens to contribute meaningfully. Because legislation is used by the government as a tool of communication, this tool must be accessible in all languages and must be drafted and translated in plain language. Thornton (1996:3) believes that legislative drafting is specifically about communicating the government rules of law to members of society by using written language. That is why Thornton is of the opinion that the legislative drafter needs to be clear so that the message will be clearly communicated. Parliament needs to respond to the call for using plain language when drafting legislation to avoid using a lot of legalese. Plain language will assist in simplifying the language of the law so that it can be understood clearly by both translators and target readers. This will also ease the burden of the lack of terminology from the side of the translator, as plain language uses straightforward terms.

Bills and acts are a way of communication between legislators (government) and the people. In this study the functionalist approach to translation was chosen as it allows translation to be seen as a way of communicating that fulfils a purpose with respect to the client and readership. There are other approaches to translation such as the linguistic and social approaches to translation, but they differ from the functionalist approach because they do not stipulate what the translator ought to do. They focus mainly on equivalence of words and sentences rather than focusing on translation as a communication activity. The functionalist approach gives priority to the target culture. Nord (1997:29) declare that this model is not only feasible but a recommendable approach in legal translation. Trosborg also in agreement as he believe that this model also addresses the needs of a professional translator in modern society (1997:44). During the interview process with the translators, the issues discussed below emerged as some of the problems to be addressed and the actions required to address them. The functionalist approach also requires translators to understand the target reader and their culture in order to produce a translated text that fulfils the intended purpose.

That is why Nord assert that when translators receive a text, they translate it on behalf of the initiator and the recipients who belongs to a certain culture, which they are required to convey the message to them by means of translation. Therefore, the translator is required to be an expert in the translation process and be responsible to relay the message to the target audience unequivocally.

5.5 Training of translators

Data also shows that there is a great need for tailor-made courses for interpreters and translators in South Africa. The researcher earlier indicated that most of the language specialists who were recruited by Parliament had a background as educators. Parliament used to send these language specialists to the University of Free State for a three-day interpreting course. This course was not sufficient since it was not including translation, proofreading and editing. The duration of the course was also too short for a person who does not have a background as a translator or an interpreter. A clear example is this scenario where interpreters who were not trained experienced difficulties at serious and prestigious events. One such incident occurred during the memorial service of the late former President Nelson Mandela in December 2013. The sign language interpreter at the service rendered incorrect sign language interpreting and blamed it on his schizophrenic disorder. People all over the world were furious about this incidence. The news about the fake sign language interpreter were reported by almost all media houses in South Africa and abroad.

Broman (1995:835) concurs with the researcher when he said professions like medicine, law and other health professions have been the object of intense scrutiny for a long time. Talcott Parsons assigned a central role to these professions in modern society (Treviño, 2008:2). When people want to be lawyers, doctors or nurses, there are formal bodies where they are forced to register and from which they must receive accreditation before they may start practising. There are still several professions in South Africa that are not legally protected, including those of translators and interpreters, South African parks and recreation practitioners, heritage practitioners and many others. Translation and interpreting services can be provided by anybody who believes they are capable or entitled to do so, despite the fact that an error in a translation or interpretation can do as much harm to people

and things as wrong medical treatment or legal counsel. Professional translators must evaluate the potential repercussions of their translational activities, protect their partners, and attempt to prevent neologisms. As Christiane Nord correctly observes, translation and interpreting are abilities with which no person is born (Nord,2006:36–37).

Cornelius (2011:123) is also of the opinion that “it is high time that people start realising that quality needs to be assured by using only well trained, professional, skilled and accredited interpreters”. There is a general feeling that interpreting is undervalued and underestimated. The introduction of the *Use of South African Languages Act* (2012) and the *Language Practitioners’ Council Act* (2014) could assist the justice system in acknowledging the crucial role that language plays.

According to Nord (2006:37), professionalism means that the translator has the competencies required for translation or interpreting services and constantly tries to improve them; it means that the translator strives for excellence. A translator or interpreter must be fluent in the target language to the level of an educated native speaker, have current knowledge of the subject material and its terminology in both languages, have access to information resources and reference materials, and be familiar with the tools of the profession.

Again, interpreters in South African courts use consecutive interpreting during court proceedings. This service was initially given in courts for those who did not speak Afrikaans, which was the language of judicial proceedings in South African courts. According to Section107 of the Constitution:

A party to litigation, an accused person and a witness may, during the proceedings of a court, use the South African language of his or her choice, and may require such proceedings of a court in which he or she is involved to be interpreted in a language understood by him or her. (*Constitution of the Republic of South Africa*, 1996: s107)

The above paragraph gives a litigant the right to a language of his or her choice in a court of law. That is why courts in South Africa render interpreting services to a litigant whenever they are requested. In rendering consecutive interpreting, the interpreter listens and takes notes while the state prosecutor puts a charge to the accused person. After the charge or charges have been read, the interpreter interprets

what has been said into the language of the accused person, and the presiding officer (magistrate) asks whether the accused understands the charge(s) against him/her. At this point the interpreter interprets the presiding officer's question and interprets the accused's plea to the presiding officer (Moeketsi, 1999:25).

According to Hung (2002:84), interpreting is a well-defined and well-established profession in many countries, particularly in Europe. However, the situation in South Africa is rather different. According to Du Plessis and Wiegand (1997), many issues still lack clear definition, for example the nature of the profession and its role in South Africa, considering changed language policy. The researcher also observed that people working in Parliament and the members of Parliament they still confuse the difference between a translator and an interpreter. Many times when the house is sitting members will complain that there is no translation in the house, whereas they simply refer to interpreting. Therefore, the researcher agrees with what Du Plessis and Wiegand are saying on a clear definition of the profession. Many people in the institution are still confusing the roles that language practitioners perform and nothing is being done with that as no one seems to see its importance.

The researcher believes that careless legal interpretation in courts may have an impact on the result of a case, particularly if a complete and correct rendering of the meaning intended by the witness, prosecutor, defense counsel, or judge is not provided in the target language. In such a case, the testimony is flawed due to the misinterpretation by the interpreter. These mistakes cannot be picked up and corrected if presiding officers are not proficient in both languages spoken in court. If the presiding officers are not proficient in the source language, they must rely fully on the interpreter's rendition of what is said, with the belief that what is presented is correct and accurate. The same above sentiments apply to translated legal text.

Cornelius (2011:121–143) comments that if sections of the testimony are misinterpreted and therefore inaccurate, incomplete or simply false, the result can be that a guilty person walks free, or that an innocent person is sent to jail. She also says that even in cases with a great deal of public interest, interpreting is substandard. One can thus assume that poor interpreting occurs daily in courts. One

can only imagine that when the stakes are lower and there is less public scrutiny, the interpreting quality would be even worse.

Consecutive court interpreting during the trial of Oscar Pistorius in 2014 is an example of the fact that court interpreters in most parts of the world are typically employed on an ad hoc basis. Court interpreters in other nations operate on an as needed basis and so do not have the chance to form long-term connections with court staff and other courtroom participants. Court interpreters in South Africa, on the other hand, are full-time public workers allocated to a single courtroom where they work with a magistrate. The two usually form a tight working connection, which frequently leads to the magistrate seeing the court interpreter as his or her own. As a result, court translators act as the magistrates' "personal assistants." They get acquainted with such magistrates' strengths and limitations, as well as their likes and dislikes, and frequently help them when required (Moeketsi, 1999:26).

The interpreting at the abovementioned murder trial led to witnesses' testimonies getting lost in translation, and left translators and interpreters outside the court furious. With eleven official languages, one would expect South Africa's justice system to be well-equipped to handle testimony in any of these languages. The *Promotion of National Unity and Reconciliation Act* (1995) provides that victims should be treated equally and without discrimination of any kind, including based on race, colour, gender, sex, sexual orientation, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin or disability. The same act stipulates that appropriate measures should be taken to allow victims to communicate in the language of their choice (Du Plessis & Wiegand, 1997:25). These provisions direct the activities of trial proceedings, especially about language use and the implication that interpreting is necessary and must be accurate.

Several Afrikaans-speaking witnesses were obliged to switch to English throughout the two weeks of testimony in the State vs. Pistorius case to avoid being misunderstood. One of the witnesses began testifying in Afrikaans about hearing cries and gunshots on the night of Reeve Steenkamp's (the victim's) killing, but was forced to halt to correct the struggling interpreter. When the witness said that events

after the shooting were *deurmekaar*, the interpreter interpreted that word as “confused”, prompting the defence lawyers to suggest that her recollection of events might also be confused. The witness explained to the court that she meant “chaotic” and she later opted to switch to English instead (Sapa-AFP, 2014:2).

It was reported in *Sowetan* (Sapa-AFP, 2014:12) that when a former police officer took the stand, there was more evidence of incompetence. He also communicated in Afrikaans. He reported seeing the athlete's girlfriend's lifeless corpse draped in towels, which the interpreter translated as "hand clothing." Several witnesses and specialists spoke Afrikaans, and the culture of primarily Dutch descendants remains strong in Pretoria, South Africa's capital. Like the police officer, others also switched to English during their testimony, or even in the middle of a sentence, out of frustration with the poor interpreting. Both lawyers of the prosecution and defence also interrupted proceedings to correct translations. After witnessing such problems in a high-profile trial, many in South Africa worried that the situation may be even worse when the cameras are not rolling. Johan Blaauw, chairman of the South African Translators' Institute, said in an interview with *Sowetan* on the 14th of March 2014 that he is also worried that “if this is what is happening in a prominent case such as this, how many miscarriages of justice are happening every day in our ordinary courts” (Sapa-AFP, 2014:2).

The two states of affairs described above indicate that interpreting and translation are undervalued and underestimated, especially in South Africa. Even though government has legalised the use of eleven official languages in all government departments, little is done to monitor the implementation and use of the necessary services. There are policies and legislation in place, but it seems as if no one acknowledges the crucial role that these documents are supposed to play. There are good, experienced and well-trained interpreters and translators in the country, but the government chooses not to use them because it will cost more money. Cornelius (2011:124) believes that “the cost of poor interpreting is much higher than the cost of a good interpreter”. If government worked with institutions of higher learning, it could improve the quality of interpreting and translation in South Africa by making sure that the legislation that has been passed is enforced.

Besides the fact that interpreting and translation as professions are undervalued, interpreters encounter many difficulties and a great deal of stress when carrying out their duty. Bochum (2006:26) confirms this by quoting (Coughlin, 1988), who states that interpreters should be trained to be winners under unfavourable conditions. It is important that this should be brought to the attention of practising interpreters so that they will be aware that they are not just expected to provide any kind of interpreting, but that it is important for them to provide a high-quality interpreting service to meet their clients' expectations. Managers of interpreting and translation staff must understand clearly that interpreters and translators need to be trained for them to be able to provide a good interpreting and translation service. Language specialists also need to understand that what they interpret during court proceedings forms part of the official court records.

Section 107(2) of the Constitution orders that:

The record of the proceedings of a court shall, subject to section 3, be kept in any official language: Provided that the relevant rights relating to language and the status of languages in this regard existing at the commencement of this Constitution shall not be diminished. (*Constitution of the Republic of South Africa*, 1996: s107)

The statement above provides that languages other than English can also be used as languages of record for court proceedings.

There is a belief that on-the-job training and mentoring can assist in closing the gap in, or fulfilling the need for, formal translator training, but this alone cannot be effective in producing the required legislative language specialist who will specialise in legislative translations.

People often argue that being a first-language speaker can make one a good translator. However, this claim has proven not to yield good results, as people often complain about the quality of translations that are rendered by such people. Legislative translation and interpreting are very important tasks as they can land someone in trouble if they are not well executed (e.g. during trials).

Rammala echoes the above-mentioned when he states:

Like all professions, the language field demands a well-trained cadre of practitioners with a range of skills, knowledge and expertise. What is at stake in this case is the academic training of language practitioners who must emerge with specialisation in a variety of domains, e.g. terminology, translation, interpreting, editing and human language technology. To produce quality services in these fields in the previously disadvantaged languages, it is necessary to extend the knowledge base and skills among serving practitioners so that there is adequate capacity to deal with domains of knowledge from which they may have been effectively barred by lack of expertise or pre-democracy history (2003, quoted by Webb et al., 2005:125).

The researcher is resolute that there is a growing need for the use of indigenous languages when delivering services in government. Consequently, the translation, interpreting and terminology services are now important in all spheres of government. Such expertise is not easily acquired and when qualified candidates are located, they must be trained and be well equipped so that they can go on to equip other specialists who are new in the field. This process will assist in building enough capacity and ensuring quality language services when bills are certified and signed into law.

Gile (1995:3) concurs that formal training is crucial in aiding those who wish to become professionals in improving their performance and realising their full potential. According to the statements of these theories, the researcher is confident that training combined with professionalism would result in higher quality translation services in the South African National Parliament.

