THE USE OF AFRICAN LANGUAGES IN TRADITIONAL COURTS: A LUYENGWENI CASE STUDY

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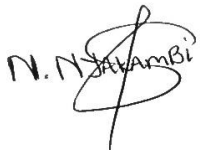
DECLARATION

I, Ntombizethu Nyakambi, hereby declare that this thesis is my own original work and has not, in its entirety or part, been submitted at any other university for a degree.

Signed



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ABSTRACT

Forensic linguistics is a relatively new field in South Africa. This field which forms part of the applied linguistic discipline seeks to look at the application of linguistic knowledge, methods and insights to the forensic context of the law. This is a forensic linguistic study that seeks to look at the use of African languages in the traditional courts. The researcher explored the traditional courts of Luyengweni, a rural area situated in KwaBhaca at Mount Frere in the Eastern Cape. The concept of African languages usage is explored within the boundaries of customary laws as outlined in Section 6 of the South African Constitution of 1996. To fully elicit the use of African languages in the traditional courts of Luyengweni this study employed an exploratory qualitative research design method. This research method allows for data to be collected from the participants using semi-structured interviews, observation and other qualitative methods of data instrumentation. Relevant community members of Luyengweni such as Chiefs and their councillors, ordinary members of the community and the court secretary were interviewed by the researcher and the data was translated, transcribed and analysed. The thesis made use of a thematic analysis. These themes showed that the use of African languages in traditional courts is still relevant, however, the imbalances of language use in both common and customary law need to be addressed. The study revealed that the traditional courts still serve as law institutions that people trust to bring about justice, therefore language use as one of the pivotal tools in the justice system needs to be considered for effective justice to be carried out.

Key terms: African languages, customary law, common law, traditional courts, forensic language, Covid-19, *iKomkhulu/komkhulu*

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CHAPTER ONE: INTRODUCTION

1.1 Background of the study

In making sure that everyone's needs are catered for, the South African Constitution of 1996 under Section 6 recognises African languages as part of the official languages. In the attempt by the legal system to include all the recognised languages in the legal system to eliminate language rights infringement in a diverse community, South Sudan customary law structures, for example, serve as a suitable adoptable model to be followed by traditional courts of South Africa. It was in the interest of this study to explore the aforementioned suggestion. The South Sudan model of customary law in relation to language use best illustrates how language is used in courts in terms of adaptation due to certain circumstances in a community. The difference between South Sudan customary law structures and the South African one is that South Sudan is advanced when it comes to language usage, despite both countries being previously colonised.

Wright (2007) states that language is an important tool as it concerns the nature and role of public communication and discourse, both as a source of information and understanding modes of legitimacy in law and politics. The language of traditional courts is of importance in this research as it ensures the implementation of Section 35 (3) (k) under Section 9; 29 (2) and 30 of the Bill of Rights (BOR). This section in the BOR is directed to the legal system and all its forms and that includes customary law to ensure that every accused person is tried in a language that they understand, and if not possible then to have the proceedings translated in that language. For the interest of this study the language concept is discussed in relation to the legal system, and customary law to be specific.

With regards to the legal system in South Africa the usage of language in its courts has been and is still a topic of debate as argued by Docrat (2017). This is in relation to both common law and customary law, but this study focuses mainly on customary law. Language related problems in the legal system falls under forensic linguistics and language planning, and this is also true in South Africa. Forensic linguistic is a relatively a new study and can be traced back to the following scholars: Moeketsi (2002); Kaschula and Ralarala (2004); Docrat (2017). Olsson (2003:3) defines forensic linguistics as:

> The interface between languages, crime, law, where law includes law enforcement, judicial matters, legislation, and even disputes or proceedings in law, and even disputes which only potentially involve some infraction of the law or some necessity to seek legal remedy.

In relation to African languages and traditional courts, Kaschula and Ralarala (2004) argue that ignoring social and cultural aspects of a language would be reducing it and denying any possibilities of how a language survives, both in the mind as well as on the tongue of its users. Section 30 and 31 of the Constitution of the Republic of South Africa of 1996, provides for the protection of language and culture. Section 30 specifically states that "every person shall have the right to use the language and to participate in the cultural life of his or her choice." Language and culture are connected and therefore cannot be separated. Chein (1991:313) defines culture as a pattern of basic assumptions that one needs to know in order to operate in society. The purpose of this research is to show the important role in which languages play in the deliverance of justice in traditional courts. This research was motivated by the introduction of English, arguably a foreign language in South Africa, in a space that traditionally uses African languages as the language of the court (Gibbons, 2003).

Language has always been of interest to the researcher, especially African languages to a point of majoring in isiXhosa during my undergraduate years. At Honours level, the researcher was introduced to a new course called Language and Law, its focus was on language related problems in the mainstream legal system as argued by Docrat (2017). This prompted the researcher's interest in customary law. In pursuing the primary goal of this research, legislation guiding the function of traditional courts as well as dangers of using unchanging language policies as argued by Cooper (1989) affects the deliverance of justice. It is therefore in the interest of the researcher and the study to explore the 'language use' phenomenon in the context of the legal system.

The South African Language policy as indicated in Section 6 of the South African Constitution of 1996

As it was initially mentioned, the recognition of African languages in South Africa was previously only within the self-governing structures such as traditional courts. This is evident in the Republic of South Africa Constitution Act 110 of 1986, which recognizes the use of African languages within self-governing territories as official languages. The language policy in the South African context is informed by Section 6 (1) of the South African Constitution of

1996. This section lists the official languages, it also recognizes the historically diminished use and status of the indigenous languages of South Africans.

It advocates for the elevation of these languages to be used across all domains, including the legal system. Section 6 (3) indicates that they must be used in all government sectors including the justice system. Section 6 (5) directs this to the Pan South African Language Board (PanSALB) to promote the development of African languages. It is also noted that Section 35 (3) (k) of the South African Constitution of 1996 states that every accused person must be prosecuted in a language that they understand, and if not practicable then they must have those proceedings interpreted to them.

1.2 Problem statement

It is indicated by Docrat (2017) that African languages were first recognised in the Republic of South Africa Constitution Act 110 of 1986 in the form of African languages being utilized within self-governing territories (traditional courts) as official languages to be used. This act is believed to have resulted in linguistic segregation (Bambust, 2012). Regarding language usage in courts, Docrat (2017:14) contends that the use of African languages has been diminished, giving rise to English as a sole official language of record. This can be traced in customary law systems in which traditional courts are located. Van Dalsen (2019:1) further states that traditional courts function in accordance with customary law, subject to the Constitution.

Section 6 (2) of the Constitution of 1996 states that African languages were previously disadvantaged and for that reason they must be developed to the same levels of English and Afrikaans. It was also mentioned in the introduction that forensic linguistics in South Africa is a relatively a new field of study and so far, the focus of forensic linguistic has been on common law as opposed to customary law. The focus of researchers being on language related problems facing the justice system in relation to language rights (Kaschula & Ralarala, 2004; Docrat & Kachula, 2015). The language use in the legal system with regards to language rights ensures that rights are not infringed. This is done to benefit all people regardless of one's language or cultural background and otherwise.

Concerning customary law, the literature reveals that there is not much research conducted on language usage in customary law, but the focus by previous researchers has been on only common law. It is for that reason that the researcher chooses to focus on this area. The study focuses on language usage in traditional courts of Luyengweni and its importance in the justice system and how it can affect the deliverance of justice, either in a negative or positive manner.

The study sought to investigate the role played by African languages in traditional courts, how these languages are used, by whom and why.

Language related problems have always been the focus of many researchers such as language planning scholars in the past and present, thus investigating them becomes a necessity and will help in preparation for a better future. The development of a language and the function of traditional courts relies on these kinds of research in shaping them in order to fit perfectly in this puzzle that is called democracy. The research was be guided by research questions discussed in the following section.

1.3 Research aims and Objectives

1.3.1 The aim of the study

Indigenous languages have been used in traditional courts as the customary laws emphasize. It was in the interest of this study to explore the language use within the customary law platforms like traditional courts. The main aim of this study was to investigate the use of language in traditional courts of the Luyengweni community. This was to create an understanding in order to contribute to the deliverance of justice, transformation of traditional courts structure and language policies that are inclusive for everyone regardless of the cultural background or language. Language being one of the pivotal tools in customary law, the aim of the study was embedded within forensic linguistics.

1.3.2 Objectives of the study

In order to achieve the above-mentioned main aim, the following objectives also formed part of this study:

- To interview people from Luyengweni community in order to understand their customary law and its application in their traditional courts.
- Record the opinions, thoughts, and experiences of Chiefs, advisers, litigants as well as the broader community who reside within the aforementioned jurisdiction, on the usage of languages in traditional courts.
- To critically analyse the constitutional provisions, legislation and policies regulating traditional courts in South Africa in comparison with other countries on the African continent.

- To critique the status of African languages in traditional courts; and to propose that language rights be fully implemented for African language speakers in traditional courts with the aim of:
- Promoting the use and development of African languages in the customary law systems;
- To analyse the data gathered from the participants using a thematic analysis;
- To discuss the themes that emerged from the data in order to answer the research questions;
- To determine how language is used in the traditional courts of Luyengweni and its impact on the justice system.

1.3.3 Research questions

The main research question of this study was to understand and critique the use of African languages in the traditional courts of the Luyengweni and the influence they have in customary law courts. The following questions were answered in the study: Are African languages still used and dominant in traditional courts? Do customary laws promote the sole use of African languages, if yes what are the implications with regards to modern society? What is the role of African languages in traditional courts and its jurisdiction?

1.4 Justification and Significance of the study

The people living in Luyengweni still rely on traditional courts for settling disputes (for example, stock theft cases, Gender Based Violence etc.) and other services. Traditional courts still exist today because of the people that continue to use them and they are there to serve them for access to justice. These traditional courts rely solely on customary law for functioning. Woodman (2011:10) defines customary law "as a normative order observed by a population, having been formed by regular social behaviour and the development of an accompanying sense of obligation." Gibbons (2003:15) in relation to Woodman's (2011:10) definition of customary law, states that these are "legal systems that operate on an oral basis" (Gibbons 2003:16).

Morapedi (2011:250) states that the term customary law has different meanings to different people and should be understood in its cultural, political and economic context. In the past traditional courts were catering for the people of the community in which the court existed, but over time things have changed as a result of standardisation, migration and modernization. It

is of importance for this study to investigate the effects of the above-mentioned changes. Communities were no longer only for the people who are originally born in the area, but for others who have come to live there for various reasons, some moved to other parts of the country. In communities where a particular language was spoken it became diluted by other languages as a result of these either being taught at school or due to language standardization or migration.

The community of ended up being constituted by people of different ethnicities and cultural backgrounds, who speak different languages. Docrat (2017:15) has advocated for the use of African languages in courts and the practical implementation of Section 6 (1) and (2) of the Constitution to apply to all languages in the justice system. Docrat (2017:16) argued that meaning is usually lost during translation and interpretation in courts and that this negatively affects the litigants. Similarly, to Docrat (2017:17), Koyana (2011:231) states that proceedings in customary courts must be conducted using a local language of the litigants involved, thus eliminating interpretational errors. Wright (2007:80) states that only one language will be in the prime position and will gain recognizable status, others are relegated to secondary positions, which then results in a hierarchical arrangement.

Transformation with regards to language is an important element of this research and this is shown as in chapter four regarding South Sudan, which advanced methods used in traditional courts. These are to ensure that justice is served to all. This thesis argues that African languages play a crucial role in traditional courts and that the usage of it relies on the circumstances that arises. This study explores these circumstances. The change in traditional court structures it is argued in this thesis is on the basis of language and how it influences structural change. Thus, the familiarity of the current South Sudan structure of common law can guide South African law makers. As indicated by Docrat (2017), change needs to be done in accordance to the people's needs and that is what is termed as 'meaningful engagement' by Docrat (2017).

This research identifies issues with regards to the role and effectiveness of Section 211(1) and Section (3) of the Republic of South Africa Constitution (1996). Section 211(1) recognises the institution, status and role of traditional leadership. Therefore, customary law as with any other laws stated in the Constitution should be given the same status as common law, subject to the Bill of Rights (BOR). Section 8(1) of the Constitution further provides unequivocally that the BOR applies to all law. The above constitutional provisions are in relation to customary law,

including traditional leaders. The chieftaincy is believed to be rich in cultural heritage and underpinned by language.

Traditional leaders are men or women of great importance in their communities (Qangule 1979; Saule 2011). This research, therefore, argues that traditional leaders should be viewed as the executive leaders of their people and perceived as symbols of unity and by implication guardians of the community's customs and culture (Chiweza 2007:61; Kyed and Buur 2007:2). According to Ntsebeza (2005), traditional leaders refers to 'Chiefs' of various ranks. Mamdani (1996:23) defines Chiefs as 'agents of indirect rule'.

Bennett (2009) is of the view that the intention of the drafters of the Constitution was to protect the diverse cultures and ensure the application of customs in courts, including language rights of litigants accessing traditional courts with the aim of ensuring that justice is served. Koyana (2011:236) states that "all proceedings in traditional courts are conducted orally in the language mostly spoken in the area of jurisdiction of the courts." Gibbons (2003:18) shares similar views with Koyana (2011:236) in alluding to the point that legal disputes in traditional courts are handled mostly using an everyday language. This study was undertaken to contribute to the deliverance of justice in a diverse community on the basis of equal justice for all, for people to realize the role of language (s) in the justice system and its effects on existing literature. This study investigates the on-going language problems that exist in Luyengweni courts and how to best limit them. This is an interdisciplinary study as it involves language development and usage of African languages in the legal system.

The study also focuses on the issues pertaining to forensic linguistic, language policy and planning and sociolinguistics more generally. This is in regard to the broad notion of language and society. The relevance of sociolinguistics in this study is based on the research question which seek to understand the role and function of language in society and most importantly how the role played by languages can enhance better access to justice in a community. This research aimed to prove that when it comes to justice for all people, language can be a considerable challenge.

1.5 Definition of key terms

Customary law: It is defined as the legal systems that operates on an oral basis and that is passed down from generation to generation based on traditionally accepted values and mores.

Common law: It is part of the English law that is derived from customs and judicial precedent and recognised written and gazetted statutes.

Traditional courts: Refers to a court established as part of the traditional justice system that functions under customary laws.

Forensic linguistics / Language and Law: Refers to the application of linguistic knowledge, methods and insights to the forensic context of the law.

African languages: The term refers to the languages of Sub-Saharan Africa which do not belong to a single family.

1.6 Layout of the study

The study followed this structure:

Chapter One: Introduction

This is an introductory chapter which gives the background of the study. The research problem aims and objectives, questions, justification and significance, definition of key terms and chapter layout are discussed and outlined in this chapter. The study's dominant concepts such as the customary law, common law, tradition courts, forensic linguistics, and African languages were defined. This chapter introduced and guided the reader to the study.

Chapter Two: Literature Review

This chapter gives a literature review on the history of customary law in South Africa, legislation policies that govern how languages must be utilized, the history of forensic linguistic in South Africa and language policy and planning. The researcher used online articles, journals, books, word of mouth and other scholarly documents to obtain information on the above-mentioned topics.

Chapter Three: Research Methodology

This chapter outlines the research design, instrumentation, procedures of data collection, data presentation and analysis, ethical considerations and validity and reliability.

Chapter Four: South Sudan comparative analysis

This chapter presents the South Sudan customary law model for traditional courts. The chapter focuses on the structure of customary law courts and language usage, given that courts uses multiple languages. The comparative analysis gives a detailed overview of the role of these

multiple languages and their status as they are treated equally, in the administration of justice in the country. The advancement in terms of the constitution, legislation and polices are detailed clearly, and the model is used in the study as an example by which South African traditional courts can use for better administration of justice.

