Plain language and multilingualism in South Africa: A focus on literacy and understanding in law drafting

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2025

Declaration of own work

This work has not been previously submitted in whole, or in part, for the award of any degree. It is my own work. Each significant contribution to, and quotation in, this dissertation from the work, or works, of other people have been attributed, and have been cited and referenced.

Signed by candidate

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17 February 2025

Acknowledgements

"My grace is sufficient for you, for my power is made perfect in weakness." I will all the more gladly boast of my weaknesses, that the power of Christ may rest upon me." 2 Corinthians 12:9.

I hereby acknowledge the funding and support from the Mastercard Scholars Foundation and the International Academic Programmes Office (IAPO) at the University of Cape Town, towards the completion of my fulltime master's degree.

I express my sincere gratitude and appreciation to the following key role-players:

Dr Sibonile Mpendukana, for his guidance, insight, opportunity and listening ear. His input towards the completion of this dissertation has truly been invaluable.

My parents, Mr C and Mrs MG Maziba, for their constant support and enduring love. I am because they are.

Abstract

Multilingualism and plain language are underexamined concepts in the prescripts of South African law, in which their minimal representation has deterred the ordinary citizen from linguistic liberty, due to complex and insufferable legalese. Madiba (2014) and Moen *et al.* (2023) studied literacy and multilingual classrooms in South Africa where indigenous knowledge creation and sustenance were discovered as literacy interventions. This study focuses on multilingualism and plain language within the prescripts of South African law drafting in assembling plausible resolutions for legal illiteracy among ordinary consumers.

Previous studies looked at multilingualism and plain language as a lacking factor in the judiciary and recommended that rigorous indigenous language implementation be adopted by the law for fair consumer protection. The study focuses on the challenges faced when decoding legalese and enquires as to whether plain language would be more helpful for a select sample of South Africans. This study looks at how the judiciary can use plain language as a principal framework for legal indigenous language glossaries and vocabularies. The study conducted interviews and observations using law order documentary evidence. The participants were provided with a law order to read, which was followed by a semi-structured interview and discussion.

The study discovered that the select sample in the study tentatively points to a preference to read law documents in English. Indigenous languages were referred to as optional languages or 'nice-to-haves' for law orders to be provided in. The English desire emanated from the economic and social status of the language, which provided more improved educational and employment outcomes than indigenous languages. English dominates legal communication even though citizens struggle with its legal understanding. Legalese tends to be upheld by law professionals in which commitment to law literacy interventions for unlearned citizens needs to be consigned to. Moreover, the study found that media viewership influenced citizen emotions and perceptions of the law as legal televised programming often provides law education and insight.

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Chapter 1 – Introduction and background

1.1 Introduction

This chapter introduces the linguistic context of South Africa where literacy, multilingualism, and language policies, which govern language use in justice and education, are discussed. The chapter outlines the background, aims, objectives and critical questions of the study. Furthermore, the structure of the study will be explored.

1.1.1 Language contexts in post-apartheid South Africa

The Constitution of the Republic of South Africa Act 108 of 1996 states that 'everyone has the right to use the language, and participate in the cultural life, of their choice'. The official languages of the Republic of South Africa are Afrikaans, English, isiXhosa, isiZulu, Sepedi, isiNdebele, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, and South African sign language. This cohort of twelve languages guides the communicative landscapes and language parities of daily South African conversation. The Constitution maps out a progressive objective upon the state to recognise the historically diminished use and status of the indigenous languages of citizens, where the state must take practical and positive measures to elevate the status and advance the use of these languages [Constitution of the Republic of South Africa Act 108 of 1996, section 29 (2)].

The inclusion of indigenous languages forecasted a new lease of life for the Constitution especially in the role of the judiciary, which was formerly used as an institution of oppression, into a transformative organ of application and interpretation that would be fair, impartial and without fear or favour for societal change objectives (Ntlama-Makhanya, 2021). The optimism of the new Constitution came with legacy challenges in language purism, especially in indigenous languages and language maintenance. Challenges, such as language comprehension and equity, continued to creep into the transforming judiciary of the Republic. According to the Foundation for Human Rights (FHR), in 2018, 51% of people in South Africa had heard of the existence of the Bill of Rights or the Constitution. The levels of awareness of the Constitution had increased from 47% in 2011 to 51% in 2018. More astoundingly, less than half of South African women had heard of the Constitution in 2018.[1] These figures act as a testament of deficient law literacy interventions by

[1] The Foundation for Human Rights (FHR) .2018. Democracy challenged: South African largest attitudinal survey on the Constitution: Department of Justice and Constitutional Development < SEJA_short_version.pdf >

the justice system where South Africans continue to fall behind in law discourses and discussions due to non-exposure to the law and illiteracy. In South Africa, the law through policy validation is the definitive institution where the universal operation of language distribution, parity and development is dispensed. The Constitution Act 108 of 1996 is the supreme law of the Republic; wherein the law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled (Constitution Act 108 of 1996:3).

One of the most debated issues between policies and constitutional provisions is that of linguistic practices and implementation. A host of scholars has bemoaned the disjuncture between policy and implementation. For instance, Beukes (2009:35) explains the "trap between intention and performance" which hinders the implementation of language policies that eventually disadvantages indigenous African languages. Meanwhile, Kamwangamalu (2000) is more pragmatic and historical in assessing the problems of policy implementation. Noting how some parents opt for English or call for English to be used in Afrikaans medium institutions, Kamwangamalu argues that this must be understood "against the backdrop of the socioeconomic power of English on the one hand; and of the legacy of Bantu education on the other" (2000:55). These historical language perplexities of South Africa gather more social momentum towards the seemingly inherent supremacy of English as the language of upward mobility and status. It also shows an established sense of a monolingual bias as far as language power is concerned (Alexander, 2005).

Other scholars have called for much more complex, dynamic, and creative ways of looking at and understanding language and its uses (Otheguy *et al*., 2015; Lewis *et al*., 2012; Garcia & Wei, 2014; & Makalela, 2014). They use the notion of translanguaging which reconceptualises language as a form of practice, away from the enumerable and bounded entities. Makalela (2014) and Madiba (2014) define translanguaging as a practice that embraces the complexity and richness of languages, along with translations that aid learners to comprehend subjects, but the fact that the same learners are expected to produce written work in English presents some challenges. As a reprieve and being cognisant of the monolingual bias and dominance of English, plain language can be useful as a component of multilingualism. This point is expanded on in 1.1.4. According to Sasidharan (2015) multilingualism may falter academic achievement in the transition between mother tongue and first additional language when trying to create equivalence and meaning

between language culture and orthography. Additionally, Makena and Mpahla (2021) observe that learners in multilingual settings become exposed to situations of being expected to speak two languages simultaneously where one of the languages, or both, may be a foreign language to them. Similarly, due to the language being foreign, learners then encounter some glitches as they learn, which, among others, may include pronunciation, spelling, accent, vocabulary, and grammar (Elizabeth, Adinolfi & Hultgren, 2017). Ultimately, this may result in passive learning, coupled with an increased exposure to the new and unfamiliar language to be learnt (Srijongjai, 2012). However, the benefits of multilingualism outweigh the disadvantages, which include multilingualism as a lens effect or magnifying glass that uncovers the linguistic dynamism across languages (Franceschini, 2011). Accordingly, the elements of multilingualism not only cement language development, but also appreciate the dynamics of each language in its syntactic and semantic essence. This study aspires to capture multilingualism and plain language as important binary core structures of the researched topic and the commentary research questions.

Subsequently, the link between multilingualism and plain language is that they both function as a stable and successive bridge towards irradicating literacy and language learning challenges, wherein their successful outcomes may reduce the barriers and literacy gaps in the legal divide and illiteracy. It must be stressed that not only indigenous languages are associated with comprehension and understanding issues – all South African languages are involved.

1.1.2 Law literacy in South African law

Law comprehension issues among laypeople may possibly be stemming from language learning literacy failures in basic education, which eventually affect law literacy acumen in later adult years. A shift from judiciary to basic education is made to reflect the issues occurring at elementary education levels, which lead up to the laws that govern the state. This shift is done to explore the different determinants that influence how educational and law literacy is embedded within the judiciary and socioeconomic landscapes, while assessing the compelling factors within basic education that morph the nation into an illiterate society. Basic education is the integral domain and foundation where elementary and fundamental reading and writing skills are taught and transferred in preparation of functional literacy and multilingualism outcome interventions. An international study on global basic education, *Progress in International Reading Literacy Study* (PIRLS), revealed in 2023 that 81% of Grade 4 learners in South Africa cannot read for meaning

in eleven official South African languages. This was an increase of 78% from the PIRLS 2016 study, which validated the hypothesis indicator that 8 in 10 South African children struggle to read by the age of 10 years (Van Staden & Roux, 2022). Poor literacy skills impact not only a learner's scholastic progress and identity, but also their general well-being (Moen *et al.*, 2023:82). Basic education, as the foundation of early academic development, is at a loss where understanding through local languages is deflated and basic learning opportunities are not met by the languages of instruction.[2]

This study argues that literacy curriculum and language policies of the South African basic education are asymmetrical and leaning towards English-inclined teaching. Urgent and radical review is required for the improvement of literacy performance in mother tongue education. Pavlenko and Blackledge (2004) define a mother tongue as the language that is learnt before any other language is learnt. The *National Curriculum and Assessment Policy Statement* (CAPS) replaced the *Subject and Learning Area Statements, Learning Programme Guidelines*, and *Subject Assessment Guidelines* by formulating a single, comprehensive, and concise policy document, which was enforced in January 2012 (CAPS Statement: DBE). Seven years later, in 2019, the South African Presidency acknowledged the reading crisis that faced the nation and stated that every child should be able to read for meaning by the age of 10, in alignment with the end of the Foundation Phase (grade 3) period (South African Government, 2019).

This was further corroborated through Priority 3 of the Education, Skills, and Health section of the *Revised Medium-term Strategic Plan* (MTSP) 2019-2024, which indicated that lesson plans for home language literacy in Grades 1-3 would have to be developed in all languages (MTSP 2019-2024: DPME). In the government measures and interventions listed above, there seems to be no clear progression plan of how exactly literacy scores across Grades 1-3 would be improved that would support the achievement of CAPS policy objectives since its enactment in 2012. The decline of the literacy rates between 2016 and 2023, as indicated, by PIRLS refute the intentions of the DBE and the Presidency regarding their strategies of irradicating illiteracy among Grade 1-3

[2] This research study is cognisant of the fact that the PIRLS 2023 Report utilised a stratified methodology sample, where learners were sampled by language and province. This further alludes to the fact that not all Grade 4 learners were tested, which dispels any notion that all Grade 4 learners cannot read for meaning.

learners. The strategies of decisive mechanisms for eradicating illiteracy seem not to mitigate the challenges facing foundation phase learners. The Department of Basic Education and the Presidency need to look at international benchmarking and learn from African and global countries that have improved their literacy rates in basic education, and review how South Africa can imitate workable solutions for illiteracy. The above paints a bleak picture of the educational situation facing the learners due to language subject areas and comprehension. In other words, it is not that learners do not understand their different subjects, but rather that they do not understand the medium of instruction used in education, namely English.

1.1.3 Literacy, language policy and multilingualism as a triangulation

The UNESCO Institute of Statistics defines literacy as the ability to understand, interpret, create, communicate, and compute, using printed and written materials. Similarly, the definition of literacy can be polysemous due to its functionality. The literacy spectrum can also include numeracy, which is the aptitude to make simple arithmetic calculations. This study specifically looks at literacy from a functional literacy perspective. Miller (1983) defines functional and practical literacy as the ability to read, interpret and comprehend text to complete daily vocational tasks. This study is cognisant of the fact that there are broad definitions and explanations of literacy, however, the focus is on reading literacy as the instrumental variable of plain language and multilingualism.

Wiley and Garcia (2016) deduce that language policy and planning attempt to solve communication problems related to language diversity. According to Kahnsamy (2020), language equity is a complex issue in environments of high language diversity where standardised versions often become entrenched as dominant languages. In this regard, language policies can be viewed as a plausible succession thread between linguistic variation and official language use in multilingual settings. Additionally, language policies express the principles, language plans and implementation strategies for language use, based on stakeholder linguistic dominance and cultural outcomes (Wiley & Garcia, 2016:241). Bearing with the previous sentiment, language policies often determine the preferred language depending on the feasibility and practicality of official documentation, and not on linguistic tolerance and cultural inclusiveness (Hult: 2018). Language challenges based on multilingualism and linguistic dominance could seek a soluble reprieve in language literacy planning, where language use can be delineated in regard to purpose, intention,

and inclusivity. This can be the same within DBE where literacy programmes can be redesigned towards the achievement of improved reading skills, and language literacy needs of primary school learners. This will assist the building of more resilient, empowering, and inclusive multilingual literacy outcomes and systems significantly.

Focusing on higher education and training, Kaschula and Maseko (2009) studied how language learning and multilingualism at Rhodes University prepared professionals for language diverse workplaces. They noted that although language policy documents laid bare the complexities of languages in South Africa, they also make pertinent recommendations on the learning and teaching of languages. Moreover, their study unearthed the intricacies of indigenous knowledge systems and cultural issues in the workplace including being sensitive towards the linguistic limitations of work stakeholders. An example was shared where pharmacists are required by Rhodes University to learn isiXhosa in sensitivity to the culture of the people they interact with in their profession, and as a need to reach out to patients who come from different language and cultural backgrounds. Likewise, this study envisages that multilingual language policies can be used towards the transformation and inclusion of indigenous languages in law drafting.

1.1.4 An introduction to plain language

Steinburg (1991:1) defines plain language as the use of language that "reflects the needs and interests of the reader." Simply put, plain language is the writing of a text that is clear, straightforward, and suitable for its audience. Petelin (2010) explains that the aim of plain language is for a text to be usable and understandable to its target audience.

The origins of plain language are dated back to the King James Bible where the language used consisted of a "so-called Attic style of writing" (Garner, 2002). The Attic style of writing exemplified by the Athenian orators of the fifth and fourth centuries BCE were writings that are active, direct, and forceful, and exemplified purity and simplicity (Petelin, 2010:207). Mastronarde (2013) associates 'Attic' with an elementary or accessible dialect that was spoken in the southeastern area above the Peloponnese region in Greece. Plain language garnered heightened popularity in the United States of America in the 1960s by consumer-led organisations in an attempt to compel government and businesses to produce documents that the public could understand (Bowen, 1986).

