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Explicitation in Courtroom Interpretation: Evidence from Kenyan Courts

Odhiambo Kenneth

University of Kabianga, Kenya

Peter M. Matu

Technical University of Kenya

Abstract:

This paper explores the issue of explicitation in courtroom interpretation in subordinate courts in Kenya. Explicitation is one of the communication strategies that court interpreters employ in courtroom communication. It shows that the interpreters try as much as possible to place the non-English speakers as near as possible to the English speaking persons in court through the explicitation strategy. It argues that interpretation in courtroom communication is a model of language rights. Drawing data from interpretation in subordinate courts in Nyanza province the paper shows that the court interpreter uses explicitation in order to aid the flow of information between the non- English speaking litigant and the English speaking personnel in courtroom settings.

Keywords: Court interpretation, Court interpreter, Explicitation

1. Introduction

This paper explores the issue of explicitation in courtrooms interpreters. Courtroom interpretation is a very important aspect in the administration of justice, as it is likely that lawyers, prosecutors and magistrates (including judges) are likely to encounter litigants who do not understand English. Such situations are likely to impede communication which can compromise legal communication. For communication to occur effectively, the parties involved should be able to express themselves and understand each other sufficiently to arrive at mutual understanding. This means that when an advocate, prosecutor or magistrate communicates with a non- English speaking litigant, it must be via an interpreter an implication that the interpreter must be able to communicate adequately in both English, when speaking to an English speaking person and in the other language, when speaking to a non-English speaking person. In the legal setting, linguistic competence of the interpreter in both languages must therefore include among others a strong command of the legal vocabulary and the equivalence (or non- equivalence) of terms and concepts across languages (Gonzalez, Vasquez and Mikkelson, 1991).

Court interpreters are therefore provided to aid in this crucial communication. Their role is complex, Kinyanjui (2000:65) states that the court interpreter has '...a duty to interpret the oral evidence, submissions, judicial pronouncements and orders as they are spoken in court or in chambers in the course of the judicial proceeding or as the judge may direct...'. This means that interpretation is an essential component of judicial work and the requirement that all actors in the legal process be linguistically present in their trials.

The court interpreter is therefore seen as a language mediator whose presence and participation allows an individual who does not speak English to meaningfully participate in judicial proceedings. The interpreter therefore has a duty to place the non-English speaking litigant as closely as is linguistically possible in the same situation as the English speaking litigant in the legal setting. In so doing the interpreter does not give undue advantage or disadvantage to the non-English speaking litigant.

To make sure that all actors are linguistically present in their trials, one of the strategies that the interpreters use is explicitation.

2. Explicitation

The concept of explicitation was first introduced by Vinay and Darbelnet (1958/1995) and they defined it as a translation technique which consists of making explicit in target language what remains implicit in the source language because it is apparent from either the context or situation. This implies that, for the interpreter, knowledge of the explicit and implicit in the situation of interpretation in court is salient. This fact is corroborated by Hatim (1997) and Shlesinger (1995), who posit that the speakers adjust their output to an expected level of specialized knowledge of their audience. Given that the court interpreter bridges this gap of specialized knowledge, the use of explicitation becomes convenient in the communication process. The interpreter should therefore share the same frame of reference with the speaker and hearer and thus the use of explicitation where necessary.

Blum-Kulka (1986:300), explores explicitation at the discourse level, and sees it as connected to shifts of cohesion and coherence in translation. According to her theory, the process of interpretation performed by the translator might lead to more redundant target texts, where redundancy is principally created by an increase in the quantity of text cohesive markers.

Shuttleworth and Cowie (1997) note that as far as the field of translation studies is concerned, explicitation is generally regarded as a phenomenon which frequently leads Target Texts to state Source Text information in a more explicit form than the original. This means that the idea of explicitation is that of expressing a situational element which is unexpressed in the source language, thus introducing gains in the message but not with respect to the situation.