Chapter Five: Data Presentation and Analysis

This chapter presents the data from the interviews, this data is analysed and presented in themes. The researcher used thematic analysis as outlined by Braun and Clarke (2006). This analysis follows six steps which are as follows: familiarizing yourself with your data, generating initial codes, searching for themes, reviewing themes, defining and naming themes and producing the report.

Chapter Six: Conclusion

This chapter concludes the study by providing a study overview, referring to its shortcomings and giving recommendations. This chapter also provides ideas for future studies.

1.7 Conclusion

This chapter sought to capture the background of the study and introduce the study phenomenon. The chapter gave background to the study, the problem statement, the aims of the study, the objectives, research questions, justification, and definition of key terms and the layout of the study. The background section included the South African language policy as per the South African Constitution of 1996. The main aim of this chapter was to introduce and guide the reader to the study phenomenon. In the chapter that follows, a literature review is presented that underpins the research conducted in this thesis.

CHAPTER TWO: LITERATURE REVIEW

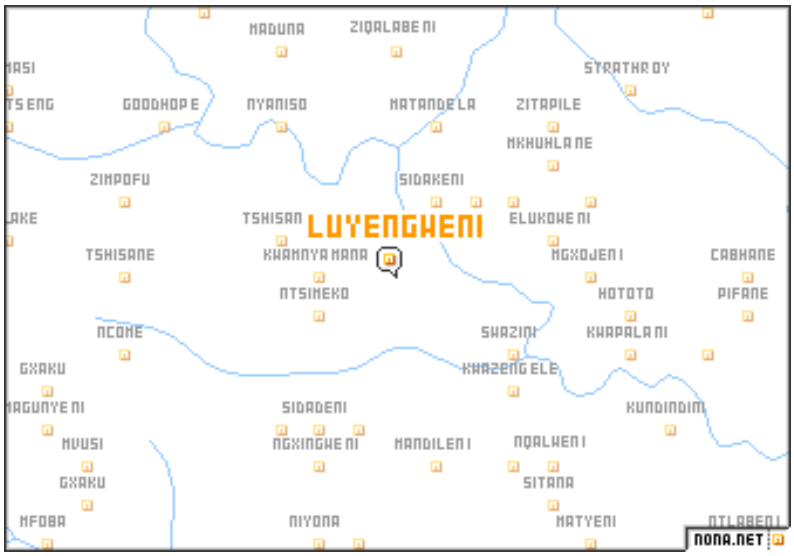
2.1 Introduction

The purpose of this literature review is to make explicit the central issues that underpin this research in relation to the data presented and analysed in chapter four of this thesis. Neuman (2014) states that the goal of the literature review is to increase a reader's confidence in the researcher's professional competence, ability, and background. The goal is to also show the path of prior research and how a current project is linked to it. A review outlines the direction of analysis on an issue and shows the event of data. A good review contextualises the research and demonstrates its relevancy by creating connections to a body of data.

This chapter will be focusing on the work of previous researchers; their arguments and findings in relation to the research question of this study, as outlined in chapter one of this thesis, thus it is important to begin this chapter by giving an overview of the geographical area in which this research was conducted. As the research question sought to investigate language related problems in traditional courts, this chapter commences with a discussion on the history of forensic linguistics in South Africa, language planning and its four tiers namely, status planning, corpus planning, acquisition planning and opportunity planning. Furthermore, discussing the history of customary law in South Africa, the traditional courts structure and its functions, legislation and lastly linguistic imperialism.

2.2 Geographical area of Luyengweni location

Figure 1. Map of Luyengweni location



https://nona.net/features/map/placedetail.1014341/Luyengweni/

Area

4.79 km²

Population

1,125 (235.05 per km²)

Households

308 (64.35 per km²)

Luyengweni location is situated in Mount Frere *kwaBhaca* in the Eastern Cape Province of South Africa and is the area in which this research was conducted in answering the research problem of this study, outlined in chapter one of this thesis. Frith (2011) estimates that approximately 96.08% is a percentage of people living in Mouth Frere, a town in which Luyengweni location is situated, with 86.58% being isiXhosa first language speakers. Telzak (2014:2) argues that over 45% of people who reside in rural areas of Mount Frere are illiterate and thus have limited or no access to English. This study investigated the language usage of traditional courts of Luyengweni and its effects. Language related problems in courts are classified under a branch of applied linguistics known as forensic linguistics/language and law.

2.3 History of forensic linguistics in South Africa

The term "forensic linguistics" surfaced around 1976, when a linguistics professor Jan Svartvik recorded it when he was analysing legal documents. Docrat (2019) and Olsson (2008:5) state that these legal documents were statements by the accused persons that were given to the police. Forensic linguistics has a global presence but in South Africa it is a relatively new discipline (Moeketsi 2002; Kaschula and Ralarala 2004; Docrat 2019). Maynard (1983:1) argues that researchers did not give language deserving attention especially in legal settings, stating that the interest by researchers came after the influence of contemporary intellectual development in language. The discourse started to be studied in legal settings in terms of a legal language not as a vehicle to fair justice for all, thus in this regard received the least attention from language scholars. Their interest was in language not its usage in the legal system thus, the position of forensic linguistic in South Africa. Olsson (2003:3) defines forensic linguistics as:

> the interface between languages, crime law, where law includes law enforcement, judicial matters, legislation, and even disputes or proceedings in law, and even disputes

> which only potentially involve some infraction of the law or some necessity to seek legal remedy.

Grant (2017) defines forensic linguistic as a way or an attempt to improve the delivery of justice. Gibbons (2003:1) when referring to forensic linguistics uses the term "language and law" and argues that:

> ...law is an overwhelmingly linguistic institution. Laws are coded in language and the concepts that are used to construct the law are accessible only through language. Legal processes such as court cases, police investigations, and the management of prisoners take place overwhelmingly through language.

Gibbon's (2017) definition of forensic linguistics particularly focusses on the role that language plays as indicated by Grant (2017) in the delivery of justice. Olsson (2008) further argues that there are many definitions of forensic linguistics. It is evident given the literature in relation to the African context that forensic linguistics/language and law is relatively a new area of research in South Africa. Currently there are few scholars whose research interest is on forensic linguistics in South Africa. The interest among others being influenced by the rise of appeal cases filled by appellants due to translation and interpretation errors that occurred on the basis of language and communication, as evident in the following appealed cases State vs Lesaena (1993), State vs Matomela (1998), Mthethwa vs De Bruyn No and Another (1998), and State vs Pienaar (2000). This further shows that language plays an important role in the deliverance of justice not only in common law courts but also in customary law courts as argued in chapter four of this thesis.

2.4 Language planning

As I stated above, forensic linguistics is considered to be part of applied linguistics, and thus the role of forensic linguistics in the language planning process is important, especially in a legal context. This point will become more apparent in chapters three and four of this study. Language planning and language policy occur in all communities and will be discussed based on its relation to the research question of this study and the focus will be on its four ties namely, status planning, corpus planning and acquisition planning. This discussion is important for the purposes of the analysis of the data in chapter four of this thesis. In South Africa, the language question is faced with many problems one being implementation. Thus, making the job of language planners exceedingly difficult.

This level of difficulty is centred towards what people want or will work for versus what those in position of power want. Language planning has been the interest of scholars for an exceptionally long time. Cooper (1989:30) argues that there are numerous definitions of language planning. Bowerman (2000:32) argues that the reason being "there are no clear-out definitions as to what language planning is, as it can be (and is) undertaken for a variety of reasons. In relation to Bowerman's (2000) views, Cooper (1989) provides a definition that stands out from the rest in my opinion despite the similarities to others is its 'openness' and defines language planning as:

> …a deliberate effort to influence the behaviour of others with respect to the acquisition, structure, or functional allocation of their language codes.

This definition does not only cover the aspects that form part of language planning as indicated by other scholars but remains open for other possibilities that in the future may form part of language planning.

Kaplan and Baldauf's (1997:3) definition of language planning along with Cooper's (1989) fit perfectly to the idea of change due to circumstances and define language planning:

> as the body of ideas, laws, and regulations (language policy), change rules, beliefs, and practices intended to achieve a planned change (or to stop the change from happening) in the language use in one or more communities.

Therefore, it can be argued that language planning is a process that needs to consider the needs of those involved and for it to be successful to undergo the following processes explained in relation to the four tiers of language planning.

2.4.1 Status planning

Bowerman (2000); Ferguson (2006); Kaplan and Baldauf (1997) all argue that status planning addresses the function of a language in a society, which includes the allocation of languages to official roles across domains. These societal domains include workplace, local government, family/home, the media, and the law among others, from which they have been previously excluded where their status can either be improved or lowered. Kaplan and Baldaulf (1997:5) argue that government have become involved in the process and that has created more problems as government has the power to legislate and enforce planning decisions.

Government in a sense takes decisions in relation to language in the language planning process. Docrat (2017) argues that the reason being that selection is done by political leaders in favour of the language that the state can use to communicate with the people. The state then selects one or more languages for official purposes. This is evident in Section 6 of the Constitution (1996) as eleven languages are granted the official status even though South Africa has more than eleven spoken languages (Lourens, 2012).

Docrat (2017) and Wright (2007:166) argue that this selection by the government in most cases is a top-down approach. Bowerman (2000:34) further argues that this approach is based on heavy intervention in language policy by the state or a similar organ. Language policy is decided upon at a top level and imposed on the speech community or communities concerned. This approach as indicated by Docrat (2017) ends up adversely affecting people in the end. Docrat and Kaschula (2015) propose a bottom-up approach which Bowerman (2000:34) explains it as a process that requires the approval of those who are affected in order for it to be successful. This approach is known as meaningful engagement, which then allow people to participate in decision making concerning their language. Yacoob (2008) quoted in Docrat and Kaschula (2015:4) defines meaningful engagement as a:

> …process in which government and the affected persons are required to find a common understanding in terms of which issues can be addressed, and solutions and or agreement achieved.

With regards to language planning this process needs to be adopted in order to yield favourable results.

2.4.2 Corpus planning

The second tier of language planning is corpus planning defined by Cooper (1989:30-31) as:

> ...dealing with parts of the government, language academy or similarly powered organisation to change aspects of the structure of a language itself".

Kaplan and Baldauf (1997:38) define corpus planning as:

> Those aspects of language planning which are primarily linguistic and hence internal to language.

Docrat (2017) argues that corpus planning deals with ensuring that languages as the results of modernisation and globalisation adapt accordingly, furthermore, it ensures that one language is not developed or influenced by the elite at the expense of other languages.

2.4.3 Acquisition planning

The third tier of language planning is acquisition planning which Bowerman (2000:33) states:

> Involves deliberate attempts (by the government, a language academy, or similarly powered organisations) to influence the whole or sectors of the population to learn and use a particular language.

Wright (2007) in relation to Bowerman (2000) argues that this process deals with implementation of both status and corpus policy. Once a language has been identified and decided upon and given a role that it is going to play, then it is up to the educationalist to organise how that language will be acquired.

2.4.4 Opportunity planning

Antia (2017:166) argues that opportunity planning is "understood and offered as a framework that foregrounds implementation in language planning and policy". Docrat (2017) argues that opportunity planning is viewed and offered as a framework that foregrounds implementation in language planning and policy, furthermore, it provides strategies for the implementation of the language policy in the specific domain. Thus, making opportunity planning a particularly important element in the justice system as it also deals not only with implementation but training as well, and those are the important elements that are needed in traditional courts and will be argued in-depth in chapters four and five of this study.

Language planning is important in this study because of the relationship it has with forensic linguistics. Docrat and de Vries (2019) argue that language planning and forensic linguistics are both branches of applied linguistics that deals with language related problems. In relation to that understanding, Olsson (2008) states that forensic linguistics should then be understood as the application of linguistic knowledge to a particular setting, namely the legal system. Both language planning and forensic linguistics are important in answering the research question of this study "the status of African languages in traditional courts". Stewart-Smith (1993) and deVos (2008) argue that language policies should be formulated based on linguistic demographics of each area, and that if the need arises for using more than one language, then the other language can be introduced alongside the pre-existing language.

Alexander (1992) places emphasis on the importance of tailor made polices that are in line with the needs of the population such as the case of Luyengweni. Language planning, including opportunity planning is needed in traditional courts for the purposes of ensuring access to justice, thus language usage and language rights form part of the constitutional provisions.

2.5 South African Constitution and language rights

In South Africa, the Constitution (1996) is regarded as the supreme law and everyone including the state is obligated to respect and live by its rules. The following discussed provisions are important for the purposes of this study. Section 6 of the Constitution informs the language rights that are stated in the BOR and applies to both the state and its citizens. Section 6 (1) lists all the eleven official languages that are declared and recognised as official languages of the Republic of South Africa. Subsection (2) places emphasis on the development and elevation of the previous disadvantaged languages (African languages). Section 6(3)(a) provides guidelines for the use of official languages in national, provincial and local government departments. Section (5) is directed to PanSALB to ensure the promotion, development, and respect of all official languages.

Chapter 2 of the Constitution contains the BOR to ensure dignity, equality and respects for all. Section 8(1) states that the BOR applies to all law, and in turn the legislature, executive, judiciary and all organs are bound by it. Section 29(2) and 35(3)(k) are language rights that are in the BOR. Section 35(3) (k) states that:

> Every accused person has the right to a fair trial which includes the right to be tried in a language that the accused person understands or, if that is not practicable to have proceedings interpreted in that language.

Docrat (2017) argues that Section 35(3)(k) does not refer to the right for a language of choice but a language that the accused understands fully not partially, in order to be present in court, and that in situations that are deemed as not practicable then interpretation be adopted as an alternative. The right to a language of choice is given to individuals in Section 30 stating: that "everyone has the right to use the language and participate in the cultural life of their choice."

Furthermore, Section 31(1) states that "persons belonging to a cultural, religious, or linguistic community may not be denied the right, with other members of the community (in ensuring full participation) and

(a) To enjoy their culture.

The language related problems that this study seeks to investigate are in traditional courts that function under customary law.

2.6 History of Customary law in South Africa

Grant (2017) states that arguments around customary law have been narrated and been based on resistance to westernization and a need to protect cultural values. In contrast Ntlama and Ndima (2009); Soyapi (2014); Botha and Tandy (1992) state that the existence of African law ordered lives and relations among African societies long before the Europeans arrived. African law came to be known as African customary law, which then referred to the first system of justice in Africa before the arrival of the Europeans and it is an original legal system with its norms and values that formed the *jural* postulates of its own world view. Bennet (2009) further states that the institution of traditional leadership has its own origin from the ancient times when communities sharing the same belief and kinship, were allocated land for occupation and grazing.

Rautenbach (2015) states that traditional courts and justice in the rural areas of South Africa is dispensed by official traditional courts, where they are presided over by traditional leaders. Traditional leaders are viewed as the executive leaders of their people and perceived as symbols of unity and by implication guardians of the community's customs and culture (Chiweza 2007:61; Soyapi (2014); Kyed and Buur 2007:2). According to Ntsebeza (2005), traditional leaders refers to 'Chiefs' of various ranks. Pieterse (1998) defines Chiefs as executive leaders of their people and are perceived as symbols of unity and guardians of their community's custom and culture and entrusted with ensuring these traditions are continued. Bekker (1989:237) further states that Chiefs can be both male and female depending on the cultural aspects that guides a specific community.

Customary law is defined by Woodman (2011:10) as:

> ...a normative order observed by a population, having been formed by regular social behaviour and the development of an accompanying sense of obligation.

Gibbons (2003:15-16) in relation to Woodman's (2011:10) definition of customary law, states that these are "legal systems that operate on an oral basis" and as opposed to the common law that depends on formal written sources, customary law depends on the basis of evidence of social practice. Morapedi (2011:250) states that the term customary law has different meanings to different people and should be understood in its cultural, political and economic context.