Rammala (2003, quoted by Webb et al., 2005:125) suggests that the Language Research Development Centres must be tasked with locating experts in translation, interpreting and terminology development. They must build a network of such professionals and support in-service programs relevant to the language company after identifying such knowledge. The major objective of this type of activity will be to match language practitioners' experience, talents, and knowledge to job requirements. This will aid in the expansion of capacity for offering high-quality language services.

The suggestion made above could have assisted Parliament, as most of the translators interviewed in this study joined the institution without experience, skills

or expertise, because most of them were recruited from the Department of Education. The recruited candidates were working as teachers and they required formal training in translation on arrival. “The environment in which they find themselves was foreign, but they were nevertheless expected to produce results. Translators in Parliament expressed the belief that formal training would empower them to deliver translated work of good quality to members of Parliament and the public at large. The services rendered by the translation unit in Parliament could be improved if translators received formal training or were drawn from the Language Research Development Centres suggested by Rammala. Training will enable them to deliver quality translated bills and acts and might reduce the high turnover. Parliament can also develop a relationship with tertiary institutions and the Language Research Development Centres to assist with training those language specialists who joined the institution without the experience required. These institutions can assist in training them before commencing their duties in Parliament.

There is no doubt that any person who has knowledge of English and any other official language can translate or interpret, but that person’s functional abilities to translate and interpret need to be nurtured and enhanced. In other words, language mastery alone does not necessarily make a good translator or interpreter if one does not have the translation skills. Pietrzak (2013:317) agrees with the latter statement and states that translators learn not only the skill of rendering a text from one language into another successfully, but also simultaneously acquire other sub-competences. The high demands in the market for qualified translators and professional qualifications shows that translators’ competence changes over time because of technology or various social demands.

Moreover, regarding the gap in difficulty left by translation education, even a perfect command of languages will never suffice. What might assist is an academic translator training program. Without a doubt one believes that some programs do offer a curriculum that is up-to-date and focus on real-world skills, and assess those abilities reliably. Pietrzak (2013:319) held that language skills are part of the duty of those in charge of imparting the skill in the subject of translation. Language skills must therefore be honed to perfection but in such a way that students do not focus

on language only. This might seem difficult but it must be incorporated into courses or whole training programmes, together with a wide range of other abilities translators are required to possess.

These abilities can be identified in such divergent fields as technical expertise and ethical concerns. What may serve as a departure point and a foundational framework in planning the structure of a translation course that will include training in the necessary abilities is a closer look at what is really necessary and what the requirements are for all future translators. This can be done before they start working and specialising in particular types of translation and interpreting in certain subject domains. There is simultaneously no doubt that the needs can be thoroughly contingent on the times, the level of development of technology, the degree of globalisation and the way it unfolds.

As an employee of Parliament who was once part of the translation team, one can advocate that as a core functional area, translators thus need to be trained to acquire such skills for the better delivery of quality translation. It is crucial that the users of the translated legislation are also trained in what translation is and the differences that exist between the translated document and the source document. This will assist them to understand the services translators render. Members of Parliament are still not properly informed about the utilisation of the translation services. They need to be aware of this service and begin to take it seriously by using the translated bills during committee deliberations. By doing so, they will exert pressure on departments to introduce bills that already have a draft translation, since members will need copies during considerations at the committee stage.

Therefore, it is becoming clear that training is key for translators to be able to execute their duties meticulously. Translators might possess sound knowledge of the language from which they translate and be masters of that into which they translate, but still come across translation requests that are beyond their competence. This study showed that translators are from time to time required to take assignments that are beyond their expertise. Translators are sometimes required to render interpreting services, do Hansard reporting or recordings during sittings if a need arises. Therefore, translators must refrain from undertaking

translation assignments in a field beyond their competence. The study also showed that working conditions that are not favourable contribute to poor quality and delays in delivering services by the translators. Translators need to work in a quiet environment where they will not be disturbed. Unfortunately, translators in Parliament work in an open-plan office environment where noise levels are sometimes not controllable. To enable translators to deliver quality translation services, some of the issues mentioned above need to be attended to as soon as possible. Translation and interpreting are a rare skill and need to be treated as such. To conclude, training needs to be considered to assist legislative translators to gain the expertise and the skills they require to deliver quality translated documents.

5.6 Legal and plain language in translation

Beveridge (2000:4) observes that legal language is derived from certain terms that exist in standard language. Therefore, there is no need for legal drafters to use complex language when drafting laws. When speaking, most people do not use legal language but standard language, and this type of language is understood by everyone. In her book *In Other Words*, Baker (1992:12) indicates that translators are concerned with communicating the overall meaning of a stretch of language. It is very important for a translator to begin by decoding the units and structures in a word that carry meaning. A word is the smallest unit that possesses individual meaning. The power of language is most closely associated with the use of these words and the meaning they possess. The meaning of general words used in everyday language thus differs from the meaning of words used in legal language. A good example is the meaning of the word “save”. In simple terms, the word denotes keeping someone or something safe from harm or danger. In legal language, the word save means to not include or to exclude. This example shows the importance of the basic understanding of the nature of the law and legal language that all legislative translators need to acquire. It will be difficult for a translator to execute a translation assignment without such basic understanding of the legal field.

Legislative drafters can therefore simply use plain language to reduce the unnecessary use of legalese when drafting legal documents. The word “save”, to

use the same example as above, does have a synonym in standard language that can be used by drafters or legal practitioners and still convey the message. Because using plain language simplifies the language of the law, its use can make translators' job much easier. The success of producing a quality translated legal document will always depend on the language used by the drafter. Cao (2007:14) indicates that legislation is a tool used by the government to communicate rules and regulations to societies by using written language. If the language used is not plain and clear, it will not be easy for people to understand, follow and apply those rules. What transpired in 2020 is a good example of what Cao mentioned above. In 2020, South Africa and the rest of the world were struck by a pandemic that left the government with no choice but to lay down new rules and regulations. The issue of COVID-19 emerged and grew to such proportions that pressure was felt by government to adopt regulations on the matter. The language (plain language) used to draft such regulations was understood by most members of the society, and language specialists did not face difficulties translating such rules. Lawyers regularly face criticism for their unnecessary use of a complex style of language and there have been numerous calls for them to draft in plain language.

The example of COVID-19 regulations shows that drafting in plain language is possible and can be implemented in all legal documents. Grossfield (1985:801) indicates that in comparative law a specific method is used to translate laws that already exist and need to be translated and amended into different languages. If the structure of a particular language plays an important role in defining people's thinking, it may well be that a particular language can only express certain legal ideas and that the limits of a particular language are the limits of its speakers' legal reasoning. There are many ways in which one may express or interpret words into a different language. The only problem would be whether the audience receives the message as it was intended to be received. These limits might be caused by the lack of legal terminology in indigenous South African languages. Very little has still been done in these languages to try and close the gap that has long existed between legal terminology and Standard English terminology. There is at least a suspicion that certain basic legal rules undergo a change when they are transferred into another language. The further apart the language structures are from one another, the greater might be the change in the law. This results from the fact that when a legal rule is

implanted into a different language context, the linguistic dynamics of the language might drive it in an unexpected direction.

Durkin (2015:6) assumes that recurring problems will still exist in the field of legal translation since no one knows exactly how strong the influences of language are on legal translation. Indigenous languages in South Africa certainly cannot explain the whole of the law, as the dimensions of law exceed any single explanation and any single cause. Even today, courts dispute over the meaning of English phrases that are used in our legislation, and this reflects the complexity of the language of the law. Chomsky (1995:106) further states that language is only one factor among many, and all the other factors that exist may be weakened by the common nature of all human beings. These factors (age, gender, social class, intonation and many other factors) may influence the way languages change, and include the influence of social and religious groups. However, one cannot avoid the fact that language specialists must take legal linguistics seriously if they want to understand the relationship that exists between everyday language spoken in societies and legal language. More studies need to be conducted in the field of legal translation and the use of plain language to be able to propose a solution for how these existing problems can be resolved. Language and law are both very important in the modern legal system that is trying to recognise all official languages. Therefore, lawyers and language specialists need to work together to make sure that this important system is used to secure the survival of legal languages and cultures. Both law and language are sensitive. Translators and drafters need to realise that and try to find a similar way of working within both professionally, without offending the other system. This is where the use of plain language might resolve all the issues that exist in drafting and translation.

The idea of Cornelius of involving role players who have both knowledge of the law and of languages to avoid any shortcomings that are presently part of the system can be explored. This call has already been made by Cornelius (2011:121) to tertiary institutions of the Republic of South Africa, law clinics and government departments, as there is a dire need to appoint role players to look at the issues faced by translators. If more than five drafters can be assigned to work on the same bill, each might emerge with a different product. The results would be the same for

translators. They can be given a similar bill to translate and they each might emerge with a different product. While there would normally be little of substance that differed between the drafts and one would rarely feel that their efforts were unmistakably wrong, but it must be clarified that these results are a true indication of the fact that translation is an art rather than a science. Five different translators given the same bill would produce different end products.

Culler (1976:21) agrees when he mentions that if language was just an arrangement of general concepts that are recognised universally, it would be easy to translate from a source language to a target language. Unfortunately, Culler (1976) recognises that languages are not nomenclatures and that ideas in one language may differ dramatically from those in another, since each language articulates or organizes the universe differently, and languages do not just name categories; they articulate their own. One of the troublesome problems of translation is the disparity among languages and the uniqueness of documents to be translated from the source text to the target text. For that reason, all bills that translators receive for processing must be approached as unique exercises.

This is evident in the early stages of a bill, when translators carry out their function of discovering the drafter's and department's intention and analysing the proposed policy to see whether it works. In fact, this is one of the main tasks translators need to do. Even though translators are unique, it is important that they approach the job by reading the memo to understand the mind of the drafter. Translators are like other people; they are of course fallible. A bill that was translated years ago can be given to another translator who may then realise that there are numerous inconsistencies in the bill that were missed by the former translator. This shows that there are many issues in translation that sometimes slip through the cracks. For this reason, the looping model can give role players a better way of working so that they can produce better quality documents that can withstand examination in Parliament and by the public at large.

According to Beekman and Callow (1974:49), the goal of translation is to convey the meaning of the source text to the receptor audience, cast in the mould of the receptor language, and taking into account the background knowledge available to

the receptor audience. The legislative language practitioners also expressed the view that it is very important to have background knowledge of the audience who will be reading the legislation. These practitioners know that their audience is the general South African public who are both literate and illiterate. The use of plain language will help accommodate most of the groups for whom they are translating. The practitioners will be able to simplify the language and the style so that every person who decides to use a particular piece of legislation finds it easy to follow the message.

Venuti (1998:127) differs with Beeksmann when he raised the opinion that since no two languages are identical, there can be no absolute correspondence between languages. Hence, there can be no fully exact translations. The researcher believes that correspondence between languages can be possible if legal terminology lists can be available. Some of the bills that they are required to translate are very technical, and they find it difficult to find equivalent words as required by the clients. The practitioners suggested that the language unit need to speed up the process of legal terminology to be sent to PanSALB for verification and standardisation to try and solve the problem of non-equivalence. The translators find themselves using a large number of hyponyms. This is caused by the introduction of many new words and legal expressions into legal language with no equivalence in the indigenous languages. Understanding the aims and objectives of a translation brief to solve problems experienced during the translation process is essential. The rules of Parliament that are written on the first page of a translated bill read as follows: “The translated (Siswati) text is an official translation of the English Bill.”

The translated text is followed by a certificate that confirms that the translated version of the bill will serve the same function and purpose for the targeted audience or community. The style, function and effect of the translated version must always be the same as that of the original. This requirement puts pressure on translators. One translator indicated that translations are considered legal documents and as such should be delivered in a literal form suitable for presentation in Parliament or any legislature. The documents are required to be submitted in soft copy as well as hard copy, neatly typed. The documents must be free of typographical and

grammatical errors. The translation must reflect the source language content without omissions or additions. The level of the source language should be maintained as far as possible. If the meaning of a word or phrase in the source language is unclear, that fact should be indicated by giving a literal translation followed by an explanation.

Mico (2013:438) concurs with Venuti and further outlines the following principles of plain language: It is clear and simple, appropriate to the audience, direct and personal, favors informal language when appropriate, draws on common everyday language, is accessible to a wide audience, explains technical terms in simple language, tries to engage and hold the reader's attention, relies heavily on simple sentence structures, avoids passive voice, and respects the reader. If these principles were followed by South African government departments in enacting laws, the result could be a justice system accessible to all. The University of Johannesburg and other universities in South Africa now offer courses that promote drafting in plain language. This shows that if the government can partner with institutions to promote plain language, written laws can be better understood, translated, respected and implemented. New legislation can be harmonised with existing legislation so that it can be compatible with the legal system. Plain language has been identified as a critical way of drafting by various scholars. Using plain language will be advantageous to the translators of indigenous languages as the message will be clear to the target audience.