On the other hand, plain language is not only concerned with words, but textual design and visual design are also included in the scope of clear and suitable writing. Some scholars may use the narrower term 'plain English' and focus specifically on the textual language of a document (Jones & Williams, 2017:412). However, the use of 'plain English' neglects the holistic approach that document design is as important as the language aspect in plain language writing. The usability and understanding of a document can vary with different people. Readers could be people of different social, economic, and educational backgrounds where the writer is required to be as clear and coherent as possible in unanimously matching the literacy needs of the target audience. De Stadler and van Zyl (2017:95) elaborate on the necessity of audience focus by noting that South African consumers who face technical documents are still made vulnerable by poverty, illiteracy, and a limited ability to understand the language in which consumer documents are written. This subsequently excludes many South African consumers from exercising their consumer rights. The criteria for the evaluation of successful plain language writing is often not based on the writer's discernment of a quality document, however, it is judged by the reader on the text's legibility and clarity. According to Schriver (1993), what is thought of as an important benchmark in a document is the speed of completion and the cost implications for the client. Helyar (1992) and Carney (1991) reported on more than fifty examples of organisations that have been sued due to factors related to poor-quality documentation. Similarly, Rakedzon *et al.* (2017) note that the target audience of publications and the relevant gatekeepers of high-impact journals should be fellow researchers as well. This is said in the assumption that fellow researchers stress the scientific implications of the research in the peer review, which maximises high-quality research production. However, the proposed peer review system by Rakedzon *et al.* (2017) neglect the fact that the researcher-audience reviews will produce discipline-focused research rather than audience-centric information. This mono-discipline style of writing is evident in legal writing where lawyers write for lawyers. This argument is further discussed in 2.7.

In South Africa, the advocation of plain language use is a recent phenomenon, which has been identified and propagated by the Constitution of the Republic of South Africa Act 108 of 1996, the National Credit Act 34 of 2005 and the Consumer Protection Act 68 of 2008. According to Viljoen and Nienaber (2001:9), plain language was not an important prerogative before the advent of democracy in 1994. Given the political history of South Africa before 1994, education systems were separated according to racial categories. The education systems for different South Africans

were constituted by a segregationist system, which had different departments of education for each of the four racial and ethnic groups (i.e. Blacks, Indians, Coloureds, and Whites) (Thobejane, 2013). This possibly impacted literacy rates due to different systems that were designed to yield different academic results for different racial groups. Moodley and Adam (2004) note that post-apartheid South Africa has the sentiments of being a promising transnational society, which is still deeply divided. Multilingualism and literacy resources connect as social narratives for sustaining inclusivity that is supposed to even the playing fields for equitable citizen rights. However, the exclusionary landscape of the country in its language and literacy domains propel linguistic division that lags from legacy segregation systems. This exacerbates the saturation and exclusion of individuals who cannot read in standardised languages.

1.1.5 Literacy indicators in South Africa

Similar to the situation facing grade 1-3 learners discussed under 1.1.2, the Department of Higher Education and Training (DHET) reported in 2023 that the South African adult illiteracy rate was at 10.5% in 2021, indicating a two-percentage point improvement from 2019 and a significant reduction of 8.6 percentage points over the past decade. Women illiteracy rates stood higher than men at 11.3%, while men obtained 9.6%, indicating that women are more likely to be disadvantaged by economic and social development than men. The UNESCO Institute of Statistics (2009) *Education Indicator Technical Guidelines* define the adult literacy rate as "the percentage of population aged 15 years and over who can both read and write with understanding a short simple statement on his/her everyday life." It stands to reason, therefore, that there is a direct correlation between law and language where language support is integral to the provision and care of illiterate individuals in ensuring that their basic rights to information are not withheld due to a lack of learning and knowledge. Literacy and multilingualism are foregrounded as integral elements of this study as most studies in the discipline of plain language have only focused on legalese and literacy, and neglected the role that multilingualism plays in language inclusivity and education.

In ensuring language equity in the services and programmes of the government, particularly those used in law, the languages used in the courts also need to be seen within a broader context of transformation and equity concerning the judiciary and the legal system (Hlophe, 2004:43). Lesch (2023) expressed in her study on translations of complainants in police sworn statements that

police often had to assume linguistic roles, such as interviewers, editors, and translators in the retelling and co-construction of sworn statements. The findings of the study argued that the role switching of police officers during statement drafting entrenched the dominance of some languages over the other, which often favoured the police officer's language of competency rather than the complainant's, thus perpetuating inequality in justice administration due to linguistic power dynamics. The emphasis on plain language and multilingualism in the law is to evaluate whether the law does support language rights through the delivery of law judgments as a case study. The law is viewed as a site of struggle where issues of language and its challenges can be mitigated via plain language.

1.2 Problem statement

The law is universal to all those that it governs in that those who are governed should have a basic understanding of how to navigate around it. Plain language in the law draws heavily on international sources and movements, which further impairs the breach in plain language advocacy in South Africa. The plain language movements in the United States, Canada and Australia marked the introduction to the change of the judiciary and government systems (Mazur, 2000). South African law has made minimal and underwhelming efforts towards the growth of plain language in which legal documents still possess characteristics of the passive voice and excessive jargon in their writing. Section 9 (3) of the Constitution Act 108 of 1996 protects citizens against unfair discrimination on the grounds of language, however, it seems the policies that govern language use in law do not ease the challenges faced in ensuring the achievement of language inclusivity and text simplification.

The advocacy for multilingualism and plain language presents an opportunity to improve the accessibility for individuals with lower literacy rates to participate in the understanding of law documents and ultimately in the decision-making of language law policies. These are language policies that should be conscious of different literacy rates and ensure that ordinary citizens are accommodated and included. Measures of inclusivity should also be expressed through a clear implementation plan on how the judiciary aims to implement plain language and multilingualism in law judgments. This should be mentioned in the language policy as well. Currently, the Department of Justice and Constitutional Development (DoJ & CD) has a language policy set out in the *Schedule for Public Information.* This policy excludes language use in court and legislative

proceedings. Section 171 of the Constitution, Rules of the Court, among other applicable legislative documents, regulate languages used in court, including court interpretation services, court processes, court documents and recording of court proceedings (DoJ & CS Language Policy 2019:15). The DoJ & CD should at least refer to the need of multilingualism and plain language in court proceedings in their official language policy. The language policy has referred to other legislative documents to regulate language use in court proceedings but refrained from making any reference to language in the courts. This is reflective of shifting the blame in official regulatory policies to avoid addressing plain language and multilingualism, and its practical extent in official documents where monolingualism enjoys preference.

Plain language aids language users and practitioners to draft documents that are clear, easy to read and in line with the National Credit Act 34 of 2005 and the Consumer Protection Act 68 of 2008. These Acts are mandated to support all consumers in procuring or using products or services that they understand and are giving consent to. Currie (2006) states that these Acts, execute the functions of the Constitution, which is a right to administrative justice and access to information and equality. Illiteracy is a reality of many South Africans, which possibly makes interpreting or analysing the documents of the law difficult due to the formal register and technical language used in legalese.

On the other hand, the use of plain language, as a remedy for difficult and technical texts, could eliminate writing technicalities and close the social reading and literacy gap. Burger and de Stadler (2019:325) affirm that documents that are written in plain language are customised for their intended audience by providing information that is at the level of their understanding. However, it is important to note that a language practitioner may not single-handedly be able to produce a text that is conducive for use at all literacy levels. Some texts are technical and specialised for a specific target audience and may use jargon that is applicable to the context. For example, in a court setting it is unavoidable that legalese or jargon will be used during court proceedings as the jargon increases the clarity of the text without sacrificing the precision of the utterance (de Stadler & van Zyl, 2017:118). However, plain language can also be perceived as a linguistic right for the protection of consumers, regardless of ‘unavoidable’ legalese. The protection of consumers in plain language promotes access to information and the quality of information in facilitating text freedom to consumers.

This study moves away from Blommaert's (1999) idea of the 'supremacy of the text' in relation to language but towards language as a universal right and obligation. Skutnabb-Kangas (2000) defines linguistic language rights as the theories that rely on the widespread assumption that a recognised language is a language that has many speakers, is independent and has a vast written lexicon. Language rights are generally used to protect individual rights, which are pertinent to one group or individuals (Skutnabb-Kangas:2005). The issue of language rights becomes even more complex in a multilingual country, such as South Africa where all twelve languages are equitable and fair as per prescription of the Constitution of South Africa. The law is extended to this research study as multilingualism is often studied in education settings where South African scholars, such as Kathleen Heugh, Christopher Stroud, and Zubeida Desai, among others, focus on mother-tongue teaching and bilingualism in classrooms. There is a gap in research that extends to multilingualism and the South African law.

1.3 Critical research questions

This study seeks to answer the following research questions:

1. In which languages do South Africans prefer to read legal documents?
2. Is law judgment writing simplistic and readable enough for the ordinary reader to understand?
3. Which language strategies can be used to make law judgments simpler for ordinary people in South Africa?
4. How would the use of multilingualism in law judgments help ordinary South Africans with understanding law judgments?
5. Is multilingualism an effective strategy in aiding ordinary citizens to understand the law as an alternative to plain language?

1.4 Aim

This study aims to do the following:

- To understand how different individuals perceive legal documents (law judgments) and the law.
- To analyse how language writing strategies influence law judgment analysis.

- To observe trends and patterns of law drafting in relation to how they adhere to language accessibility and inclusivity.

1.5 Objectives

Consistent with the need to understand the research aims, this study hopes to do the following:

- Explore the effectiveness of using translanguaging and plain language in law judgments.
- Review possible strategies aimed to improve the written perception of language in law documents.
- To examine the visibility and efficiency of multilingual languages as an alternative for plain English.

1.6 Outline of the structure of study

Chapter 1 introduces the background information on the researched topic, which is followed by the problem statement, aims and critical questions of the study.

Chapter 2 discusses the review of language standardisation, the role of language provision in law, plain language and multilingualism in law, and relevant literature, which entails the work of other academic scholars about the researched topic.

Chapter 3 addresses the conceptual framework that addresses critical consciousness while looking at textual analysis and thematic analysis as variables that may influence the outcomes and the data analysis method of the study.

Chapter 4 delineates the research methods that guide the study and offers an outlook on the ethical considerations of the study. Lastly, the data analysis is dissected.

Chapter 5 discusses the findings of the study where the retrieved data is deliberated and discussed as themes.

Chapter 6 summarises the conclusions and contributions of the study. Moreover, the limitations of and the original contribution to knowledge are outlined. The chapter concludes with the recommendations of the study.

Chapter 2: Literature review

2.1 Introduction

This chapter reviews the relevant literature in relation to the role of plain language, multilingualism, and literacy in the law linguistic landscape of South Africa. Furthermore, the concept of translating law documents is presented, aligning to the goals of inclusive law prescriptions and language equity. Plain language is introduced through text editing and text simplification, discussing practical avenues of target-focused writing and the orderly structuring of language. In the discussions of plain language, plain English is discussed as the only case reference where individual languages have a basis for plain language. The chapter further discusses the language provision and the racial composition of South African law where Roman-Dutch law remains as a prominent factor. Moreover, a shift from Afrikaans and English legalese is made, towards Plain English and multilingualism in complementing the developments made in multilingualism and plain English over the past 30 years. A benchmark of the Tanzanian linguistic composition is delineated in assessing how Kiswahili, as an indigenous language, has been incorporated as an institutionalised hegemonic language in education, governance, and economic trade. Translation as a solution for legal multilingualism is also deliberated as a solution towards pragmatic indigenous legalese building. Thereafter, the chapter finally assesses the readiness of plain language and literacy in education and law within the misconstrued role-play between law professionals and language editors.

2.2 Standardising indigenous languages in South Africa

Standardising indigenous languages can be viewed as the first step in directing the reclaiming of power and the social inequality of languages from colonial rule that saw the demeaning and unequal distribution of language attention to indigenous languages in education in African countries. Mtintsilana and Morris (1988) note that the standardisation of African languages has been left redundant by a host of ideological, historical, and educational factors at the most exacerbation of language policies of the Republic of South Africa. However, the South African government has ultimately made advances to eradicate the linguistic dominance of Afrikaans and English post democracy with the advent of language structures and policy that would guide the linguistic progression of the country. According to Kamwangamalu (2009:329), not much has been done to improve language policies (LiEP, 1997 and National Language Policy Framework, 2003).

Kamwangamalu (2009) further emphasises the failures of policy and how African languages are not 'perceived to be reservoirs of technical knowledge'; this is where translanguaging and interborrowing can be viewed as progressive – it uses intelligible linguistic resources rather than "languages" themselves. This study discusses inter-borrowing and intellectualisation of indigenous languages in more detail in 2.3. Standardisation is recommended for increasing the social status of indigenous languages where the central goal of standardising a language is to minimise variation in the selected variety, and to facilitate uniformed communication across regional and social dialects of a language (Curzan *et al.*, 2023). However, the gatekeeping of the selected standardised language exudes forms of marginality and exclusions in terms of determining which variety will be standardised within the language group. The selection of the standardised variety follows the institutionalised social power of particular users, promoted within powerful social, cultural, and legal institutions, where standardised varieties obtain an inherently better prestige than varieties that are less standardised (Curzan *et al.*, 2023).

What connects the standardisation of indigenous languages with law, basic education and literacy rates is the objective to develop strategies of improving the current stature of law judgment writing, which is extended to all people within the Republic. Legal drafting in its current form gatekeeps laypeople from comprehending the law coherently where determent influencers, such as education levels and literacy rates, often exacerbate the gap between law-learned citizens and the unlearned. Standardised languages are the symbol of national unity, social identity, and social prestige (Deumert, 2005). Standardised multilingualism should be utilised to promote indigenous languages in law making, which can be attributed to Fishman's (2006a) term of *unum ideal* where he states that English remains superior to cross (fellow) languages, due to colonialism and socio-academic stature. A hyper-legal English-only assimilation in law making dissuades the inclusion and opportunity of indigenous languages in functional development and recognition within law prescripts.