Van Dalsen (2019:1) states that traditional courts function in accordance with customary law, subject to the Constitution (1996). Traditional courts are *Iinkundla* where disputes and other matters are held, these courts are important as they are derived from the fact that they are close to the communities and more importantly use the language(s) understood by the community, better than procedures used by formal courts. Traditional courts are presided over by Chiefs and headman.

2.6.1 The recognition of customary law

Customary law as indicated by Rautenbach (2015) before 1994 had taken a seat back as its rulings were deemed to be contrary to those of the common law. Since 1994 customary law has been regarded as a parallel system on a par with the common law. In post-apartheid South Africa, the Constitution (1996) placed customary law on an equal status with the common law. Section 166 of the Constitution (1996) states that the courts are the Constitutional court, the Supreme court of Appeal, the High courts, the Magistrate's courts, and any other court established or recognised in terms of the Act. The Constitution confirms the continuation of traditional courts under Section 166(e) by stating that:

> Every court, including courts of traditional leaders existing when the new Constitution took effect, continues to function and to exercise jurisdiction in terms of the legislation applicable to it.

Traditional courts were already functioning long before the new Constitution of 1996 under what was known then as Native Administration Act 38 of 1927, later renamed to Black Administration Act 38 of 1927 (Himonga, 2000:307). Thus, the recognition the new Constitution under Section 211(1) of the Constitution gives and provides the institution of traditional leadership is noted, emphasising the status and role of traditional leadership. Traditional leaders are men or women of great importance in their communities (Qangule 1979; Saule 2011). Customary law as with any other law stated in the Constitution should be given the same status as the common law, subject to the Bill of Rights (BOR). Section 8(1) of the Constitution further provides unequivocally that the BOR applies to all law. The above constitutional provisions are in relation to customary law, including traditional leaders. The chieftaincy is believed to be rich in cultural heritage and underpinned by language. The structure of traditional courts differs from the structure compared to common law courts with a different structure and the way proceedings are conducted is different as well.

2.6.2 Traditional court structure and its functions

Melton (1995); Soyapi (2014); and Rautenbach (2015) share the same views with regarding the structure of the traditional justice system and state that it affirms the values of customary law and is deeply rooted in the principles of restorative justice and reconciliation. As such, traditional courts are an indispensable part of the administration of justice in South Africa. Although they are not recognised as forming part of the formal courts, they occupy an important space in the administration of justice in rural areas, where a huge percentage of the population of South Africa is located. Traditional courts have the following strengths:

1. There is a sense of ownership by the people as the community is bound by its rules. The people are more comfortable because they are included in the process and are under a law that is indigenous and not foreign.

2. The processes are flexible, simple and familiar, with no rigid rules. The language is not foreign, and people can easily follow the process. It has also been found that the informal procedures of customary courts have the advantage of leaving less room for technicalities and having the real substance dealt with.

3. The system is based on mediation and is more restorative than retributive. In this regard, the community is more important, and relations are meant and expected to exist after the process. There is, thus, a measure of bringing unity and togetherness.

4. The courts are accessible, inexpensive and speedy. It is important that by virtue of their being geographically closer to the people there are often no travelling costs involved. This way of doing things contrasts with the way of formal courts systems.

5. Traditional courts do not adhere to any prescribed or written set of rules rather, they are guided by the culture and tradition of the community in which they operate. In this way justice is then dispensed easily and quick without any unnecessary delays.

6. Traditional courts are not court of record. A record is normally necessary on basis of an appeal or review, which in most cases does not happen as most traditional courts deal with minor cases (Melton, 1995:123)

Rautenbach (2015) makes a distinction between formal and informal courts and states that formal courts are the ones that are recognised in terms of the legislation. Furthermore, arguing that the reason for this legislation is to allow the procedures to be observed in connection with the hearing of the matters in the traditional courts, in accordance with the laws and customs of the traditional community in question (Rautenbach, 1989). A traditional court's structure is

made up of the leader (a Chief) and his or her councillors. Rautenbach (1989) states that councillors are selected from the ranks of headman, sub-headman and people of great significance in the community. These people are chosen based on their skills and leadership qualities in the community. Furthermore, Rautenbach (1989) argues that women are selected to Chieftaincy positions only in exceptional circumstances, where there is no male heir or where the existing one is too young to govern. Another distinction between common law courts and traditional courts is the language that is used during proceedings, discussed in the next section of this chapter.

2.6.3 Language of traditional courts

Koyana (2011: 236) states that "all proceedings in traditional courts are conducted orally in the language mostly spoken in the area of jurisdiction of the courts." Gibbons (2003:18) shares similar views with Koyana (2011: 236) in alluding to the point that legal disputes in traditional courts are handled mostly using an everyday language. Language of the courts is invariably the local language of the participants, with no risk of distortion through interpretation. This makes the courts popular and attractive to their users and more importantly gives great satisfaction to the participants in the process as compared to regular courts where the language used there is not understood by most of the people. This is currently an ongoing debate beyond the perimeter of customary law in relation to language usage, but this has been the interest of academics / forensic linguists in language usage / language of record in the mainstream legal system by scholars such as Docrat and Kaschula (2019); Docrat *et al* (2017) to mention a few.

Docrat (2017:15) advocated for the 'full' use of African languages in courts and the practical implementation of Section 6 (1) and (2) of the Constitution to apply to all languages in the justice system. Docrat (2017:16) argued that meaning is usually lost during translation and interpretation in courts and that this negatively affects the litigants. Similarly, to Docrat (2017:17), Koyana (2011:231) states that proceedings in customary courts must be conducted using a local language of the litigants involved, thus eliminating interpretational errors.

2.7 Legislation

For the purpose of the study at hand legislation will be discussed in relation to customary law, and the role it plays with regards to language. Bamgbose (1991:22) argues that legislation is an important tool through which language policy can be codified and implemented. Turi (1993:7) further argues that:

> Legislation is intended to make one or more designated, or less identifiable languages official in the domains of legislation, justice, public administration and education.

Docrat (2017:52) argues that making a language official does not necessarily solve problems with regards to the status of the language in question, rather the status is determined. Grant (2006:3) states that South Africa is a culturally diverse society. Moreover, it is a society in which the culture of the majority, including legal culture, has, over a long period of time, been disparaged and subjected to minority "western culture", first under colonialism and subsequently under apartheid". Bennett (2009) states that legislative development of customary law faces problems compared to the common law.

Customary law as the system that is derived from social practices, legislative development will not be at the rate of common law regarding transformation. Although legislative development ensures legal certainty and consistency, in customary law legislation development can be viewed as an act of imposing homogeneous rules on communities that do not apply such rules in practice, with time deem relevant.

Bamgbose (1999) argues that language legislation is an instrument of change, and change is needed in situations where old methods no longer work or need to be revamped. Therefore, customary law needs tailor-made language legislation that will cater for the needs of the people that depend on it.

2.8 Linguistic Imperialism

The introduction of English and other languages such as isiXhosa and Sesotho in the traditional court of Luyengweni contributes to the debate of scholars whose interest is in linguistic imperialism. Phillipson (1997:238) defines linguistic imperialism as:

> ...as a theoretical construct, devised to account for linguistic hierarchisation, to address issues of why some languages came to be used more than others less, what structures and ideologies facilitate such process, and the role of language professionals.

Phillipson (1997:289) further argues that the term linguistic imperialism is the term coined by Skutnabb-Kangas in 1988 and the reason was to draw parallels between hierarchisation on basis of race, gender and language. Furthermore, they argue that linguicism exists between speakers of a language, when one dialect is privileged as a standard for an example isiXhosa compared to isiHlubi in Luyengweni. Day (1985:164) argues that:

> …the new language [isiXhosa] gains in prestige and status among the speakers of the old language [isiHlubi], while the old language loses its usefulness (and in some cases prestige); children no longer learn it as their first language.

The hierarchy in terms of language use in this case is isiXhosa and isiHlubi as a result of language contact as defined by Thomason (2001:1) as "the use of more than one language in the same place at the same time"; contributed to the evolvement of a new language that is now spoken and used in traditional courts of Luyengeni called the "mix-up" language (Day, 1985:164). According to Phillipson (1997) linguicism also exists between speakers of different languages as a result of resource allocation where one language has more resources than other languages, for example English and Afrikaans in South Africa as opposed to African languages. In the case of traditional courts, they are designed in a manner that they use a local language which is a language that is understood by the people as indicated by Gibbons (2003), regarding the mainstream legal system in South Africa English is most used. Kirkpatric (2008:333) states that English is the most spoken and used language in controlling domains such as law. English is mostly used and spoken already in common law courts, while other languages are used through interpretation. Thus, there is a call for the intellectualization of African languages by scholars such as Docrat (2017) in the South African legal system.

Kirkpatric (2008:335) argues that the development of English resulted in it becoming the "language of the court, the bureaucracy and thus power", and English became the dominant language. It can be argued that English compared to other languages in the South African legal system continues to be given preference and was made a sole official language of record, leaving other languages that are officially recognised in low status domains. In relation to the above point Wright (2007:80-82) states that when this happens only one language will be in the prime position and will gain recognizable status, others are relegated to secondary positions, which then results in a hierarchical arrangement. In relation to Luyengweni courts, English is also used. The inclusion of English in traditional courts of Luyengweni became a necessity due to social change.

2.9 Conclusion

This chapter has not only discussed the main elements that are important in answering the research question of this study such as the history of forensic linguistics, language planning and its tiers, constitutional provisions regarding language rights, history of customary law in South Africa, traditional courts structure and legislation. This chapter furthermore, gave a brief

discussion on the geographical area of the place in which this research took place. The discussion pertaining the above-mentioned element is discussed using the views of the authors mentioned in this chapter, and will be used throughout this thesis as they are relevant in answering the research question of this thesis. This chapter illustrated that language related problems are mostly the results of (1) improper language planning, and (2) hierarchy in language status and usage across domains, in this case in customary law courts including legislative challenges.

CHAPTER THREE: RESEARCH METHODOLOGY

3.1. Introduction

This chapter offers an overview of the analysis strategies employed within the study. It provides data captured from the participants (see appendices I-M), that is, the criteria for inclusion in the study, who the participants were, and how they were sampled. The researcher describes the analysis style that was chosen for the aim of this study and the reasons for this alternative. The instrument that was used for knowledge assortment is additionally outlined and the procedures that were followed to carry out this study area unit is enclosed. The researcher also discusses the methods used to analyse the data. Lastly, the ethical issues and the authentication processes followed in obtaining the data is discussed. This study has followed the qualitative research approach by taking in-depth interviews as well as written texts as a tool in answering the research problem of this study.

3.2. Research Design

Myers (2009) suggests that, the research design involves deciding on the researcher's philosophical assumptions, the research methods and techniques, collection and treatment of data, and approach for writing up and presenting results. This research was exploratory in nature as it attempted to explore the status of African languages in traditional courts of Luyengweni. The participants' perceptions about how language is used in traditional courts of Luyengweni and which language is used as languages of record and court proceedings, formed the core data of the study; hence it needed the method that would deal with the topic in an exploratory nature. For the purpose of this study, the research paradigm followed was of a qualitative nature, using semi-structured in-depth interviews as discussed later in the chapter. The explorative and qualitative nature in research was explained below along with its advantages and disadvantages when it comes to conducting a research study.

3.2.1. Exploratory Research

Goundar (2013) states that exploratory research is used when the subject is very new, we know little or nothing about it, and no one has yet explored it. The goal of the researcher is to engage with current literature, collect further data that addresses the issues established in Chapter One of this thesis and contribute to the knowledge of research and this enables future research and analysis. As a first stage of inquiry, we want to know enough after the exploratory study so we can design and execute a second, more logical and extensive study. Exploratory research

draws definitive conclusions only with extreme caution. Exploratory research is flexible and can address research questions of all types (what, why, how). Exploratory research is often used to generate formal hypotheses.

3.2.1.1. Advantages of Exploratory Research

As outlined by Stebbins, (2001), the main objective of exploratory research is to improve a researcher's knowledge of a topic. It should not be employed to draw definite conclusions, because of its lack of statistical strength, however it can help an investigator begin to determine why and how things happen. This research is relatively new in nature and exploratory in nature hence the application of this method. Exploratory research can also assist market researchers to find potential causes to the signs or symptoms conveyed by decision makers. Researchers may carry out research to build up a list of possible causes to the problem.

3.2.1.2. Disadvantages of Exploratory Research

The primary disadvantage of exploratory research is that it seldom offers adequate answers to research questions, even though they hint that answers are present and direction is given as to which research methods could provide definitive answers. Precisely why exploratory studies are rarely definitive is because individual studies may not be typical of the larger population of interest, which is not the case in this study, the sample is likely not a representative one (Stebbins, 2001). Exploratory research is primarily qualitative research as it is used to get in-depth information about the research problem.

3.2.2. Qualitative Research

According to Willig (2013:15), qualitative research is concerned with meanings, it is interested in how people make sense of the world and how they experience events. The qualitative approach involves the collection of different kinds of empirical material such as case studies, life stories, interviews and visual texts that describe what different things mean to different people (Denzin and Lincoln 1998:20). The reason for selecting the qualitative approach is that multiple methods assist in gaining an in-depth understanding of a phenomena. One of the important objectives of qualitative research is to describe and possibly explain events and experiences and not to make predictions (Willig 2013:52).

Qualitative research studies people in their own territory, within naturally occurring settings (such as the home, schools, hospitals, the street). This research was conducted in Luyengweni location, a place where the participants reside and the interviews were conducted at their homes

and *Ikomkhulu* (the main court). Rossman and Rallis (2012) denote that qualitative researchers are central to the process, continually making choices, testing assumptions, and reshaping their questions. As the inquiry method grows from curiosity or surprise to understanding and data building, the researcher is usually challenged. Vosloo (2014) also states that with qualitative research, the researcher is required to be a good listener, non-judgmental, friendly, honest and flexible. This is important in the context of the research undertaken where varying subjective opinions were offered as part of the semi-structured interviews conducted as represented in appendices F-J. The researcher therefore works from the point of understanding the research respondents without imposing pre-existing expectations.

3.2.2.1. Advantages of Qualitative Research

As stated by Vosloo (2014) qualitative research is a means of understanding human emotions including and not limited to rejection, pain, caring, powerlessness, anger and effort. Since human emotions are difficult to quantify (assign a numerical value), qualitative research seems to be a more effective method of investigating emotional responses than quantitative research. This point of subjectivity in opinions is important in the context of this research, with particular reference to the interviews conducted. In addition, qualitative research adopts a person-centred and holistic perspective. Abstract thinking processes are used to develop research findings from which meaning and theoretical implications emerge. The research design is flexible and unique and evolves throughout the research process.

3.2.2.2. Disadvantages Qualitative Research

According to Rahman (2016), a qualitative research approach in some instances omits contextual sensitivities, and focusses more on meanings and experiences. The phenomenological approach, for instance, attempts to uncover, interpret and understand the participants' experience. This researcher further states that, qualitative research focuses on the participants' experience rather than any other imperative issues in the context and that policy-makers may give low credibility to results from qualitative approach. Lastly, in terms of a research method, a smaller sample size raises the issue of generalizability to the whole population of the research. I, however have opted to interview individuals and a group interview as evidenced in appendices I-M. This yielded better results as the information gathered came from not only those who are originally from Luyengweni, but from individuals who moved there for employment purposes as well as customary law experts such as the Chief of the village and her advisors.