5.7 The functional approach in legal translation

Translation needs have become a pressing task for various reasons in South Africa, especially in delivering government communication services. Functionalism is one of the translation strategies suitable for application to all types of translation and in all situations. Functionalism is also applicable to legal translation. Garzone (1999:1) conducted research to see if it is legitimate to propose the application of functionalist theories to legal translation, and he concludes that it is. The researcher indicates that legal text is regarded as a special case within the general framework of the source texts. The functionalist approach concurs by emphasising that translation is a communicative action and it considers the translator as an

intercultural operator and an expert in the translation process. The function of the translated text is very important in functionalism since it is expected to meet the expectations of the target readers. Reiss and Vermeer (1984), in their *skopos* theory, stress that the target text and the source text are no longer seen as the only standard for judging a translation. The source text is also assessed on the basis of its adequacy in fulfilling a purpose in the target culture.

The functionalist approach to translation is applicable to legal translation because it is comprehensive and applicable to all text types in all situations. The good thing about this approach is that it does not follow the rules of equivalence, which are mostly based on the criterion of loyalty to the source text with no regard for the use to which the translated text is to be put. Equivalence focuses attention on the message itself, in both form and content. One is concerned with matching as closely as possible the message in the language of the receiver with the different elements in the source language (Munday, 2001:41). In legislative translation what is important is that translators must consider the function of the end product, which is the translated legislation. Translators in the legal field have to make strategic decisions about the application of functional criteria, even in the context of absolute respect for the meaning of the source text. Legal translators must thus cope with problems that are different from those encountered by translators in other sectors. That is why a general translation theory will never be adequate for application in legal translation. This field needs a comprehensive theory that will allow translators to adapt the methods they use at any time, and that is why the functionalist approach was seen as the best method for the field. Even though the application of a functional approach does not circumvent the problem of equivalence; the approach seems especially suitable for the translation of legal texts on account of their diversity.

The functionalist approach rejects the idea that there should be one single universally applicable concept of equivalence and instead puts forward the idea that the degree of equivalence to be achieved in the translation of a given text is not absolute. It suggests that equivalence merely depends on the target text's intended function and on the nature of the source text. Therefore, this whole process is governed by a principle of generalisation that can be seen as suitable for all text types. Nord (1997:29) makes it clear that in the whole of legal translation a

functional approach is not only viable but a recommendable approach. It is also effective in light of its comprehensiveness and flexibility. The interviews conducted with the language specialists and the discussions held during online meetings showed that actual translating practice is routinely based on functional criteria. The function of the source text and the target text are both to inform and legislate, and both texts are legally binding and have legal consequences. Therefore, if there were one principle that would work as a guide for the choices made by legal translators in choosing an appropriate model, the functionalist approach to translation seems to be the only alternative model for legal translation.

5.8 Legislative framework

The introduction, processing and assent of legislation that deals with the use and importance of indigenous languages in South Africa brought hope to the country. After a number of consultations with the public through public hearings and advertisements in the Gazette, Parliament passed the *Use of Official Languages Act* (2012), and the *South African Language Practitioners' Council Bill*. The main objective of introducing the former is to regulate and monitor the use of official languages by the government (*Use of Official Languages Act, 2012*).

The act requires that national government must report on the use of these languages. Prior to 1994, Afrikaans and English were the only official languages that were recognised in South Africa. Afrikaans was imposed as a language of instruction on Black Non-Afrikaans speakers. The impact was the point of ignition for the Soweto uprising in 1976. Willemse indicates that Afrikaans was seen as the language of the oppressor by indigenous language speakers (2017:12). The researcher agrees with Willemse as the government in those days managed to force Black students and White Afrikaans-speaking students to use Afrikaans as their medium of instruction in all subjects that were taught in schools. Willemse says people were left with no choice but to accept what the government expected them to learn. The methods that were used by the apartheid government to force Afrikaans upon everyone worked. People were full of fear and they were tortured if they did not follow the regulations in place at that time. De Kadt (2005:21) agrees that the Afrikaans language was employed to differentiate Afrikaners as superior to South Africa's

indigenous peoples, as well as to enforce the right to rule the land and its populace. As a result, the right to use the language of one's choice was unshakable.

The democratic government managed to recognise all languages that are spoken in South Africa as official languages. The Constitution requires that they should all be treated with equity and esteem. The response by the government to draft laws that legislate what the Constitution requires was a good step towards fulfilling this mandate. However, language specialists reveal that the policies or legislation adopted by the national government departments on the use of official languages are not fully implemented. The *Use of Official Languages Act* (2012) requires the Minister of Arts and Culture to monitor the use of African languages by the national departments. National government departments and entities are required to submit reports to the minister and PanSALB annually about the activities of their language units. They must report on how they are implementing their language policies, complaints received on the use of official languages and how they resolved these complaints. These reports must be published and the public has the right to deliberate on these reports and suggest better ways of dealing with implementation problems. The researcher claims that the table presented (Table 1: Statistics on acts passed by Parliament since 1994), clearly shows that monitoring and implementation of the *Use of Official Languages Act* is not functional. If the minister and PanSALB are receiving the reports that the act suggests they do, this begs the question of what they have done to ensure that languages are developed and used equally in legislative drafting and translation.

As discussed previously, PanSALB was established to promote multilingualism and ensure that translation and interpreting services are provided in all official languages. This is the body that is entrusted with the transformation of the historically marginalised languages. Beukes (2004:5) observes that the development of this body was prioritised due to the nature of work with which they were entrusted. PanSALB is expected to establish a dedicated language development agency that will develop and promote the use of all official languages as well as the ancient languages of South Africa's first people, known as the Khoi and San. In its 2020 report to Parliament, PanSALB states that there has been notable progress in the area of monitoring the implementation of the *Use of Official*

Languages Act since 2016. Their report recommends that departments and public entities should be subpoenaed to account for the implementation of the act. However, it would be better for PanSALB to be on the ground to monitor whether the act is being implemented, rather than awaiting reports that are not a true reflection of what is happening on the ground. The progress they report might be happening on paper but not in the actual work done by the departments. Members of Parliament, especially the Economic Freedom Fighters, have been complaining about the unequal distribution of second-language translation as far as legislation is concerned. Therefore, PanSALB's report might be true for some departments but not for most of the entities that represent government's language units. Reports are always nicely crafted but very few of them are a true reflection of what is happening on the ground.

No tangible progress has been made by PanSALB in the area of language research, and there has been minimal achievement in the status of language planning, language standardisation, translation and interpreting in the past five years. There is a growing need for PanSALB to give a practical report on the execution of its language mandate. This will assist in addressing language issues with regard to development and promotion of all indigenous official languages to reach the same level as that of English and Afrikaans. PanSALB does celebrate and promote language days, which is a good gesture. However what language specialists require more is the implementation of these policies and regulations instead of celebrating something that has still not been achieved. PanSALB needs to establish a way of involving stakeholders and role players that will ensure language promotion and equity. In their report to Parliament, PanSALB agreed that the use of indigenous South African languages is diminishing measurably. Afrikaans is still on the top of the list of languages that are used more often by their speakers. This report (*2020/21 PanSALB Annual performance plan*) and the Table on language distribution presented in this study are clear indications that Afrikaans is still given the esteem and status it received during the apartheid years.

The legislature introduced and passed the *South African Language Practitioners' Council Act* in 2014. It is aimed at regulating the work of language specialists. One of the aims of the act is to develop and implement a framework for the accreditation

of language practitioners at all levels. In Chapter 2, many factors were highlighted that indicate the lack of respect for the language profession. The case of the sign language interpreter at the funeral of former President Nelson Mandela was a clear example of disrespect for the profession. The well-crafted legislation and the council that was established in terms of this act were unable to prevent what happened on that day. Unqualified and unlicensed translators and interpreters are still hired and used by government and the private sector because there are still no drastic measures taken by the council against such people. The act seeks to protect the interests of language practitioners and ensure that all language practitioners are trained and possess the necessary skills that are required by the council. The researcher specifies that the status that is given to indigenous languages in this country still leaves much to be desired.

South Africa's indigenous languages still need to be transformed and be given prestigious status, like English and Afrikaans. When one considers the impact of colonialism on the psyche of former colonial subjects, it is not surprising how people respond to problems of change, which include language development and empowerment. The situation is complicated and tough to understand. Be that as it may, language specialists also maintain that something must be done. There is already enough legislation in the country to regulate language use, the language profession and multilingualism. The focus now needs to change from legislation to implementation and oversight. It is important that every citizen should work towards upholding the principles laid out in the Constitution and legislative framework of the common good, in the hope that it will help instil in the mind of everybody that it is not only possible but imperative to do the right thing, which is to develop and empower South African indigenous languages.

5.8.1 Parliamentary papers

Parliamentary documents in the form of bills, acts, Hansard reports and question papers were analysed. These documents were gathered from the questions of members of Parliament, deliberations from committees, public submissions (both written and oral), debates from Taking Parliament to the People relating to language matters, or bills and acts passed and sent to the President for assent. The analysed

documents were used in Parliament and dated from 1994 to the present. This covers the period from the years after the adoption and passing of the legislation discussed in this study, which include the *Language Practitioners' Council Act, Pan South Africa Language Board Bill* and all the legislation used at the time of the study. These bills, acts and parliamentary papers were selected for this purpose as they were presumed to be a reliable source of information and a basis for researching and understanding the functioning of the Language Unit. They were also assumed to be reliable documents because that is where language specialists perform most of their translation work.

The questions asked during parliamentary proceedings were also incorporated into the analysis because members of Parliament are expected to play an oversight role and ensure the accountability of government by, among other things, putting questions to the president and ministers. Little information was gathered from these papers since for the past 23 years, translation of the Parliamentary papers was done in Afrikaans only and most of the papers are still produced in English. Parliament is in the process of introducing all the other languages but this process is very slow. Translators mentioned that these papers are technical in nature and they are not given enough time to execute this work.

5.9 Language practitioners in Parliament

In the previous Chapters, it was mentioned that the Parliament of South Africa recruit's educators from the Department of Education, court interpreters from the Department of Justice and Constitutional Development and newly trained language practitioners. Ntuli (2012:5) confirmed that Parliament recruit language specialists from these institutions and they arrive at Parliament without the relevant skills, experience and qualifications.

The language specialists' responses showed that all the language specialists had more than seven years' experience working as language practitioners in Parliament. Not all the language specialists participated had prior experience as language practitioners. Some of these respondents had more than sixteen years' experience working as language practitioners and were also involved in legal interpreting. Some of them were also language activists advocating for all languages to be treated

equally and enjoy parity of esteem as per the Constitution. According to them, they have noticed that a number of changes have been made in Parliament following their activism. For example, some of the parliamentary papers that were only available in English and Afrikaans are now being made available in other languages. Even though some of the languages are still grouped in clusters (Nguni and Sotho) when these translations are requested, they believe that one day all eleven official languages will be represented when these parliamentary papers are produced. The language practitioners interviewed believe that Parliament will eventually publish its papers and legislation in all eleven languages and within a reasonable time in the near future.

According to Nord (1991:250), the translation difficulties and problems encountered during the translation process help provide a better understanding of the source text. Each language has a defined structure with its own agreed-upon rules that lead to their own translation difficulties specific to the nature of the text. The translators agree with Nord because during translation, translators frequently have to add, remove and rearrange source words to effectively communicate in the target language. When asked about problems faced by translators assigned to translate legal documents, the language specialists were of the view that understanding of the legal field is very important when dealing with legal translation. The idea that many translators lack the necessary understanding of the legal jargon was raised many times. The legal field has its own language, which is different from normal everyday language. Therefore, this language poses a number of challenges for language practitioners who have not received any training to deal with such documents. For example, a document might refer to “a person who has been granted leave to appeal”. In everyday language, “leave” might be interpreted as “permission to be absent or take a vacation”, but in legal language it means “permission to appeal”. Thus, the best solutions for the translation problems encountered by translators lie with the translators themselves, as they know the best alternative words to use and are in control of the final target text.

The language specialists also stated that a lack of terminology in target languages create challenges during translation as it leads to transliteration most of the time. Ronka (2016:1) writes that lack of terminology could possibly have serious

consequences as legal language is characterised by a high terminological density, and most terms are polysemic and convey different meanings depending on the legal field concerned. She further explains that the word “polysemy” is of Greek origin (*polys*, much + *sema*, meaning), and means the coexistence of many possible meanings of a word or phrase. Crystal (1980:274) also declare that a polysemic word refers to a lexical item that has a variety of meanings used in semantic analysis. A polysemous term has several shades of meaning, more or less clearly separable but with a basis in similarity. Chromá (2011:4) agrees with the above two authors when he notes that identification of polysemic expressions in a legal text is difficult, if not impossible, without sufficient knowledge of the specific legal issue and without a reasonable context available to help delineate the topic, branch of law and text type. Again, a legal translator's experience, training, and knowledge of the law are critical in order for him or her to be able to distinguish between the various shades of meaning that a term may have.