Indigenous language policymaking strides have been made, such as the Pan South African Language Board (PanSALB), which was derived from the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993). It aimed to promote the development of previously marginalised languages, and advocate for rights relating to language and the status of language. Arguably, the enactment of the PanSALB Act 59 of 1995 was the foundational reform policy that sought to foster

language equity and multilingualism after apartheid, followed by the Language in Education Policy (LiEP) in 1997 and National Language Policy Framework in 2003. The objectives of the PanSALB Act aspired to foster the respect for languages spoken in the Republic, other than the official languages (English and Afrikaans in 1995), and the encouragement of their use in appropriate circumstances, and the development of the official South African languages (Pan South African Board Act No.59 of 1995 Section 3(a)(b)). As a result, the establishment of PanSALB as a national language regulator was and still is representative of the urgency towards language redress and encouraging equitable language playing fields in official orthography. Although, PanSALB was endorsed to promote and strengthen the visibility of indigenous language advocacy in government regulation and policy, indigenous languages are still not awarded a functional status in terms of orthography and functional status in formal government communication and official activity.

Public speeches by governing politicians are a reflection of linguistic sanctions towards indigenous languages where communication strategies among various speeches represent heightened levels of English proficiency and competence towards predominately non-English citizens (Pienaar, 2002). Translations as a remedy for language inclusion is a viable solution to reach a wider audience, however, translating political speeches has its own challenges where they can convey issues pertaining economic, foreign policy, political, and socio-cultural factors to which the translator needs to transmit sensitivity (Pamungka, 2020:135). The study does not eliminate translation as a literacy building strategy but recommends the exercise of caution especially in cross-cultural activity and inter-cultural communication of translated speeches. The study discusses translation as a solution for legal multilingualism in 2.6. Nonetheless, the non-accelerated use, and partial publishing of indigenous languages on government communication websites bemoan the functionality and purpose of indigenous languages as prescribed by the PanSALB Act. This illustrates how English hegemony continues to advance, despite many good attempts to bring it to a halt. The standardisation of indigenous languages is important for developing their academic and economic corpuses, where their linguistic advancements are not on placed on the back-pedal of English supremacy practices in education and governance. From the prescription of the PanSALB Act, the practice and evident implementation of equitable official language use for indigenous languages should be committed to by government, which will set a precedence and emulation for law and education industries to expedite the use of indigenous languages in achieving their

linguistic inclusivity objectives and mandates. This will assist with the literacy, linguistic and legalese inclusivity interventions that both industries are in dire need of.

2.3 Roles of South African indigenous languages

Indigenous language standardisation accentuates the language credibility of African literature and corpus building where indigenous language paradigms can potentially positively infiltrate the basic schooling system leading up to the judiciary that governs the law, when applied carefully with tested implementation models. However, Webb (2010:159) notes that standardised languages may lead to poor educational performance by learners where a sense of failure and a loss of self-esteem may be felt, and even to exclusion from the school community. The significance of standardising indigenous languages still stands as a cornerstone of inclusion and universality in building a national language corpus. The role of indigenous languages is centred in education, law, economy, and trade, and social status development. It is not limited to these factors only but also to the sustenance and modification of indigenous languages. The importance of social roles in indigenous South African languages also lies within the priority of their intellectual development in academic literature. The intellectualisation of indigenous languages for academic purposes is not a new phenomenon, however, it is gaining momentum in several countries due to the realisation that the significance of preserving and promoting their indigenous languages is paramount for generational revitalisation. Mabela and Ditsele (2024), studied the possibility of intellectualising indigenous languages by borrowing existing terminologies from other South African indigenous languages. This perspective embraced the fact that fixing the issues facing language development would combat illiteracy in classrooms. Finlayson and Madiba (2002:40) further concurred with inter-borrowing in indigenous languages by stating that it would accelerate the growth and development of indigenous languages in enhancing their effective interface with modern developments, theories, and concepts. To study the achievements of the intellectualisation, promotion and preserving of indigenous languages as national official languages of education, law and economy, this study benchmarked Tanzania as a case study.

2.3.1 Tanzania

Tanzania is benchmarked as an African country that has successfully implemented Kiswahili as a national language of governance and education in 1971 to counter the dominance and status of English as the colonising language. According to Mulokozi (2005:118), the decision to make

Kiswahili the primary language emanated from the need to rapidly expand the terminology and geographical coverage of the language of education. Previously, Kiswahili was rendered as a language of cultural and commercial trade and African politics (Ngonyani, 2001). The second reason that made Kiswahili the preferred language of education resulted from the low mastery of English among school pupils. This low English competence resulted in fewer pupils accessing secondary and tertiary education due to a deficient pedagogical and linguistic continuity framework (Mulokazi, 2005:117). From the lessons learnt from the planning and standardisation of Kiswahili, South Africa can continue with the robust implementation of indigenous languages as languages of national codification in government, education, and trade. The propelled usage of standardised indigenous languages would also provide leeway and substance for South African law to be written in different official languages. Similarly to Tanzania, which recorded a literacy increase in Kiswahili, judicial understanding and engagement in South Africa could benefit from the standardisation model to minimise the legal divide.

2.4 Language provision in South African law

Standardised multilingualism is fiercely endorsed in national policies, legislature, and legal academia. However, the reality of its implementation in legal disciplines in South Africa still largely remains in the terrain of Dutch, English, and Latin as source languages. Loubser (2003) also credits the successful ability of Afrikaans as the only indigenous language in Africa that derived its legal terminology and literature from German and Dutch. To date, English and Afrikaans are the only legal languages in South Africa. South African law prescripts and policy that govern language use in the judiciary have lacked creativity and thought on how to be inclusive and foster linguistic legalese innovation without lamenting that legalese is convolutedly realisable under two languages. Solution-driven methods on how to formulate legalese in indigenous languages rest on intellectualising African languages to facilitate their use in academia and their translation in the law. Through intellectualising languages, the creation of educational resources, such as multilingual legal glossaries and plain language indexes, can provide insight into transformation towards inclusive and accessible legalese in indigenous languages. This study particularly delved into the law as a focus point of whether citizens of South Africa are able to grasp what has been prescribed, and if not, what avenues are available in terms of translation and literature.

Roman-Dutch law proliferated in South Africa through the migration of Dutch settlers to the Cape of Good Hope (present-day Cape Town) from the middle of the seventeenth century. To date, South African courts still rely on 'old sources' – which are documented accounts of Roman-Dutch law from particularly the seventeenth and eighteenth centuries when applying common law (Du Toit, 2014: 285). According to Du Plessis (1999:48), South African law still arguably represents more Roman-Dutch law than modern Dutch law itself. The courts' continued use and reliance on the old sources of Roman-Dutch law, among others, when addressing questions in common law, continue to conjugate an embraced and accepted reception for Roman-Dutch law in modern South Africa. The democratic judicial composition of South African law can be summarised as a mixture of Roman Dutch common law (influenced by English law), indigenous customary law, legislation at various hierarchical levels, and a supreme justiciable Constitution (Botha & Bekink, 2018:265).

The upkeep of Roman-Dutch law in Afrikaans and English only represents the rigidness of transformation in the language structure of South Africa's law composition. Language changes in the dispensation of the law should be inevitable as the country's linguistic terrain has moved from Dutch to English and Afrikaans, and multilingualism during the four ideologies, namely *Dutchification* (1652-1795), *Anglicisation* (1795-1948), *Afrikanerisation* (1948-1994) and *Democratisation* (1994-present) (Kamwangamalu, 2003). Under the four language ideologies, the changing and obsoleting of languages in legislature, proves that language is not stagnant, however it supplants transformation and changes as culture and systems improve. The recent and current ideology of democratisation saw the emergence of functional multilingualism as a policy constituent where the Constitution requires government to use two official languages in legislation [Constitution of the Republic of South Africa Act 108 of 1996, section 6(3)]. The feasibility of using two official languages remains saturated in English and Afrikaans as they are the only South African languages that have been developed with a fully-fledged legal language with comprehensive legal terminology and legal literature (Loubser, 2003).

Functional multilingualism on the other hand, has been reserved for where effective operation of government requires comprehensive communication, which will be published in all official languages, where necessary and practicable (GCIS language policy 2016:5). However, all official languages of South Africa are deemed equitable in terms of hierarchy and official status. It seems that multilingualism is considered under non-legislative and non-official government objectives

where the inclusion of indigenous languages is deemed to necessitate cultural inclusion rather than official administrative use. Undoubtedly, official indigenous languages of South Africa, except for Afrikaans, may possibly be developing their corpus in academia and social prestige, however, the end goal for official adoption as legal languages is still very far in the future. Nonetheless, incentives to introduce more indigenous languages in the law, other than the two legal languages, should actively advocate for developing local indigenous language legalese by a country, which should be actively innovating legalese in African languages instead of referencing old foreign law prescripts. Law is perhaps one sphere where issues of multilingualism, especially with reference to African indigenous languages, and despite translation efforts being available or not, show the gap between languages. The real effects of this are to be found with the speakers of these languages, which get a disservice in equitable language distinctions.

2.5 Multilingualism in South African law

Law is studied as the focus area for this research in terms of what avenues are offered to citizens who are not familiar with legalese in English and Afrikaans. The South African Constitution has a special cognisance of the recognition of the official status of twelve languages (Afrikaans, English, South African sign language, plus nine other indigenous languages). However, according to Arzoz (2012), multilingualism does not imply that all languages are treated equally, as the number of official languages is both a political and a distributive decision. Although, the South African law has remained largely bilingual, there has been minimal and inadequate integration of multilingualism in the law precepts of South Africa. Section 35 of the Constitution warrants the right to a free trial, including the right to a language interpreter if the accused does not understand the language used in the court. Yet, the right to an interpreter may not be always realised especially for speakers of endangered or less common languages, which could lead to inaccurate translations and biased testimonies that possibly affect the case and its verdict (Ngubane, 2023). It is precisely with these challenges and realities in mind that this study aims to suggest that, perhaps, as an avenue to mitigate the large gaps between written law and reality, the law introduces equivalence translation for law judgments in primary indigenous languages of the province where the court is located as a functional multilingualism incentive. Equivalence translation could act as an intervention to translate the constitution and legal documents into multiple indigenous languages.

2.6 Translation as a solution for legal multilingualism

Translation can be defined as encoding the meaning and form in the target language by means of the decoded meaning and form of the source language (Owji, 2013). Different scholars define translation differently. Legal translation for multilingualism is easier when it is done in the same legal system, as is the case in most national contexts (Arzoz, 2013:3). In Canada, the two official languages express two different legal traditions, common and civil law (Palermo & Pföstl, 1997). South African law is derived from one primary source where the law originates; this source amalgamates more than one source, which is not limited to legislation, case law (court decisions), common law, old writers (authors) and indigenous law (African Charter on Human and People's Rights, Chapter 2). This singular law system possibly makes the grounds for translation between source and target language seamless and efficient, as there is a singular law for all languages. Currently, legal literature that has been translated into different languages of South Africa is not easily available where translation might facilitate a pragmatic stance for the development and availability of legalese in indigenous languages.

Equivalence translation can be used as a remedy to expediate legal multilingualism in institutionalised glossaries and indexes through language expert consultation and collaboration. Through the endeavour of language consultation with cultural and linguistic experts, the translation process follows an extensive language-centric translation that ensures that language customs and conventions are observed where atypical translations are avoided in the target indigenous languages. However, Jakobson, (1959/2000:114) notes that there can be no full equivalence between two words. Translation is not impossible but rather redirects the differences in the structure and terminology of language. From this experience, the development of multilingual legalese should ensure that conformity to English or Afrikaans linguistic styles is avoided as their pursuit will formulate duplications of English indigenous translations that are flawed in the register and linguistic principles of the target audience. The study discerns that the existence of translation services on their own present a host of challenges (Kobe, 2017). However, equivalence translation could be viewed as a remedy that could defy the aspects of literal translation, which uses a translation system of source text word to target text word/sentence notion without regard for any grammatical, social, or cultural contexts. From this translation process, the output objective of

using multilingual legalese is that it will reduce the elitist perception of English and Afrikaans in South African law.

2.7 Plain language and text editing

Plain language is the assessment and writing of texts that consider the writing of information both visually and textually – what is accessible, comprehensible, and is suited for its target audience (Jones & Williams, 2017:412). Text simplification comprises text coherence assessment where an original complex text is rewritten into a simpler target text (Scarton & Specia, 2018:712). The easy adjustment of a reader to a text document takes issues, such as page layout, font, line spacing and register, into consideration in plain language document analysis. Plain language can be used closely with text editing as both are concerned with the simplification of the reading and writing of texts.

Renkema (2018: 5) defines text editing as the systematic identification and elimination of flaws in writing to improve it, not only for conveying the author's intentions but also to meet the needs and expectations of the reader. Plain language is concerned with the writing of text that will guarantee comprehension and understanding. Stroll *et al.* (2022) studied plain language summaries and presented a four-point subject area that renders a text as 'plainly written'. The plain language summary assesses the connection of the four areas which (1) *aim* to provide a document that will improve the understanding of the layperson knowledge in the read topic. The document should have (2) *characteristics,* such as improved front, style, and register, that will garner an improved reading response. Further, (3) *criteria* are listed as a facet that will explore the avoidance of technical terms or unnecessary jargon, while the (4) *outcomes* will have the desired response (Stroll *et al.*, 2022:28). The point of departure of plain language is collectively stemmed from the readability, clarity, and comprehensibility of a text for the consumer (Cheek 2010:8). Text documents could be written paragraphs, brochures, forms, and advertisements. Text simplification can play a vital role in distinguishing whether law prescripts are plainly written. The four-point subject area can be used to assess whether plain language is an added quality in the writings of the law. Plain language is introduced as a specialised avenue that should precede legal multilingualism, as law in its current form is not comprehensible, not even for English-speaking individuals.

Law professionals do not write in plain language; they tend to use verbose and arcane sentences to explain common ideas, which end up in wordy, unclear, and pompous writing styles (Wydick, 2005). More recently, Garner (2023) argues that lawyers who draft for judges tend to adopt a highly legalistic style under the assumption that judges have legal training. The layperson or ordinary citizen, who is impacted by a legal judgment that was written for a judge, may not necessarily have legal training or any educational training at all. Text simplification should be an incorporated drafting feature that will reduce unneeded and pompous legalese in judicial documents that are drafted for public intention and comprehension. It is precisely at this juncture that this study wishes to contribute to a thinking towards providing a reprieve through the notion of plain language.