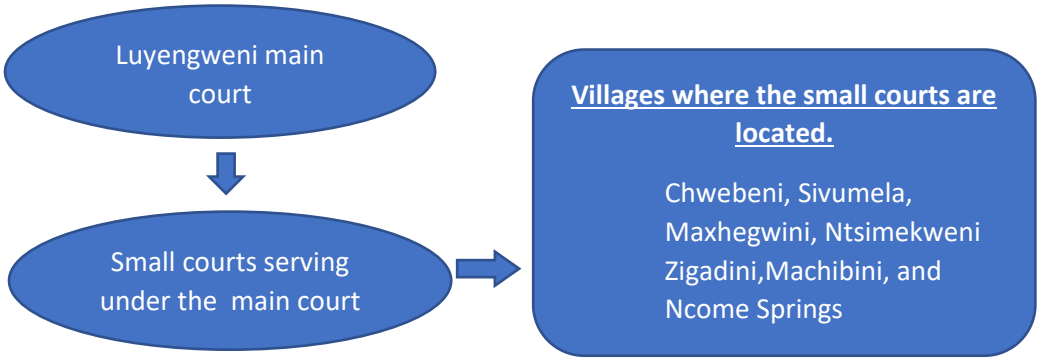
3.3. Population, Sample and Sampling

According to Govender (2016) population in research is defined as a group of individuals who have a certain common characteristic that makes them a distinct group from other individuals. In this study, the population of interest was the people of Luyengweni in Mount Frere *kwaBhaca* under the Alfred Nzo Municipality, Eastern Cape Province, South Africa, the reason being they were in close proximity to the researcher. A sample and sampling are the research instruments that were used in this research and are discussed below.

3.3.1. Sample

Alvi (2016) defines a sample as a group of a relatively smaller number of people selected from a population for investigation purposes. For this study people who were selected compromised of eight people, a Chief, three Chief Councillors, a court secretary and three community members. The participants were both males and females of different age groups to gain varying perspectives on the subject matter. All participants reside in Luyengweni and either attended the trial or participated in it. This location is considered relevant as the area to collect the data is *Ikomkhulu* (main court) situated in Luyengweni under the leadership of the Chief, with seven other smaller courts operating under the leadership of the headman. Situated in sub-villages of Luyengweni that serve under the main court together form the *Ncome* Administration Area. The following figure depicts the structure of Luyengweni traditional courts:

Figure 2. Hierarchical structure of Luyengweni traditional courts



All these small courts are located in each of the above-mentioned locations functioning under the guidance of the councillor *isibonda* who then reports all the day to-day court matters to the main court in Luyengweni.

3.3.2. Sampling

As stated by Polanczyk *et al*. (2015) sampling is the process of selecting participants and different sampling can be used as a research method to select the participants within the framework such as random sampling, stratified random sampling, systematic sampling, and cluster sampling. Purposeful sampling or Non-probability sampling was used in conducting this research since the researcher was considering a total of twelve participants only managed to get eight as the result COVID19. As stated by Johnson and Christensen (2010), purposeful sampling is where the researcher specifies the characteristics of the population of interest and locates individuals with those characteristics.

In non-probability sampling, subjects are chosen according to their association with the researcher's topic. As a result, the aim is to realize a deeper understanding than to generalize to a bigger population. Moule and Goodman (2009) state that purposive sampling aims to sample a group of people or events with specific characteristics or a specific set of experiences. The technique can also be referred to as 'judgement sampling', as the researcher passes judgement about the composition of the sample, selecting participants whom he/she believes have either experienced a particular episode or have a set of knowledge that relates to addressing the research question. This method is mostly useful in exploratory research, where the researcher uses the locations he or she knows to access suitable data collection locations.

With regards to language the participants had a choice in choosing which language they prefer to be interviewed in i.e. between English and isiXhosa. This was in accordance with the provincial language statistics and the language demographics of the research area. Consent forms and an invitation letter were also written in both languages to ensure the participants' understanding. Neuman (2000) argues that the main target of the qualitative research worker in addition to selecting participants is the ability to clarify and deepen the understanding of social life than its representativeness. Furthermore, Neuman (2000) indicates that the qualitative investigator ought to be troubled with getting cases that may enhance his/her learning method concerning social life in a very specific context, and that is the reason why they tend to use a non-probability sampling methodology.

3.3.3. Research Instrument

Colton and Covert (2007) refer to a research instrument as a mechanism for measuring phenomena which is used to gather and record information for assessment, decision making, and ultimately understanding. For the purpose of this study, the researcher used semi-structured interviews, which involved using open-ended questions. According to Willig (2008), the semi-

structured interview provides an opportunity for the researcher to hear the participant, talk about a particular aspect of their life or experience. The questions asked by the researcher function as triggers that encourage the participant to talk. This style of interviewing is sometimes described as non-directive; however, it is important to acknowledge that it is the researcher whose research question drives the interview.

3.3.3.1 Semi-structured interviews

The interview questions covered the biographical information of the participant followed by a series of questions pertaining to the role of the participants in traditional courts and the language(s) used during court proceedings. Since this was an exploratory study, the researcher used semi-structured interviews that comprised of open-ended questions that enabled the researcher some degree of flexibility. Additionally, gave the researcher an opportunity to deduce further information and clarification wherever necessary. According to Neuman (2000), the researcher must have a talent to match the analysis question to associate with acceptable techniques. Therefore, semi-structured interviews were used despite being more time consuming as they provided further information.

3.4 Procedure of Data Collection

Corbin and Strauss (2014) define procedure as a process that is often described in developmental terms such as phases or stages, implying a linear or progressive nature to it. The procedure or process can be a series of related acts taken toward some end. Auerbach and Silverstein (2003) define convenience sampling as recruiting whomever you have access to. The participants all resided in Luyengweni and in order to get all eight interviewees, the researcher had to use ‘snowball sampling’. Snowball sampling was explained by Auerbach and Silverstein (2003) as starting with a convenience sample of a few research participants and asking them to select others. Alluding to Auerbach and Silverstein (2003), Etikan (2016:1) argues that:

> Snowball sampling method is not uncontrollable as the name implies. The researcher is deeply involved in developing and managing progress of the sample, and seek to ensure at all times that the chain of referrals remain within limitations that are relevant to the study.

The time of snowballing sample used in this study is called liner snowballing. Etikan (2016) argues that this type of sampling allows the researcher to recruit a single participant, while the

second nominee recruits the third participant. In relation to the research question of this study this type of sampling was found to be most suitable.

3.5 Data Analysis

As stated by Sutton and Austin (2015) data analysis in a qualitative study defined as the range of processes and procedures whereby we move from the qualitative data that has been collected into some type of rationalization, understanding or interpretation of the individuals and things we tend to square measure work. It is their voices that the researcher is trying to hear, so that they can be interpreted and reported on for others to read and learn from. Thematic analysis is the method of characterising patterns or themes among qualitative knowledge. Braun and Clarke (2006: 78) recommend that it is the primary qualitative technique that ought to be learned as "…it provides core skills that may be helpful for conducting several different kinds of analysis".

This study used thematic analysis guidelines as put forward by Braun and Clarke (2006). This type of data analysis follows six phases, which include the following (Braun and Clarke, 2006:87):

> ...familiarizing yourself with your data, generating initial codes, searching for themes, reviewing themes, defining and naming themes and producing the report.

The researcher in this study had to transcribe the research interview questions as the interview questions where written in isiXhosa and answers were also given in isiXhosa.

The data gathered through these interviews was transcribed. Themes were written systematically and rigorously to draw conclusions. The themes were grouped according to their similarities, and common or recurring themes were identified for the purpose of making sense of them in relation to the theoretical framework created in the literature review of Chapter Two of this thesis. The above procedure is in line with what Neuman (2000) suggests about qualitative data analysis. This indicates that in qualitative research the data is analysed through reading and re-reading of data notes, reflecting on what is read and organizing those into similar themes and patterns.

3.6 Ethical Considerations and Informed consent

According to Marianna (2011) ethics are a system of well-founded principles that can change previous consideration about the choices and actions people take. Ethics deals with the

standards of what is right and wrong and what humans should do. Research ethics involves the protection of dignity of subjects and the publication of the information in the research. Ritchie and Lewis (2003) state that ethical considerations are the final aspect of the negotiation of research relationships and that any research study raises ethical considerations. During research it is easy to overstep your set boundaries as a researcher, whether it is intentional or unintentional, as researchers it is our duty to have the participants' best interest in mind.

The researcher made sure the experience was beneficial to the participants than him or her alone. Since qualitative designs utilise people as subjects of scientific inquiry, this adhered to the following ethical standards as indicated by Quigley (2001). Informed consent according to Munhall (1988) is the permission granted by the participant with the full knowledge of the possible consequences. It includes the knowledge of the title, purpose, explanation of the research and the procedure to be followed. As the research progresses, consent needs to be renegotiated as unexpected events or consequences may occur over time. Whereas, Woodfield (2017) indicates that informed consent entails giving enough information about the research and ensuring there is no explicit or implicit coercion so that prospective participants can make an informed and free decision on their possible involvement. In this study, the purpose was explained to the participants face to face prior to the interview taking place.

The participants were then given the invitation letter, which provided the details of the study, including its purpose and that the participation in the study is purely voluntary and that participants can choose not to participate whenever they want to without providing an explanation. In addition, participants were informed that no form of remuneration would be provided. In the invitation letter, both the researcher's contact details, her supervisor's contact details and the details of the ethical review board were included, should they need further debriefing due to possibilities of re-traumatization. The participants were able to choose whether they prefer the isiXhosa or English written invitation letter and consent form and were asked to keep the invitation letter to refer to it should they want more clarity regarding the study and its purpose or want to call the researcher, her supervisor or the Rhodes university ethical review board.

3.6.1 Anonymity and Confidentiality

Wiles and Boddy (2013) state that anonymity and confidentiality are connected. Confidentiality means that, identifiable information about individuals collected during the process of research will not be disclosed and that the identity of research participants will be

protected through various processes designed to anonymise them, unless they specifically choose to be identified. As stated by Wiles and Boddy (2013) anonymity is the vehicle by which confidentiality is operationalized. In this study, the participants were given the right to privacy, and the assurance that the information they are disclosing will be kept confidential, for that reason the researcher will give the participants specific names such as (A or B) in respect of their anonymity.

3.7 Trustworthiness

A qualitative approach of trustworthiness was used in this research and it encompasses four aspects which are, credibility, transferability, confirmability and dependability and they are explained in more detail below. Gunawan (2015) defines Trustworthiness as a matter of persuasion whereby the researcher is viewed as having made those practices visible and therefore auditable. This basically means that, it is the believability of the researcher's findings for example, all that the researcher has done in designing, carrying out and reporting the research to make the results credible.

3.7.1 Credibility

As stated by Cope (2014) refers to the truth of the data, or of the participant views and the interpretation of them by the researcher. Credibility ensures that the study measures or tests are of what the study intended. Anney (2014) defines credibility as the confidence that can be placed in the truth of the research findings. Credibility establishes whether the research findings represent believable information drawn from the participants' original data and is a correct interpretation of the participants' original views without alterations. In this research credibility is guaranteed as the data was a true representation of the original views expressed by the participants.

3.7.2 Transferability

Cope (2014) states that transferability refers to findings that can be applied to other settings. It is the interpretive equivalence of generalizability. According to Anney (2014:277-278) to achieve transferability the researcher needs to facilitate the changeableness of judgement by means of a doable user, through what is called thick description and purposive sampling. The researcher then provides a detailed description of the enquiry and participants are selected purposively and then facilitates transferability of the enquiry. Transferability is therefore,

guaranteed because of the findings from the data and can be transferred to other research contexts and participants that are similar to this study.

3.7.3 Confirmability

As stated by Anney (2014) confirmability refers to the degree in which the results of associated inquiry can be confirmed or verified by different researchers. It is involved with establishing that information and interpretations of the findings are not inventions of the researcher's wild imagination, but purely derived from the information. Therefore, during the analysis, confirmability has been obtained to confirm the trustfulness and objectiveness of the study.

3.7.4 Dependability

Shenton (2004) refers to dependability as referring to the work that is repeated in the same context using the same methods and participants and similar results would be obtained. Anney (2014:278) refers to dependability as the steadiness of findings and the interpretation, recommendations of the study in making sure that they are all supported by the data received from the participants of the study. The researcher has ensured that other researchers can depend on the findings of the research of this study since it complied with ethical standards and practices and is of an objective nature.

3.8 Conclusion

This chapter outlined the methodology that was employed in this study. An explanation of qualitative analysis as a technique for information collection and analysis was given in addition to measures adopted throughout data collection which were also mentioned and discussed namely: consideration and informed consent, anonymity, and confidentiality, trustworthiness, credibility, transferability, confirmability, and dependability, which are the most important elements in achieving the research goal. Information concerning the sample was provided and discussed. The following chapter includes data presentation and analysis. The data will be presented and analysed according to the research question presented in Chapter One of this thesis.

CHAPTER 4

Using South Sudan modern customary law as an exemplary adoptable model: A comparative analysis

4.1 Introduction

To attempt answering the research question which seeks to investigate how African languages are used in traditional courts of Luyengweni, I reviewed existing literature in South Africa with regards to customary law and language as discussed above in chapter two of this thesis. The South Sudan modern customary law is chosen and used in this study as a unique comparative analysis. This was done in order to fully elicit not only the use of African languages in traditional courts, but to understand the traditional justice system, its processes, procedures, and furthermore, its function in an attempt to answer the research question of this thesis. This chapter begins with the historical background on customary law in South Sudan with regards to language policies that are implemented in traditional courts of South Sudan, focusing on Juba courts as a means of ensuring the right to a fair trial as well as challenges facing customary law courts. The reason why I chose South Sudan is the similarities it has with the South African justice system with regards to customary law courts, which is the main focus of this study. As opposed to other courts in Africa, South Sudan is more advanced when it comes to its traditional courts, due to their unorthodox methods in which the court operates, using methods that are influenced by common law but that work to enable better access to justice. Methods that are not yet available or used in South African traditional courts. This chapter will discuss these advancements in a detailed manner.

4.2 Historical background of customary law in South Sudan

4.2.1 Precolonial era

As argued by Allott (1970), indigenous legal institutions are everywhere in Africa and practicing under customary law. As with other countries in Africa, South Sudan is not an exception. Traditional authorities were the ones who were in charge with the dispensation of justice and the authority was based on the community's customs and practices. During the time of the British colonial empire its control was over Sudan through a system of indirect rule as well as the local justice systems. New structures even in customary courts, were introduced to what was known as native administration of government rule. A native administration system of government was created with a mandate to govern rural Sudan (Vaughan, 2010:260).

4.2.2 Colonial era and Post-colonial era

Bennett (2008) argues that during the colonial era colonial court systems were not designed for African litigants. This was due to high fees among other things which made the access to justice to be difficult, but also the fact that courts were under the supervision of the colonial administration. The courts went from being a place to settle disputes to be a place of punishment for those who opposed the government. In the post-colonial era during this time the Sudanese central government legislators re-affirmed the status of customary law courts in South Sudan. As stated by Section 2(1) (a) of the People's Local Courts Act 1977 that:

> …any court established under any of the aforesaid ordinances shall continue to decide cases until the warrants of establishment of the new provisions of the act.

The Chief's Courts Ordinance of 1931 and the People's Local Courts Act of 1977 made separate provisions for North and South Sudan in relation to local courts in terms of jurisdictions and powers. The above discussion on the history of customary law clearly indicates that customary law courts before the current Constitutional framework were recognized on fair terms (recognizing their existence), but common law was still taken on basis of the land, while customary law was a subordinate element and so were the traditional courts. The constitutional change prompted various arguments one being 'Africanizing' the legal system and the Chief Justice of that time Ambrose Thiik said that:

> …customary law embodies much of what we have fought for these past twenty years. It is self-evident that, customary law will underpin our society, its legal institutions and laws in the future (Hessbruegge, 2012:303).