According to Ntuli (2012:102), Parliament does not have enough capacity to deliver all services in all eleven official languages. He observes that there is a shortage of language specialists in Parliament. This causes the existing staff to work long hours, which in turn has negative effects on the delivery of quality services. The language specialists also believed that institutions performing legal translations do not possess enough capacity to produce quality legal documents. One language specialist said that Parliament might have the enough capacity to deal with legal translations, but the capacity is either not be used adequately or the institution is not aware of the capacity it has. Efforts are being made by Parliament to expand the capacity and effectiveness of the Language Unit to try and address the major difficulties faced by the unit. Parliament is embarking on an organisational realignment project that might help locate some of the required skills needed in dealing with legal translation. This project aims at revisiting the current organisational design of the institution to ensure that the parliamentary administration is able to meet both current and future needs of the members of Parliament in their role in the legislative process. Another respondent shared the same sentiment and said that “Parliament recruit translators who, in most cases, do not have a legal background”. As a result, when translating they use everyday language to translate it in the manner that they understand the text, and sometimes

they use literal translation.

Language specialists were also requested to comment on the equitable use of languages by government as required by the Constitution. The general impression was that English and Afrikaans still dominate in the field of translation. Parliament has a daily bulletin called Announcements, Tablings and Committee Reports, which is published almost every day. This important Parliamentary paper is published in only two official languages, namely English and Afrikaans. The question papers are also published in a few official languages. If a Nguni language is used, it is one language out of the four in the cluster. A number of reasons are given as an excuse for not using indigenous languages on the same level as English and Afrikaans. Translating into all these languages is seen as time consuming, and sometimes the language specialists are told that people understand English better than vernacular languages.

If government institutions continue not to give these languages equal status, there is a high possibility that these languages will go extinct and the future generation will never know anything about them. The respondents believed that section 6 of the Constitution is disregarded by institutions. Therefore, a lot still needs to be done in that respect. The fact that there are very few departments (national, provincial and local) that have heeded the call of establishing language units speaks volumes on the unfair application of legislative translation. In *Lourens v Speaker of the National Assembly of Parliament* (2014:6), Cornelius Lourens took the government to court on the non-promulgation of the *South African Languages Bill*. He was not satisfied with the unequal treatment of the official languages. Even though the court ruled in favour of Lourens, languages are still not treated equally by our government and a lot still needs to be done to compel the government to apply this section as required.

The language specialists also highlighted a great need for the training of legal language translators and that they should have a language qualification coupled with a background in legal language or legal qualification. The lack of training programmes and institutions providing training in legal translation causes a serious problem in this field and it is a call for concern. Legal translators are simply assigned to any language-related training, but such training does not always assist them or address the issues at hand, and they are of a very short duration. Normally,

such training takes two to three days and is led by language specialists who also do not have legal experience or qualifications. There is a growing call for institutions of higher learning to formulate a programme that will address the issue of legal translation in South Africa. The programme can be designed to deal with the challenges these institutions are already aware of based on experience. Mentoring programs can also be made available to translators who are already in the system to empower them with the required knowledge of dealing with legal documents.

The translators also indicated the importance of euphemism in translation. They were aware of the fact that legislative documents legislate people's lives. These documents can be culturally sensitive and could even contain topics considered taboo. Some of the topics that pose difficulties to the translators are health, social development and local government, to mention but a few, as they sometimes contain sensitive words that relate to sexual behaviours, circumcision and many more. Translators find it difficult to translate such legislation as offensive words might be used that might not be accepted by the target communities. Gross (2012:146) aptly states that euphemism is a strategy adopted by translators to produce a culturally compatible text that would not violate conventions of face-work. Scholars of translation have looked into the topic of cultural taboos and the challenges that they have caused in translating cultural taboos from one language to another. The researcher indicated that translation of cultural taboos has created a great deal of controversy in many cultural groups. Scholars thus view euphemism as a successful strategy for translating cultural taboos.

In collaboration with Gross, Ndhlovu (2012:235) also views euphemism as a norm that influences the kind of strategies that are selected by translators in the African languages. Translators tend to choose those strategies that promote this norm when dealing with taboo words. Hermans is of the view that "cultural taboos guide and facilitate decision-making by applying social and psychological pressure on individuals and collective members of a society to communicate in a certain way that is acceptable to the members of that society" (1999:80–82). Translators therefore need to be creative and use euphemisms if some of the words they come across are taboo in the target culture. As indicated earlier in the study, translating culture-specific concepts always present translators with difficulties. Translators

need to be aware of these culture-specific taboos as they must be translated or be presented with extra caution. These words determine how members of the society behave, communicate and relate with each other.

Translators avow that one must know when taboo words can be used, how to say them and who is allowed to say them. They further assert that there are words that invoke respect in indigenous languages, and translators need to be aware of those words and be able to relay them in the most acceptable and respectful manner. Translators should always take the needs of their target culture readers into consideration because a transparent text that shocks sensitive readers is not linguistically effective if it is not culturally accepted. Borrowing is another strategy translator can use since it allows translation by substitution of other terms. Words can be borrowed from foreign languages and be transliterated to maintain respect and acceptability. When translators decide to translate a euphemism, they need to choose a technique whereby the euphemistic function would not be lost but will instead be conveyed in the target language. For example:

SLT: Young girls must not have sex.

Siswati TLT: *Emantfombatanyane akukafaneli kutsi abanjwe bobabe.*

BT: Young girls must not be touched by men.

Baker (1992:26) discusses a number of translation strategies a translator may use in the process of translation. The translation strategies and methods were presented in chapter 2 because they are a translator's plan for solving concrete translation problems when given a translation task. The researcher claims that it is the role of the translator to choose the correct translation strategy and to develop a method of translation. She further highlights that the chosen strategy needs to be flexible to allow the translator to make amendments or to use any other strategies that will make it possible to adhere to the necessary translation norms. That being the case, it becomes clear that a translator may choose to use more than one strategy at a time to solve a problem experienced during translation. Pavis (1989:37) is of the view that translators are sometimes caught between a rock and a hard place when they are required to stay true to the source text while also making the text understandable

to the target audience, that is, to do justice to the original text while also generating an acceptable target text. In other words, when translating something with strong cultural connotations and associations, translators have a tendency to either sacrifice the original cultural connotations and associations to translate idiomatically, or to convey the cultural content and flavour at the expense of idiomaticity.

Translating legal documents has its own challenges. According to Nord (2014:59), translation challenges arise because source language texts can be translated into the target language for various purposes. The translator in each case is confronted with two communicative situations and intercultural translation problems. Because the cultures of the two language groups differ, the translator may use words that cause conflict between them. As a result, word equivalence becomes an issue because some terms in the source language text have no equivalents in the target language. In the case of legal translation in Parliament, some of the words and phrases used in the bills and acts originate from Latin. A translator thus has to try and coin a suitable word or define the word for the target reader to be able to understand the message. At times it was necessary to know the origins of words, and language specialists had to consult the drafters of the original documents. The introduction of a co-drafting programme might eliminate or reduce the problems that are faced by language specialists. Such a programme would eliminate the need for language specialists to work in isolation because they would work together with the legal drafters. The introduction of co-drafting may also eliminate or reduce the poor quality of translated documents because both practitioners would have an equal understanding of the drafting process and the jargon used. This process would give the translator the advantage of working with the originator of the source document, and all questions needing clarity would be resolved as they arise.

If co-drafting units were to be introduced, there would be a need for language specialists to be trained both as language specialists and legal practitioners. This would avoid confusion when dealing with translations that require experience on both fields. A specialised legal translation qualification that will offer modules like introduction to law, legislative drafting, interpretation of statutes, translation studies and other relevant modules may be a breakthrough in the field of legal translation.

The aforementioned proposal can be a good foundation and a major breakthrough in eliminating legal translation problems.

Language practitioners who have experience in working with legal documents or have a legal qualification complained about the quality of some of the bills and acts they are sometimes requested to edit. One language specialist indicated that sometimes he is forced to read the English memorandum of a bill to understand what the translator was trying to say. He said that the translation is always of poor quality and he is forced to re-translate most of the clauses or to send the translation back to the sender. Comments are given to the sender highlighting the challenges in the documents.

5.10 Language practitioners in OCSLA

Through the interviews with the language specialists in the OCSLA (language unit), it was learnt that the office had developed a fully-fledged language services unit in December 2007, informed by the National Language Policy Framework. Its main goals are to recognise multilingualism and promote the equitable use of the official languages, which in their language policy is stipulated as Afrikaans, English, and all Sotho languages, Xitsonga, Tshivenda, Siswati, isiNdebele, isiXhosa and isiZulu.

The OCSLA, Parliament Language Services and other stakeholders have, during the translation of bills, during the process of terminology development and on a number of projects, collaborated with other government departments such as the Cultural, Religious and Linguistic Communities Rights Commission, the South African Translators' Institute, the Centre for Legal Terminology and PanSALB. However, it was reported that there has not been much cooperation with translators from other language units and National Language Services, as they do not respond positively to collaboration. Most of the language specialists reported working in isolation and they did not often meet to develop terminology. If they could meet more often to develop terminology, especially legal terminology, the problems and issues pertaining to terminology development may be resolved. This does not bode well for a nationally driven and coordinated process of cooperation in language development. Where legal terminology has been developed it has depended on the

inclination of individual officials.

As noted by Wagner, Bech and Martínez (2002:50), what is said above is true because terminological problems in this context are a perfect example of the dilemmas of articulating national legal structures for the coordination and harmonisation of national policies and legislation.

Translators must adhere to institutional terminology that has been developed to indicate univocal common notions in all official languages, including all types of bodies, procedures, and technicalities. Such words are regarded as the sacred backbone of the common framework, and they are often recognised as authoritative by specialised users outside the organization. By doing so, translators will be able to eliminate the problem of misinterpretation.

With regard to monitoring the quality of translated bills and acts in the OCSLA, the study established that there is a great need for quality checkers who perform quality assurance on the translated bills. This requires the office to appoint more specialists to edit and proofread the work before it is sent to Parliament for processing. Translators also felt that they need more training to be able to produce quality work in the department. Such training can have a significant impact on the quality of original texts and on the overall quality of multilingual texts that are produced by the unit. Well trained translators can rectify the draft submitted to them for translation if they are involved in the early stages of drafting. Kaduczak (2005:39) agrees when he says that in his experience the translated draft might serve as a basis on which to improve the original, and the interaction with authors may lead to an enlightening dialogue in which the legal translator expertise is unveiled to and acknowledged by the experts involved in drafting legislation.

Frame (2005:22) also addresses this issue of taking into account the complexity of text creation processes as well as the various language and professional backgrounds of drafters since he feels it is not unexpected that translators commonly find flaws. While errors in certified legal instruments are invariably replicated until explicitly corrected, translation serves as a quality control mechanism for institutional drafts. Translators must be permitted to bring mistakes and "obscure" language to the notice of drafters at all times. Translators maintain

that if drafters were to realise that comments raised by translators can be extremely useful, the issue of quality could be dealt within the early stages of translation and drafting. Input from translators might be appreciated in the process of finalising the legislative process, and previously overlooked inaccuracies may be rectified. Errors and ambiguity would be realised early on, before legislation reaches its final draft. The aforementioned method could be of immense assistance if departments were to consider it. Again, the researcher claim that the issue of capacity would be a problem, since this process of sending bills back and forth may be exhausting to the translator who does all these things alone. Translators always work under pressure and that may affect translation quality.

5.11 Other language specialists entrusted with legal translation

The data collected showed that there is a great need for training in the legal language field. Lawyers do have a full four years of training, but legal language specialists are only trained as general language practitioners. In the medical field as well, doctors are trained specifically for the field where they will be practising. Therefore, there is a growing need for language specialists to be trained in the subject in which they will be practising. If language specialists will be translating legal documents or in the field of agriculture, training to the field in question must be provided for such translators. Translators also felt that the Nguni official languages are not treated equitably because there is an over-utilisation of isiZulu and isiXhosa. They said that most of the translation request they received were for these two languages. Siswati and isiNdebele legislation is perhaps requested once or twice per quarter. Some participants also expressed the view that since Parliament is a national legislature of the Republic of South Africa, representing all the provinces, legislation passed by this institution must be translated into all official languages. Therefore, the use all the official languages of the country is pivotal.

