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To the Director,
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Enclosed find the information that has been written, as your office suggested, in the form of an article for PANSALB NEWS. The project members dealing with the issues raised would appreciate comment from your people who have relevant expertise or who could direct us to writings or similar work already done on these matters. Specifically, we request names and contact addresses for our provincial board if it has already been constituted.

UNNECESSARY COMPLICATIONS IN TRANSLATION

by Paula Loynes

Some interesting language issues have arisen during a research project in KwaZulu-Natal run collaboratively by a number of non-government organisations, academics in the field of agrarian studies and government agencies. The project is described by its name: Legal Entities Assessment Project (LEAP) which started early in 1999 and is on-going.

The legal entities studied are specific to rural land reform programs where people eligible for grants may choose to mass those grants for purchasing a larger property which is held and worked in common. Such groups are obliged to form themselves into legal persons competent to take transfer as owners. Whatever form their association takes, an agreement must be registered setting out the rights of members and the processes of management, in other words a constitution, which is legally binding on all parties.

Language questions have arisen because the LEAP project includes an assessment of the extent to which management committees and community members understand and use their constitutions. As these are important documents, being the record by which people assert and justify their land rights and also spell out the rules for protecting those rights, they should be clear and accessible. Most of the people involved have little formal education and many are illiterate; a few are partially literate in a second language. All the communities LEAP has engaged with are isiZulu-speaking.

On the whole, the documents studied are not serving their purpose as the communities are unable to retrieve information from them. This is partly circumstantial due to the process and because a copy has not always been locally available. However, even where the document is held, the case is no better as the final texts have all been in English, prepared by lawyers in traditional legal drafting style.

The first major issue, therefore, is for whom such documents are composed as there are liable to be multiple users from different language groups: the registering authority, the people who carry full liability for compliance, third parties such as financial institutions or courts should disputes arise. There may well be a question as to the legality of people being obliged to sign an agreement in English that they made in isiZulu. If there were two versions in different languages, which would be the primary document? Setting those questions aside, however, translation of existing documents into understood language is an obvious necessity if association duties are to be taken seriously and people's rights adequately protected.

In two cases unsuccessful attempts had been made by communities at having their constitutions translated. What emerges is that no direct translation of major parts of the texts, i.e. those lengthy provisions written in "Legalese", is possible. This was confirmed by members of the Zulu department at the local university. In fact, traditional legal drafting is not easily intelligible to any lay person, even one who is a native English speaker. A preliminary translation into plain English becomes unavoidable and this is of concern to any translator training programme.

Legalese is not one of our many official languages, yet it is used in key documents of both private and public importance, even Acts of parliament, which very likely infringes the constitutional right to information. That there is no necessity for its use is demonstrated by our Water Act which is written in plain language. This is not merely a matter of eliminating jargon. Legal entity constitutions are typical samples of legal drafting and LEAP findings are generally applicable. A language consultant tasked to assess these for effective communication used five tests for intelligibility and all the texts failed on these points: clarity (by use of jargon), logical arrangement, flow of information (by extensive use of cross-references), economy of language and consistency in terminology.

If the given texts are to be rendered intelligible, all these factors must be taken into account. It is a process of simplification and rearrangement rather than merely rewording: excising repetition, grouping related concepts, defining words where they first appear, cutting down over-elaboration and avoiding unnecessary cross-reference. An interesting outcome of this work is that conflicting provisions in the originals are exposed as well as glaring omissions, inconsistencies and downright errors. Unsuitable provisions had obviously been taken whole from precedents and it is to be assumed that the style of writing, sometimes justified as ensuring legal precision, in fact obscures meaning even for the drafter! We are recording provisional lessons and beginning to find guidelines for this task and would welcome exchanges of relevant information.

The next step of translation into isiZulu is more straight-forward and the purposes of LEAP are perhaps very specific but some points arising may nonetheless

be of general interest. Translation is shown to be an excellent way to test whether a document drafted in English is simple and clear! As our object is to be clear in isiZulu, we have preferred to simplify or become more specific in the English version e.g. to use “movable and immovable property” rather than “property” and to merge “conciliation or mediation” which is not easily distinguishable in the other language. Insofar as these are popular rather than literary documents, regional Zulu usages have to be considered. A question may well arise as to whether it would be desirable to use Zulu terminology (with a glossary) in the English version where cultural concepts differ materially e.g. family, household, homestead.

Unfortunately, in our project this translation is by no means the final step as, having discovered the shortcomings of the legal-language text, much of the original agreement-making has to be re-done. The entire process is time-consuming and expensive. LEAP researchers urge PANSALB to resist any development or training in translation that might lead to a form of Legalese in any language that does not yet suffer from this unnecessary complication.