These sentiments have among others resulted in legislation in South Sudan that has taken into consideration diversity by recognizing the following as indicated by the Transitional Constitution of South Sudan of 2011 by Article 5 (a) this institution (b) written law (c) customs and traditions of the people (d) will of the people; and (e) any other." In the post-colonial era customary law was re-recognized to be in line with the current Constitution.

One can argue that during the colonial era customary laws and courts were disrupted, furthermore it is to be noted that the disruptions allowed the common law to dominate. The disruption of customary laws made it difficult for them to return to their original practice post-colonialism. It must however be noted that the post-colonial era allowed for these laws to be fully functional, again creating an "Africanizing" argument. The alignment of customary laws

with the current Constitution of South Sudan raised questions as to the dependency of these laws. Are customary laws more independent or do they rely on the administrative nature of Common laws? This comparative case study shall unpack the aforementioned.

4.3 The recognition of customary law in South Sudan

Bennett (2011) argues that the recognition of customary law and customary justice are rooted in the right to culture. The South Sudan Bill of Rights contains cultural rights of people belonging to a cultural, religious or linguistic community and provide for the enjoyment of their cultural practices and this right is categorized as a collective right. Article 33 of the Transitional Constitution of South Sudan provided the following rights that:

> Ethnic and cultural communities shall have the right to freely enjoy and develop their particular cultures. Members of such communities shall have the right to practice their beliefs, use their languages, observe religion and raise their children within the context of their respective cultures and customs in accordance with this Constitution and the law.

This is one of the provisions that support the recognition of customary law in South Sudan as it gives all the people of South Sudan the right to participate and enjoy a cultural right of their choice. Sibanda (2010) argues that the recognition of customary law was in line with the need to incorporate equality in the justice system that is rooted in cultural traditions. Therefore, the law needed to constitutionally recognize a system that is suitable in achieving the objective of the justice system. Furthermore, he argued that customary law was already functioning as a legal system for that reason it had to become part of the state's justice and administrative system, and was to help in rural areas as there were no functioning formal legal system in those areas thus, the need for recognizing customary law courts. This recognition as previously mentioned came with the appreciation of cultural significance, and importantly argued by Musila (2008:48-49) 90 percent of the population in South Sudan access justice in the customary law courts. The aforementioned clearly depicts that customary laws and courts are more dominant in South Sudan than common laws and courts. The reason being that the customary law justice system in South Sudan is mostly understood by the people, as it existed long before colonialism. One can also argue that the implementation of customary laws in South Sudan makes it more dominant and relevant in the context of the post-colonial era. The current justice system of South Sudan is comprised in the following order discussed below.

4.4 The Justice system of South Sudan

Museke (2015) states that statutory laws and formal courts have been functioning in South Sudan from the days of Anglo-Egyptian colonization, while customary justice has been the primary source of the social order and stability within South Sudan. Unlike before customary law courts of South Sudan despite having colonial roots as per the influence are currently functioning and guided by the Constitution and not just common law rules and regulations. The new Constitution firstly introduced new developments in relation to customary law and introduced a new set of customary courts categorized to suit the 'new' South Sudan operating under a democracy. This requires one to look at the duality of legal systems to fully elicit the function of customary laws in South Sudan.

South Sudan as with most African countries has a dual legal system comprising both formal and customary law courts. These systems are applied concurrently but in a parallel manner, both in rural and urban areas. This shows that both common and customary laws can be used concurrently proving that customary laws are as important as the common laws. One can argue that due to language constraints and diversity these laws are applied in a parallel manner that sometimes put customary laws in a compromised position, refusing independence in terms of relevance and superiority. The evolution of justice system can be argued to have contributed to dependency of customary laws to common laws or at least its administrative nature in order to be fully functional and recognized in the current space. It can be argued that this is due to the change of focus, customary laws now serve as a justice system for the colonized and the common law becomes an advocate for the colonizers. Mamdani (1996) argues that these systems in South Sudan have colonial origins. This can be understood from a view that the customary laws post-colonial era still resembles the common laws that initially replaced the customary laws, making customary laws diluted and dependent. One is believed to be designed for colonizers in order for them to access land and natural resources, and the other for the colonized to defend what the research called the injustice of the justice system. Both systems are recognized in the Transitional Constitution of South Sudan of 2011. However, the researcher argues that they might not be the same.

4.5 The composition of Customary Law Courts of South Sudan

As indicated by Section 97 (1) of the Local Government Act of 2009, Customary Law Courts of South Sudan are categorized as follows:

1. The 'C' Courts,
2. 'B' Courts of Regional Courts,

3. ‘A’ Courts or Executive Chiefs Courts, and
4. Town Bench Courts

4.5.1 The ‘C’ courts

As indicated by the Local Government Act of 2009, this court is the highest customary law court of the county. It consists of the paramount Chief as the chairperson and the Head of the ‘B’ courts known as Regional courts. The responsibilities of the paramount Chief include the administration of the customary law in the country with all the duties given to the court by Section 99 (7) of the local Government Act of 299 that:

> The ‘C’ Court shall have the competence of deciding on: (a) appeals against the decisions of the ‘B’ Courts; (b) cross cultural civil suits; and (c) criminal cases of a customary nature referred to it by a competent statutory court.

4.5.2 The ‘B’ courts

This is the second highest court according to the hierarchy of customary law courts in South Sudan, functioning under Section 100 (1) of the Local Government Act, 2009. These courts are established in each county and they compromise of the Head Chief as the chairperson of the courts with other Chiefs as members. The responsibilities of the of the Head Chief include the administration of the customary court of the *‘payam’* defined in Section 5 of the Local Government Act, 2009 as the second tier of the county that exercise delegated powers from the County Executives Council. The chairperson as indicated by Section 100 (6) states that the chairperson of the ‘B’ court answers to the paramount Chief in relation to accountability due to the performance of the court. This court deals with cases ranging from customary suits of marriage, divorce, adultery and elopement, inheritance, child rights and care, and customary land disputes. The court has both the original and appellant jurisdiction in relation to appeal cases against the decision of the ‘A’ courts known as the Executive Chief’s courts. This court deals with minor cases while major cases against the public order are appealed in statutory courts.

4.5.3 The ‘A’ courts

The ‘A’ courts function under Section 101 (1) of the Local Government Act, 2009 and are established in each *‘Boma’* or Chief court, they are customary courts of first instance. This court is the basic administrative unit of the country and delegate powers within the county. The

court is comprised of the Chief as the chairperson of the court and sub-Chiefs as members. The responsibilities of the chairperson are the administration of the court and account to the Head Chief for performance purposes. With regards to appeals against the 'A' court, this depends on the decision by the 'B' court/ Regional court. Matters that are handled in the 'A' court include: Family disputes, Traditional feuds, Marriage suits, and Local administrative cases.

4.5.4 The Town Bench Courts

They are established under the Local Government Act, 2009 situated in the areas of the town councils. They are the equivalence of the 'B' courts and 'A' functioning under the town's Quarter Councils. Cases discussed in these courts include: Administrative cases, Customary civil suits, Rates, Excise and other services provision related disputes, and Public order cases. Appeals against these courts rely of the First-Grade judge of the county court. Although the Towns Bench Courts are established under the Local Government Act, 2009 these courts are not entirely customary courts due to the nature of its jurisdiction. This court has both the Chiefs and retired civil servants acting as lay judges.

These courts fall under customary law and are recognized by the Transitional Constitution of South Sudan of 2011, and they shall apply customary law subject to the Constitution and the Law. The aforementioned is supported by Section 98 (1) of the Local Government Act of 2009 that Customary Law Courts have judicial competence to adjudicate disputes and make judgements in accordance with the customs, traditions, norms and ethics of the communities.

In South Sudan both formal courts and customary law courts are catered under Article 122-134 and can both apply customary law when the need arises. Section 7(2) of the Civil Procedure Act of 2007, indicates that

> …in cases not provided for by any law, the courts shall act according to South Sudan judicial precedents, customs, principles of justice, equity and good conscience.

Thus, customary law has been applied not only in relation to family matters, but in civil and criminal cases as well. With regards to these kinds of cases Section 6(2) of the Penal Act of 2008 indicates that "…in the application of this Act, Courts may consider the existing customary laws and practices prevailing in the specific areas.

With regards to the equal use of both customary and statutory law in South Sudan, Bennett (2011) makes a great argument in support - that this forms a type of legislation that results in the formation of a special system of courts that recognizes the cultural and religious affiliations

of the litigants. This is an important factor in any policy where legal pluralism is concerned. This gives full and proper expression to their beliefs and practices. Based on the above discussion it is evident that customary law status has improved after colonialism and Sudan now has customary law which is qualified to compete with the common law in the race for equality. In my opinion customary law in African countries is to be developed further with the aim of aligning it with the principles of democracy, in the same way as it has happened in South Sudan.

4.6 The hierarchy in the composition of customary law courts in South Sudan

According to the Transitional Constitution of South Sudan of 2011, as well as the Judiciary Act of 2008, customary law courts are placed at a lower level in terms of the judicial structure and are referred to as 'other courts'. They are arranged as follows; The Supreme Court, Courts of Appeal, High courts, County courts, and Other courts or tribunals as recognized in accordance with the provisions of the Constitution and the law.

4.7 Language usage in South Sudan Courts

Miller (2007) states that Sudanese Southerners with regards to language are expected to speak a specific language such as Juba Arabic and Ki-Nubi, despite the overwhelming number of asylum seekers in European countries, those who claim to be Southern Sudanese speak Arabic, a variety that is close to Northern Sudanese instead of Juba Arabic. According to linguists, that person cannot be a 'true' Southerner as they are not speaking the proper Juba Arabic. This was evident in local courts of Juba, were the people who are supposedly Southerners would constantly shift from a creole level of Juba Arabic to the other influenced by Northern Sudanese colloquial Arabic. This was noticed in the way in which these speakers use various features of language such as phonology, lexicon and morphological features. The difference in the way in which these two groups speak resulted in what Miller (1987) termed as a vernacularization. Mclean (1994:153) with regards to that argues and states that vernacularization relates to the centrality of the indigenous languages (s) in the language policies of the country. This is as a result of diversity, which then raises the question of boundaries of people who speak the Juban Arabic or its creole variety.

4.8 Language usage in Juba courts

According to Miller (2007), the diversity with the Juba-Arabic speakers is presented based on the research that was conducted between 1981 and 1984 in two of the local courts of Juba, in

the capital city of South Sudan. The people were using these courts to present and defend their cases. Local courts are the term used in referring to Southern Sudan A and B courts which is at the level of the village, the district or the city and in these courts various languages were used. The A court is the village court headed by the village Chief, assisted by two or three elders. The language of communication is mostly a local vernacular. In the B court, which is the district court headed by the paramount Chief, they are assisted by village Chiefs and this court deals with matters that are not solved in the A court. In multilingual districts the languages that were spoken were local vernaculars namely: Kakwa, Moro, Madi, Avokanda, Juba Arabic, Bangala and English (Miller, 2007:2-3).

The Juba court referred to the A court and also called it Garawiyya, which is located in the center of Juba, close to the main market and deals with low-level criminal cases, involving the people that reside in the area regardless of ethnicity or the period of their stay. The main language of communication in the court is Juba Arabic. Those who did not speak the main language but who speak the local vernaculars were being assisted by an interpreter. Although these languages were spoken in the A court the case summaries were always written in English. The B court, is situated in the Bari, which is the main area of the local group of Juba-Rejaf. The paramount Chief is assisted by two to three Bari elders in this court.

The language of communication in this court is mainly Juba Arabic, Bari and English. The localization of each of the courts being influenced by the language's users, which depends on the languages spoken by the people. The language usage in traditional courts of South Sudan caters for the needs of the people to eliminate discrimination and a right to a fair trial (Miller, 2007:3). South Sudan language polices are in line with what Docrat (2017:66) refers to as a double approach, namely territorial and personal approaches. The territorial approach is grounded on geographic positioning of the majority of the speakers of particular language. This approach is a common phenomenon where persons of the same linguistic community are positioned geographically.

The personal approach to the use of minority languages in a geographical area. Docrat (2017) argues that this approach favors inclusivity in making sure that no person is excluded on the basis of language as this approach embraces linguistic diversity.

The South Sudan model is therefore a model that can be emulated on the African continent, pacing the language of the court participants at the center of any trial and allowing for a sense of familiarity with court proceedings which would not otherwise exist.

4.9 Right to a fair trial

When ensuring the right to a fair trial there are procedural justice guidelines that are put in place. These guidelines ensure that all parties are treated equally and that the case is decided by a person with no ulterior motives, to ensure an unbiased objective rule. The international human rights law indicates that everyone has without discrimination a right to a fair and public hearing in a criminal or a civil matter by a competent, independent and impartial tribunal established in terms of the law. The Bill of Rights in the Transitional Constitution of South Sudan of 2011 is developed with the declaration to Human Rights as a guide, its principles premised on equality and non-discrimination. In correspondence Article 17 of the Transitional Constitution of 2011 has a similar provision in relation to a right to a fair trial.

Article 19 (3) indicates that all courts afford all parties in any dispute a fair trial and state that:

> in all civil and criminal proceedings, every person shall be entitled to a fair trial and public hearing by the competent court of law in accordance with procedures prescribed by the law.

Thus, the right to a fair trial is put at the center of legal proceedings. In customary law courts the right to a fair trial is surrounded with challenges especially in cases that are between men and women, the haves and the have- nots. In cases involving men and women this right is being violated by men who still hold patriarchal views that influence their decisions. With regards to a right to a public hearing, proceedings are held in public under a tree so that justice is seen to being served by the people. The challenge in these public hearings is that the attendance of men is far greater than that of women and that tends to favor men more than women since public opinions are taken into consideration in customary courts by the Chief. This makes it difficult for women regarding cases of a sensitive matter such as rape.

Due to embarrassment and associated stigmas some women end up abandoning such cases. Such instances are in violation of the right not only to a fair trial, but to dignity as well as indicated by the 2011 Transitional Constitution of South Sudan under 16 (1). There are other factors that contribute to the violation of the right to a fair trial such as corporal punishment, the use of girls as monetary compensation in certain instances, among other things. On the other hand, language seems not to be a major problem or challenge in courts of law.

4.10 Challenges facing the customary law courts in South Sudan

Musila (2008:49) argues that amongst the challenges facing the customary law courts in South Sudan is the allocation of powers due to the fusion of judicial, executive, and legislative powers in traditional authority. This is the main issue with regards to the principles of modern democracy that emphasize the separation of powers, which then makes it difficult for these democratic principles to be implemented well within the three arms of the government equally. Traditional authorities are required to execute this function as they are the traditional systems of governance at local government and the state, and they shall administer customary law and justice in customary law courts as indicated by the law, while exercising the powers given to them within their jurisdiction.

The separation of powers means that certain powers and responsibilities are given to distinctive institutions according to the means of competence and jurisdiction. The idea behind this separation of powers was to prevent abuse within the different spheres of government. Furthermore, the challenges of customary courts are the lack of accountability as the result of how things are done in customary courts. In most cases traditional leaders hold their positions for life even in cases where their performance is poor. Unfortunately, people that are served by these leaders do not have the luxury to simply vote them out as it is done in government. That is why these leaders hold positions for longer periods of time. According to Section 117 (5) of the Local Government Act of 2009 in a way serve as a protection from these leaders as it states that:

> All selected Chiefs whose chieftainship constitutes of the institution of governance shall assume office according to their customs, and practices save that, such customs and practices shall be in conformity within the provisions of the Act and any other applicable law.

This provision in a way opens a window for the abuse of power by the traditional leaders, which is undemocratic and continues to exist in customary law courts. Despite such abuse younger people and those who are educated identify this problem and other areas of improvement in relation to customary law courts and have criticized the way things are done in those courts. The criticism has resulted in some traditional authorities trying by all means to retain their respect and the affection of their people. While others simply maintain the balance by satisfying the government while appearing as having the people's best interests at heart and serving them.