All government departments, including Parliament, need to be informed of language issues through appropriate information and awareness campaigns so that they can appreciate the value of serving the public in their different languages. Translators and interpreters should be appointed in the public service to assist the

officials in language services in providing good services to clients. Training of legislative language specialists and translation of legislation equally into all official languages should be utilised to enhance, supplement and assist the language services rendered by Parliament. Parliament needs to use the strength and the position of Afrikaans as a positive lesson to advance the other official languages. Afrikaans must be used as an example in language development and terminology development for all the indigenous official languages of South Africa. Legislative translation is a very important and sensitive task. Therefore, expertise must be applied.

5.12 Strategies adopted by language specialists

The data collected and observed showed that even though translators have challenges while translating, they employ a variety of strategies to overcome these obstacles. Baker (1992:26) listed a number of strategies which have been used by professional translators to solve translation problems. Baker believes that translation strategies are the main link between theory and practice, and continues to state that translation strategies justify translation theory. Baker's strategies are some of the approaches employed by language specialists to address their translation challenges. The translator's decision to use translation strategies will always depend on the initiator and the purpose of the translation.

Language specialists are always aware of the aim of their assignment, the language specialists used the following tactics when translating: literal translation, loan translation, borrowing, paraphrasing, translation by using a more general word and employing superordinates. Literal translation allows translators to stick as near to the source text form as possible without having to worry about the source language structure. This method is used by language professionals the majority of the time since it aids in the translation of legal language because it follows the original form. When the translators are following the structure of the source text, which is always unfamiliar to the target reader, adopting a loan term is also a tactic that always helps. Transliteration is the term used by translators to describe how terms acquired from other languages are easy to grasp because they follow the structure of the original. The other approach used is translation by paraphrasing.

Although the source language may be translated by a matching phrase in the target language, translators preferred this technique because it uses changes in the internal structure of the noun phrase or verb phrase. The majority of translators were hesitant to utilize the method of translation by omission. Their point was that if they followed this technique, they may lose out on vital information that was supplied in the source text but was supposed to be in the target text. As a result, the data gathered demonstrated the need of adopting translation techniques, as well as the fact that these translation strategies can be utilised in conjunction with other tactics as necessary. Translators should continue using these strategies as a means of solving equivalence problems, producing quality and accurate translations.

5.13 Conclusion

This chapter discussed the data presented and analysed in the previous chapter. There are key topics that were discussed, among others were the legislative process, language equality, the importance of training language specialist and how can on the job training assist in filling the gap that exist in the field of translation. This chapter has established that there is a great need for well-trained legislative language specialists in all government departments and in Parliament.

More emphasis is made on this chapter that institutions of higher learning need to open colleges that specialises on training legislative language practitioners that will be able to provide the translation services that are required in the institution. These colleges must have specialisation courses in all the areas where there is a need for translation. The study has also established that the lack of legal terminology that can be used by the language specialists contributes to the poor quality of translated documents. Emphasis is also made on the fact that PanSALB as a body established to promote multilingualism through translation, interpreting and terminology development, need to ensure that dedicated language agencies are established to deal with terminology development issues.

The researcher gathers that Afrikaans has proved that there is no language that is superior or inferior and that languages develop through use in different platforms overtime and believe that the indigenous languages may follow suit. The data from

language specialists have revealed that Parliament have tried to use these languages but most of the Members' speeches are written and delivered in English. This chapter highlighted that African languages are still not developing because they are still not being used the way English and Afrikaans are used in government and in translating legislation. The data obtained from language specialists indicate that the Pan South African Language Board need to do more regarding monitoring the implementation of language policies that promote multilingualism in government institutions.

CHAPTER 6: CONCLUSION

6.1 Introduction

This study set out to review the gap that exists in the legislative process pertaining the translation of legislation and any other legal documents from English into Afrikaans and Siswati. This was done with the goal of identifying some of the key contributing elements to the institution's success or failure while delivering translations in second languages. The aim of the study was to investigate the processes followed by translation units in SA Parliament in ensuring that proper guidelines are afforded for future translation of legislation and that translators are well trained in executing their duties meticulously. In order to achieve the study's aim, bills and other pieces of legislation were reviewed with the involvement of language practitioners working for Parliament. These language specialists were interviewed to show how they do their translations as well as the difficulties they come across during the process of translation. In conducting this study, language specialists were informed about the processes involved in the study so that they could be available when they were needed. The language practitioners were also informed about the type of questions they would be asked and the information that was required from them, in order for them to prepare for the interview sessions. In conducting this research, the objectives of the study were achieved.

In the previous chapters, many factors were highlighted. Among other things, the issue of the continued dominance of English and Afrikaans in Parliament was raised. This implies that what former President Nelson Mandela promised the people of South Africa that "there shall be a social order which respects completely the culture, language and religious rights of all sections of the society and fundamental rights of individuals" has still not been fulfilled. Indigenous languages do not have the full respect they deserve, and all languages in South Africa are not treated equally and do not enjoy parity of esteem and their development are still far more limited, as stated in the Constitution by Kandt (2005:1).

Chapter 1 highlighted the role translation plays in the process of communication through legislation. It also outlined when translations are used and for what reasons. Chapter 1, particularly the introduction, firstly dealt with the vital role played by

translation services in the legislative processes. The chapter further outlined all activities in which the Parliament engages to fulfil its constitutional obligation. The chapter also contained a brief background of the establishment of the language unit in the office and this unit's role in promoting access to justice for all, in compliance with section 6(2) of the *Constitution of the Republic of South Africa*, 1996.

The chapter went on to introduce the history of the South African Parliament, its establishment and the reforms it has gone through until to date. It was also important to introduce the history of South African languages and the challenges these languages faced in early years before the dawn of democracy. Finally, Chapter 1 looked at the progress that is being made in language planning, development and empowerment in South Africa and in Parliament.

Chapter 2 undertook to review literature and provides the theoretical framework. In doing so, the researcher introduced the chapter by defining translation as an activity that requires specialist knowledge and experience. This chapter also put forward the ideas of Newmark when he sees translation as craft that requires a skilled person who can be able to transfer a written message from one language with the same message in another language. The chapter also addressed the legislative process, the work of Parliament in ensuring that the public is involved in the legislative process, the legislative framework and a brief discussion of the Parliamentary Language Policy. The main focus was on contextualising legal translation and interpreting in South Africa, defining legal language and identifying the need for translators to master legal translation.

The chapter also looked at the different pieces of legislation that govern languages in South Africa. It paid special attention to legislative language practice (specifically translation into indigenous languages) in South Africa as a fairly new profession in South Africa, as it was fully acknowledged after the Interim Constitution of 1993 and fully covered by the 1996 Constitution. This chapter dealt with both the field of translation and that of interpreting, especially legal translation and consecutive interpreting in South African courts. Interpreting was mentioned in passing as it was not the main focus of this study. The theoretical framework discussed the translation approach and the phases of the translation process. The

main focus was the functionalist approach and its development, translation models, the translation process, translation strategies. Lastly, the chapter contained a discussion of the translation models that are available for translators to choose from when they are given a translation assignment, to address the needs of professional translation in modern society.

Chapter 3 contained an explanation of the methodology, data collection, and analysis. The methodology used in the study were interviews, ethnographic observation, and document analysis. This chapter also highlighted the questions that were asked to the participants during the interviews and also the data focus. The chapter on methodology also indicated the biographical data of the participants and how they were selected.

Chapter 4 presented the collected data and the analysis of that data. The data was collected from language specialists through interviews, document analysis, ethnographic observations and presented by being categorised into different themes and which were further organised into groups. Examples were provided to reveal the important role that translators play when choosing a strategy that might work for the assignment given to them.

In Chapter 5 the data presented in the previous chapter is discussed. This chapter concluded with a discussion of some of the thoughts that were put forward by the language specialists in Parliament and outside Parliament. The present chapter is the final one, the remainder of which presents the findings, recommendations and the general summary and conclusion.

6.2 Findings

Findings reveal that twenty-seven years after having earned freedom and having been declared a democratic state, nothing substantial can be pointed at as a drastic measure that has been used to uplift the status and maximise the use of indigenous languages of South Africa. A number of programmes have been rolled out to try to develop and empower the use of indigenous languages in the country, but the results are insignificant. There are even days that are declared as International Mother Tongue Language days which are celebrated each year where UNESCO re-iterates

its commitment to linguistic diversity. Countries are invited to celebrate the day in many languages as a reminder of the importance of multilingualism and linguistic diversity. South Africa has enough translators and financial resources to carry out the work that is needed by the government departments and to promote multilingualism, but the finances are misappropriated.

Alexander (1999:5) is of the view that the failure on the part of independent African governments, South Africa being one of them, to develop the indigenous languages of the people results in failure in these countries and causes stagnation and mediocrity. Alexander also mentioned that the colonialization of Africa has created a language barrier between the people and the government. When Africa was colonised, most of the indigenous languages colloquialised English words and made them part of the language. Through the years Nguni words have been made into a transliterated version of an English word. This is evident in South Africa where most important documents, such as legislation, are assented to mostly in English and Afrikaans instead of the languages that people understand. Prior to 1994, acts were assented to in English and Afrikaans but now they are only assented to in English. The second-language text of a bill only accompanies the English-language text as required by the rules, but it is not signed by the president. The efforts that are put by the language specialists in translating a bill are not recognised since the language speakers of the second language used for translation are always not aware about the existence of that document.

The study highlighted that South African languages have played an important role in apartheid South Africa. Languages have been central to South African history and were used as a political instrument during the colonial and apartheid years. Language was used as an instrument to colonialise, but it was also used in defiance. The colonial language was often regarded as being superior to other languages, which were therefore inferior. English as well as Afrikaans were used as means to access power, and as tools to oppress and dominate other racial groups classified as sub-human, namely the indigenous people of South Africa. These so-called superior languages were used to maintain the distribution of wealth as the preserve of White people, resulting in unequal distribution of economic capital as a means of preserving racialized inequality. Despite having been given official status, some

languages on the other side of the linguistic divide are marginalised, oppressed and degraded (Kandt, 2005:9).

The study also brought to light that the plight of indigenous languages today has a long history. They were related to the origins of the division of people into inferior and superior races. The colonisers were treated as natural people, while the indigenous people were treated as second-class citizens. The former had language and the latter had no language. This condition, which began in the 15th century in America, was replicated in the 19th century in Africa and South Africa. South Africa is thus faced with linguistic colonialism, which is “a component of the racialisation process of dehumanising colonised people” (Veronelli, 2012:119). This has continued in various ways in South Africa until the present day, leaving the indigenous people without a voice. Most provinces have adopted only one or two African language with English and Afrikaans, and it is not clear that there has been much progress in language development even at this level, again suggesting that some people are still without a voice in provinces (Kandt, 2005:9).

The study also revealed that understanding language, its importance and its position in colonial and apartheid culture would be a significant starting point for taking radical action towards actually developing and empowering South Africa’s indigenous languages. This will make evident the influence it has had on such a culture. Understanding language and its role in a colonial society will help South Africans understand the role of translation in their society. It is time for South African authorities and bodies who are entrusted with language transformation to understand why everyone should be made aware of the importance of language in communication.

The previous chapter looked at the importance of using plain language to empower translators in translating legislation into South Africa’s oppressed languages, and it became clear that language is often taken for granted, possibly because people who have mastered a natural language and speak it fluently do not know how important it is. When the speakers of a language take it seriously, they will take action and work to improve and nurture their languages to become important tools. They will be dedicated to making sure that the legislative process includes the use of indigenous languages from beginning to end. There has been a lack of dedication

and vision in interpreting and enforcing the provisions of the South African Constitution (1996), the *Use of South African Languages Act* (2012), *South African Language Practitioners' Council Act* (2014) and the *Pan South African Language Board Act* (1995).

The lack of similarities between Latin terms and Siswati words create major problems as some Latin legal terms and phrases are rendered in a descriptive manner. It is difficult to overstate the importance of translational notation, which provides for a thorough grasp of the translated legal text, the filling of gaps in the reader's previous knowledge, and the resolution of cultural conflicts in the professional field. The lack of translation tools which are widely used by most departments in the field of translation is also a major problem. Some of their problems arose from the style and the language used when drafting the legislation, as well as from the language the legal advisers use. The study also revealed that the language practitioners in Parliament need intensive translation training because most of them joined the institution without skills in legal translation and without proper qualifications. In addition, since they joined the office, they have not been offered training in legal translation but only in interpreting, editing, terminology development and proofreading, which amount to less than 30% of their key performance areas. Therefore, the implication is that the translation unit in Parliament operates with unskilled and inexperienced translators. This explains the complaints the translators themselves had regarding legal translation and editing.