2.8 Law and plain language

The law fraternity has moved towards the transformation of more understandable and accessible publications since the great Civil Codes, but certainly not sufficiently so. From time to time, new movements have promoted the idea of understandable law (Zodi, 2019:248). Comprehensibility of the law (statutes, judgments, and other official documents) is an issue within the emergence of modernity where a simple, plain style in the law sphere has been on the agenda since the Enlightenment (Strouhal, 1986; Tiersma, 1999).

Plain language writing strategies are a required and necessitated factor in South Africa where low literacy rates, as indicated by PIRLS (2023) and Stats SA (2022) continue to prevail among the population. Plain language implementation could contribute to the improvement of the literacy rate and reading indexes of the country through text simplification and rigorous text editing of technical jargon in law and education. Although, the implementation of plain language does not go without challenges as it has been noted to be met with resistance. Willams (2015:191) notes that Lemens and Adams (2015) affirm that contract writing in legalese "is fundamentally flawed where any given contract will likely be riddled with the *Alicante Journal of English Studies* deficient usages, which collectively turn contract prose into 'legalese' through flagrant archaisms, botched verbs, redundancy, endless sentences, meaningless boilerplate, and so on."

Plain language is still a developing subject matter within the Republic of South Africa as the Credit Act 34 of 2008 and the Consumer Protection Act 68 of 2009 encourage the usage of plain language as an effective strategy for consumer literacy and inclusivity. These Acts were not the only Acts

that sought to instigate transformation in the law; policy and lawmakers in South Africa have re-written and passed laws that would inspire change in the law and justice sphere, for example the Access to Information Act 2 of 2000, the Bill of Rights, the Companies Act 71 of 2009, the Constitution of the Republic of South Africa Act 108 of 1996, and the Short-term Insurance Act 53 of 1998. Apart from this extensive cohort, the notable National Credit Act 34 of 2005 (NCA) and the Consumer Protection Act 68 of 2008 (CPA) embody the most important access to information in plain language as a basic human right.

2.9 Plain language as plain English

In exploring the characteristics and essence of plain language, the study delves more into the extent of the 'plainness' of a language. Williams (2004) notes that the aims of plain English are generally much broader and may include a desire to democratise government, extend legal rights, and encourage efficiency. Plain language embodies the possibility and ability of all languages to use their applicable standardised versions towards writing that is clear of ambiguity, and that uses simple words to write short and clear sentences. These objectives of plain language are justified in order to break the barriers of the 'educated' by the 'layman,' as the educated or trained can understand and participate in textual discourse while the layman or unknowledgeable participant is left out in the textual discussions.

The usage of the term 'plain English' represents the idea that English is the only academic and technically complex language that would necessitate plain language strategies due to its elevated technical lexicon. According to Algeo (2005) in Harvard (2020:49), the English language is widely spoken in United Kingdom, in its former colonies, and in the United States of America. However, before that it was regarded as an immigrant language which burgeoned in Anglo-Saxon England in the fifth century The language was developed from the Indo-European speech way of the Norwegian, Danish, French, and Greek languages. Subsequently, the derivation of English from other languages makes its basis and origin entrusted on the borrowed knowledge systems and orthography of other languages such as French and Danish amongst others. 'Plain English,' being used on the premise that it is the only language that could use plain language strategies, is thus incorrect and imprecise based on the assertion that English is a 'borrowed' language.

Jones and William (2017) view plain language as a social justice issue where concerns affecting spoken language and comprehension should be safeguarded in the law and social policy spheres to protect all language users from unwanted prejudice or consequences, due to literacy impediments. Sapir (1949: 68-69) describes language as a guide to a social reality, "Human beings do not live in the objective world alone ... but are very much at the mercy of the particular language, which has become the medium of expression for their society" (Sapir, in Mandelbaum, 1963:162). This statement suggests that the livelihood and social culture of language users are determined by the language they speak. Likewise, the ideology of plain English inertly deduces its language culture from the whole framework of plain language. This is exemplified by the explanations and writing techniques that would be applicable to the English language used to explain plain language. This suggests that languages that do not fall under the English philosophy of grammar and writing would be left deprived of the benefits and laws of plain language.

In South Africa, plain language literature in other South African languages apart from English is non-existent in scholarly work. The essence of plain language in these languages could be missing due to the cultural, rhetoric and linguistic elements that African indigenous languages possess, which render processes of shortening and simplifying language as awkward and inappropriate. African languages have many dos and don'ts that surround language and culture that protect traditional norms from colonial ways of being and habits. The discourse of plain language suitability may not succinctly be applicable to discourse conventions in many African communities, due to the fact that "in interethnic encounters what constitutes cooperativeness will be even more difficult to tie down since principles of cooperation will be encoded differently in different languages and cultures" [Roberts & Sayers (1998: 28)]. This suggests that the flouting of correct principles, such as greeting, thanking and leave-taking conventions (Ndoleriire, 2000: 279), can be relatively long and could therefore be seen acting against plain language conventions. According to Pienaar (2002), many African communities ideally consider it inappropriate to get to the point too quickly as this could be interpreted as impolite, given the convention that important information should be held back until the setting is adequately established. The convergence of plain language and multilingualism is to test the feasibility of multilingual realties of simplification and whether plain translanguaging needs to be developed in meaningful law literacy making. Moreover, it also needs to consider that the formulation of multilingual plain language may not follow the convention as socio-cultural factors also need to be taken into account.

2.10 Ambiguity and readiness of plain language and literacy in South Africa

Languages do not only contribute to the cultural advancements but also to economic development through the local economy and trade. Within the legal trade in South Africa, the legal profession has had a momentous era over the last thirty years through the transition from apartheid to constitutional democracy (Klaaren, 2020). In the conveyance of democracy, Abel (1995:19) noted that in the mid-1980s, Indian, Coloured or African lawyers comprised about 10% of the 6 500 attorneys and about 7% of the 650 advocates who were recognised by the General Council of the Bar (GCB). In 2017, that figure had expanded exponentially as law professionals amounted to 25 283 attorneys and 2 915 advocates, and where the racial profiling indicated that Whites occupied 58% of the number of practising attorneys and 63% of the number of advocates (Law Society of South Africa, 2017a). The population distribution of attorneys and advocates based on race contra-reflects the Census 2022 results, which indicated that South Africa has an estimate of 62 million people where African/Black people form the majority at 81% (Census, 2022). The study does not suggest that racial demographics of law professionals should be inclined to the national population indicators and does not instigate any provocations towards the restriction of marginalised or underrepresented groups. However, it delves into law demographics to understand the law profession landscape from the role of law professionals to their socio-political markers that are determinants of the transformation potential of South African law.

The work of attorneys could be described as the equivalent of English solicitors, who take instructions from clients, while they may, and sometimes do, perform courtroom work themselves, but it might be much less than those of advocates, who work as the equivalent of English barristers, who engage in specialised litigation and high-level opinion work (Klaaren, 2020). This study argues that plain language has not been developed significantly and progressively in South African law due to the growth of the law fraternity, where lawyers can be described as paradox plain writers and orators who derive economic benefits from the profession. Lawyers construct documents that are written in legalese and get remunerated for explaining them in plain and simple terminology. This could be a considerable way of keeping plain language editors at bay by the law fraternity, where lawyers act as language practitioners who also draft the law.

Basic education is at an additional loss due to the inequality structures of the country where those who are able to compete and participate in successful educational outcomes are the privileged and

literate. According to Fiske and Ladd (2003), the policy architects of post-apartheid South Africa state education understood the democratic social order of basic education for all. The national education system has two types of schools, public and independent. The PIRLS 2021 Report indicates that all nine provinces participated in the study with a nationally representative sample of Grade 4 (in all 11 official languages) and 6 learners (English and Afrikaans only) across the different provinces (CEA Newsletter: UP). However, it is not clear in the PIRLS research sample whether both public and private schools were sampled for the assessment or only public schools were identified. As a result, this non-clarity leads to ambiguity on the actual literacy rate among learners in private schools and those in public schools. The 2022 NSC results indicated a national pass rate of 80.1% (2021:76.4%) while the IEB national pass rate was 98.4% (2021:98.4%).[3] Moreover, only 38.4% of public school matriculants obtained a Bachelor pass compared to 89.3% of those attending private schools, indicating a 50.9% gap regarding learners who are able to access university higher education.

Based on the matriculation results, the unknown literacy rates and inequality in public and private education, and the blurred double-role of lawyers in plain language, negatively construe the readiness of the country to implement plain language and literacy eradication strategies. The ability to fulfil both literacy and plain language implementation plans is uncertain and seems unfeasible within the near future due to the failure to allocate equitable resources for all schooling systems.

2.11 Conclusion

The literature review has explored plain language from a text editing and analysis perspective by looking at the linguistic features of plain language from a document analysis point of view. Multilingualism was converged with plain language by looking at whether plain language is expendable to other languages, apart from English, with a mandate to improve indigenous languages through multilingualism. Standardised indigenous languages in South Africa are regarded as secondary to the English and Afrikaans prevalence in official administration and legislative documents. This does not reflect inclusivity and will influence the literacy and legal

[3] NSC – The National Senior Certificate is a national state matriculation certificate, with grade 12 as the matriculation grade. The Department of Education administers the preparation and writing of NSC exams. (NSC Examinations (education.gov.za)

IEB – The Independent Examination Board is a private examination body in state and private schools that provides national and international benchmarked certification (Intentional Educational Beliefs | IEB Website)

divide among South Africans who are not literate or professionals. The chapter further benchmarked the standardisation of African languages as official state and education languages, where Tanzania was used as a case study. Tanzania successfully implemented Kiswahili as their official language after the eradication of English as an official state language. South Africa continues to use standardised versions of indigenous languages that maintain Anglicised, Dutch, and Afrikaans spelling and orthography. Although this is an impediment for the correction of historical inaccuracies, the democratic state should invest in correcting the standardisation of indigenous languages through consultancy with language experts and cultural scholars. Standardised indigenous languages remain underrepresented in national policy frameworks. Moreover, the law discipline of the Republic also maintains Roman-Dutch law and only Afrikaans and English legalese for the drafting of its official administrative documents. It is notable that indigenous languages may not be able to participate in official legalese due to them being still developed in academia where their legal orthography and jargon might yet be discerned. Legislature that guides language use within the justice system has not fully expressed how it will implement plain language and effective multilingualism meaningfully, yet it mentions that it aims is attempting to provide functional multilingualism in the languages of the courts and judiciary.

Chapter 3 - Theoretical and analytical framework

3.1 Introduction

This chapter formulates the theoretical and analytical framework that is used in the study. The critical consciousness, textual analysis and thematic analysis are the chosen existing theories that will analyse and support the aims and objectives of the study. In the first section of this chapter, critical consciousness will be defined and developed in terms of the social science research strategies that will be applicable to the aims of the research investigation. The social issues will further delineate the influences and challenges of illiteracy in South Africa in terms of language skills, and the transformative potential of implementing plain language and multilingualism in the education and justice systems. The second section shapes the analytical framework of the study, which will be in the form of a thematic analysis where interviews will be analysed through codes and themes. This will create understanding of how individuals perceive law orders. The thematic analysis will eventually form the basis for the findings section, which will be reported on in subsequent chapters. In addition to the thematic analysis, the researcher will also conduct a law analysis review, which will assist the themes in garnering a discussion that will address the objectives and research questions of the study.

3.2 Critical consciousness

In understanding variables that inflict the usage of plain language in the law of South Africa, it is important to denote the conceptual basis for the research. Taekema (2018) unpacks the term 'theoretical framework' as a systematic body of work that is based on previous (empirical) research. Critical consciousness theory aims to create awareness from systematic inequality maintained and propelled by processes and outcomes of interdependent steps and recourses (Jemal, 2017:302). As such, critical consciousness theory can be used in social science research as its coherent basis for transformative potential, in instances where norms have the possibility of being unequal. The norms of normality foregrounded by this research are the quest for understanding how plain language and multilingualism can be made into actuality in South African law. On the other hand, critical awareness study can act as an embryo of a possible new language theory that focuses on how language conventions and practices are invested in power relations and ideological processes that people are not aware of (Clark *et al.*, 1991). Power and language ideologies cannot

be separated from issues affecting the public language dispensary, as national language policies and processes may not always favour the public but the capital investment that funds it.

According to Strickland *et al.(*2002), successful readers have normal-to-above-average language skills and have opportunities to identify letters and environmental print. Clark and Ivanič (1990) state that language cannot be separated from the social context in which it exists. The social context of South Africa requires the transformative potential to critically reflect on the conditions that shape the lives of ordinary citizens. Transformation requires simultaneous and reciprocating processes and actively collaborating with self and/or others to change problematic conditions (Campbell & MacPhail, 2002). People cannot be effective citizens in a democratic society if their education cuts them off from the critical consciousness of key elements within their social and physical environment (Fairclough, 2014:8). Functional and consistent reading skills cannot be expected in a society that reaches into the literacy realities from a tired and complacent top-down outlook. However, it is the society that actively engages with and searches for achievable literacy mechanisms that will mitigate a wide gap between the literate and the illiterate. According to the General Household Survey (2023), the illiteracy rate of South Africa was documented at 3.2% for those aged 20-39 years of age, reflecting a margin although minimal, between the literate and illiterate (Stats SA, 2023).

In the researched topic, critical consciousness can communicate the social context of how visual presentation and analysis of language in a law judgment document is received. Critical consciousness must be applied to purposeful writing, which is built from the existing learning capabilities of the reader. Links should be made to the development of language awareness and the language practice of the reader where the writer communicates effectively with the reader for maximum understanding (Fairclough, 2014:16). Moreover, the conveying of law language can be an indicator of the socio-political background and education literacy of South Africans. The relationship between plain language and multilingualism, and the language used in South African law, is interdependent. The law of South Africa is written in Latin script alphabet, which is used as the official alphabet in all spheres of governance and education in South Africa. The alphabet constitutes the words and language used to write the law. The variables between language and law have a cause-and-effect variable due to the dependency of law on language.

3.3 Textual analysis

Textual analysis is a research method that discusses and is interested in gathering information about how individuals, in particular, make sense of the world around them (McKee, 2003). Textual analysis as a method is used by researchers to examine messages as they appear through a variety of mediums, which can be derived from documents, films, newspapers, paintings, and web pages (Smith, 2017). This research study focuses on law judgments as a medium for a textual analysis to assess plain language and multilingualism in their contents. Texts are naturalistic in their occurrences, and the method is non-reactive, indicating that researchers do not interfere with the messages as they are produced or transmitted (Frey *et al*., 1992). However,, the textual method allows for researchers to develop informed and deductive descriptions of texts and their use over time by individuals and groups (McKee, 2003). It is limited in its ability to establish causality or make predictions (Smith, 2017).