The government involvement with traditional affairs has both a positive and negative impact as traditional authorities perform much better compared to state institutions in serving the people. What stands out with regards to customary law courts and traditional authority in South Sudan, despite their functionality, is the neglecting of the system by the government. This had resulted in the system being underdeveloped although there is evidence indicating that traditional authorities are the ones dealing with the majority of cases. The lack of resources which result in functioning under trees, with no clerks to assist with the recording of cases, the government only paying the presidents of the courts while other members remain unpaid. This act has resulted in corruption within the courts and that hugely interferes with the work of traditional authorities. Furthermore, this compromises not just the smooth running of court's operations, but the quality of justice being rendered to people in those courts as well.

4.11 Conclusion

This chapter has outlined the customary law model of South Sudan commencing with the historic background as well as language legislative developments that are adopted and employed in customary law courts. South Sudan recognizes and embraces multilingualism thus, using different languages in each of their courts depending on the languages that are spoken in the area. Their customary law model best illustrates the importance of language in the legal system as Gibbons (2003) argues that law is an overwhelming linguistic institution, and that without language there is no law. South Sudan's language policies in customary courts in relation to language usage in the administration of justice seems to be favoring not only legal practitioners but litigants as well.

The model furthermore, shows that customary law courts can evolve alongside culture as it is embedded in it, with that the courts are able to cater for people's needs in the present and also that more languages can be used in courts successfully in a multilingual society with the use of translation and interpretation services. If we say law is language therefore, the development of language polices that are suitable for smooth administration of justice are of importance and need to be employed for all not just one group but people from all cultures. Without sound language policies, the Constitution remains nothing but fiction.

The South Sudan model continues to illustrate that problems exist and remain that way not because they cannot be fixed but because of the unwillingness to adapt new models. Also, that some problems are the result of neglection, and that customary law suffered a great deal during the colonial era and continues to suffer the same fate today. Nonetheless, the South Sudan

model shows that nothing cannot be fixed or improved with the proper tools and proper implementation and language is important in law and linguistic equality is something that can be achieved. I believe that even in South African traditional courts this model can also be adopted and is needed with regards to language usage in traditional courts.

In a democratic society such as South Africa and South Sudan people have a right to reside anywhere and to speak any language they want and that is acceptable. While they are in those places whether on a temporary or permanent basis they have the right to access justice and a fair trial as well using the language they understand. This comparative analysis clearly depicts that the justice system needs to be contextualized, it is important to note that for justice to be served context needs to be understood. In South Sudan the customary law courts and the language, convenience in terms of having translators in court and setting show that understanding context is important for justice to fully prevail. The manner in which this model can be best implemented in South African traditional courts will be discussed in chapter five of this study and that discussion will lead to the conclusion and recommendations that this study will propose based on the outcomes. The following chapter analyses the data that was collected by means of themes. Illustrating the way in which traditional courts of Luyengweni operates and how they are different compared to traditional courts of South Sudan, despite having to operate under the same circumstances.

CHAPTER 5: DATA PRESENTATION AND ANALYSIS

5.1 Introduction

As indicated in Chapter three this study employed thematic analysis as outlined by Braun and Clarke (2006). The researcher followed all the steps outlined by Braun and Clarke (2006) and formulated the following themes:

- Use of African languages as a primary language in court proceedings;
- 99The use of multiple languages in courts administration: The use of English and Sesotho;
- African languages in Traditional Courts: Language endangerment;
- Language as a Right for all;
- Language interpretation; and
- The Language of record.

Braun and Clarke (2006:82) state that a theme need to capture something important from the data collected, and it should be something that is related to the research question. As indicated by the research questions in Chapter one of this thesis, the themes that were identified are related to the research question(s) of this study and will be discussed. The themes that are selected and discussed in this chapter are from the interviewees that were conducted in Luyengeni, and as indicated by Braun and Clarke (2006) display evidence of the data and captures all that is needed in the making of a theme.

For the purpose of this study, it was ideal that I first give the background to the analysis as this is an exploratory language study, so as to give context to the analysis. The following subtopics were discussed to achieve the aforementioned: The Luyengweni location demographic, and the amaHlubi as a nation. The sub-themes that emerged from the data were combined to make main themes, which answered the study research question, which sought to understand how African languages are used in traditional courts of Luyengweni. It is noted that language plays an important role in ensuring access to justice. The themes emerged are discussed in relation to extracts from the interviews.

5.2 The Luyengweni location demographic

The inclusion of Luyengweni location demographic in this Chapter unlike in chapter two is discussed in relation to linguistic demography. This is to illustrate the language (s) that are spoken in the area, as they are important and also form part of the research question of this

study. Luyengweni, is dominated by both amaHlubi and Sesotho people such as in Madlangala location, which despite the difference in ethnicity can speak each other's languages fluently. Madlangala is located approximately 25 kilometres from the small town of Matatiele. Madlangala is also commonly known as Ward 11 (Zulu, 2016:3). Luyengweni is an exception with only a few people who speak Sesotho fluently and who had learnt the language in mines during their working days in the Gauteng Province. Amongst those people only three of them are members of the Luyengweni court council, two being the councillors while the other is the court secretary (*unobhala*). There are quite a number of Basotho people who have moved to Luyengweni, mostly from Matatiele and Lesotho. This is largely being motivated by unemployment.

According to (Matatiele's annual report 2012/2013) it indicated that about 38.2% of their population comprised of unemployed people. There are also several undocumented Lesotho nationals who reside in Matatiele and its neighbouring towns and villages. Some of those people reside in Luyengweni, are working as housekeepers, with some looking after live-stock. This has resulted into language contact between isiHlubi, isiXhosa and Sesotho language groups.

5.3 *AmaHlubi* as a nation

According to Wright and Manson (1983) the history of amaHlubi indicates that there is not enough written material on the origin of the amaHlubi nation. The most available information from what is written about them is based on historical oral narrations passed down from generation to generation. Herd (1976) argues that amaHlubi used to be a nation and due to political issues at the time it forced them to move and they ended up being scattered across the country including the Eastern Cape where this research is conducted. Herd (1976) further argues that this resulted in members of the group joining other nations away from what was once a large powerful nation.

This drastic change as argued by Herd (1976) and Zulu (2016) resulted in the Hlubi language (isiHlubi) to disappear in some parts as people began to communicate in other dialects such as isiXhosa, isiZulu and Sesotho. It is argued by Zulu (2016) that despite this change, amaHlubi continued to preserve their language as much as they could under the circumstances and continued to practice their traditions as well, even though they were in other areas. They were therefore recognised by other ethnic groups in South Africa.

5.4 Data Analysis

5.4.1 Theme 1: The court proceedings: The use of African languages as a primary language

According to the paramount Chief of the village, traditional courts of Luyengweni use what she calls a "mix-up" language. This "mix-up" is the combination of two languages which is isiXhosa and isiHlubi. This then produces a new language which is unnamed, hence the "mix-up". This theme that emerged shows that African languages are still in use in the traditional courts, although they might not be authentic as they are supposed to be. It can be argued that the use of these African languages as primary language use in traditional courts of Luyengweni make the court proceedings effective and the effectiveness of courts means justice is served **(see appendix I).**

> *...Sithetha isiHlubi mixed with isiXhosa thina apha kulenginqi yethu. Isizathu soko ikukuba apha ekuhlaleni kuthethwa isiHlubi kodwa esikolweni kuthethwa isiXhosa njengolwimi olumiselweyo. Lonto yenze ukuba sizixube ke ezi lwimi zombini xa sithethayo. Siyanyanzeleka kengoku kuba amaxesha atshintshile ngoku nezinto ziyatshintsa kuyabheda nje, sizakufa thina basale bona bethetha lento yabo ixubayo ixhaphakileyo ngoku. Futhi ngoku naba bantwana bayakhumsha naba badala sebapntshela nabo bathetha isiNgesi, kuyaxutywa nje kunzima, kodwa ke phaya komkhulu siyevana kulo mxubo wethu akhonto.*
>
> ...We speak isiHlubi mixed with isiXhosa in this area. The reason for that is because in this area we speak isiHlubi but at school isiXhosa is spoken as it is a standardised language. It is for that reason we end up using both these languages when we speak. We are forced to do so now as the times have changed and the way of doing things have changed its difficult now, we are going to die and leaving our children with this mixed language that is spoken now. Besides these children also speak English including those that are retired they also speak English, it's a mix-up but at the royal house despite this mix-up we are able to hear each other.

The reason for not only using isiHlubi but a "mix-up" despite the majority of people in the area being amaHlubi is because of standardization. This process has elevated isiXhosa to higher heights compared to other African languages that are spoken in the Eastern Cape, which are known as "vernaculars" since they are not taught in schools. Thomason (2001:10) argues that despite the common result of language contact (isiHlubi and isiXhosa) being the issue of "officiality" as to which language is recognised and to be spoken where and why in

Luyengweni courts, using both combined proved to be efficient thus the "mix-up" language. For isiXhosa to be spoken and used in a community with the majority of the people being amaHlubi, is the result of language standardization. In the Eastern Cape schools isiXhosa is the only African language that is taught in both primary schools and high schools, leaving little room for isiHlubi to develop to the same level as isiXhosa. Children would learn isiHlubi at home and isiXhosa at school and the contact of these two languages resulted in what has come to be known as the "mix-up" language in the area as stated by the Chief.

According to Kaplan and Baldauf (1997:3) the process that governs how language (s) can be used in a particular setting is known as language planning and they argue that these are the ideas, laws, regulations, change rules, beliefs as well as practices that are intended to achieve a planned change. According to Bowerman (2000) in relation to status planning which is one of the language planning tiers that deals with the allocation of languages to official roles across domains, isiXhosa was allocated to be the official language to be taught in schools. Thus, the so-called unnamed language is used in Luyengweni traditional courts. The reason for choosing isiXhosa to be taught in schools dominated by amaHlubi is that the majority of the people in the Eastern Cape speak isiXhosa. The language then became this mixture of isiXhosa and isiHlubi as people understand it better. Despite the language usage in courts being a "mix-up", it did not cater for all the needs of the people as the population in the village increased due to migration. The estimated increase in terms of population is approximately 20% as estimated by the Chief and this is made up of the arrival of Sotho nationals. While South Sudan on the other hand as discussed in chapter four with regards to language usage in traditional courts made new provisions in their constitution to cater for a diversity.

According to the one member of the council the move by Sotho people to Luyengweni is motivated by unemployment and now they reside in the area working as domestic workers and some are looking after the livestock amongst other jobs they do. Another member of the council indicated that this number is estimated to grow if it is not so already doing so as other Sotho people are not documented according to *ikomkhulu.* One needs an identity document or a passport in order for the person to be recorded and be given an official permission letter for his/her stay in the village. The undocumented are believed to be originally from Lesotho and are in the village illegally and because of that they do not have the required official documents, and this makes it very difficult for *ikomkhulu* to know the exact number of Sotho people that are residing in the area.

The arrival of the Sotho people in Luyengweni has resulted, according to the Chief, to the inclusion of Sesotho as another language that is used in the court on special occasions concerning Sesotho speakers. According to the court secretary only four people who are members of the council are fluent in Sesotho and have learnt it during their working times in the mines in Gauteng. He spoke as follows:

> *"... Ewe bebekhe banceda apha enkundleni kwityala lomSuthu kwathetheka satolika lagqitywa ityala, bathathu ndim owesine siyasazi isiSuthu. Siyancedisa apha enkundleni..."*
>
> ... Yes they have helped during a trial involving a Sotho language speaker we managed to speak and interpreted the trial until the end, three people that can interpret the fourth one is me we know Sotho. We help in the court…

According to Docrat (2017) with regards to language she argues that refering to the second tier of language planning that is corpus planning with regards to issues of modernisation and globalisation, this ensures that languages adapt accordingly while ensuring that a language is not developed at the expense of other languages, in this case the relevant languages are isiHlubi, isiXhosa and Sesotho. Alluding to Docrat (2017), Bowerman (2000:33) indicates that refering to acquistion planning the population can learn and use a particular language. Docrat (2017) argues that this is possible taking into account opportunity planning that deals with the implementaion of language policies for a particular domain. This would mean that isiHlubi should be recognsed as an official language in this context of traditional courts.

5.4.2 Theme 2: The use of multiple languages in court administration: The use of English and Sesotho

It has been argued in theme 1 that people move from their places of origin to other places looking for greener pastures, this movement is known as migration (Rwodzi, 2011:18). Mafukudze (2006:103) defines migration as "the relocation of people within spaces that involve their permanent or temporary change of residence." It is revealed in the data collected that most of the people from Luyengweni had also moved out of town due to employment challenges, marriage and education to mention a few, and even though some have moved on a permanent basis, and others temporarily, they often seek services from *ikomkhulu* such as proof of origin, and other tailor-made letters depending on the individual's problem. This is believed to have required the traditional courts of Luyengweni to adapt an effective administration. In the case of Luyengweni the traditional courts needed to add English and Sesotho in both their

proceedings and administration. This was done to accommodate migrants and those of origin that had relocated to other places. This theme focuses more on interregional migration as it is the case with Luyengweni location. Rwondzi (2011) argues that most people choose this type of migration as they find it to be less traumatic compared to cross-border migration, furthermore, they argue that the choice is mostly motivated by the familiarity in language, food, literature, music, broadcast as well as social customs. With regards to social customs as indicated by Mrs C **(see appendix L)** traditional courts are used in Matatiele and the procedure by which things are done is likely the same as in Luyengweni traditional courts.

> *...Thina bantu bangazalelwanga apha kuye kunyanzeleke ukuba sibhalise khona. Ndiya ngokuyobhalisa andikaze ndimamele tyala ke kodwa. Kuyafana napha kuthi kuba umntu ofikayo uqala kwaNkosi abikwe okanye azibike imvelaphi nesizathu sokundwendwela okanye eyomangalela lonto lichotshelwe ke ityala enkundleni nje ngalapha kuthi nqwadalala.*
>
> …Us people who were not born here we are required to register ourselves. I only go for registration not during a trial. It's the same as in our village, new people are required to register at the royal place and declare his/her origins and the reason for visiting or when opening a case and the case will be held in court the same as here.

Due to the arrival of Sotho people in Luyengweni, Sesotho had to be adopted as the language that is also used in traditional courts of Luyengweni, in cases that involve them through interpretation. The addition of Sesotho to the already used "mix-up" language of the court, English despite being a foreign language, has also been introduced alongside isiHlubi and isiXhosa. This requires the use of not only African languages, but foreign languages as well. The traditional courts of Luyengweni use English when dealing with administrative work such as writing referral letters, emails etc. In the general context of South Africa, English is known and used as the medium of instruction language, whether this is for convenience or not is up for debate. This is believed to bring about effectiveness not only for Luyengweni people but the outsiders as well. This theme speaks to the importance of traditional courts to play a vital role not only in the justice system but addressing social issues as well **(see appendix I)**.

> *...Ndibhala iileta ngeleta ezinye zezamanxiwa nezifuneka ezikolweni, kufuneke ke ngoko ndizibhale ngesiNgesi. Ingxaki ndiyazithumela imeyila ndizithumele ngqo ebalungwini. Andinokwazi ke uzubhala ngesiXhosa yilonto kufuneka ndaze isiNgesi*

ndikwazi unceda. Ezalapha ekuhlaleni uninzi lwazo ndizibhala ngesiXhosa kodwa zikhona ezifuna ubhalwa ngesiNgesi nazo. kuyaxhomekeka nje manditsho…

...I write letters some for sites others are requested in schools, and those require me to write them in English. The problem is that I email them to White people. I cannot write them in isiXhosa that is why I write them in English so that I can help. For those who stay here I write theirs in isiXhosa although some require that I write them in English also. It depends I can say...