The study put more emphasis on formal training as necessary to assist individuals who want to become professionals in their work (translation and interpreting) to enhance their performance and reach their full potential. These data suggest that if translators underwent proper legal translation training, the translation unit in Parliament would vastly improve. Training is essential for success, and an organisation that does not prioritise or invest in its employees' training loses competitiveness over time. This is what is currently happening with the language unit in Parliament, because management has failed to realise that training is closely linked to performance and is a key component in the delivery of quality translation services.

The study indicated that OCSLA introduced a new method of identifying training

needs among their employees because the translators have indicated to the office the value and importance of training. The majority of speakers of indigenous languages in the office (state law advisers) believe that if someone can speak two or more languages fluently then that person can translate. They also believe that someone who is bilingual will be good at translating from one of their languages into another without further training. However, they are not aware of all the complexities involved in the process of translation. The statements above are untrue as translation is a skill and an art. To be able to speak more than one language does not make someone a good translator. A combination of talent, attitude, education and practice produces a good translator. For example, some government departments have employees who edit legislation after it has been submitted to them by the office. These individuals are employed as language specialists but they do not speak the language. The researcher observed that some employees are also used as quality assurers or proof-readers just because they can fluently speak and write a particular language.

The study find that translators work tirelessly in difficult situations and often work under pressure. It is vital that the translator should demonstrate professionalism in all dealings with clients and adhere to superior standards of performance in the production of translations and, most importantly, in the ability to meet deadlines. This can be made possible after translators have progressed through training and have been provided with relevant resources. The training programmes must be aimed at developing translators within the framework of continuing education, and should equip them with a series of skills and competencies that are relevant to both their professional status and their future work.

The study also showed that, currently, translators are not provided with enough resources (dictionaries, statutes, translation tools, translation software and other relevant documents) for pre-translation preparation. The translators of some of the language groups ordered their tools and other resources early on, soon after their arrival, but have still not received them. Some translators have applied for translation training opportunities that are offered by the University of Stellenbosch and other institutions, but the department takes time to respond to such applications. The translators are of the opinion that the provision of the relevant resources

mentioned above could help them do their work.

The study revealed that legal translation requires the translator to have specialised knowledge that differs from that of a general translator. Therefore, training is very important in the field of legal translation. When the Department of Justice advertised the posts for legislative language practitioners, it listed the following as requirements: a university degree with a major in languages, a legal background, knowledge of other languages and experience in translation. The interviewed translators felt, however, that the aforementioned requirements were not enough to enable them to carry out their day-to-day duties without further in-house training. When Parliament advertised their language practitioner posts, they advertise them the same as other general language practitioner posts. Whilst training can be seen as the biggest problem in the institution, hiring editors and proof-readers can also be vital at Parliament. At the moment, the translators translate, proofread and edit at the same time. This shows that translation and language development are not being taken seriously by the language unit's management.

6.3 Recommendations

For the purpose of delivering good translation, proofreading and editing services in Parliament, the following are recommended. First, the office needs to invest in developing a training model that dwells more on the use of plain language in legislative drafting and translation. Possibilities should be considered for beginner translators to first receive training from an accredited training institution in the theory and practice of translation using plain language before assuming their legal translation duties on any of the legislation received by the translation unit. Training of translators should be ongoing to keep up with the developing trends in the language field. The University of Stellenbosch offers short practical courses in legal translation, and the University of Pretoria and the University of Johannesburg also offer courses in legislative drafting with special emphasis on the use of plain language. Parliament can also work hand in hand with Justice College, which offers free training to all government department employees in the use of plain language and drafting in plain language, as well as translator and interpreter training.

Second, parliamentary rules on second-language translations need to be amended

to cater for certification in both languages. The second-language text must also be submitted at the same time as the English text and be treated as an official text. The rules must provide that a bill cannot be introduced in Parliament if it does not have a second-language translation. Departments submit the English draft bills to Cabinet for approval before certification and introduction, but the second-language is not required at that stage. If the development and empowerment of languages is to be taken seriously in our country, this needs to change. Draft bills must be submitted before Cabinet in English and at least one other official language. This can be done on a rotational basis. The second-language bill must also be treated as the official language of the bill. The introduction of co-drafting, as suggested in Chapter 4, could assist legal practitioners and language practitioners to work together in creating a uniform document. By implementing the above-mentioned recommendations, Parliament can render excellent services to all government departments and the public by ensuring that all people have access to information in their languages.

The absence of vision, passion and commitment on the part of the employer in developing a functional language policy for Parliament is seen as a lack of aspiration towards language development. Given that the people of the country are at a standoff, one might wonder if there is a way around the brick wall called policy implementation. With proper policy development and implementation, there will never be a language problem that cannot be solved. The challenge is to figure out how to get there. If the powers that be cannot be convinced to take seriously the importance of working on policy development, implementation and working on the indigenous languages in trying to change the present situation, the little that has been done presently will too fail. This third recommendation is not the simplest of tasks, since any effort to develop these languages would necessitate large amounts of money, which the government should provide. Alternatively, one might turn to the private sector, but it almost always supports and/or invests in companies that produce immediate returns. Investing in language growth and empowerment is, sadly, a long-term project. It is therefore not easy to convince the private sector. The dedicated speakers of these languages, however, should not give up hope of making a breakthrough.

Additionally, the idea of appointing role players, mentioned in Chapter 6, can also yield positive results. The Department of Arts and Culture, together with PanSALB, must make a plan to coordinate these role players. The appointees can be based at the Language Research and Development Centres and be given terms of reference. This could be an excellent way for the department and PanSALB to do something admirable to support South Africa's indigenous languages. These recommendations can be basic measures that can be taken to restore the status of South Africa's indigenous languages and ensure that their declining use becomes a thing of the past. Furthermore, with the appointment of such role players, it might be simple to centralise and organise operations, preventing the duplication of effort and human resource overstretching. Collaboration with a wide variety of stakeholders and organisations would help advance this honourable cause. The restoration of indigenous languages' integrity and passion is possible. Afrikaans is a good example of a language that was developed and empowered by the apartheid government and is now used in a number of important fields.

Finally, the move from bilingualism to multilingualism came with many uncertainties. The expenses and inconveniences would have been enormous if every document were to be produced in all eleven languages. No one would have qualified for a job in the public service if knowledge of all eleven languages were a requirement. What multilingualism requires is to acknowledge the fundamental rights for all eleven languages and find sensible and practical ways of realising these rights. English and Afrikaans are already in a strong position and their status has reached the stage of equality with regard to the translation of legislation. One cannot say the same about African languages, however. Though spoken by the majority of the people in this country, these languages are still marked with inequality. Nonetheless, there is hope that language bodies will continue to promote the idea of equal status among all languages. Parliament needs to start using all indigenous languages on a rotational basis when translating internal daily papers and bills that are introduced for the first time. By doing so, the institution will be recognising the rights that are enshrined in the Constitution, namely the right to use one's own language, the right to develop one's language, the right to be understood and to understand other languages and the right not to be discriminated against because of one's language.

6.4 General Study Summary and Conclusion

The research objectives were met through the use of several different resources, one of which an exploratory approach that allows for deeper analysis of the research issue and allows research participants to share their subjective viewpoints on the research topic. The researcher used interviews, ethnographic observations and document analysis to gather data, and to analyse data she made use of thematic analysis. The functionalist method to translation was also used by the researcher since it focuses on the functions of the translated text and ensures that it fulfils its intended communication function. These resources allowed the researcher to investigate the translation and certification of legal text in the Parliament of South Africa.

The researcher gathered that people use language to express their views and norms. The government use laws to govern its people. The research further indicated that language is an important tool that the government uses to communicate with the citizens.

The goal of this research is to learn about legal language and legal translation and the problems that are faced by translators in Parliament when they are required to translate a certified legal text before it is sent for assent. To sum up, the purpose of this study is to understand more about legislative process and legal language translation, as well as the challenges that translators in Parliament encounter when they are entrusted with translating certified legal texts before they are dispatched for assent. As a result, the participants included language specialists, particularly translators who translate legislation for Parliament and the Office of the Chief State Law Advisers in the Department of Justice. As an observer who has worked for the Department of Justice and continues to work for Parliament, the researcher also participated in the study. The researcher was able to gain insight into the legislative translation process and also the experiences of language specialists in relation to legal document translation and the feasibility of implementing other translation methods to assist Parliament in realising the language rights enshrined in our

Constitution. The study highlights that our indigenous languages will inevitably become extinct if we do not address the historical inequalities that still exist in how our languages are utilised. The researcher recommends that additional studies and innovation will be required in future to address the issue of language use and inequality when translating government legislation and Parliamentary papers.

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APPENDIX 1: CONSENT FORM

CONSENT FORM FOR

RESEARCH TITLE:

RESEARCHER:

I have been requested to participate in a research titled “the Translation and Certification of Legal Text: Parliament of the Republic of South Africa as a case study”, and I have discussed the research project with Thobile Mbata who is conducting this research as part of a her PHD degree supervised by Dr Rethabile Possa-Mogoera in the Faculty of Humanities at the University of Cape Town.

I understand that my participation in this research is voluntary, I am free to refuse to participate and I am free to withdraw from the research at any time. My refusal to participate or withdrawal of consent will not affect my treatment in any way or my relationship with my colleague.

If I have any enquiries about the research, I can contact Ms TP Mbata at 082 664 5796. By signing below, I am indicating that I fully understand the consent. I understand that the data collected from my participation will be used for the purposes of this Dissertation and I consent for it to be used in that manner.

Signed Date

.....

Name (please print)

.....

APPENDIX 2: QUESTIONS TO PARTICIPANTS

Dear Participant,

I would like to invite you to participate in my PHD research study which aims to understand the most important aspects of legal language in South Africa, problems faced by legal translators and translators in general. I would appreciate it if you could spare 20-30 minutes of your time and complete a short anonymous survey, which will require you to reflect on your understanding of some of the translation of legal texts into Nguni languages.

This research has been approved by UCT's School of Languages and Literatures: Humanities Faculty Ethics Research Committee.

Your participation is entirely voluntary and you may choose to withdraw from the research at any time, for any reasons, and without any penalty. There are no known risks associated with your participation in this study. You will not be requested to provide any identifiable information. Your responses will remain anonymous. The data will be kept confidential and the results of the study will be used for academic purposes only and presented in comprehensive form.

If you are willing to participate in this study and support my research, please answer the questions below. Completing and submitting your responses via WhatsApp or email will be considered as informed consent to participate in the study. There will be no incentive for participation in this study.

If you have any questions, or concerns, please do not hesitate to contact me on the email addresses provided below.

Thank you for your time.

Researcher Name: Thobile Mtyobile (Mbata)

Researcher Email Address:

MTYTHO001@myuct.ac.za

I have read and understood the cover letter presented at the beginning of this study. I understand that all my answers will be kept confidential and that my identity will remain anonymous throughout this questionnaire and this study as a whole. I voluntarily consent to taking this questionnaire.

- I consent to participate in this study.

- I do not consent to participate

in this study.

-

- Questions

1. What is your mother tongue?

.....

2. What additional language are proficient in?

.....

3. Do you have a qualification in languages or experience in working in the languagefield?

.....

4. What work experience do you have in translation, editing, linguistics andproofreading texts that have legal content?

.....

5. Are you aware of any problems that are faced by translators assigned to translatelegal documents? If yes, please clarify.

.....

6. Do you think institutions performing legal translations have enough capacity toproduce quality documents?

.....

7. Do you think that there is an equitable use of the four official Nguni languages by thegovernment, if not why do you think this is the case?

.....

8. The constitution require that Acts are submitted in at least two languages for assent,the department introducing the Bill choose the second language for certification and assent.Do you think the clause of equitable use of languages (in this case the Nguni languages) in legislative translation if fairly applied?

.....

9. Are there any training programmes afforded to language specialist who are taskedwith legal translation? If yes, please clarify.

.....
10. Do you think introduction of a programme dealing specifically with legal translation training in South Africa institutions of higher learning can eliminate the translation problems faced by language practitioners?

.....
11. Do you think the introduction of dual language drafting units can eliminate the poor quality of translated legal documents?

.....
12. Is there a need for a legal language translator to have a language qualification coupled with a legal qualification to avoid confusion when dealing with legal text?

.....
13. If you have read a legal document translated in your language (e.g. a Bill, Act, ordinances, regulations etc.), were you happy with the quality of the translation? Please also indicate the document/s that you once read.

.....
14. Any other general comments on legal text translation language.

.....
APPENDIX 3: TRANSLATION BRIEF

NAME OF PROJECT: Skills Development Levies Bill

Layout of documents: The Bill has 4 pages, and is a word

document, Arial font. Translation required: The Bill must be translated into

Siswati.

Proofing: To be done after layout

Important Information to translator/s:

To facilitate the layout process (flowing

BILL

To modify the customary law of succession so as to provide for the devolution of certain property in terms of the law of intestate succession; to clarify certain matters relating to the law of succession and the law of property in relation to person's subject to customary law; and to amend certain laws in this regard; and to provide for matters connected therewith.

