

A PERSONAL REFLECTION ON ACCESS TO JUSTICE AND THE ROLE OF INTERPRETERS/TRANSLATORS

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Access to justice creates happy citizens and harmonious communities. For a small jurisdiction such as Tokelau which has fewer than 1,500 people,¹ it might be surmised that access to justice would not be a matter of concern. Nevertheless, on further thought, this will be found not to be so. While the issue of access to justice in smaller jurisdictions varies, access to justice remains a concern for all jurisdictions whether big or small. This article focuses on access to justice in relation to the provision of information and service by justice providers.

Le principe de l'accès à la justice est on le sait, un facteur de sécurité et de cohésion sociale.

De prime analyse tout pourrait porter à croire qu'il ne devrait pas s'agir d'un sujet de préoccupation pour une petite juridiction comme les Tokelau qui compte moins de 1 500 habitants. Or, si la question du libre accès à la justice peut certes varier d'une petite juridiction à l'autre, l'auteur observe néanmoins qu'un examen plus poussé révèle l'existence de problématiques communes qui sont sans réelle corrélation avec la taille des juridictions concernées. L'auteur, illustre son propos

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Lise is enrolled presently doing a Postgraduate Certificate in Intercultural Communication and Applied Translation at Victoria University of Wellington, New Zealand. She says that this new journey has opened her eyes: "Since taking up this study, I now hold the view that the language barrier is a great hindrance for the people of Tokelau in their access to justice. For many citizens, to access justice through information that is communicated in interpreting/translations is the only option, but it can be a hindrance also".

1 Tokelau is a territory of New Zealand. Its High Court and Court of Appeal are the New Zealand High Court and Court of Appeal. Both the High Court cases and Court of Appeal cases for Tokelau are heard by New Zealand judges and, presumptively, in New Zealand. Proceedings are conducted and written in English. To date there have been no translations. For further information on the law of Tokelau see Jennifer Corrin and Tony Angelo (eds) *Legal Systems of the Pacific* (Intersentia, Cambridge, 2021) 329-350.

par les difficultés d'accès aux informations et aux services administratifs et judiciaires qui sont rencontrées par les différents auxiliaires de justice.

I ACCESS TO JUSTICE

Access to justice is a fundamental human right:²

Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable.

This right gives one citizen the opportunity to resolve a dispute or grievance against another citizen or an institution. If this right is hindered because of ignorance of the law or because it is not understood then there are unhappy citizens. Unhappy citizens are not good citizens. Happy citizens bring joy and harmony to communities and nations.

How can information and service providers become key agents for citizens to access justice? When a person encounters a dispute or conflict, immediately they want help on how to resolve or fix it. This immediate help comes in the form of information and through a service provider. This service provider can be a person who is qualified to give that help or through an institution or a system. Even if this help is available in the first instance, the help may not be understood.

Access to justice whether formal or informal by way of receiving the information at first hand can help consumers decide what pathway to take. From a consumer perspective the information must be relevant, simple, and easily understood. Accessing relevant and right information will help a consumer make informed decisions. Information can come in different forms depending on who the service provider is. If this information is received in a foreign language, this is a big barrier. If the information is ambiguous or outdated or incorrect or irrelevant, the consumer will encounter even more barriers. Access to justice will not be provided or be pursued by a person who faces too many challenges.

II ACCESS TO JUSTICE THROUGH INFORMATION AND SERVICE PROVIDERS

This article focuses on information communicated through interpreters and translators to a consumer, who in this article will be primarily a court user. The court

2 <<https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>>.

user depends on the interpreter or translator to communicate the meaning of the information:³

In various process-oriented conceptions of interpreting, the task of the interpreter is merely to process (verbal) utterances. While a verbal-transfer view would foreground the linguistic components, a cognitive-processing perspective would focus on mental structures and operations, and interpreting as 'making sense' would highlight the (language-independent) conceptual representation, all of these accounts of the process start with the interpreter's 'input.' Even approaches to interpreting as (target oriented) text production may limit the scope of the process to the transformation of a source text into a target text. In contrast, viewing the interpreter as an interactant enabling communication between primary parties in a process of interaction offers a much broader analytical framework.

The interpreted message communicated to the court user can hugely impact on their life positively or negatively. The outcome is determined by the meaning of the message interpreted or translated. The task of communicating the interpreted message places a huge obligation on the interpreter or translator. The need for accuracy in interpretation/translation is paramount:⁴

The interpreter is envisaged as a bridge between the situational and socio cultural backgrounds of the source and target languages, but outside the communicative situation shared by the primary parties.