Øverås (1998) examined explicitation and implicitation shifts in the English-Norwegian Parallel Corpus, and found that there was more explicitation than implicitation in both Norwegian translated from English and English translated from Norwegian.

Heltai (2003) points out that the phenomenon of explicitation derives from the differences between the source language and the target language, and in other cases it is used by translators in the interest of safety. This study is based on English Hungarian translation in which it is noted that English language tends to shorten the lengthy Hungarian compound words and expressions.

Klaudy and Karoly (2005) emphasize that explicitation serves a range of different functions: obligatory explicitation which is necessitated by language specific differences; optional explicitation resulting from the discrepancies in text-building, strategic and stylistic preferences between source language and target language; pragmatic explicitation employed because of cultural differences between the source language and target language and translation inherent explicitation which can be attributed to the translation process itself.

Thus, explicitation occurs as a result of and is aimed at increasing processability (Pochhaker, 2004) and thus an attempt to ease communication between the speaker and hearer via the interpreter.

Perego (2003) studied subtitling in audio-visual language transfer method with the aim of finding out if explicitation occurs in subtitling at all, and if so, to describe the way it works and is prompted. Perego (2003) uses a corpus collected from the *Magyar Nemzeti Filmarchívum* (Hungarian National Film Archive) in Budapest. The study found out that explicitation occurs in subtitling and fulfill multiple function: compensatory purpose, since it makes “up for the [sometimes massive] translation loss of important source text features by approximating their effects in the target text through means other than those used in source text; facilitating function which tends to make the target product easier by giving more precise, detailed and exact descriptions/information. Perego also found out that explicitation facilitates comprehension by reinforcing the association of words with either imagery/actual objects or situations; the additive effect of image and translation together results in a powerful combination – very useful for language learning.

According to Gile (1995), it is secondary information that determines the degree of explicitness in the message. Secondary information can be of three kinds, such as 1) framing, i.e., background information, consciously or unconsciously delivered by the sender to guide and facilitate the receptor; 2) linguistically induced information, i.e., language-dependent, rhetorical choices; 3) personal information, i.e., sociolinguistic features, associated with the personal speaking habits of the sender or with their idiosyncratic style.

3. Language Use in Courts in Kenya

In the Kenyan legal system, English is used as the official language of communication. The Judicature Act Cap 8, Section 194 (4) of the Criminal Procedure Code, and Section 86 (1) of the Criminal Procedure Act, state that English shall be the official language of communication in the country’s courts. The courts thus assume monolingualism, and hence when dealing with litigants who do not understand English, interpretation is provided for.

As English is the language of courtroom communication, this study is cognizant of the fact that it is also the language of training for the advocates, magistrates and prosecutors, who encounter non-English speaking litigants. The non-English speaking litigants are disadvantaged and to make sure they effectively participate in their trials, interpreters are provided for.

With English as the official language of courtroom communication, the language of court records will normally be in English. Hence, the magistrate will heavily rely on the interpreter’s efficiency in the process of interpretation to keep an accurate record of the proceedings.

The litigants who do not speak English have a right not only to understand the charges against them and the court proceedings, but also to a trial that is substantially in their own language. The right to use a language that one is well versed in should therefore not be regarded as conditional on the litigant. It therefore requires the court to accommodate the litigants’ preference to use their own language. This serves as the basis for the provision of the court interpreter.