Stewart-Smith (1993) and deVos (2008) argue that language policies should be formulated based on linguistic demographics of the area and if a need arises for using more than one language, then the other language can be introduced alongside the pre-existing language. The introduction of Sesotho language through Sotho migrants in Luyengweni area forced the traditional courts to include Sesotho in their court's proceedings. This added to two languages that were already used as "mix-up" language in courts. The use of English language in their court's administration is informed by both their local and broader linguistic demographics. This theme therefore speaks not only to the use of African languages in traditional courts but the effectiveness of multilingualism and its use in these courts. This theme reveals the importance of multilingualism in traditional courts as a method of inclusivity. This theme also views traditional courts of Luyengweni as custodians of not only their local languages, but other African languages as well. This also brings into question the issue of language interpretation. It is common knowledge that the use of multiple languages can affect them and how they are interpreted as so much can be lost during translation and interpretation.

5.4.3 Theme 3: The African language in courts: Language endangerment

According to Phillipson (1997:238) language endangerment occurs as the result of language imperialism and defines it as referring to an account of language hierarchisation in addressing issues of why other languages are used more than others or have higher status than others. With the use of three languages in court, two being African languages and English, a participant indicated that the "mix-up" that is used in courts furthermore put isiHlubi in danger as some words of the isiHlubi are not known by the youngsters and are in most cases only used by the elders.

She said isiXhosa is the most dominating language and will continue to do so as long as it is still being taught alone in schools. Furthermore, this contributes to the debate of English being the most dominant language in South Africa as indicated by Docrat (2017) in relation to

common law than other African languages. It can be said that this is no longer an issue only in common law, but in traditional courts as well as isiXhosa is developing at a higher rate than other constitutionally recognised languages due to its dominance. This shows that there is language endangerment. It would be interesting to look at the correlation between the language "mix-up" and language extinction. This theme shows that the language "mix-up" can endanger language although theme 1 depicts its convenience in the court proceedings.

The local language which is isiHlubi is found to be endangered both by language "mix up" and the standardization of isiXhosa as a formal African language to be taught in schools. The introduction of other languages in Luyengweni can be seen to further endanger isiHlubi as a local language. One can argue that although the local language is endangered, other African languages are not as it is not just English that is used in the traditional courts of Luyengweni but isiXhosa and Sesotho as well. The use of these languages makes the proceedings smooth and that ultimately translates to justice being served. The effectiveness of any court relies on its just proceedings and language plays a pivotal role **(see appendix I)**.

> *…Amaxesha atshintshile ngoku nezinto ziyatshintsa kuyabheda nje, sizakufa thina basale bona bethetha lento yabo ixubayo ixhaphakileyo ngoku. Futhi ngoku naba bantwana bayakhumsha naba badala sebapntshela nabo bathetha isiNgesi kuyaxutywa nje kunzima, kodwa ke phaya komkhulu siyevana kulo mxubo wethu akhonto…"*
>
> …Times have changed so is the way of doing things it's difficult, we are going to die and leaving our children with this mixed language that is spoken now. Besides these children also speak English including those that are retired they also speak English, it's a mix-up but at the royal house despite this mix-up we are able to hear each other.

According to Koyana (2011:236) they argue that the proceedings in traditional courts are conducted orally in the language that is mostly spoken in the jurisdiction of the court, to prevent interpretation errors. In the case of Luyengweni the "mix-up" language is the language of the court and understood by most of the people in the area. This "mix up" language is convenient however it puts the local language which is isiHlubi in more danger of being extinct. The language endangerment brings about negative social issues that might impact the community. The language endangerment in common law courts has been argued to exist as language interpretation in courts is not standardized. It is however noted that in the traditional courts of Luyengweni that language interpretation might be accurate due to representation. Some of the court's council members are believed to speak and understand the languages spoken in the area.

5.4.4 Theme 4: Language as a Right for all

According to the South African Constitution of 1996 Section 35(3) (K) indicates that everyone has a right to be prosecuted in a language that they understand, and if not possible to have proceedings translated into that language. The suggested theme supports the above quoted section. A retired member of the council indicated that the traditional court is used by everyone in the community, as it represents the community at large. This suggests that everyone is represented in the traditional courts, one can argue that full representation includes the use of one's indigenous language which serves as a democratic right in this case. The community of Luyengweni is diverse, therefore language representation is seen as of pivotal utility. This recognises one of the basic human rights which is found in the South African constitution.

> *...Ikomkhulu lelabantu bonke futhi likho ngenxa yabantu bonke. Wonke umntu uyahoywa yiNkosi okanye usibonda walondawo amamelwe ancedwe okanye agwetywe enkundleni abantu bekhona besiva.*
>
> *Sibaninzi apha jonga abantu basuka kwindawo balapha nathi benza yonke into esiyenzayo nathi, napha enkundleni siyababona nabo bayaxoxa, baxoxise akho mntu ungahoywa phaya. Siyanyanzeleka silikomkholu sincede abantu bonke ngokulingana.*
>
> *Mna ke ndisebenzile phaya komkhulu ixesha elide phantsi kweNkosi eyandulwelwa nguNkosazana lo. Sinceda abantu ngabantu ngengxaki ngengxaki…*
>
> ...The Royal house is for everyone and exists because of the people. Everyone is served by the Chief or a headman of that particular place and is listened to, assisted or fined in court with people present.
>
> There are many coming from other places and are here with us now and they do what we do, even in court we see them they participate and everyone is served. It is our duty as the Royal house to help everyone in need...

According to the BOR, it ensures the dignity for all people and Section 8(1) indicates that the law, legislation, executive, judiciary and all other organs are bound by it and people regardless of cultural background and differences cannot be denied their right to participate in the community, that it is his/her cultural, religion and linguistic right according to Sections 30 and 31 of the Constitution. Furthermore, being treated fairly and being trialled in a language that they understand, and if not practicable the proceedings are to be interpreted into that language. This theme is supported by other themes which include the use of multiple languages in

traditional courts, as well as language interpretation. The above-mentioned themes revealed that the traditional courts of Luyengweni are inclusive when it comes to language use.

5.4.5 Theme 5: Language interpretation

As indicated by Docrat (2017) regarding the use of African languages in South African courts, she argues that African languages unlike English and Afrikaans, are used via interpretation. It was within the interest of this study to look at the use of these languages in the traditional courts. The first theme indicated that a "mix up" language is used as primary language and other languages like Sesotho are subjected to interpretation. This means that African languages are still subject to interpretation as claimed to be in South African common law courts. Furthermore, Docrat (ibid.) argues that African languages need to be treated or used in the same manner as the aforementioned languages as indicated by Section 6 of the Constitution of South Africa.

With regards to traditional courts Koyana (2011); and Gibbons (2003) argue that the reason to use a local language in traditional courts is because it is known and understood by the people, and this helps to prevent interpretation errors. In the case of Luyengweni the local language is not understood by everyone due to other people residing in the place and being there for employment reasons. Therefore, there is a need for an interpretation services at court. According to Section 35 (3) (k) of the Constitution, it indicates that everyone has the right to be tried in a language they understand and if not possible have those proceedings interpreted to them in that language. In the case of Luyengweni traditional courts regarding a case involving Sotho people, interpretation services are used in order for the person to be present in court **(see appendix J)**.

> *...Ngamatyala abantu abathetha lwimi lumbi kuneli silithethayo thina apha. Umzekelo apha siphila nabeSuthu abanye babo bayasazi isiXhosa kodwa hayi bonke. Kwimeko ezinjalo kuye kunyanzeleke ukuba batolikelwe apho bangaqondi khona.*
>
> ...Only cases of those who speak a different language than the one we speak here. For an example in this area we live with Sotho people some of them knew isiXhosa but not all of them. In cases that are like that we have to interpret whenever they are missing something.

According to the court secretary only a few people understand Sesotho properly in the community and only three of them who are able to interpret when the need arises. They further

indicate that they do not have a formal training or qualification to do so but assist as it is their duty. This is believed to be the case even in the common law courts, proving that language use is the challenge even in the traditional courts. Docrat (2017) argues that interpreters should be given a proper training to be able to do their job properly so that every detail is presented without anything getting lost in translation.

5.4.6 Theme 6: Language of Record: The use of record in traditional courts

For a very long-time traditional courts relied on the oral way of doing things. This theme that emerged from the data states that proceedings in traditional courts are also written down although primary traditional courts rely on an oral way of doing things. This shows that traditional courts have evolved or are moving forward to writing and keeping records. The data is then recorded in a language that is also used during court proceedings. According to Malan (2009:141) with regards to language of record, they state that there is an official and unofficial language use in South Africa. In relation to traditional court of Luyengweni three languages are used in court **(see appendix I),** although for different reasons, as the court needs to cater for all the needs of the people in the community.

Two of these languages which are Sesotho and English are used unofficially as they are not given the "official" status as opposed to the other language known to them as a "mix-up" and this language is used as an official language of record and court proceedings in Luyengweni courts **(see appendix J).** Malan (2009:141) defines language of record as "...a language in which the court proceedings are recorded and in which the judgment is written and delivered by presiding officers." The choice of using a certain language as the language of record and court proceedings in traditional courts is determined by the language known and spoken by the people of that community as indicated by the court secretary:

> *Siyayithetha yonke into eqhubekayo enkundleni kumanyelwe ngabantu bonke. Ndiyazama ukubhala imiba ebelulekileyo kodwa not yonke, ndiye ndishiywe lixesha kuba ndibhala phantsi encwadini. Abantu bayakhawulezisa kunzima ubaleqa.*
>
> *Ndibhala ngale mix-up kaloku yesiXhosa nesiHlubi kuba ndazi yona nangona isiXhosa ndasifunda esikolweni. Kodwa neSesotho naso ndiyasazi.*
>
> We discuss everything happening in the court and everyone listens. I try to write important points but not all of them, as there will be no time as I write in the book. People speak fast so it's difficult to keep up.

I write in the mix-up of isiXhosa and isiHlubi as it is the language I know despite learning isiXhosa from school. But I know Sesotho as well.

Furthermore, it is a constitutional right of each and every person regardless of their ethnic background to be able to benefit from the services rendered by *iKomkhulu* (Royal house) especially the right stated in Section 35 (3) (k) of the Constitution of South Africa, which states that everyone has the right to be tried in a language that they understand, or if not possible to have those proceeding interpreted in that language. The court secretary argues that the reason for writing minutes of the trial in the "mix-up" language is because people are speaking in that language as well and it makes things easier for everyone. The minutes are an informal way of recording what was done on a particular day, and not everything is recorded. This speaks to both the good and bad transformation in the traditional courts. The "mix up" language threatens languages in the "mix" although it is convenient for the court and the recording of the minutes to keep track of what was said in court. This helps to keep evidence that can always be refereed to when the need arises.

Ndibhala encwadini kwi-exercise book. Yiyo le sibhala kuyo kwaye kungahlwa sibhala xa singabhala kwanto, yaye akhonto inokuqhubeka. Umntu angathetha igama libelinye kaloku ngexesha ukuba kunjalo. Sigqibe nini ke?, akunakulunga. Unobhala wenzela nje ukuba sikhumbule okuthethiweyo ngexesha elithile kuphela kwaye akagqibi naye s simkhumbuze nathi.

I write in the book an exercise book, we write in it and it will take while writing if I could write everything, and there will be no progress. A person will have to say one word at a time if that would be a case. When will we finish then? It won't be ideal. A secretary writes for us to be able to remember what was said at a particular time only and sometime do not finish we have to remind him.

The recorded minutes in most cases, according to the Chief, end up going missing due to the negligence of those in charge such as the court secretary or headman. This shows that the oral nature of the court proceedings has made the judiciary succumb to not so honest or consistent ways of manoeuvring and facilitating the justice system.

Andiwazi amatyala ayekhe axoxwa ngaphambili kusaphethe utata nezoncwadi azisekho, ezikhona bayala ngazo lo matyala ayafana nokuba zange axoxwe kuba akhonto itshoyo ibhaliweyo ngaphandle kwabo babekhona mhla ethethwa. Amanye ke mna ndadisemncinci ukuxoxwa kwawo.

> I do not know all the cases that were previously held in the court while my father was still in charge and the books are no longer available, those available are being held from me those cases it's like they never presented in court as there are no records, only a word of mouth from those who attended the trial. I was still young when some cases took place.

Melton (1995); Soyapi (2014) and Rautenbach (2015), argue that records from traditional courts are only needed on the basis of appeal and in most cases that does not happen in traditional courts as the courts only deal with minor cases and they are decided on an immediate basis. The Chief in the interview agreed and stated that some cases are referred to the magistrate's court due to the severity of the matter, and if a situation arises that would need a formal written record from the court, they will have to do it then with the information recorded by the court secretary. This theme clearly indicates the need for both adaptation of traditional courts to modernise and at the same time to be cognisant of the changes that might disrupt the gist of justice delivery.

Language of record in South Africa has always been the issue since the arrival of missionaries. Docrat (2019:40) in relation to common law with regard to language of record in courts states that language of record historically was determined by the political dispensation of the time, with the arrival of missionaries and that resulted in the imposition of their languages on the indigenous people of South Africa. Alluding to Docrat (2019), Van Niekerk (2015:375) states that at the time the language of record was Dutch along with it, multilingualism and legal pluralism was also introduced although Dutch remained the language of the court. Furthermore, they argue that English, because of the influence at the time, had to be introduced alongside Dutch (Van Niekerk, 2015:373-375). Therefore, it can be argued that based on the Luyengweni situation with regards to choosing a language of record that the "mix-up" language that is chosen as the language of record is correct, as like Dutch at that time, it is the language that is spoken not only by the people of Luyengweni, but those in power and the Chief approves of it. As English then found its way to be used alongside Dutch, isiXhosa and Sesotho are used in Luyengweni courts due to the need and influence they have as the result of migration for a better administration of justice.

This theme suggests a possible transformation that is taking place in the traditional courts. In relation to transformation of traditional courts, Skosana (2011) argues that in South Africa, The Traditional Courts Bill in the history of customary law is arguably a critical piece of legislation

towards the restoration of dignity of the Africans since democracy. Ntlama and Ndima (2009), alluding to Skosana (2011), argue that the Bill proposed a newly revamped structure of traditional courts as an attempt by authorities to undo decades of colonial and apartheid distortion of the African justice system like in South Sudan as discussed in chapter four of this thesis. Based on the above argument with regards to language, it shows that even language usage in traditional courts is subjected to change as was done in South Sudan. Therefore, the researcher believes that traditional courts are not immune to transformation, but the language use in that transformation is of importance. Traditionally as argued by Gibbons (2003) and Koyana (2011) traditional courts are not courts of record, it can be argued that previously this used to be the case, but with the change of times they are now unofficial, as South Africa uses a dual legal system and for appeal proceedings these need to be recorded.

This is the case in Luyengweni traditional courts. The need for recording in traditional courts is stated in the Traditional Courts Bill. Komane (2013:70) argues that the proposal made in the Traditional Courts Bill for traditional courts to have their proceedings recorded rose from the argument that there is an:

> ...interconnectedness between tradition and modernity in South Africa today. The theoretical boundaries often drawn between the two value systems are likely to be blurred and often intertwined in everyday life.

This means that traditions change with time and new methods need to be adapted for the betterment of something in this case justice. Komane (2013:75) states that traditional systems and customary courts have survived this long because of the ability to adapt and blend with different political systems, while not losing character and relevance to the ordinary village people. Therefore, language usage in traditional courts is subjected to change especially when the need arises.