For accuracy of interpretation or translation, the interpreter/translator must have sufficient experience and knowledge in the subject matter of the discussion in both languages. This means the interpreter must be proficient in both the source and the target language. The key task of an interpreter/translator is to communicate the meaning of the message as accurately as possible. The interpreted/translated message must not alter or omit any part or add to the original text or utterance.

III EXPERIENCE/CASE STUDIES

The information below paints a picture of the reality of what access to justice might look like for the people of Tokelau.

The ability for Tokelauan interpreters to communicate the message from English or any other foreign language to Tokelauan is significant, particularly for the court

3 Pöchhacker, F (2005) "From Operation to Action: Process-Oriented in Interpreting Studies" *Meta*, 50(2), 682–695 <<https://doi.org/10.7202/011011ar/>>.

4 Ibid.

users who understand only Tokelauan. Language is the key tool for the people of Tokelau to access justice.

A Being Prepared

Interpreters and translators often struggle to find the equivalent of the spoken or written word in their own language. This challenge to finding an equivalent or trying to contextualise the work to something meaningful is a huge barrier. How then is access to justice received by court users if interpreters or translators struggle or fail to find an equivalent? Even if a word is borrowed from the foreign language, there is still a need to explain it to help the court user understand:⁵

Translation involves more than finding linguistic equivalence: conceptual, idiomatic, and experiential equivalence are also key factors in comprehending messages, particularly in intercultural situations.

I want to share a challenging interpreting experience that I had encountered in Tokelau during a work trip to one of the villages. This experience haunted me for days and I was really disappointed with myself. Since I have taken the Victoria University of Wellington interpreting course, I am aware and understand why this interpreting experience upset me and has stayed with me for a long time.

The experience took place in Tokelau in 2018 in the village of Fakaofu. I was asked on the spot, just prior to the welcoming meeting, to translate for the Honourable Kris Faafoi. Minister Faafoi was on an official New Zealand government visit to Tokelau with a New Zealand delegation. This was a big welcome ceremony for the people of Fakaofu as Fakaofu is the village of Minister Faafoi's parents. It was the very first time for the Minister to visit his parents' village.

As an interpreter who learned interpreting and translating by doing it on the spot from the guidance of Tokelauan Gagana Experts, and having worked for the Government of Tokelau for more than fifteen years, I thought I was one of the best. I was confident and always prepared to interpret and translate but on that very particular day in Fakaofu, when I was asked to be the interpreter/translator for the Minister and his delegation, I was very nervous.

Where I was asked to sit made me even more nervous. I sat right at the front just behind the Minister and in front of about thirty other people. I was asked to do both simultaneous and consecutive interpretations.

5 Lustig and Koeter *Intercultural competence. Interpersonal communication across culture* (7th ed, Pearson, Boston, 2013).

When I started interpreting the source language which was Tokelauan to English to welcome the Minister and his delegation, I was fine and comfortable. But when it was my turn to interpret the Minister, who spoke in English, into Tokelauan, I was very nervous.

I recall I was so busy taking notes of what the Minister was saying, that I forgot to listen and follow what was actually being said. The Minister did not have a loud voice and I was not used to his accent. Since I also sat behind him this made it difficult for me to hear what he said.⁶

The major task of an interpreter ... might seem straightforward, but this role begs two important questions: what are contextual factors that impact translation of words and what sort of language is the translated ... data?

Every time the Minister paused so I could interpret what he had uttered in English to Tokelauan, I felt nervous, uncomfortable, and distracted.

Thinking back to this experience in Fakaofu makes me sad. I was not trained professionally, but I had failed in my job. I recall clearly how I felt when I realised that I had missed some key words or had done a poor job. This experience was not good at all for the audience, the listeners, the people of Fakaofu. They were so proud and happy that Minister Faafoi was on Fakaofu. I could tell the eagerness and excitement in their eyes every time the Minister spoke.

However, I believed there were times I had surely caused frustration to a portion of the audience who had independently understood what the Minister said. This was a dilemma for me especially as an interpreter as I felt in my heart that I was not doing a great job. I was not focused and prepared. Whilst listening to the Minister, instead of thinking and strategising what I would interpret I was immensely distracted by my thoughts of embarrassment and shame.