The concept of textual analysis generally entails looking at disciplines, such as content analysis, semiotics, interactional analysis, and rhetorical criticism. Since textual analysis requires close interaction with the work itself through the examination of the details without presumption, the research reviewed and discussed the use of language in a law judgment by looking at the jargon, sentence formation and the layout of the document. This practical approach looked at what is contained in the law document from an objective perspective, which is minimally influenced by the researcher's positionality on the analytical framework. Seemingly, this approach also found that different individuals have differing interpretations and views not due to illiteracy, but due to social markers, such as race, class, and identity, which inform their worldviews and personalised interpretations. Smith (2017:4) and Lindlof and Taylor (2011) outlined that qualitative approaches offer interpretive and inductive approaches to the researcher, which can branch into many areas leading to the research question, generally grounding the researcher from going too far astray in describing the researcher's expectations for the study. This was not observed for this study as a textual analysis strives for impartiality in individual positionality where presumptions and pre-informed convictions are discouraged by the method.

Textual analysis can be qualitative, quantitative or computer based. According to McKee (2003), qualitative textual analysis is interested in gathering information about how individuals in particular contexts make sense of the world around them. Similarly, this can be attributed to the

critical consciousness theory that views the social surroundings in relation to the researched topic. According to Ifversen (2003), the material form of the text is absolute for the rendering of cohesion. The material form of the book, painting, letter, or the newspaper article, for example, tells us that we have a textual unity. This study used a qualitative textual analysis of law judgment orders to determine their readability and content analysis for the ordinary reader.

3.4 Thematic analysis

Thematic analysis, as a qualitative analysis method, is a reflexive method that is extended to theoretical assumptions, research questions, data collection and analysis. Thematic analysis credits its origins to a philosopher of science, Gerald Holton, on his work on 'themata.' More recently, thematic analysis refers to various things not limited to data methods in social sciences (Terry *et al.*, 2017:17). Thematic analysis can be quantitative (Castleberry *et al.*, 2018), used interchangeably with content analysis (Humble *et al.*, 2022) or as an explicit reference to a developed method. This study has defined qualitative research methods in the methodology section as the methods used in this study, and will not interrogate the discipline of research methodology first. Thematic analysis is a mixture of different methods that have been synthesised into one methodology framework. Braun and Clark (2006:79) define thematic analysis as a "method for identifying, analysing and reporting patterns (themes) within data." Thematic analysis is not connected to any pre-existing theoretical framework, which makes it flexible within different theoretical frameworks.

Qualitative approaches are diverse, complex, and nuanced (Holloway & Todres, 2003). This makes the basis for the application of thematic analysis practicable yet unclear as it allows for an influx of knowledge of approaches, such as grounded theory and discourse analysis, while the theoretic position of the method is left unravelled due to the different assumptions of the nature of data (Braun & Clark, 2006). This research study uses a thematic analysis to analyse the interviews of the participants in order to identify and examine patterns and recurring themes found in the participant responses. The method was suitable for this study as the interviews followed an open-ended deductive technique of interviewing to understand how plain language and multilingualism can be a solution to the issue of illiteracy in South Africa.

The processes of thematic analysis are paced in a unilateral manner where it begins with the researcher familiarising themselves with the data, and the formation of codes, followed by

generating themes. It is important to note that not all thematic analyses will have a uniformly patterned process, as some analyses may deviate from the others, which may lead to some thematic analysis stages not being followed or omitted. Many researchers who use thematic analysis fail to provide sufficient descriptions of the analysis process followed and of the theories or epistemological assumptions undergirding the analyses (Attride-Stirling: 2001). Additionally, Braun and Clarke (2006) recount that many studies that have used thematic analysis as a method have not explicitly labelled it as such in their manuscripts; instead, they have stated qualitative data was examined for recurring themes, without offering further explanation. This can cause confusion about how a thematic analysis is featured in a study and which is the standard procedure to follow for data analysis. This research study followed the unilateral procedural technique of conducting a thematic analysis as prescribed by Braun and Clark (2006) and Riger and Sigurvinsdottir (2016). This process followed the steps of conducting a transcription, and reading the transcription extensively, which was followed by the grouping of recurring words and ideas into a code that formulated a preliminary theme. After the preliminary themes had been discovered, they were analysed and delineated to assess whether they were relevant in the context of the established patterns that had been formulated by the participants' responses. Lastly, the themes were defined and adopted to conduct a theoretical report of their interrelationships and a discussion of the patterns and the decisions that were made during the study.

In reducing the confusion regarding when and how to use a thematic analysis, Kiger and Varpio (2020) delineate that the choice to use thematic analysis as a method should be based on the goals of the research itself, more than being a desire to select an easy-to-follow method of analysis.

3.5 Conclusion

This chapter explained the concepts behind critical consciousness, textual analysis, and thematic analysis. Critical consciousness was defined from a critical analysis perspective where social norms that occur in the social reality were used to decode that language decision making may not be in the ambits of language users but of social power. Secondly, multilingualism and plain language were dissected as solutions to illiteracy but also viable solutions to a legal divide that may exist between the layperson and the professional. Hence, the study saw it logical to include participants that are not professionals only, but rather laypeople in the study to assess the reception of legal documents and make a case for the need for plain language.

Moreover, textual analysis was explored as a data collection method that could be messy, yet decisive, in understanding that interpretations among different individuals are not only based on literacy but also on social markers, such as race and class. Finally, thematic analysis was discussed in detail in terms of the steps for conducting a thematic analysis under data analysis while describing how the study will position itself in terms of achieving its objectives and the course of action best placed to answer the research questions.

Chapter 4 – Methodology

4.1 Introduction

This chapter describes how the data collection methods of interviews, document analysis and observation of the selected sample will gather the primary data that will be used in the analysis and synthesis of the study. It begins with an explanation of the research paradigm adopted in this work in research design and triangulation and how it is related to literacy and multilingualism. Secondly, the chapter goes on to delineate and explain the data collection methods in aligning them with their feasibility and appropriateness for this study. Moreover, the sampling will discuss how the sample will be selected and how the researcher aims to best answer the research questions with the determined sample and what type of sampling method will be used. Furthermore, ethical considerations will be explained with regard to how the study endeavours to uphold research ethics and data privacy to protect participants and the stature of research. Lastly, this chapter will examine the data analysis in terms of how the theoretical framework will analyse the interviews transcription of the study.

4.2 Research design

The research methodology is the overall standpoint and principle of the epistemological framework and methods that guide this study. This study used a qualitative approach through an interpretivist paradigm that sought to understand the research topic from the participants' point of view (Yanow & Schwartz- Shea, 2013).

The interpretive approach is a term that positions a certain or specific perspective based on organisational reality in the belief that reality is socially constructed or made meaningful through individualistic understanding and interpretations of events (Berger & Luckmann, 1966). Interpretive approaches focus on two distinctive features: meanings and interpretations. 'Meanings' refer to how people make sense of their experiences or reach understandings of their everyday organisational lives while 'interpretations' are the making of meaning in the tailoring of organised social structures of living (Putnam & Banghart, 2017). The interpretivist approach rejects the idea that the world is uniform and complete. However, different individuals view similar objects differently. The study follows a qualitative approach, which is suitable to the research

objectives of attempting to understand the effectiveness of plain language and multilingualism while understanding how law judgments are perceived by different ordinary citizens. Further, methodology in multilingual research usually follows research approaches or instruments in observations, interviews, questionnaires, or elicitation techniques (Jessner & Aronin, 2014:58). These research techniques complement each other as techniques would give a 'individualistic truth' based on an individual law judgment experience. For this study, participants were given three different law judgment orders from the Special Investigative Unit (SIU) to skim and vaguely understand the contents of the judgment. Participants were cautioned not to specifically focus on the jargon and legalese, but to get the gist of what the document about. They did not need to focus on the specifics, as the researcher does not have a legal background to answer any follow-up questions on the contents of the document. After the participants had completed their scan of the judgment order, the interview process was commenced, guided by the researcher through the unstructured interview guide.

4.3 Triangulation

This study makes use of qualitative triangulation as a research strategy. As a methodological strategy, triangulation is the mixture or combination of two or more diverse kinds of methods in a single line of inquiry (Risjord *et al.*, 2001:41). Qualitative approaches, on the other hand, are social, interactive, text-based, and specifically useful in evaluating the existence and strength of relationships among variables and in making predictions based on those relationships (Creswell & Guetterman, 2019). Triangulation bears more advantages for the study than a single method, as neither qualitative nor quantitative methods can justify the viewpoints of all studies when used autonomously (Olsen, 2004). According to Risjord *et al*. (2001:43), the debate over methodological triangulation in social science has focused on the relationship between qualitative and quantitative methods. However, the use of mixed methods benefit the research projects, as both qualitative and quantitative methods have the prospect of increasing the study's credibility (Hussein, 2009). For this study, the application of qualitative methods flowed parallel with how this study aimed to use qualitative interviews and thematic analysis as a data collection strategy and method.

This study only focused on qualitative methods to obtain data from the participants' thoughts and own experience. Creswell and Miller (2000) endorse the credibility of a triangulation method by

stating that triangulation is “a validity procedure where researchers look for convergence among multiple and different sources of information to form themes or categories in a study”.

4.4 Data collection methods

As mentioned in the previous subsection, triangulation was used in gathering the research data through interviews, observation, and documentary evidence.

4.4.1 Interviews

The interviews were semi-structured and consisting of open-ended and closed-ended questions. The interview guide was prepared beforehand, but during the interview the interviewer had time to adjust it to the context of the participants’ responses (Zhang & Wildemuth, 2009:239). This allowed the researcher to have an extension of the participant observation and the natural flow of the interaction (Patton, 2002). Moreover, this enabled the researcher to be able to speak freely with the participants while allowing the participants to voice their own opinions and thoughts regarding the research question. All participants were asked the same questions in the same order, however, the researcher created follow-up questions where the participant responses were unclear, or required more explanation or paraphrasing from the researcher. The researcher also had to code-switch between English and isiZulu in the research questions to maximise the understanding and comfortability of participants during the interview. Some of the participants were not proficient in English and opted to code-switch or use their mother-tongue exclusively while answering the questions. This required the researcher to be accommodating and cooperative with the language choices of the participants. The research questions comprised questions that included, but were not limited to, past experiences with the law, and language comfortability, and whether the text was easy to read and understand.

4.4.2 Observation

An observation method is the monitoring of the context, or a setting during a data collection period (Bratich, 2018). The observation occurs when the researcher is gathering data. This study observed how the participants react when reading a page of a law judgment by analysing the facial behaviour and the emotions associated with the expressions. The researcher observed that the participants seemed unsettled with the law order when presented with it, where a reassuring follow-up talk had

to be conducted by the researcher to ease the tension. The participants were asked not to read in-depth but only to get a basic understanding of the contents of the judgments.

4.4.3 Documentary evidence

Documentary evidence is an ethnomethodological technique that gains knowledge from institutional roles and iconographical information, such as pictures, documents, or records of other authors' opinions on the researched topic (Bohnsack, 2009:117). Documentary evidence in this study is the backbone of the data collection methods as the researcher utilised a random law judgment document as a point of reference and an exhibit during the interviews. The law judgments were retrieved from the Special Investigation Unit (SIU) website where law judgments are published to the public on the court outcomes on cases that were investigated by the state forensic investigation and litigation agency. The law order was used to analyse the style of writing used and whether the documents could be further written in more simplistic writing to suit a larger audience from different social and education backgrounds. Additionally, the law document was retrieved from pages that do not have the names of the accused or defendants so as to protect the individuals concerned, as individual permission was not sought from them. Moreover, the research used the pages of findings and orders stated by the law order for the documentary analysis. In instances where names were found in the findings and analysis section, they were concealed.

In terms of selecting the random sample of law orders that were used as the case document, the documents were selected through a simple random sample that follows no systematic nor stratified processes. Three recent judgment documents posted on the SIU webpage were selected. The aim of using these documents for a case study analysis was for the participants to refer to the official legal document and answer the interview questions based on the document given.

4.5 Sampling

Sampling is the selection of a specific part of a population in order to study a phenomenon that seeks to estimate results about the rest of the unselected population. Sampling methods can be delineated into probability or non-probability sampling methods. Probability sampling entails the random selection of participants where each case has an equal likelihood of being selected (Shorten & Moorley, 2014). Probability sampling uses methods, such as simple random sampling, systematic sampling, stratified sampling, or cluster sampling. Non-probability methods use an approach where the sample is selected based on the subjective judgment of the researcher instead

of using random selection (Elfil & Negida, 2017), whereas non-purposeful sampling uses methods, such as snow-ball sampling, purposeful sampling, volunteering sampling, case study and other sampling methods that would not require a sampling frame. Vehovar *et al.* (2016) view non-purposeful sampling as beneficial as it has low non-coverage rates and high response rates. Furthermore, it allows the researcher to justify their selections based on theoretical, logical, and analytical purposes (Berndt, 2020:226).

This study uses non-purposeful sampling as the study aimed to investigate the effectiveness of language use in law judgments on a small sample. This was done to offer the researcher an opportunity to perform in-depth structured interviews and observations in a specific community. Law judgments are public documents that affect specific individuals on personal cases or affect all citizens in public-stakeholder related cases. In targeting participants, the researcher was conscious that the participants should be derived from a wide range of cohorts to gain different viewpoints across different social margins. A linguistic profile was also recorded in gathering whether participants have a basic understanding of English in order to analyse the law judgment during interviews.

The pre-requisites for interview participation are the following:

1. An adult over the age of 18.
2. An average proficiency in one or more South African languages.
3. A general schooling level (Grade 9 basic education and higher).