PREAMBLE

SINCE a widow in a customary marriage whose husband dies intestate does not enjoy adequate protection and benefit under the customary law of succession;

AND SINCE certain children born out of a customary marriage do not enjoy adequate protection under customary law;

AND SINCE section 9 of the Constitution provides that everyone has the right to equal protection and benefit of the law;

AND SINCE social circumstances have so changed that the customary law of succession no longer provides adequately for the welfare of family members;

AND SINCE the Constitutional Court has declared that the principle of male primogeniture, as applied in the customary law of succession, cannot be reconciled with the current notions of equality and human dignity as contained in the Bill of Rights,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows: —

Definitions

1. In this Act, unless the context indicates otherwise—

"customary law" means the customs and usages traditionally observed among the indigenous African peoples of South Africa which form part of the culture of those peoples;

"descendant" in relation to a deceased person, includes a person who, in terms of customary law, was a dependant of the deceased immediately before the death

of the deceased; "**house**" means the family and property, rights and status which commence with, attach to, and arise out of, the customary marriage of a woman; "**Intestate Succession Act**" means the Intestate Succession Act, 1987 (Act No. 81 of 1987); "**spouse**" includes a partner in a customary marriage that is recognised in terms of section 2 of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998);

"**traditional leader**" means a traditional leader as defined in section 1 of the Traditional Leadership and Governance Framework Act, 2004 (Act No. 41 of 2004);

"**this Act**" includes any regulation made under section 5; and

"**will**" means a will to which the provisions of the Wills Act, 1953 (Act No. 7 of 1953), apply.

Modification of customary law of succession

2. (1) The estate or part of the estate of any person who is subject to customary law who dies after the commencement of this Act and whose estate does not devolve in terms of a will of such a person, must devolve in accordance with the law of intestate succession as regulated by the Intestate Succession Act, subject to subsection (2).

(2) In the application of the Intestate Succession Act—

- (a) where the person referred to in subsection (1) is survived by a spouse, as well as a descendant, such spouse must inherit a child's portion of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Cabinet member responsible for the administration of justice by notice in the *Gazette*, whichever is the greater;
- (b) a woman, other than the wife of the deceased, with whom he had entered into a union in accordance with customary law for the purpose of providing children to the house of his wife must, if she survives him, be regarded as a descendant of the deceased;
- (c) if the deceased was a woman who was married to another woman under customary law for the purpose of providing children to the deceased's house, that other woman must, if she survives the deceased, be regarded as a descendant of the deceased.

Interpretation of certain provisions of Intestate Succession Act

3. (1) For the purposes of this Act, any reference in section 1 of the Intestate Succession Act to a spouse who survived the deceased must be construed as including every spouse and every woman contemplated in paragraphs (a), (b) and (c) of section 2(2).

(2) For the purposes of this Act and in the application of section 1(1)(c) of the Intestate Succession Act, the following subparagraph must be regarded as having been added to that section:

"(iii) where the intestate estate is not sufficient to provide each surviving spouse and woman contemplated in paragraphs (a), (b) and (c) of section 2(2) of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2008, with the amount fixed by the Minister, the estate shall be divided equally between such spouses;"

(3) In the determination of a child's portion for the purposes of dividing the estate of a deceased in terms of the Intestate Succession Act, paragraph (f) of section 1(4) of that Act must be regarded to read as follows:

"(f) a child's portion, in relation to the intestate estate of the deceased, shall be calculated by dividing the monetary value of the estate by a number equal to the number of children of the deceased who have either survived the deceased or have died before the deceased but are survived by their descendants, plus the number of spouses and women contemplated in paragraphs (a), (b) and (c) of section 2(2) of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2008."

Disposition of property allotted or accruing to wife in customary marriage

4. (1) Property allotted or accruing to a woman or her house under customary law by virtue of her customary marriage may be disposed of in terms of a will of such woman.

(2) Any reference in the will of a woman contemplated in subsection (1) to her child or children and any reference in section 1 of the

Intestate Succession Act to a descendant, in relation to such woman, must be construed as including any child—

- (a) born of a union between the husband of such woman and another woman entered into in accordance with customary law for the purpose of procreating children for the house of the first-mentioned woman; and
- (b) born to a woman to whom the first-mentioned woman was married under customary law for the purpose of providing children to the first-mentioned woman's house.

(3) Nothing in this section is to be construed as preventing any person subject to customary law, other than the woman contemplated in subsection (1), to dispose of assets in terms of a will.

Dispute or uncertainty in consequence of nature of *customary law*

5. (1) If any dispute or uncertainty arises in connection with—

- (a) the status of or any claim by any person in relation to a person whose estate or part thereof must, in terms of this Act, devolve in terms of the Intestate Succession Act;
 - (b) the nature or content of any asset in such estate; or
 - (c) the devolution of family property, involved in such estate,
- the Master of the High Court having jurisdiction under the Administration of Estates Act, 1965 (Act No. 66 of 1965), may, subject to subsection (2), make such a determination as may be just and equitable to resolve the dispute or remove the uncertainty.

(2) Before making a determination under subsection (1), the Master may direct that an inquiry into the matter be held by a magistrate in the area in which the Master has jurisdiction.

(3) After the inquiry contemplated in subsection (2), the magistrate must make a recommendation to the Master who directed that an inquiry be held.

(4) The Master, in making a determination, or the magistrate in making a recommendation contemplated in this section, must have due regard to the best interests of the deceased's family members and the equality of spouses in customary and civil marriages.

(5) Any determination made under this section must be

made with due regard to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

(6) The Cabinet member responsible for the administration of justice may make regulations regarding any aspect of the inquiry contemplated in this section.

Disposal of property acquired and held by traditional leader in official capacity

6. Nothing in this Act is to be construed as amending any rule of customary law which regulates the disposal of the property of a traditional leader who has died and which was acquired and held by such traditional leader in his or her official capacity.

Property rights in relation to certain customary marriages

7. (1) A marriage under the Marriage Act, 1961 (Act No. 25 of 1961), does not affect the proprietary rights of any spouse of a customary marriage or any issue thereof if the marriage under the Marriage Act, 1961 was entered into—

(a) on or after 1 January 1929 (the date of commencement of sections 22 and 23 of the Black Administration Act, 1927 (Act No. 38 of 1927)), but before 2 December 1988

(the date of commencement of the Marriage and Matrimonial Property Law Amendment Act, 1988 (Act No. 3 of 1988)); and

(b) during the subsistence of any customary marriage between the husband and any woman other than the wife of the marriage under the Marriage Act, 1961 (Act No. 25 of 1961).

(2) The widow of the marriage under the Marriage Act, 1961, contemplated in subsection (1), and the issue thereof have no greater rights in respect of the estate of the deceased spouse than she or they would have had if the marriage under the Marriage Act, 1961, had been a customary marriage.

Amendment of laws

8. The laws mentioned in the Schedule are hereby amended to the extent indicated in the third column of that Schedule.

Short title and commencement

9. This Act is called the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2008, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

2. Target text

IRIPHABHULIKHI YENINGIZIMU AFRIKA

**UMTSETFOSIVIVINYO WEKUGUCULWA KWEMTSETFO
WESINTFU WEBUNDLALIFA KANYE NEKUPHATFWA
KWEMITSETFO LEHAMBISANANAWO**

*(Njengoba wetfulwe kuMkhandlu Wavelonkhe (sigaba
lesiphakanyisiwe 76); ummongo lochaza loMtsetfosivivinyo
ukhishwe ku-Gazethi yaHulumende lengunombolo ya)
(Lombhalo wesiSwati ngiwo umbhalo losemtsetfweni
walomtsetfosivivinyo)*

(NGCONGCOSHE WETEBULUNGISWA NEKUTFUTFUKISWA
KWEMTSETFOSISEKELO)

[B - 2008]

UMTSETFOSIVIVINYO

Kugucula lomtsetfo wesintfu webundlalifa kute kudluliselwe lenye incenye yemphahlangekwemtsetfo walabashone bangakabhali tindlela tekwabiwa kwemafa abo, kucacisaletinye tintfo letihambisana nalomtsetfo webundlalifa kanye nalomtsetfo wemphahla kubantfu labatsembela kumtsetfo wesintfu; nekutsi kuchitjiyelwe leminye imitsetfo; nekugunyata letinye tindzaba letichumana naleto.

SINGENISO

NJENGOBA umfelokati kumshado wesintfu le-indvodza yakhe ishone ngaphandle kwekwenta incwadzi yelifa akatfokoteli kuvikeleka ngalokwanele kanye nekuhlomulangaphasi kwemtsetfo wesintfu webundlalifa;

FUTSI NJENGOBA labanye bantfwana labatelwe ngaphandle kwemshado wesintfu abakutfokoteli kuvikeleka ngalokwanele ngaphasi kwemtsetfo wesintfu;

FUTSI NJENGOBA sigaba 9 kuMtsetfosisekelo ugunyata kutsi wonkhe umuntfu unelilungelo lekuvikeleka ngalokulinganako kanye nekuhlomula kutemtsetfo;

FUTSI NJENGOBA simo setenhlalo sesigucuke ngendlela yekutsi lomtsetfo wesintfu webundlalifa awusagunyati ngalokwanele kunakekelwa kwemalunga emndeni;

FUTSI NJENGOBA inkhantolo yemtsetfosisekelo icinisekise kutsi lenchubo yemntfwanawemfana longewekucala, njengoba kubhaliwe kulomtsetfo wesintfu webundlalifa, angeke ucatsaniswe naletimo tanyalo tekulingana kanye nesitfunti semuntfu njengoba kubhaliwe Kumculu wemalungelo

NGAKO KE UTAWUMISWA yiPhalamende yeRiphabhuliki yaseNingizimu Afrika, ngalendlela:—

Tinchazelo

1. Kulomtsetfo ngaphandle kwekutsi ingcikitsi ikubeke ngaleny indlela—
"umtsetfo wesintfu" usho emasiko kanye nekusentjetiswa kwawo kubantfu bemdzabu baseAfrika labahlala eNingizimu ne Afrika lekwakha incenye yemasiko alabo bantfu; **"situkulwane"** ngekwwebudlelwano naloshonile sifaka ekhatsi umuntfu lo, ngekwemtsetfo wesintfu, bekangulowondliwa nguloloshonile ngembi kwekutsi ashone;
"indlu" isho umndeni kanye nemphahla, emalungelo kanye nesimo lesicala, lesichomekeke,nalesivuswa, ngumshado wesintfu wemuntfu lomsikati;
"umtsetfo walabashone bangakabhali tindlela tekwabiwa kwemafa abo" usho (umtsetfo walabashone bangakabhali tindlela tekwabiwa kwemafa abo) *Interstate Succession Act, 1987*(Act No. 81 of 1987);
"inkhosikati" kufaka ekhatsi umlingani kumshado wesintfu lovunyelwe ngekwesigaba 2 ku- *Recognition of Customary Marriages Act 1998* (Act No. 102 of 1998);
"umholi wenzabuko" kusho umholi wenzabuko njengoba kuchaziwe kusigaba 1 we- *Traditional Leadership and Governance Framework Act, 2004* (Act No. 41 of 2004); **"lomtsetfo"** ufaka ekhatsi nobe ngumuphi umtsetfo lowentiwe ngaphasi kwesigaba 5; futsi **"incwadzi yelifa"** kusho incwadzi yelifa lapho khona lombandzela we *Wills Act, 1953* (ActNo. 7 of 1953), usebenta khona.

Kuguculwa kwalomtsetfo wesintfu webundlalifa

2. (1) Lelifa nobe incenye yalelifa lanobe ngabe ngumuphi umuntfu longaphasi kwemtsetfo wesintfu loshone ngembi kwekutsi lomtsetfo ucale kusebenta futsi lelifa lakhe lingakahlukaniswa ngekwewabiwa lokubhalwe phasi ngulowo muntfu, litawabiwa ngekwalomtsetfo wekwabiwa kwemafa njengoba kugunyatiwe ngule *Interstate Succession Act*, ngekuya kwasigatjana 2.