B Limits of Commentary

Another experience I want to share is the situation with the lay judges of the Commissioner's Courts of Tokelau. The lay judges are known as Law Commissioners. They are appointed by the Governor-General on the recommendation of the Minister of Foreign Affairs and Trade of New Zealand. This recommendation results from the Minister's consultations with the Taupulega of the relevant village.⁷ The Commissioners have no legal experience, nor do they have

6 Inger Skjelsbæk Peace Research Institute, Oslo (PRIO) (University of Oslo, Norway).

7 Tokelau Amendment Act 1986 s 5.

any law qualification. This arrangement is a great hindrance to the people of Tokelau accessing justice.

The fundamental role of the Law Commissioners as lay judges of the Commissioners' Courts of Tokelau is to hear cases and deliver decisions. The key resource for the work of the Commissioners is the Crimes Procedure and Evidence Rules 2003 (Crimes Rules). Despite there being a Tokelauan version of the Crimes Rules, the language barrier remains. This barrier is a hindrance to the people of Tokelau accessing justice and to those expected to deliver justice.

To fully comprehend the Crimes Rules, the Commissioners must have sufficient knowledge of the laws and have legal experience. Language is a big barrier especially for law as it has its own legal elements and interpretation/translation must be accurate. Insufficient legal experience, legal qualification and ad hoc judicial training further restricts accessing justice by the people of Tokelau. All these barriers can contribute to delayed hearings and judgment delivery; justice is not served. The struggles for written structured judgments results from the language barrier and legal competencies.

C Dual Roles? Interpreter/Adviser

A final experience I want to share is my interpreting for Sir Ronald Young in September 2019.⁸ This interpreting experience left me shattered and broken-hearted. I was saddened whilst interpreting as I felt that I had betrayed my people for what I had communicated to them. Having said that, this experience was a classic example of denied access to justice. As the interpreter at the time, I truly felt the emotions, fear and confusions conveyed by the people of Tokelau. At this juncture, I was working as the senior lawyer for the Office of the Government of Tokelau. I was tasked to travel to all the three villages to present the key recommendations of Sir Ronald's Report with the writer and the Administrator of Tokelau. Our consultation team travelled by boat to all three villages of Tokelau with a scheduled programme to spend one whole day in each village.

The village consultations included the Taupulega (Village Council of Elders), the Women's Committee (Fatupaepae) and the Able-bodied Men's Group (Aumaga).

During these consultations, there were villages who gathered as a whole village – hence one big Village Meeting. In other villages, the meetings were restricted to those involved with village governance: Taupulega; the Abled-bodied Men and the Women.

⁸ Chairperson of the New Zealand Parole Board; formerly a Justice of the High Court of New Zealand.

My job on that trip was to interpret for Sir Ronald Young when he presented the key recommendations of his report. I was to communicate the message from Sir Ronald to the communities. In addition, it was also my role to communicate to Sir Ronald any responses or questions from the communities. The Report was about the future of the Tokelau judiciary. Sir Ronald's recommendations included the major restructuring of the Tokelau judiciary – specifically the courts and the roles of the judicial officers.

Despite my being the senior legal adviser at the time, I was travelling with Sir Ronald as an interpreter. This task was a difficult one for me particularly in both my roles as the senior legal adviser and as interpreter/translator. I had the most significant role to communicate Sir Ronald Young's Report with its recommendations to his targeted audiences. At the same time, it was also a most uncomfortable experience and a difficult role to have. I was the senior legal adviser and a Tokelauan woman. To sit and listen to Sir Ronald Young's Report presentation, especially interpreting the recommendations that were contradictory of my then current work plan was difficult. Communicating the message was my major role on that day and I really struggled. I did not want to be an interpreter as I felt like I was betraying our people. I should have been an adviser at the time to help my people rather than interpreting. I felt helpless.

Given my role, legal knowledge, and experience over the years, I believe I was the right person at the time to interpret for the village consultations on the Sir Ronald Report and I was competent. Access to justice for members of the three villages of Tokelau to know about suggested changes to their courts system was pivotal. Nevertheless, now I have taken the interpreting course and, looking back to what happened, I did not do justice to the speaker or to the audience. Based on the Code of Ethics for Interpreters I would have failed immediately. From a professional perspective, I should have refused the role of interpreting for Sir Ronald Young.

I was the legal adviser at the time and there were sections of the report that I strongly disagreed with. I was sad whilst interpreting as I felt helpless and frustrated especially that I was in no position to advise or say anything pertaining to the Report. My body language did not correspond with my words and I believe this was obvious to the audience.