The participants were all from the community of Orlando East community in Soweto. This was to allow a mix of participants who might be from different educational and social backgrounds to participate in the study. Moreover, the research area is a peri-urban residential area with a local court, police station, football stadium and post office. The area has been facilitated with civic resource centres that does not necessitate town or city travel for basic services, for civic needs or recreation of the community. The researcher interviewed four people using a page from a random court judgment, given that some participants who had been invited to participate in the selected sample had abstained from it. The researcher interviewed two females and two males with varying academic backgrounds and occupations (see table below). The researcher used a law judgment in assessing whether the participants understand what is written, whether it was written in plain language, and if they would prefer a change in the documentation language or have the possibility

of multilingual law judgments. In selecting the participants, the researcher approached the prospective participants in the community representative WhatsApp group chat by informing them about the research study and requesting them to be participants through a self-selecting sampling technique. According to Berndt (2020:227), people who choose to participate in a self-selected sample are likely to be committed to the research and likely to provide more truthful responses. The research study sought to have a difference of viewpoints by having different individuals from different genders, ages, and social groups. Moreover, a difference in opinion of different participants renders a series of multiple eyes that measures the credibility of the data obtained (McQueen, 2002).

Table 1: Demographic information about the participants

Interviewee	Gender	Occupation	Educational background
Participant 1	Male	Retired technician	Chemistry
Participant 2	Female	Homemaker	Matric
Participant 3	Female	Student	Communication studies, public governance, and administration
Participant 4	Male	Advocate	Law

4.6 Ethical considerations

Ethical considerations needed to be taken into account in complying with UCT policy on conducting research, and in understanding the individual and social vulnerability of participating in a research study. Permissions were sought and an ethical clearance certificate (HUMREC011220231) was permitted from the departmental Research Ethics Committee (REC). Participants were asked for their own consent to participate in the study. Additionally, participants were 18 years and older to prevent working with participants who are underaged and possibly require parental/guardian permission. Participants were allocated pseudonyms in protecting their privacy, and were identified as Participant 1, 2, 3 and 4. The term ‘participants’ is to a certain

extent contentious as participants are people who have human capital value and are not only informants who only answer questions. Synonyms, such as ‘sources’ or ‘informants,’ were not used as that would imply the further minimising of the value and importance of the people who have centred the whole exercise of data collection. Participants were informed of their right to withdraw from the research if, and when, they wished to do so.

Law (2007: 2) indicates that research is a messy process where a lack of clarity may be required for researchers. The lack of clarity in using ‘participants’ or ‘sources’ could be necessary for the evaluation on the importance of participants and how they should be referred to. Barlo (2017:18) explicitly explains that participants should have as much access to, or control of, the proceedings of the research, as possible. This is to avoid the misinterpretation of participant data, which has the prospect of being written and published in a manner that misinterpret their views. In this study, participants were permitted access to their recorded interviews on request, and the researcher rechecked the transcriptions and recorded data to ensure that transcriptions were representing participants as truthfully possible. Data collected in the research project was stored in a password-encrypted laptop cloud during the duration of the project and will be retained for a period of two years post the research study. The research used the UCT iCloud as the preferred cloud network. The iCloud is suitable for data protection reasons in eliminating instances where information has been transferred to other parties without the knowledge or approval of participants and acts as a safety net in the eventuality of the laptop being stolen or crashing. Alternatively, the retainment of transcriptions post-research is to ensure that the participant interviews are retrievable in a safe and private manner by competent legislative authorities, should the legal need arise.

4.7 Data analysis

This study used interviews as a data-gathering strategy where audio transcripts of the interviews are analysed using a thematic analysis. Specifically, a thematic analysis was conducted to examine the collected data. This research aimed to assess the research questions of ‘What language strategies can be used to make law judgments simpler for ordinary people in South Africa?’ and ‘Is multilingualism an effective strategy of assisting ordinary citizens to understand the law as an alternative to plain language?.’ The objective of assessing the realities and practices of plain language and multilingualism in relation to education and law was the research focus point for this study. To study this phenomena, thematic analysis was deemed as a suitable data analysis method,

due to its theoretical flexibility in identifying and analysing patterns of data in qualitative research (Clarke & Braun, 2013). Moreover, this qualitative method of analysis additionally befitted this research study as it also accommodated the researcher to interpret the data meaningfully. According to Braun and Clark (2022), thematic analysis is conceptualised as meaning-based, interpretative stories.

In starting the thematic analysis procedure, the researcher had to familiarise themselves with the study, which entailed reading through the transcript multiple times to understand. According to Vaismoradi *et al.* (2016) the initial phase is to familiarise oneself with the data by reading the interview transcripts multiple times, as well as by taking reflective notes. This is followed by the coding process, which creates an overall understanding of the data and the main interests of the phenomenon that is studied (Vaismoradi *et al.,* 2016). This study followed an open coding where codes were not assessed on a line-by-line basis but on each segment of data that was relevant to or captured something interesting about the research question. The interviews were coded in an open-coding phase, which led to a set of codes that has a recurring trend or pattern of meaning and provision of a description. The coding step focuses on the preliminary organisation where the researcher looks for abstractions in participants' accounts (Vaismoradi *et al.,* 2016). Braun and Clarke (2006: 88) define preliminary or initial codes as the feature of the data that appears interesting to the analyst and refer to the most basic element of the raw data that can be assessed in a meaningful way regarding the phenomenon. These initial codes were then organised into fewer, more meaningful groups during the coding phase. This study used a theoretical thematic analysis where no pre-empted codes where made, however, the thematic analysis envisaged to attempt to answer specific research questions and analysed the data with this in mind.

Eventually, from the preliminary codes, initial themes were developed in the selective coding phase. The codes that emanated from preliminary themes were identified as language choice, legal skills, feelings, and educational skills. After the grouping of initial themes, the codes were re-assessed in determining if they had been correctly placed and if some codes did not belong to similar, yet distinct, themes. Examples of closely related, yet different, themes are language choice and educational skills. A plausible reason for the closedness of these themes may be that education skills and language are directly proportional to the maintenance and solidification of social class reproduction (Fairclough, 2014). The three sifted themes included law emotions, legal and

educational skills, and language choice. The analysis of themes required the researcher to look whether the themes made sense, if the data supported the themes, whether too much had been fitted into a theme, whether themes overlapped, and whether there were themes within themes (subthemes) (Maguire & Delahunt, 2017). After the reassessment of the themes, the researcher aimed to look at labelling themes more specifically and orderly, as themes were too broad and some utterances between two themes had been overlapped. The themes that were separated for definition and analysis were the following:

- Language choice was formulated as **language preference for law interpretation**.
- Legal skills were renamed as **legal language understanding and interpretation**.
- Emotions were expanded as **emotions associated with law encounters**.
- Education skills were identified as **education skills for understanding the law**.

After the final themes had been identified, the researcher had to re-check and reposition some of transcriptions. Braun and Clark (2006) note that depending on your research question, you might also be interested in the prevalence of themes, i.e. how often they occur. The emotions associated with law encounters and education skills for understanding the law were merged into one theme as the researcher noticed duplication of codes between the theme, moreover most of the answers regarding education were based on personal thought or opinion from emotions on the law. The theme was rebranded as:

- **Emotions, opinions and educational flairs on law writings and encounters**

After this process, the final step was to formulate an analytical model, where themes were defined, and a report was written on the thematic analysis to establish the findings and discussions on the researched topic.

4.8 Conclusion

The methodology chapter has outlined the research measures and design that were used for this study. The research measures and strategies entailed a triangulation of interviews, observations, and documentary analysis as qualitative data collection methods. The interviews were guided by

an interview guide and a linguistic profile to steer the interviews in a manner that was participant-centric while assisting the researcher to answer the research questions in-depth. The chapter further explained how non-purposeful sampling techniques were employed. Ethical considerations and data-handling strategies were delineated to assess how law judgments as public documents are perceived by ordinary citizens. Additionally, ethical considerations were conveyed on how the researcher exhibited ethical research standards that sought to protect the participants and the data that was extracted from the interviews. The ethical standards sought to align with institutional best research practices and principles. Lastly, the chapter discussed the data analysis on how data was untangled for analysis and findings. The data analysis used an analytical framework of thematic analysis where data from the interview transcripts was coded into themes. The themes were further reassessed to determine whether the codes were correctly placed in their themes, and double-coded themes were addressed, after which the researcher was able to formulate conclusive themes that would be analysed and discussed as the findings of the study.

Chapter 5: Findings and discussion

5.1 Introduction

This chapter deals with the data analysis of the study. More specifically, the findings of the study are interpreted and discussed in-depth. The results of the interviews will be discussed and expanded on as well. The results will report on the analysis of the interview transcripts and observations. Furthermore, the most relevant aspects that emerged from the data will be introduced. Each theme will be presented and explained, using inferences obtained from the interviews. After finishing the coding process of the interviews, the four final themes that were discovered were language preference for law interpretation, legal language understanding and interpretation, emotions associated with law encounters, and education skills for understanding the law. Each theme will be thoroughly explained in the following subsections.

5.2 Textual analysis

This study conducted a textual analysis of the law order documents that were used to conduct the interviews. A textual analysis benefited the study in the context of conducting an extensive examination of the exploration process that would not entail a coding process but conduct a category-based analysis that would dissect the texts extensively (Kuckartz, 2014:143). The textual analysis was done in three steps where it followed a descriptive pre-interpretation phase, followed by a formal discursive analysis of key lexico-grammatical elements in the text, which also consisted of the exploration and verdict that summarised the textual analysis of the law orders.

5.2.1 Descriptive pre-interpretation phase

The orders were two separate judgments from different cases. The study used two separate judgments to get a different variation of data to strengthen the objectives of research questions and more importantly, to guide the researcher not to make generalised assumptions about law judgment drafting based on one law order. The court orders are referenced as Order 1 and Order 2. The law orders (Order 1 and 2) have the same heading, ORDER, written in capital letters, followed by five to seven sentences below the heading. The sentences are written in sentence case and range from one to three lines in paragraph length. After the order section of Order 1, there is a digital signature

of the accounting officer of the judgment, which is the president of the Special Tribunal of South Africa.

5.2.2 Formal discursive analysis

A summary of the text was done to understand the semantical context of the document. To understand the document, a scan and full synthesis of the document, and the formal discursive analysis will follow the delineation and exploration process. This will complete the discursive process.

5.1 Delineation

For Order 1, the judgment used passive voice constructions, such as *'The review application is dismissed with costs'*. Additionally, complex sentences continued to plague the judgment in the second line where wording, such as '*the recess period constitutes dies non,' 'the excipients shall file their plea.'* This sentence choice and formation hinder the non-legal person from fully understanding, as a lawyer would need to be hired for the enlightenment of these terms. Non-simplistic English has been used in the order where words, such as *'shall*,' *'discovery* 'and *'replication,'* can be substituted for their simplistic active voice synonyms. Furthermore, the text refers to '*The SIU shall file its replication if any by 18 March...*' which amplifies the Special Investigative Unit (SIU) as a person. Words, such as '*pre-trial conference*' and '*excipients,'* are not easy to follow. *'Conference'* is debatable in this phrase as it could be a synonym for a meeting or session between the accused, respondents, and the presiding judge, while '*excipients*' is synonymous with plaintiff, which is the person who initiates the lawsuit in a civil manner (Cornell Law School: 2024). Holistically, these utterances render the text of Order 1 as difficult, with its complex wording, passive voice and generous practices of legalese. Although, the paragraph did use minimal sentences for the order, the technical wording, jargon, and long sentences can still be rendered as complicated.

For Order 2, the first line was similar to the first line of the first order phrased as *'The review application is dismissed'*. One of the sentence lengths in the second order was three lines long with words, such as '*second recipient'* and '*application to compel on a punitive case.'* The sentence used a single comma with no conjunction or logical connector in the sentence. Furthermore, a sentence structure, such as '*which costs shall include the costs of two counsel where so employed,'*

was used. This sentence is a clear example of a complex and passive voice sentence formation and legalese in the law orders. Additionally, '*Wasted costs occasioned by April postponement'* and *'the first respondent shall bear their respective costs of the review application and counterapplication'* are continued examples of passive voice sentence structures. Similarly to Order 1, the technical and passive voice use of words and legalese plague the order as relatively difficult and non-simplistic to the layperson, due to the continued use of passive voice legal jargon.

5.2 Exploration and verdict

In summary, both documents (Order 1 and 2) did incorporate plain language writing through short, simple sentences and adhered to text editing strategies, such as labelling headings and using double lines to make way for more white spaces for the easy reading flow. Moreover, the law orders numbered their sentences, which contributed to the correspondence and consistency of the law orders. However, the law orders did have their generative share of legalese, passive voice use, and complex sentence formations that could have been avoided. Legal terms can become inherently difficult and vague to a non-lawyer-targeted audience.

Although, both orders (Order 1 and 2) have posed complex to passive wording, the researcher is cognisant of the fact that specialised terminology, suitable to the legal profession, cannot be avoided. Words, such as '*excipients*' and '*pre-trail conference'* may be discipline-specific with no plain language alternative to the layperson. Moreover, the referral to the Special Investigation Unit (SIU), using personified terms, such as '*its'* may refer to the entity as an organisation that assumes legal authority. The study acknowledges that plain language may not be ultimately achievable in all aspects of law order drafting, however, a willingness towards multilingualism and plain language, where applicable, can be committed to. This can be achieved by using plain language techniques that combat complex lexical and grammatical constructions that are sources of difficulty in legal language. Instances of technical language, passive constructions (in subordinate clauses), long sentences and jargon can be vehemently avoided in the pursuit of simple target-specific law order writing (Charrow & Charrow, 1979).

Finally, Redish (1985, in Cheek 2010: 8) outlines a criterion for plain language where a document can be said to communicate in plain language if the people who are the audience for that communication can quickly and easily:

- find what they need;
- understand what they find; and
- act appropriately on that understanding.

Based on the law orders (Order 1 and 2), only one point on the listed criteria has been achieved by the law orders, which is the indicator of finding what is needed. What is needed, was achievable through the heading, which illuminated the order section and its contents. From a heading, a reader can quickly search for and retrieve the information that they require. Textually, the orders were moderately complex and non-simplistic to understand, which made coherent analysis and examination almost unachievable. As a result, the law orders (Order 1 and 2) did not meet the two requirements of understanding what is found, and the ability to act on understanding. Only one-third of the Check (2010) rubric could be achieved by the law orders.

5.3 Defining themes

The findings start with the preliminary definition of the themes and assessing the transcription with their identified theme. The definition of themes aims to capture the *'essence' of what each theme is about*.' (Braun & Clarke, 2006:92). On the other hand, the definition of themes aims to find understanding of what the theme is saying. If there are subthemes, how do they interact and relate to the main theme? How do the themes relate to each other? (Maguire & Delahunt, 2017).