(2) Ekusentjetisweni kwale *Interstate Succession Act*—

(a) lapho khona lomuntfu lokukhulunywa ngaye kusigatjana (1) ashiye inkhosikati, kanyefutsi nesitukulwane, leyo nkhosikati itawutfoala incenye

yelifa lemntfwana kulelifa lelingakabhalwa kutsi labiwe njani nobe lelo linani
lelifa lelisele lelingadluli ngekwabungako lemali lemisiwe lilunga
lekhabhinethi ngaleso naleso sikhatsi lekungilo lelibuketa lokuphatfwa
kwetebulungiswa ngekwesatiso kuGazethi, noma ngabe ngukuphi
lokulungele;

(b) umfati, lokungasuye inkhosikati yaloloshonile lebangene esivumelwaneni
ngekwemtsetfo wesintfu ngenhloso yekunakekela bantfwana kulendlu
yenkhosikatiyakhe, uma ngabe ashone anaye, atsatfwe njengesitukulwane
saloloshonile;

(c) uma ngabe loloshonile bekungumfati lebekashade nalomunye umfati
ngekwemtsetfowesintfu ngenhloso yekunakekela bantfwana endlini
yaloloshonile, lowo lomunye mfati kufanele, uma loloshonile ashone ahlala
naye, atsatfwe njengesitukulwanesaloloshonile;

kuchazwa kwaleminye imibandzela ye-*Interstate Succession Act*

3. (1) Ngekwenhloso yaloMtsetfo, kubuketa kusigaba 1 wale
Interstate Succession Act nkhosikati loshonelwe utawuchazwa ngalokufaka
ekhatsi onkhe emakhosikati lanjalo nabo bonkhe bafati lebavetwe kundzima (a),
(b) na (c) kusigaba 2(2).

(2) Ngekwenhloso yaloMtsetfo kanye nasekusentjetisweni
kwasisigaba 1(1) we-*Intestate Succession Act*, letindzinyana letilandzelako kufanele
titsatfwe njengaletingetwekuleso sigaba:

"(iii) lapho khona lelifa lelingakabhalwa kutsi labiwe njani linganeli kutsi
lingabelwa inkhosikati ngayinye kulabashonelwe kanye nalomfati
lovetwe kundzima (a)(b) na (c) wasigaba 2(2) we-*Reform of
Customary Law of Succession and Regulation of Related Matters Act*,
2008, kulelinani lelibekwenguNgcongcoshe, lelifa litawuhlukaniswa
ngalokulinganako kulawo makhosikati;"

(3) Ekuncumeni incenye yemntfwana ngenhloso
yekuhlukanisa lelifalaloloshonile ngekwwe *Intestate Succession Act*, indzima (f)

yesigaba 1(4) yalowoMtsetfokufanele ufundzeke ngaloluhlobo:

"(f) incenye yemntfwana, ngekwalelifa lelingakabhalwa kutsi labiwe njani laloshonile, litawubalwa ngekuhlukanisa lobungako ngekwemali kwalelifa ngenombolo lelinganako neyebantfwana bemufi lebashiywe ngumufi nobe labashone ngembi kwemufi kodvwa bashiye situkulwane, kanye nenomboloyemakhosikati kanye nebafati labavetwe kundzima (a), (b) na (c) wasigaba 2(2) we- *Reform of Customary Law of Succession and Regulation of RelatedMatters Act, 2008.*".

Kuhlelwa nekwabiwa kwemphahla nobe intalo kunkhosikati kumshado wesintfu

4. (1) Imphahla leyabiwe nobe letalele umfati nobe indlu yakhe ngaphasikwemtsetfo wesintfu ngemandla emshado wakhe wesintfu tingahlelwa ngekwencwadzi yemafa yalowo mfati.

(2) Nobe ngukuphi lokuphatselene nalencwadzi yelifa yemfati levetwe kusigatjana (1) kumntfwana wakhe nobe bantfwabakhe nobe ngukuphi lokuphatselene nakokusigaba 1 we-*Intestate Succession Act* kusitukulwane, macondzana nalowo mfati, kufanelekuchazwe njengalokufaka ekhatsi nobe ngumuphi umntfwana—

(a) lotelwe ngekwekuhlangana emkhatsini walendvodza yemfati lonjalo kanye nalomunye umfati lebahlanganiswe ngemtsetfo wesintfu ngenhloso yekutalabantfwana kulendlu yalomfati lobalwe ekucaleni; na

(b) lotelwe kumfati lelomfati lobaliwe ekucaleni beakashade ngekwemtsetfo wesintfungesizatfu sekunakekela bantfwana kulendlu yalomfati lobalwe kwekucala.

(3) Akukho kulesigaba lokutawuhunyushwa njengalokuvikela

noma baningekwemtsetfo wesintfu, ngaphandle kwalomfati lovetwe kusigatjana (1), kwabiwa kwetimpahla ngekwencwadzi yekwabiwa kwelifa.

Kungavumelani nobe kungaciniseki ngemiphumela yesimo semshado wesintfu

5. (1) uma ngabe kuba khona kungavumelani nobe kungaciniseki ngeke—
- (a) simo nobe ngabe ngusiphi sicelo lesifakwa nobe ngumuphi umuntfu lohlobene nemuntfu lelifa lakhe nobe incenye yalo kufanele, ngekusho kwaloMtsetfo alidluliselengekusho kwe Interstate Succession Act;
- (b) simo nobe lokusekhatsi kwanobe nguyiphi impahla kulelo lifa; nobe
- (c) lokudluliselwa kulomunye kwetimpahla temndeni; letitsintsekako kulelo lifa, Indvuna yenkantolo lephakeme (Master of the High Court) lenemandla ngete-Administration of Estates Act, 1965 (Act no. 66 of 1965), ngekuvunyelwa kusigatjana (2), ingenta sincumo lesinjalo lesitawubonakala kuye sineliciniso nobe silinganisa kute kusonjululwe lokungavumelani nobe kususwe lokungabata.
- (2) ngembi kwekutsi kwentiwe lesincumo ngekwesigatjana (1) Indvunaingancuma kutsi kube neluphenyo ngaloludzaba lwentiwe nguMantji kulesigodzi lapho Indvuna iphetse khona
- (3) ngemva kwekutsi kube naloluphenyo lolubukwe kusigatjana (2),Mantji kufanele ente sincomo kuNdvuna loyalele kutsi kube naloluphenyo.
- (4) Ndvuna, ekwenteni sincumo, nobe Mantji ekwenteni sincomolesivetwe kulesigaba, kufanele abeke embili loku lokulusito kumalunga alomndeni loshonelwe kanye nekulingana kwalamakhosikati lashade ngesintfu kanye nalashadengesilungu.
- (5) nobe ngabe ngusiphi sincumo lesentiwe ngaphasi kwalesigaba kufanele sentiwe ngekulandzela imibandzela ye-Promotion of Administrative Justice Act,2000 (Act No. 3 of 2000)
- (6) lelilunga leKhabhinethi lekungilo lelibukene netekuphatsa kwetebulungiswa lingenta umtsetfo lobukene nobe yini lebukene naloluphenyo loluvetwekulesigaba.

Kuhlelwa kwemphahla lezuzwe kanye nalebanjwe ngumholi wenzabuko ngekwemandla embuso

6. Akukho kuloMtsetfo lokutawuhumushwa njengalokuchibiyela nobe ngumuphiumtsetfo walomtsetfo wesintfu logunyata lokuhlelwa kwemphahla kwemholi wenzabuko lesekashonile naleyatfolakala futsi iphetfwe ngulowo mholi wenzabuko kuleso sikhundla sakhe lesisemtsetfweni.

Emalungelo kumphahla ngekuhambisana naleminywe imitsetfo yemshado wesintfu

7. (1) Umshado ngaphasi kwe-*Marriage Act*, 1961 (Act No. 25 of 1961), awuwatsintsi emalungelo ebunikati anobe ngumuphi nkhosikati kumshado wesintfu nobe ngabe nguluphi ludzaba uma lomshado longaphasi kwe-*Marriage Act*, 1961 bewubhaliswe—

(a) Leso sikhatsi nobe ngemva kwamhlaka 1 Bhimbhidvwane 1929 (lusuku lekusungulwa kwesigaba 22 kanye na 23 we-*Black Administration Act*, 1927 (Act 38 of 1927)), kodvwa ngembi kwamhlaka 2 Ingongoni 1988 (lolusuku lwekucalwa kwe-*Marriage and Matrimonial Property Law Amendment Act*, 1988 (Act No. 3 of 1988)); futsi

(b) ngalesikhatsi kusenekulekelelwa kwalomshado wesintfu emkhatsini wendvodzakanye nanobe ngumuphi umfati kungasuye lonkhosikati loshadwe ngaphasi kwe-*Marriage Act*, 1961 (Act No. 25 of 1961)

(2) Lomfelokati walomshado longaphasi kwe-*Marriage Act*, 1961, lovetwekusigatjana (1), naloludzaba lwayo angeke lube nemalungelo langako ngekwemafa alonkhosikati loshonelwe lebebangaba nawo uma lomshado longaphasi kwe-*Marriage Act*, 1961, bewungumshado wesintfu.

Kuchitjiyelwa kwemitsetfo

8. Lemitsetfo lebalwe kulelihlelo itawuchitjiyelwa kuze kufike kulokulokuboniswe kulekholamu yesitsatfu yalelo lihlelo.

Sihlokwana kanye nekusungula

9. LoMtsetfo utawubitwa nge *Reform of Customary Law of Succession Act*, 2008, utawucala kusebenta ngelusuku lolutawubekwa nguMongameli ngekulumemetela kuGazethi.



Chair: Research Ethics Committee
School of Languages & Literatures
Faculty of Humanities

Karin Schmid

Room 201, Beattie Building
Tel: +27 (0) 21 650 2937 / 2607
E-mail: Karin.schmid@uct.ac.za

7th February 2020

Dear Thobile,

Thank you for your application for Ethics Clearance with respect to the research you intend to undertake for your PhD degree on "The Translation and Certification of Legal text: Parliament of the Republic of South Africa as a case study" in the African Languages Section of the School of Languages and Literatures, Faculty of Humanities at the University of Cape Town.

The School's Research Ethics Committee has reviewed your application and has decided that your methodology meets the School's criteria for ethical research as outlined in your application.

We note that the study will be based on willing participation and that participants' confidentiality will be maintained throughout the study. The project will involve interviews with persons, and participants may withdraw from the study at any time.

You will be required to submit an annual report until the research is completed. Kindly submit an annual research ethics report to Ms Shirley Whitmore · Shirley.whitmore@uct.ac.za by 30 November.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'K. Schmid'.

Karin Schmid
Chair of SLL Research Ethics Committee

A handwritten signature in black ink, appearing to be 'R. Roth'.

Associate Professor Roman Roth
Director, School of Languages & Literatures



MEMORANDUM
[For Approval]

TO : Ms PN Tyawa
Acting Secretary to Parliament

FROM: TP Mtyobile
Control Editor: Bills Office

DATE: 30 October 2019



**SUBJECT: REQUEST FOR PERMISSION TO CONDUCT RESEARCH ON THE
TRANSLATION AND CERTIFICATION OF LEGAL TEXT:
PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA AS A CASE
STUDY**

1. Decision Required

The Acting Secretary to Parliament is requested to grant Ms Thobile Mtyobile permission to conduct research on 'The Translation and Certification of Legal Text: Parliament of the Republic of South Africa as a Case Study'.

2. Background

Ms Thobile Mtyobile is a Control Editor in the Bills Office Unit in Parliament, and she is a student at the University of Cape Town (UCT), having been accepted to study for a PHD in African Languages. Ms Mtyobile's research topic is entitled 'The Translation and Certification of Legal Text: Parliament of the Republic of South Africa as a Case Study'.

3. Motivation

In this proposed research project, Ms Mtyobile believes that Parliament is an institution that encourages excellence and where legislation processing which includes, drafting, editing, translation, proofreading and certification is well supported, one believes that it will be beneficial to the academic environment as well as to the institution to provide its contribution to a highly skilled area of work. Through this

research, Ms Mtyobile will gain insight into many of the challenges faced by language specialists and drafters during the processing of legislations and thereby be able to contribute positively to the academic environment as well as directly to the current work environment. I appreciate the attention given to this request and thanking the management for affording me the opportunity to conduct the study in this prestigious institution.

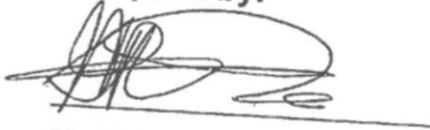
4. Declaration

The information contained in this memorandum is to the best of my knowledge accurate and reliable. The researcher has no known conflict of interest in any of the matters that are addressed in this document.

5. Recommendation

It is recommended that the Acting Secretary to Parliament approves the request to conduct research in the institution.

Compiled by:



Ms TP Mtyobile
Control Editor: Bills Office

30/10/2019
Date



NK BELL
CHIEF EDITOR: BILLS OFFICE

30/10/19
DATE:

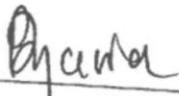
~~SUPPORTED / NOT SUPPORTED~~



MM MOKONYANA
HUMAN RESOURCE EXECUTIVE

05/11/2019
DATE:

~~SUPPORTED / NOT SUPPORTED~~



MS PN TYAWA
ACTING SECRETARY TO PARLIAMENT

8/11/2019
DATE:

~~APPROVED / NOT APPROVED~~