The issue of access to justice is whether the people of Tokelau during the village consultations received enough information to fully comprehend the Report. The Report was a significant one for the people of Tokelau now and for the future. The Report pointed to important and critical issues that will affect Tokelau. I truly felt that the people of Tokelau were denied access to justice. They did not receive

sufficient legal advice and support. This legal support if it were available would have provided additional perspectives and recommendations.

IV ISSUES

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.⁹

Can the people of Tokelau in their villages access justice? – Access to justice in the form of the information that requires service providers.

The answer can be found from the future court users of the Tokelau judiciary. They are the people using the information and their perspectives matter.

The interpreter/translator should have sufficient knowledge and experience of the subject/or topic before undertaking an interpreting/translating task. I now know, having taken the Interpreting/Translation Course, that this is an absolute necessity.

Interpreters and translators must separate themselves from the speaker and the audience by showing no emotion. This means no facial expressions of joy or anger or frustration or confusion while interpreting and translating. The role of interpreter/translator is to communicate the message without being responsible for the message.

I truly welcome this enlightened view as this is so significant when the interpreter knows the people being interpreted for or vice versa. To do this practically in a small community like Tokelau is challenging but it is possible. Further, this approach takes the pressure off the interpreter/translator so they can focus fully on doing an excellent job.¹⁰

An interpreter will be able to exchange information exactly as they intend, without distortion of meaning.

Having worked for the Tokelau Government for more than 15 years, my interpreting and translating experience continued to improve. I was translating from English to Tokelauan every time a proposal was submitted to the Council. For the legal services, I was for a very long time the only interpreter and translator of the laws. This was not an easy task; any interpreting/translating of law must maintain the elements of the law. Interpreting and translating as an engine of communication can change the whole life of the receiver or the speakers. To have the laws

9 UDHR, art 10.

10 NZSTI Code of Ethics and Code of Conduct, 2013.

translated/interpreted into Tokelauan is a great enabler for the judicial officers¹¹ and police who have limited legal experience and qualification to advance justice in their work.

As the senior legal adviser at the time, I knew the conversation between Sir Ronald Young and the people of Tokelau was not well-balanced. There were cultural differences between the parties that affected discussions. It was important to acknowledge that the speaker was a distinguished visitor, a foreigner who had not lived in Tokelau, and that the locals were the court users and those affected by the justice system that was being reviewed. Informing and presenting a foreign perspective to transform the Tokelau judiciaries of Tokelau was, in my view, seen as a huge barrier to access to justice:¹²

But what if cultural differences are not only about what people put on their heads or in their mouths? What if they sometimes reflect incompatible values, beliefs, norms, and behaviors?

It was very difficult to remain as an interpreter under such circumstances. As a Tokelauan lawyer, I felt it in my bones that my people needed me. The speaker definitely had the floor. When questions came from the audience that were contrary to what was being proposed, I immediately felt the tension in the meetings.¹³

Unfortunately, there is no one-size-fits-all magical recipe that works whenever a conflict starts simmering in a cross-cultural encounter. Individual differences can complicate any given situation, and some individuals are more flexible and open to foreign cultures than others. But there is also another important point to remember. Some cultural values seem nonnegotiable.

V CONCLUSIONS

Access to justice is crucial to people everywhere and is provided in different forms. Information and information service providers as forms of access to justice for the people of Tokelau is pivotal. Court users rely on the information from service providers to help them access justice.¹⁴

To enable both parties to trust that the interpreter will be a neutral facilitator of their communication, staying within defined role boundaries.

11 The Tokelau judges at the local level, the Law Commissioners, are key.

12 Micheal Minkov, *Cultural Differences in a Globalizing World* (1st ed, Emerald, UK, 2011).

13 Ibid.

14 Ibid.

As an aspiring interpreter and translator for the Tokelau language, I am more determined than ever to ensure that the information provided to any court user in Tokelau is accurate, relevant and up to date:¹⁵

Viewing interpreting as a form of action gives pride of place to the purpose that is to be achieved as well as to the baseline situation that shapes the process and will in turn be shaped by it.

It will be a big deprivation for any court user in Tokelau to be denied access to justice due to a language barrier and the interpreting and translating.

It is for the interpreter/translator to remove the language barriers and provide the cultural references needed for comprehension of the original message.¹⁶ This can occur only if the interpreter/translator has received professional training. The current situation is no longer acceptable for the people of Tokelau. It is timely now for the government to ensure that sufficient resources are allocated to cover interpreting and translations. These are core services urgently required by the people of Tokelau. Doing this will provide reassurance that the people of Tokelau can access justice at their point of need whether at the court house, or through court documents or information.

15 Above n 6.

16 Above n 6.