5.3.1 Language preference for law interpretation

This theme aimed to look at which languages participants prefer when reading a law document, in this case, a law judgment order. The language component in this theme sought to focus on the language choice, reading language competency, and language comfortability of a participant. In terms of language choice, all interviewed participants opted for English as their first language choice for reading and interpretating the judgment orders. This was followed by South African indigenous languages as a second choice or alternative language for the judgment orders to the

written in. The researcher asked the participants which language they would have preferred to read the law order in and the participants responded as follows:

> Participant 1: English yeah, maybe in Zulu or something. I studied some things in English.
>
> Participant 2: English, simplified English.
>
> Participant 3: In English I understand English (but) I would like for it to be written in another language. Optionally in IsiZulu.
>
> Participant 4: I am more proficient in English than in any other language including my mother tongue. I'm able to read and understand English better.

Note that participant 1 refers to wanting another language option for the law order but refers to the language offering to be in Zulu or something. The phrase of 'Zulu or something' speaks to the willingness to have another translated language alternative and an ambiguity in the actual preferred language. Gullifer and Titone (2021) note that bilinguals face language-related uncertainties where each acquired language has a distinct linguistic ecology from the other; the ambiguity arises in the lexical and syntactic competition on which language to choose and when it must be used. Similarly for Participant 1, they could be facing a lexical competition due to proficiency in and exposure to multiple languages where they cannot pick any one language that can be used as English alternative for the law judgment translation. As a remedy, Gullifer *et al.* (2021) note that speakers tend to make enforced internal representations, where, in most cases, translanguaging largely imposed by the monolingual majority may be utilised to lessen these uncertainties, which can aid decision-making and ultimately making a language choice.

Participant 4 stated that he is more proficient in English than in any other language, including his mother tongue, and he can read and understand English better. This could be attributed to the English acculturalisation that Africans have adopted, where assimilation has included the espousal of English in the society's culture and behaviour, especially in language. Moreover, Bagwasi (2020) notes that globalisation has influenced cultural assimilation where English linguistic adjustments have resulted in socially desirable identities and the social approval of non-native English speakers. Due to his higher reading aptitude and social inclination towards English, he could have a stronger preference for English as reading language. This study is also cognisant of

globalisation that has largely taken effect in developing countries like South Africa, where global languages have become the languages of teaching and learning. Participant 2 pronounces that she would prefer for the document to be further simplified. The question on complexity was not asked initially, however, it was projected to be the subsequent question that the researcher would ask on the plainness of language used in the judgment order, which the participant answered before it was asked. This intended to suggest that although the participant opted for an English law order, she would have preferred for more simplicity in its drafting. From the entire cohort of participants, Participants 1 and 3 mentioned isiZulu as a viable language translation option for a law judgment order to be written in. From the results gathered from this theme, an English preference for law judgment reading is common and mutual among South African citizens. Moreover, even if English is not the mother tongue, it still prevailed above the mother tongue as the preferred choice for reading and writing in this case. It can be deduced that the historical establishment of law, *via* Dutch and later British and Afrikaans colonisation, propagated language environments where the law became synonymous with languages used in governance and authority. Currently, in the democratisation era of South Africa, English is used as the *de facto* language of governance and order, which may foster an English preference as it is the promulgated language of governance.

Additionally, the researcher observed that although English was preferred for reading for the oral answering of questions, the participants tended to code-switch between English and their mother tongue in answering the questions. The reasons for the code-switching could have emanated from various reasons, such as social identities in shared race and ethnicity with the interviewer. Blom and Gumperz (1972) argue that members of the same speech community share an orientation to both varieties of language as resources for identification along this continuum. Similarly, the code-switching by the participants redirects language choice as a possible point of pride, not habit, in the harmonisation of the social meaning of language among people of the same community.

5.3.2 Legal language understanding and interpretation

This theme concentrated mainly on the legal language understanding and interpretation skills of the participants. The theme delved into the simplicity and plainness of law judgments where the theme additionally focused on the extent of easy readability by the reader. The researcher asked the participants whether they understood the law order – three of the participants stated that they

did not understand the wording of the document. One participant out of the four indicated that he could comprehend what was written in the law order. The participant who could understand what was written in the law order was Participant 4 who mentioned that he is a legal professional with a legal background, which would explain the reasoning behind his understanding of law jargon. Additionally, a follow-up question was asked to the participants based on the question of whether they would prefer the document to be further simplified. The question sought to find out if they had any knowledge or experience of reading law documents. The responses from the participants were as follows:

> Participant 1: It's got some legal uh (hesitation) words which I don't understand, I think it's (hesitation) I've got fair knowledge of the legal documents [Nginokuyi bona ku TV (I see sometimes I see on TV)].
>
> Participant 2: Well, I understand that it is speaking about prosecuting somebody. I am not familiar with law, but I can understand when someone explains to me about what the process/procedure is.
>
> Participant 3: Further simplified because I don't understand, for the document to explain, to have a background and understanding, I don't have it. I have been fine (because) I have not any experience. (Because) I have not had any experience with reading (law) documents, I don't understand the document. I don't think (so) because I had difficulty understanding.

The question on whether the participants would have appreciated it if the document had been further simplified had different responses, which were coupled to hesitation and uncertainty about the law order. Participant 1 clearly affirmed that the document had some legal writing that he did not understand. His answer had hesitations and used gap fillers, such as 'uhm' to try and locate words in his lexicon on how to answer the question. Kirkland *et al.* (2022) explains that fillers may be essential in spontaneous speaking, but also reflect a speaker's attitudes, emotional state or personality trait in relation to the discussion. Another point of consideration on the excessive use of fillers, could be rooted in the unfamiliarity with the topic and the lexical lag time for searching for the answers in the lexicon to answer the question. The gap fillers used by Participant 1 in this case, may suggest that he was unaccustomed to reading law documents, which had also resulted in hesitation in answering questions that would relate to the law order.

Participants 2 and 3 had different answers to their unfamiliarity with law orders. Participant 2 noted that she understood that the law orders were speaking about 'prosecuting someone' and would understand the contents of the document had someone explained to her. On the other hand, Participant 3 expressed that she would like the law judgments to be further simplified as she had no experience of reading law orders. Notice how Participant 3's answer was also expressive of her unfamiliarity with reading law orders, where finding and saying the words to answer the question were a challenge for the participant. In contrast, Participant 4 explained that in his view the law orders could not be further simplified; to explain this, the participant referred to the second law order where he indicated that it referred to a complicated process that would require legal training for individual analysis. He stated that:

> "I don't think that you could simplify it more than this especially on the second document, the one that that speaks of the exception in of its own it's it the according to my understanding the document itself speaks of a very complicated process. The exception one needs legal training in that to understand so I am able to understand it and I don't think that you can simplify it any further."

The views expressed by Participant 4 regarding the law contents characterise the law discipline as a more subject-specific discipline where knowledge and training are essential to understand what is meant. The diction of 'exception' within the legal precepts would be largely understood by a law professional and not necessarily by an ordinary non-legal individual. This also furthers the discussion in Chapter 2 on the blurred double-role of lawyers in plain language where lawyers construct complex legalese and are also employed to unpack them in plain language, creating a contradictory trace between the role of a lawyer and a text editor.

5.3.3 Emotions, opinions and educational flair in law writings and encounters

This theme endeavoured to look at the participants' emotional expressions and opinions of the law. The participants demonstrated to have different opinions regarding the law. The researcher asked the participants how reading the law orders made them feel and if they believed that South African law is inclusive of all people in its law drafting.

> Participant 1: I feel belittled (in Zulu, I mean) I feel stupid or ignorant.
>
> Participant 2: I feel interested because almost every day we read in the news on law cases where others are unresolved or not easily resolved, you also get interested to listen in on the law.
>
> Participant 3: I'm not used to reading (law) documents with uhm so probably from my first experience, I don't understand the document I don't know how (to feel about it).
>
> Participant 4: I never felt good about it because for me I'm doing it for work and it's never nice working but also when you read for instance the second document when I read it, I normally have to read it to understand.

The answers from the participants also represented their emotional thoughts when reading law orders. Participant 1 clearly marked his displeasure with his law experience by using words, such as 'belittled and ignorant', to explain how they made him feel. Participant 4 expressed his discontentment with law experiences based on employment conditions where he stated that he is a law professional who has to read law orders repetitively to understand, which makes the experience not enjoyable for him. Contrary to the unsatisfactory experiences of other participants, Participant 2 shared a different opinion about her emotions on law orders where she mentions that she feels interested in reading the law orders. She mentioned that she heard information on law matters via traditional media in the news where some cases are resolved, and some are delayed. Participant 3 stated that she is not used to reading law orders, so she did not have a specific feeling towards the order as it was her first time reading them. Their opinions and emotions could be largely attributed to their individual social standing – in occupation and level of education, which could be a determinant underscore on their exposure and experiences regarding the law.

A follow-up question was raised where the researcher asked the participants whether they believed South African law is inclusive of all people in its writings. The answers generated similar answers where all participants stated that the law is not inclusive of all people for several reasons that are mentioned below:

> Participant 1: No, I don't think so, a standard (grade) 4 child doesn't understand what he's read, I think it's the quality of education.

Participant 2: No, I am not convinced.

Participant 3: I don't think so because I had difficulty understanding the terms, so I don't think its inclusive for everyone to understand.

Participant 4: I don't think it does because lawyers write for lawyers and we tend to forget that our documents could be written by non-lawyers and they have to understand so you know just as an example if sure there will be in this document you showed me the one that has to that speaks to an exception I had to train as an advocate to understand what an exception is.

Participant 1 lamented the quality of education as a determiner of a lack of knowledge in law judgment reading, while participant 4 gave a more sweeping response when he indicated that the law tends to be exclusive to law professionals only. Note that participant 1 laments the state of basic education where 81% of Grade 4 learners cannot understand what they have read in 11 South African languages according to the PILS 2023 Report. Participant 2 noted that she was not convinced that the law includes all people and Participant 3 referred to her own experience of difficulty to shed light on how South African law is not inclusive of all people. From these responses, although different in synthesis, it was clear that there was agreement on the fact that law language is exclusive and known to only those who are trained in law. People who are not law-educated face legalese separation, which ultimately leads to potential law literacy discrimination. Furthermore, this would suggest that law information requires background knowledge in basic education and legal synthesis to understand law procedures. Individuals who are not law-educated face more adversity, as law professionals themselves also need to read law documents repeatedly to grasp the full essence of a judgment order’s contents and meaning.

5.4 Discussion of findings

This subsection discusses the main findings of the theme analysis. The findings are deliberated to arrive at a conclusion on the results and implications obtained from the research study.

5.4.1 An English preference for law interpretation

From what was discovered in the interviews, English was not the primary language or mother tongue of the participants. This reflects on the globalisation and language regimes of Anglicisation, Dutchification, Afrikaans and Democratisation that South Africa had undergone. All participants stated that they could read the documents and had a good English reading proficiency. However, in answering the research questions they noted that they could find little to no understanding of the law judgment order that they had read. The barrier to understanding was the law terminology and structure of the document rather than the language used. It was further mirrored in their answers that they had a preference for reading the law judgment in English, although they had little background in law. In further probing why English might be preferred, it was apparent that English was the general language of formal reading and learning. According to Gilbert *et al.* (2010:680), a preference for English language proficiency may not always be influenced by acculturation, social adoption, or class prestige, but by the ability to communicate, reflecting a necessary skill for better education and employment outcomes. Similarly, the easy-to-read-and-understand phenomenon was attributed to proficiency in English, which increased the preference for English for reading over any other South African language. Additionally, the participants could have obtained competent reading and writing acumen of the English language during their school years, which garnered them with the comfortability and ease for English reading.

When asked whether they would prefer an alternative language to read the law order in, two of the four participants readily answered that they would like for the judgments to be written in their mother tongue. This was a dramatic shift from an English reading preference to an indigenous language alternative selection. Note that the indigenous languages are referred to as optional languages as their translation of the law are viewed as nice-to-haves with the English versions. Responses for official law judgment language translations ranged from ‘maybe in Zulu or something’ or ‘optionally in isiZulu.’ Words, such as ‘maybe’ and ‘optionally,’ echo the substitute or “option” sentiments that indigenous languages are referred to as the second-best option for legal documents. These responses render African languages as periphery or optional languages in legal discourse and within the broader judicial system in SA. Indigenous languages seem to be taking long to close the gap in certain areas that are institutionalised due to, among other things, lack of recourse and political will. Managing multilingualism in language policies may be a passive

process towards multilinguistic dispensaries in law where active and agile planning must be realised. Kamwangamalu (2009) notes that indigenous languages should be treated as a marketing obstacle where the languages need to be promoted for better consumer consumption. This may be a favourable approach towards eliminating the passive top-down approach of language policies that do not yield anticipated implementation results. The marketing of indigenous languages as intelligible in developing their legal corpus can be an appealing market strategy for indigenous social egalitarianism against indigenous language erosion.

From the findings analysis above, this study uncovers that English remains as a monopoly language in SA where the growing number of English speakers allows for English networks to develop. Moreover, the English language continues to grow due to globalisation and industrialisation, which causes the number of speakers to rise as the language receives more social value rendition. The English language finds itself at an advantage as it already has a developed plethora of academic and professional disciplines, which makes it more socially and economically accessible rather than developing indigenous languages.

5.4.2 Legal language understanding, ambiguity, and exclusion

The answers from the participants on their legal understanding and interpretation varied in terms of their lived experiences and assumptions. The responses indicated that their general knowledge and background of legalese and legal processes was partial to little. Similarly, their answers reflected a general idea of unfamiliarity with law, which was represented by ambiguous or vague responses as to what exactly the document was about. According to Jansen and Lentz (2008:7), readers' prior (or domain) knowledge, as well as their ability or inability to draw conclusions or to make complex inferences, may not be considered where writers who are trying to make their texts as comprehensible as possible, naturally need to be able to see to what extent they have succeeded in conveying their message. In this context, legal texts can be notoriously difficult to understand, where the comprehension difficulty can be attributed to the distinct features of legal language, which are not regularly used in other discourse domains (Cornelius, 2010:172). The study found that law documents convey forms of coveted intimidation towards readers who are not experienced in the discipline, which creates additional pressure on them when confronted with reading or analysing legal texts. Although the participants had been reassured by the researcher that their

knowledge of the law would have no bearing on the quality of the interviews, the participants were hesitant during the interviews, which was also reflected in their analysis and answering.