4. Methodology

The research area in this study is drawn from the subordinate courts in Nyanza Province of Kenya. Nyanza Province is one of the eight (8) provinces in Kenya which include Nairobi, Western, Rift Valley, Eastern, Central, Coast and North Eastern. Nyanza Province had eleven Districts at the time this research was being carried out. The districts are: Kisii Central, Kisii North, Kisii South, Kuria, Migori, Homabay, Rachuonyo, Nyando, Kisumu, Siaya, and Bondo. The population of this study comprises of interpreters from selected courts in Nyanza province. The choice of the courts is informed by the fact that the residents in these districts are functionally bilinguals but with very strong affinity to their mother tongue (Dholuo). This means that they will tend to use Dholuo in courtroom communication and hence need the services of an interpreter. Nyanza province is made up of ten (10) administrative districts. The ten (10) have a total of twenty seven (27) subordinate courts. Each of the twenty seven (27) courts has one (1) interpreter. A total of 10 interpreters were used as a sample. The observation data collection took place in the magistrates’ courts in Nyando, Bondo, Siaya, Rachuonyo, and Migori. Since then, the provinces and districts have been re-organized into counties and we no longer have them in Kenya since 2010 when Kenya promulgated the new constitution.

For the analysis, the English and Dholuo texts were audio-recorded. The audio-recorded data was transcribed to describe explicitation strategies. In the next step, both texts were segmented into smaller information units and then the Dholuo and English texts were arranged under one another so that the information units came as close as possible to each other for easy comparison. Thereafter the two versions were compared to find out the explicitation strategies in the Dholuo texts. As this paper is concerned with information load, a sentence by sentence or structure by structure analysis was not done, but the information load approach in which additions and omissions as explicitation strategies were isolated was used.

This method centered on the contrastive linguistic approach, that is, comparing two languages thus highlighting the explicitation technique

5. Data analysis and discussion

The focus of this section is on the analysis of the interpreters' use of explicitation. The goal is to show that the court interpreters use explicitation as a strategy to aid communication in courtroom interaction which could involve magistrate (**MAG**), interpreter (**INTERP**), advocate (**ADV**), witness (**WIT**), complainant (**COMP**), and accused (**ACC**)

5.1. Excerpt 1

1.1 MAG: Tell the accused person that the court has found that he has a case to answer.

1.2 INTERP: *Kot oyudo ni in gi bura monego i dwoki e kot ka eri, to nitie yore adek minyalo dwoko go wechegi ma in iwoun ema iyiero. Kihero to inyalo wuoyo kuma ichunge. Kanyo kiwouye to ng'ama biro penji penjo moro amora onge. Janeno be ka in go inyalo luongo. Yo machielo to inyalo ng'ado koni, kuma janeno chung'e koni. Koni to kapok iwouyo to ibiro kuong'ori gi muma kata gi Koran kaluwore gi din mileme. Bange ibowuoyo to kise wuoyo to inyalo penji penjo, koni kata kiwouye to janeno be inyalo luongo wouyo ka in go. To e yo mogik to inyalo ling' aling'a kucha. Koro ibiro yiero yo mane? Ibiro wouyo kichung kucho, koso ibiro ling' aling'a.* (The court has found that you have a case to answer and there are three ways in which you can answer these questions depending on your choice. You may talk from where you are standing. If you speak from there no one is going to ask you any questions. If you have any witness you may summon them. Another way is to cross over this side, where the witness is contributing. On this side you will swear using a Bible or a Quran before you speak depending on your religion. Afterwards you will speak then you may be asked questions, on this side, if you speak, you may call any witnesses if you have any. The final way is to keep quiet. Will you speak from there or will you keep quiet.

1.3 ACC: *Abiro dwoko wechegi ka achung ka.* (I will respond from here)

1.4 INTERP: *Ka ichung kanyo* (while standing there)

1.5 ACC: *Ee* (yes)

5.2. Excerpt 2

2.1 MAG: What has he to say in mitigation?

2.2 INTERP: *Chiu yuakni. Wach chandruok ma in go ma kata ka kot owinjo to inyalo kata mana nguononi midhi dala* (Mitigate. State the problems that you have that if the magistrate hears he can even pardon you so that you go home)

2.3 ACC: *An giyuak. Babana nosetho mama sani oti koro kane abiro Oyugis...* (I'll mitigate. My father died and my mother is old so when I came to Oyugis...)