Another finding in legal interpretation remedies was that the media through court television broadcasts provided a real-time exposure and feel to the legal court settings, terminology, and professional conduct to the interviewed participants. According to Podlas (2010), the media, including television, are primary sources of heuristic knowledge where individuals take mental shortcuts by simplifying complex decisions based on what they have seen or heard. The media acts as a definitive primary source of normative information through news bulletins and screenplay. Irrespective of the truth or falsity, the stories that are seen on television shape societal beliefs (Simpson-Wood, 2016). Legal televised broadcasts did not seem to educate the participants with definitive legal rules and procedure, however, they contributed to the attitudinal values and social constructs of the legal fraternity, based on televised portrayals of legal conduct. This could be detected in their responses to their legal understanding where some participants admitted that their exposure to law is heavily influenced by what they watch on television and on how it reflects the law profession. As a result, this further creates misconstrued assumptions on actual law processes based on televised programming, which augment falsified pseudo-legal literacy among audiences. Additionally, televised legal programming also instigated interest and minimal subjective predictions on how the law is discharged especially in court proceedings. This created a curiosity and attentiveness to follow publicised court proceedings and the verdicts thereof.

5.4.3 Emotions and opinions in law capacity-building and perceptions

Opinions on whether the South African law does its best to include all people in its writing garnered different opinions from participants ranging from quality of education to law enactment and general law-making. One participant referred to the perception that ‘lawyers write for lawyers’ where an individual may need legal training to understand some of the practices used in the law. Susskind (2023) forecasted that in the future clients may not necessarily need to pay for expensive legal advisors for work that can be done by less expert professions, supported by capable systems and standard processes. This opens the employment market for flexibility in new important forms of legal practices. Plain language experts are thus marketable in the new niches of legal practice

where enhanced characterisation for drafting craftsmanship may fall upon language practitioners, in collaboration with legal experts. Moreover, the participants continued to add that lawyers forget that they prescribe the law to non-lawyers. The study determined that an exacerbated need for plain language within the law fraternity is required for universal legal access and inclusion.

The study found that conversations about law-making and prescription are not uniform across all people as different individuals have distinct law experiences, which also influence their opinions and thoughts on the judiciary. Based on the responses, a favourable and revered law experience results in heightened excitement and positive acknowledgement for the profession, yet an unfavourable, biased, or anxious law perception altered the feelings of admiration into criticism and disapproval of the legal discipline. Anxiety and disapproval of South Africa's legal system can also be attributed to publicised court cases and public perception. Public-based narratives in law knowledge building can be a dangerous and untrustworthy outlook for law education as the media can be exaggerated and may contain diluted and politicised legal coverage and analysis. On the other hand, reliance on traditional media for factual information can also be progressive and constructive as the media encourages cultures of democratic debate while acting as a gatekeeper of bringing political power to account through investigative reporting (Wasserman, 2020:455). However, reliance on the media, wholly for legal analysis and law education, should be consumed carefully to minimise confirmation bias and selective exposure gained from media reporting against actual legal proceedings and practices.

5.5 Conclusion

This chapter dissected the study's findings that emanated from the interviews and observations. The findings determined that media viewership, English preference and emotional bearing were the key elements that influenced participant responses and behaviour during the data collection. The results from the findings revealed that education and media tend to have a directly influential role on how general citizens view the law and their knowledge thereof. Law analysis carried forms of anxiety for people who do not have a law background, which aggravated law literacy divisions among law professionals and laypeople. Moreover, the researcher conducted a thematic analysis on the documentary evidence (two law judgment orders) that were used for the interviews and observations. The results from the thematic analysis coincided with the responses from the participants where excessive jargon, passives and complex sentence structure were

heavily utilised, which ultimately presented the document as complex and textually difficult to non-legal consumers. South African law drafting is not accessible to the citizens to which it prescribes. Urgent and radical strategies to synthesise the legal divide and law inclusivity are required.

Chapter 6: Conclusion and recommendations

6.1 Introduction

This chapter summarises the research objectives, and their answers based on the findings gathered from the findings and discussion analysis. The chapter will further provide an outline of the findings of the study, the limitations of this study and recommendations for future research.

6.2 Objectives revisited

This dissertation contributed to the literature on plain language, literacy, and multilingualism in a democratic country with twelve official languages. The contexts of multilingualism, plain language and literacy were formed by looking at the prevalence of law literacy among South African citizens. Decisive ways to mitigate the usage of plain language in law with additive translanguaging methods were explored.

The literature review explored the status and role of South African indigenous languages within governance and national obligations, where the discussion extended to law, and language usage in South African law. The main contribution towards the review of relevant literature was to suggest that plain language should be used as a foundational basis for multilingual law indexes, and translations. The benefits of formulating indigenous language legal glossaries, vocabularies and indexes are invaluable to the convergence of indigenous language development within legal settings. Additionally, from the development of translated and plain language law guides in the form of glossaries, the law fraternity will move towards an inclusive and citizen-centric legal framework. A triangulated variety of methods was used to investigate the research questions in which the results indicated that English legal maintenance and sustenance was supported by the citizens that the law governs. The choices of mother tongues as law order languages reflected timid and tentative views, which identified indigenous languages as ‘optional languages’ for law dispensation. The study determined that the appetite for indigenous languages in law was minimal among ordinary citizens where the most concerns regarding law orders emerged from their readability and not necessarily the language used.

The theoretical and conceptual framework unravelled the incidence of transformative potential and critical consciousness of language use in the law discipline. Societal factors, such as power and equity, were highlighted as determiners of successful plain language and multilingualism

implementation in education and law. Language conventions and practices are invested in power relations and ideological processes where capital investment directly influences language policy and governance. The study observed that transformative potential should be imparted through purposeful writing that is audience-focused and literacy-inclusive. Moreover, the study utilised the thematic analysis and textual analysis as theoretical frameworks that would shape the data collection analysis of the study. Text dynamics in textual analysis acknowledged textual factors, such as grammar, spacing, jargon and sentence writing, which were utilised by the law orders. The law orders were holistically deterred as complex and difficult to read due to the excessive jargon and obscure sentence structures.

From the results that were derived from the data analysis, various impediments from the non-implementation of plain language were heightened, where law education and exposure were mostly acquired through television-viewing experiences. The analysis further uncovered that television viewing featured in the emotional impression of law through publicised court cases and general screenplay. Emotions about or perceptions of the law mainly emanated from court verdicts and behaviour that associated law with non-parity and technical jargon, which created intimidation and hesitance for the ordinary observing citizen. Cultural and educational backgrounds, through social markers, reflected that those who succeed in reading literacy may not necessarily be competent in law reading and analysis. The study found that the law is subject-focused where law professionals and individuals with law acumen are the individuals who can successfully interpret and coherently apprehend the writings and processes of law order dispensation.

The findings and discussion section discussed the verdicts of the data where the key focus was to find meaning from the multiple themes and analysis that were derived from the interview responses. Four main findings emerging from the findings included television influence on law exposure, language preference for English law maintenance, law saturation of law professionals, and attitudinal values based on the public perception of law. The language similarity of the interviewer and participant had a significant effect on the feel and response quality of the questions. Participants tended to code-switch from English to isiZulu when explaining their emotions regarding the law and its simplicity for reading and analysis. This was the opposite when choosing their preferred selection for law orders to be written in. This outcome was important for response rates where more detailed analyses and explanations were provided to the interviewer, based on

their personal perceptions regarding the law. The study has answered the research objectives that sought to understand the law literacy and legal language landscape of South Africa.

This dissertation has shown that language embodies a crucial role towards understanding and meaning creation. Multilingualism, plain language, and literacy building cannot be ignored in the significant role of the judiciary in driving inclusivity and equal opportunity before the law. Policy creation and implementation needs to be relooked to ensure that all people are provided equal representation and support through law discipline capacity resources. Knowledge building methods through language incentives are instrumental to the building of cognitive development, which may be taken for granted in rigid and unimplemented language policies. Overall, language affects our view of the world and how we interact with others.

6.3 Limitations

The research was cognisant of the fact that the general legal scope of comprehension and understanding of all people of South Africa would not be investigated due to time and research tool constraints. Furthermore, the research designed its sampling with a criterion of having a general educative level, which possibly rendered those who do not fall into this group, as omitted. Additional limitations that may have deterred the full development and scope of the study included the following:

- The limited number of law order documents that were retrievable online for the experiment. The research could have utilised more legal documents from different legal institutions to obtain a more holistic perspective on how ordinary citizens perceive the law.
- A legal person as a participant in the study is a limitation of the study as they are privy to general law terminology that would warrant their access and comfort with legalese.
- The researcher is not a lawyer nor has any legal background. A legal background would have furnished the researcher with more discipline-focused knowledge and case analyses, which would have garnered in-house, law-oriented advisory, and suggestions based on matters that they would have proficiency in.

6.4 Original contribution to scientific knowledge

The findings of this study contributed to the following:

- The review and analysis of the techniques of plain language and multilingualism used in South African law.
- The advocacy for written multilingualism in the law, not only in translation and interpretation but in official judicial writings as well.
- The development of new research in understanding plain language affecting multilingualism after three decades of democracy in South Africa.
- The fostering of a continuous appraisal for law literacy development and sustenance.

6.5 Recommendations

Recommendations of the study and for further research include the following:

- The continuation of institutional policy-making and editorial gatekeeping to acknowledge the benefits of distributing knowledge through plain language and active literacy interventions. This should be done in multiple languages.
- Plain language in basic education needs to be made more secure in formulating steady bridges between literacy building and mother tongue education.
- Law literacy inventions through plain language and multilingualism can be studied and developed from a regional and national footprint in determining the success rates of plain language and translanguaging within the law.

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Appendix A: Information sheet

INFORMATION SHEET FOR PARTICIPANTS

STUDY TITLE: Plain language and multilingualism in South Africa: A focus on literacy and understanding in law drafting.

RESEARCHER NAME: Gugu Maziba

INTRODUCTION
The research is intended to gauge how multilingualism and plain language assist the ordinary South African with understanding law documents.

VOLUNTARY PARTICIPATION
My aim is to understand how different individuals perceive law documents (law judgments) and their perceptions on the law. Your participation in this study is absolutely voluntary, and you may decide to leave the study at any time you wish.

CONFIDENTIALITY
All personal information given, your name and identity and that of the school will be kept completely confidential at all times and in all academic writing. Your individual privacy will be maintained in all published and written data resulting from the study. This study is fully anonymous and no identifying information resulting from your participation will be stored recklessly.

RISKS AND BENEFITS
There are no foreseeable risks in participating in this study. You will not be paid for participating in the study. Benefits of the research will be a contribution to the current discourses of language planning and maintenance, at the University of Cape Town and in the context of Higher Education institutions in South Africa.

PROBLEMS AND QUESTIONS
If you have any questions about this study, you can feel free to contact me:

Researcher's contact details
Gugu Maziba
Cell: [redacted]
Email: [redacted]

Appendix B: Ethical Clearance Certificate

Department of African Studies and Linguistics
Harry Oppenheimer Institute Building, Engineering Mall
University of Cape Town, Private Bag X3, Rondebosch, 7701, South Africa
Tel: 021 650 2847
Email: linguistics@uct.ac.za

1 December 2023

To whom it may concern

Ethics clearance for minor dissertation towards the MA in Linguistics

Thesis title: *Plain language and multilingualism in South African law: A discussion on law judgments post-2010.*

Researcher: Gugu Maziba
Ref: HUMREC011220231

This is to confirm that the dissertation, as above, meets the requirements for research ethics as laid down by the Faculty of Humanities and the Department of African Studies and Linguistics. Please feel free to contact me if you require any further information.

Yours faithfully

Justin Brown (on behalf of departmental research ethics committee)
Email: Justin.Brown@uct.ac.za

Appendix C: Interview guide

Unstructured interview questions/guide

1. Do you understand what is written on this document?
2. What languages do you prefer to read this document in?
3. Is the text simple to read or would it to be further simplified?
4. Would you like this document to be written in another language and why?
5. How would you describe your past experiences with the law?
6. How do you feel when you read documents of the law or anything law-related?
7. Do you think the South African law does its best to include all people in their writings? Please explain your answer

Appendix D: Interview transcript

INTERVIEW TRANSCRIPT WITH S3 (PARTICIPANT) AND GM (RESEARCHER)

GM: Do you understand what is written in this document?

S3: No

GM: Which language would you prefer to read this document in?

S3: English

GM: Is it simple to read or you would like it to be further simplified and why?

S3: Further simplified because I don't understand it.

S3: By simplified English, I don't understand what the case is about. I would like for the document to explain what it is essentially about. So, it doesn't need someone to have a background and understanding in which I don't have it.

GM: Ok, how would you describe your past experiences with the law

S3: They have been fine.

GM: How would they be fine if you have had no experience with the law?

S3: It's been fine because I have not had any experience.

GM: How do you feel when you read documents of the law or anything law related?

S3: I'm not used to reading documents so probably from my first experience I would like to see for this one, but I don't understand the document.

GM: Do you think South African law needs does its best to include all people in their writings please explain?

S3: I don't think so because I had difficulty understanding the terms, so I don't think its inclusive for everyone to understand.

Appendix E: Documentary Evidence (Order 1)

ORDER

1. The review application is dismissed.
2. The applicant shall pay the second respondent's costs of the review application and the application to compel on a punitive scale, which costs shall include the costs of two counsel where so employed.
3. The counterapplication is dismissed.
4. The applicant and the first respondent shall bear their respective costs of the review application and the counterapplication.
5. The applicant shall also bear its wasted costs occasioned by the April 2023 postponement.

MODIBA J

PRESIDENT, SPECIAL TRIBUNAL OF SOUTH AFRICA

Order 2

ORDER

1. The exception is dismissed with costs.

2. Considering that the Tribunal goes on recess on 4 December 2023 until 19 January 2024, and that in terms of the Uniform Rules, the recess period constitutes dies non, the excipients shall file their plea by 26 February 2024.

3. The SIU shall file its replication if any by 18 March 2023.

4. The SIU shall make discovery and file its witness statements by 15 April 2024.

5. The defendants shall make discovery and file their witness statements by 15 April 2024.

6. The parties shall hold a pre-trial conference no later than 30 April 2024.

7. Within 5 days of the excipients filing their plea or 22 January 2024, whichever comes last, the Tribunal Registrar shall arrange a trial date with the parties in the second term of 2024.