2.4 INTERP: My father died and my mother is old enough

5.3. Excerpt 3

3.1 ADV: But you did not produce it in court.

3.2 INTERP: *Ne ok igole e kot. Seche mane itimo neno mari ne ok igolo otas manyisoni ni nisyogi ni gibi e kot. Ne ok inyiso kot seche mitimo neno. Nyalo bet adier? Openjini ne ok igolo otas manyiso ni ibiro e kot koso ne ok igolo* (You did not produce it in court. While you were testifying you did not produce the summons which directed them to appear in court. You did not inform the court about the summons while testifying. Could that be true? She is asking you if you did not produce produce the summons or if you did not produce?)

3.3 COMP: *Ne ok agolo* (I did not produce it)

In excerpt 1, the hearing of the case had been completed and the magistrate was supposed to give the ruling. In Turn 1.1 the magistrate's are that 'Tell the accused person that the court has found that he has a case to answer'. The magistrate's utterance contain only 16 (sixteen) words. The interpreter's rendition contains 118 words. By ruling that the accused has a case to answer the accused was placed on his defense. The interpreter added the following pieces of information to the magistrate's utterance; *that there are three ways in which the accused will carry out his defense, the choice of the method of defense depends on the accused, the first method is by standing on the dock and conduct his defense from there, if the accused chooses to testify from the dock he will not be cross-examined, if he has any witness they can testify, the second method is to cross over to the witness box, on the witness box he will take an oath using the bible or Quran depending on his religion, he will the testify and he can be cross-examined ,if he has any witness they can testify and they will also be cross-examined, the third method will be to remain standing on the dock and remain silent, which method is the accused is going to use , is the accused going to conduct his defense or is he going to keep quiet.* All these pieces of information are not contained in the magistrate's original utterance. The interpreter adds this information so that the accused makes an informed choice of how to conduct his self- defense. These additions are made as

explanation of the procedures of defense that the interpreter assumes the accused is not aware of. The interpreter's rendition is therefore longer and contains more specific information than the information offered by the magistrate.

In the case of excerpt 2, the case has been concluded and the magistrate is supposed to deliver the judgment. The magistrate in Turn 2.1 tells the accused person to mitigate before the judgment is delivered. In Turn 2.2 the interpreter tells the accused to mitigate. But she adds more information that is helpful to the accused. The interpreter further tells the accused to state the problems the accused has which would even grant the accused a pardon (*wach chandruok ma in go ma kata ka kot owinjo to inyalo kata mana ng'uonni midhi dala*) Mitigation is the offender's expression of remorse in courtroom setting and the legal process assumes that the offender's ability to express remorse is straightforward. These additions are meant to help the accused person be focused in the mitigation in order to get a lesser sentence.

In the case of excerpt 3, the advocate tells the complainant that the complainant did not produce a certain letter in court. The letter is referred to as 'it' in Turn 3.1. in Turn 3.2, the interpreter renders the advocate's utterance accurately in the first part of the rendition. But the interpreter adds more information to the advocate's question. The interpreter informs the complainant that he (the complainant) did not produce the letter informing the defendant to appear in court, asks the complainant if he produced the letter in court and asks the complainant if it is true. All these additions are attempts at making explanations for the benefit of the complainant.

In excerpts 1 – 3 explicitation is thus discerned depending on whether the information that marks the locus of interpretation shift in the target language structure can or cannot be retrieved from the source language context. In excerpt 1, for example, it is inconceivable that the accused could have knowledge of the procedure of conducting defense in court. This warranted a lengthy explanation offered by the interpreter.

Omission as an explicitation strategy was used when the interpreters attempted to compress the length of an utterance in order to find an economic way to express the source language utterance. The semantic content of the message is preserved and the interlocutors seem not to have any difficulty in continuing with the dialogue. The moot point of omission is the degree to which something in the source text might be considered implicit in the context and thus dispensable. In this way, the question of omission is closely related to the role of context (Viaggio, 2002). On the same note, Pym (2008) notes that omission is considered valid if it is measured to the extent to which it achieves the communication aim it intends to. In this case of intended communication aim, Viaggio (2002) defends the need to omit redundant information stating that the interpreter should omit as much as he can.

Excerpts 4 - 6 are texts presented here to show the interpreter's use of omissions.

5.4. Excerpt 4

4.1 PROS: Did you get information out of him?

4.2 WIT: According to the suspect he told me that he went to the village... no... the house of the complainant saying that he had been drunk and he wanted an assistant to reach to his home.

4.3 INTERP: *Owacho ni nidhi kanyo kiwacho ni mondo okonyi ichop dala.* (He is saying that you went there requesting them to help you reach home)

5.5. Excerpt 5

5.1 PROS: Yes, you told the court that your nets worth 3000/= and who else lost his nets apart from you?

5.2 INTERP: *Ng'ano kendo mane tondege olal?* (Who else lost his net)

5.3 WIT: *Yuth bende ema ne tondege nolal.* (Youth also lost his nets)

5.6. Excerpt 6

6.1 WIT: But I said that is not the way to go let us try the other side. Your honour we agreed that we exploit all the arms of the law. When I came back to my office I wrote a letter to the OCPD

6.2 INTERP: *Koro kanodhi e ofise nondiko barupe ne OCPD.* (Now when he went to his office, he wrote a letter to the OCPD)

6.3 WIT: And the assistant chief to help me arrest the suspect.

6.4 INTERP: *Kaachiel gi assistant chief mond ookonye omak jagono mane iwachoni okwelo e nam kanyoero.* (Together with the assistant chief to help him arrest the suspect)

Excerpts 4 – 6 show data on omissions. In excerpt 4, the accused was arrested for theft. The witness is giving evidence on how he arrested the accused. In Turn 4.1 the prosecutor asks the witness if the witness got any piece of information from the accused. The witness in Turn 4.2 gives an answer that has four parts; *that the suspect went to the village, that the suspect went to the house of the accused, that the suspect was drunk and that the suspect wanted assistance to reach his home.* In Turn 4.3, the interpreter omits the information that the suspect was drunk in his rendition but includes all the rest of information. The omission of the information that the suspect was drunk is important as the suspect could use this information for his defense.

In the case of excerpt 5, the prosecutor makes a statement before asking a question in Turn 5.1. The statement is that 'you told the court that your nets worth 3000/='. In Turn 5.2, the interpreter omits the statement and asks the question only. It may be assumed that according to the interpreter, the statement is not important. What is important to the interpreter is the question and therefore it is the question that he renders.

In excerpt 6, the prosecutor, the magistrate and the witness understand English. It is only the accused who does not understand English and thus the interpretation is meant for the accused. In Turn 6.2 the interpreter renders the version of the witness in Turn 6.1. But the interpreter omits the initial utterance by the witness and renders the final section of the utterance. The omitted utterance is that *'But I said that that is not the way to go let us try the other side. Your honour, we agreed that we exploit all the arms of the law.'* The rendered utterance is thus *'when I came back to my office I wrote a letter to the OCPD'*.

6. Conclusion

This paper set out to place the strategy of explicitation in the perspective of communication strategy. The systematic and comparative analysis carried out in order to identify cases of explicitation in courtroom interpretation revealed omission and addition as explicitation strategies.

The paper started by discussing the concept of interpretation in courtroom citing the tasks engaged in by the court interpreter. It shows that interpretation is a salient feature in courtroom discourse. The data used in this paper point to the fact that explicitation is one of the strategies adopted by the court interpreter in courtroom discourse. Explicitation helps the discourse participants in court to understand and hence be engaged in communication in a more informed way. This makes the discourse participants in court engage in a more informed dialogue.

One consideration that the paper did not look at is the structural and sentence aspect of explicitation in interpretation in court. We recommend that a study be carried out to determine this aspect of interpretation in which the number of words and characters in the source and target languages are compared.

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