5.4.7 Theme 7: Language and culture

Wright (2000:62-63) argues that cultural preservation is possible indicating that "different groups can speak the same language without that affecting the group's identity, culture or history." This suggests that different cultural groups can co-exist without affecting each other's culture. In the case of Luyengweni, both amaHlubi and Sotho people co-exist without one having to sacrifice their identity and culture through nationalism. The data presented indicates that some of the Sotho people come from Matatiele and have co-existed with amaXhosa and have found it easy to adapt to the Luyengweni community. Part of this adaptation can be

accredited to the local traditional courts for allowing Sesotho language as one of the unofficial languages to be used in the courts **(see appendix L)**.

> *Ndithetha isiSuthu nesiXhosa kuba zithethwa zombini kwaseMatatiele apho ndisuka khona. Ndafika ke nalapha sithethwa isiXhosa ukanti nesiHlubi esi siyelelene esiXhoseni siphinde sibenamagama afana neSisuthu.*
>
> I speak Sesotho and isiXhosa as they are both spoken in Matatiele where I'm coming from. I came here and isiXhosa is spoken even isiHlubi is similar to isiXhosa and some words are similar to Sesotho.

Ferguson (2006:2) argues that nationalism is a tool that aims at providing operational efficiency both in administration and economic management for the maintenance of political stability, when used or pointed in the right direction. The use of Sesotho in traditional courts of Luyengweni was only for the purposes of inclusion for all as it is everyone's right as indicated by Section 34 of the Constitution that states the following:

> ...everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

Gellner (2008), alluding to Ferguson (2006), state their views on nationalism and argue that despite nationalism being a Western phenomenon, it is relevant even in African countries as it supports unity, equality and egalitarism in this case in court to be able to enjoy the same rights as the people of Luyengweni. Furthermore, Wright (2008:63-69) argues that another important function of nationalism is to enhance communication capacity that is essential for building modern democratic communities as the result of modernity, industrialization and linguistic unification. The success of nationalism relies on voluntarily assimilation regarding language. Green (2006:240) argues that voluntary assimilation is a much-needed necessity when dealing with language and cultural issues.

The use of isiXhosa, isiHlubi, English and Sesotho in Luyengweni traditional courts was a needed necessity in ensuring better delivery of justice. The use of the aforementioned languages in courts indicate the buy in of the people and without it, the court system can fail as the result of rejection. It can be argued that meaningful engagement or a bottom up approach has been applied in choosing which languages to be used in the courts of Luyengweni (Docrat & Kaschula, 2015). Alluding to Green (2006), Wright (2008) argues that language barriers

result to people being not equal before the law, as a result in such situations litigants find themselves not fully present during a trial as they lack representation.

5.5 Conclusion

This chapter sought to represent data and analyze as per the steps outlined in the methodology chapter. Prior to data representation and analysis, the chapter was introduced, the demographics of Luyengweni were outlined and amaHlubi as a nation were also discussed. The above-mentioned sections were discussed to make sense of the findings or themes that emerged from the data. Four themes that emerged from the data were discussed and analyzed in relation to the literature that was reviewed in chapter 2. The themes were discussed and analyzed to answer the research questions. The data presented was from a thematic analysis point of view which was applied to data gathered through semi-structured interviews. What follows is a conclusion and some recommendations regarding the research.

CHAPTER 6: CONCLUSION

6.1 Introduction

The previous chapter presented the data that was discussed and analyzed to answer the research question. This present chapter seeks to give conclusion to the study by giving a summary of the main findings, provide study limitations, recommendations and assess the contribution of the study to the academic field. The aforementioned will be discussed based on the study with no new information added. The first chapter outlined what the study is about, and other chapters gave the gist to the researched topic. This was an exploratory study that sought to investigate the use of African languages in traditional courts of Luyengweni and this was done through application of qualitative research designs.

This study was embedded within the forensic linguistics field which looked at the research phenomenon from an interdisciplinary perspective which is language and law. It is also noted in chapter one that forensic linguistics is a relatively new field. Therefore, it is important to note the contribution of this study to a broader language discipline. The findings suggest that African languages are still of importance in the traditional courts although certain things are believed to be threatening these languages. The findings further reveal that the use of African languages in traditional courts must take into consideration the modernization which has a potential to either advance or to disrupt the justice system.

6.2 Summary of main findings

This is an exploratory qualitative study that sought to investigate the use of African languages in the traditional courts of Luyengweni community. This study explored the concept of customary law as it is believed to inform the traditional courts. This concept was explored with regards to the South African Constitution of 1996 and the Transitional Constitution of South Sudan of 2011. The literature reviewed gave context to the researched phenomenon and methods employed to answer the research questions prevailing. The literature also touched on both the law and language aspects of the topic under study.

Prior themes were observed and commented on. They are based on the findings the researcher found that the traditional courts still serve as pivotal justice institutions. Luyengweni community members still trust these courts as law institutions capable of providing them with justice. The researcher also found that the traditional courts are slowly transforming to adapt to modern times although they are still faced with challenges such as lack of resources which

help in deliverance of justice. The analysed and discussed data which was presented in themes answered the research questions. As it is stated in the South African Constitution of 1996, African languages are used in traditional courts. The Transitional Constitution of South Sudan of 2011 states that the use of multiple languages in courts does not affect the justice system as there are interpretation services in place. This was found to be the case in the traditional courts of Luyengweni as Sesotho speakers are provided interpretation services in courts.

Based on the analysed data which served as findings of the study, the African languages are still used as the primary languages in the traditional courts, in addition to a "mix-up" of these languages. This is in relation to customary law, similarly as argued by Docrat (2017) that in common law the language usage has been diminished, giving rise to English as a sole official language of record. The study findings reveal that the use of foreign languages in the traditional courts assist the deliverance of justice. This is evident as the traditional courts representatives that were part of this study indicated that they provide translation service for cases to continue and to allow for justice to be served. These foreign languages also assist in the administration, for example English is used when writing documents like referral letters, proof of address etc.

The researcher found that there is a local language known as isiHlubi which is not standardized, this speaks to a broader language issue which can be categorized in the following way: Language planning, policies, social issues and past language inequalities. This is an issue that needs to be addressed however for the scope of this study the researcher focused on the language endangerment as it relates to the justice system. The researcher is cognisant about the current study focussing on customary law, it is to be noted that language endangerment can be also traced from the common law where interpretation serves as method when African languages are spoken. This can be understood to serve justice however; the researcher believes that some meaning gets lost in translation. The meaning lost in translation calls for independence of African languages as it is the case in traditional courts. This is supported by Koyana (2011) when arguing that the use of African languages in traditional courts was initially to limit translation errors as these languages are spoken and understood by the people who seek justice in these courts.

It was also found in the study that the use of African languages in traditional courts is embedded in basic human rights, perhaps the inclusion of foreign language can be argued to be for the same reason. The use of diverse languages in the traditional courts of Luyengweni follows a similar style as South Sudan traditional courts and this proves to be effective. This in

relation to African languages can be argued to show competence, adaptation, inclusivity and development. This proves that the use of African languages in traditional courts has and will continue being effective in the process of deliverance of justice. African languages are found to be effective in the processes of customary law whereas this is not the case in the common law. This finding shows that there is language imbalance in the South African justice system, and this will always create arguably language discourses highlighting linguistic challenges in relation to the justice system. This study therefore served as the guide to look at these imbalances, how to address them and perhaps find ways to improve language discourses in relation to justice. This is for the benefit of all and it serves as an intervention to social issues. Justice cannot be divorced from society and society cannot exist in a language vacuum, any language development (in) directly impacts the development of justice and effective use of law. Therefore, the main purpose would be to use and elevate all languages as indicated by Section 6 of the South African Constitution, as these languages are all used despite not being of the same status.

6.3 Research limitations

One of the most significant limitations was the number of participants, the researcher only managed to interview eight participants instead of twelve. This was because the study was done during the Corona virus outbreak also known as the Covid-19 pandemic. The researcher could not conduct interviews with some of the participants as they were scared to contract this deadly virus and court cases were suspended. Forensic linguistics is a relatively new field in South Africa with limited written documents and sources. It was therefore a mountain to climb for the researcher to do an extensive literature review and look at the researched phenomenon from any theoretical lens. The interdisciplinary nature of the study also proved to be a challenge.

This is due to the researcher being not so familiar with law as compared to language. As initially stated, the researcher only interviewed eight participants out of twelve and the eight interviewed took time to agree and meet for interviews. This delayed the researcher and the study as I had to wait for the first and second waves of the pandemic to recede before proceeding with interviews. This is not the only thing that delayed the researcher as gatekeeping continued to be one of the delays together with technicalities such as bad coverage during calls, busy schedules of the participants etc. The researcher could not do court observations during trials in court so to gather ethnographic data in order to understand language use. It is to be noted that although the researcher is from Luyengweni which uses

isiHlubi as language of communication, the researcher is not familiar with this language therefore it was a bit challenging to adjust to the language, which largely consists of the use of a “mix up” language.

6.4 Research recommendations

The researcher recommends that traditional courts should play a pivotal role in the preservation of African languages as they serve as tools of justice deliverance. The researcher further suggests that the traditional courts need to be inclusive when it comes to language use as the study revealed that various languages play a role in the traditional courts with varying degrees of importance. The researcher recommends that both common and customary laws be revised to bring about language balance or inclusivity. In common law courts the African languages are translated, thereby diluting them and they then lose meaning. In customary law courts also use foreign languages which are translated, creating a language balance which is of the importance. The researcher suggests that the traditional courts must be given enough budget to effectively run courts and for example be provided with stationery so that the referral letters can be done as well as properly qualified interpreters.

Understanding the modern times, we live in, it can be only fair that traditional courts be provided with the necessary ICT skills and equipment to effectively adapt to modernization. This can also assist in language use as these can be used as a source of information (translations, transcription applications and online language courses etc.). The research can be replicated to other parts of South Africa. This would help generalize findings to the traditional courts of South Africa. The researcher recommends the standardization of isiHlubi language, this will help with the “mix up” language used in Luyengweni courts as that has a potential to endanger languages. A study that will focus on both common law and customary law courts is recommended as it will speak broadly of the language use in justice system.

6.5 The contributions of the study to the academic field

This study contributes to the existing literature of the field of forensic linguistics, this field as initially stated it is relatively new and it seeks to un derstand the usage of language in court to make sure that justice is served. This also is to ensure that the deliverance of justice is not hindered by language use. According to the South African Constitution of 1996 everyone has a right to be prosecuted or heard in a language that they understand therefore forensic linguistics research has a mandate to make sure that this happens.

Due to the aforementioned the researcher believes that this study contributes to the new knowledge and better understanding of the law as Gibbons (2003) states that law is an overwhelming linguistic institution. This study contributes to language use, policy and planning. This study can be use as basic document for any research related to both common law and customary law. This study can also contribute to the field that seeks to understand societies and their cultures. Culture cannot be divorced from language.

6.6. Conclusion

The researcher introduced the topic in chapter one, in this chapter sections such as background, research problem, aims and objectives, questions, study justification and significance, definition of key terms and study layout were outlined. The researcher further reviewed literature in chapter two which then gave context to the topic under study. This chapter focused on customary law and its structure, language planning, history of forensic linguistics, legislation and linguistic imperialism. Research methodology was discussed in chapter three, this included research design, instrumentation, sample, analysis and other method related things. Chapter four presented data and provided its analysis and discussion in relation to research questions.

Themes were outlined and served as study findings. This chapter gave a brief overview of the entire study. The summary of findings was discussed, limitations and recommendations were outlined based on the study and the researcher's experiences while conducting the study and the contributions of the study to the academic field. The researcher believes that the limitations given in this study will assist to guide the next researcher that seeks to conduct a similar study. The researcher is also under the impression that these limitations will help improve planning for the next level of research which is at doctoral level. The recommendations provided are believed to help achieve the following: improve justice delivery in traditional courts, contribute to the field of forensic linguistics, and help guide language use, planning and policy. It is of importance that similar studies be conducted in other disciplines as well such as Anthropology. A follow up study is highly recommended to help strengthen the argument and findings of this initial study and to also further contribute to the field of forensic linguistics. This will help improve the relevance of applied linguistics in South Africa.

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State v Lesaena 1993 (2) SACR 264 (T).

State v Matomela 1998 (3) BCLR (CK).

State v Pienaar 2000 (2) SACR 143 (NC).

Interviews:

Chief, headman and two Chief advisers, 2020-10-19. Group interview. Luyengeni Royal Place.

Mr. A, 2020-10-19. Formal interview. Luyengweni location.

Mrs. B, 2020-10-19. Formal interview. Luyengweni location.

Mr. D, 2020-10-19. Formal interview. Luyengweni location.

Mr. C, 2020-10-20. Formal interview. Luyengweni location.

Legislation:

Act 110 of 1986.

Constitution of the Republic of South Africa, 1996.

South Sudan Legislation

The Civil Procedures Act, 2007, Laws of South Sudan

The Local Government Act, 2009, Laws of South Sudan

The Penal Code Act, 2008, Laws of South Sudan

The People's Local Courts Act 1977 (Laws of Sudan)

The Transitional Constitution of South Sudan, 201

APPENDIX A

Consent form

Project topic:

Name of researcher: Ntombizethu Nyakambi

I the undersigned hereby confirm that,

Message to the researcher: Tick the following boxes correctly, according to what is stated on the form.

I am aware of the information stated on the invitation.	
The researcher had allowed that I ask any questions that I might have in related to the research and my participation.	
After reading (or being read by the researcher) the invitation letter, I volunteer to participate on the project.	
I understand that I may withdraw my participation on the project, without being asked questions or giving reasons.	
The researcher has confirmed that my particulars will be kept private.	
I hereby give the researcher Mrs Ntombizethu Nyakambi permission to record the interview.	
I hereby give permission to the researcher the permission to use the information provided by myself. I understand that both the researcher and his supervisor will use the information I provided for the sole use of the research. No information will be given to a third party.	
I agree to participate on this research, both myself and the researcher had an agreement and signed on the date stated in the invitation letter.	

Name of the participant:

Place where the participant lives:

Contact number:

Signature:

Declaration from the person doing interviews

I, Ntombizethu Nyakambi (researcher) confirming that the information acquired from the interviews will be kept private.

Date:

Signature:

Name of witness:

Date:

Signature:

APPENDIX B

TRANSLATED CONSENT FORM

Ifomu Yesivumelwano

Isihloko seprojekthi: Ukwakha impilo eyomeleleyo: Ngokubandakanya, nenkqubo hlalutyo eqiqayo ngendlela eyakha impilo emaphandleni

Igama loMphandi: nguNtombizethu Nyakambi

Mna, mtyikityi ongezantsi, ndiyaqinisekisa ukuba,

Umyalezo kuMphandi: tika ezibhokisi zilandelayo ngokufanelekileyo, ngokuqulathe okufundileyo kule fomu

Ndilufundile (okanye ndilufundelwe nguMphandi) ulwazi oluqulathwe kwincwadi yesimemo.	
Ndiyaliqonda ulwazi oluqulathwekwincwadi yesimemo.	
UMphandi undivumele ukuba ndibuze yonke imibuzo endithe ndanayo ngoluphando nokubandakanya kwam kulo.	
Emva kokufunda (okanye kokufundelwa nguMphandi) incwadi yesimemo, ndiyavoluntiya ukuthatha inxaxheba kule projekthi.	
Ndiyaqonda ukuba ndingarhoxa kule projekthi na nini na ndifuna ndingabuzwa mibuzo kwaye ndinganiki sizathu sokurhoxa kwam.	
UMphandi undiqinisekisile ukuba iincukacha zam ziza kugcinwa ziyimfihlo.	
Ndinika uMphandi, uNksznNtombizethu Nyakambi imvume yokurekhoda oludliwano ndlebe.	
Ndinika uMphathi woMphandi imvume yokufikelela kulwazi oliyimfihlo oluqulathwe kule projekthi kwaye ndiyaqonda ukuba uMphandi noMphathi wakhe abazi kukhupha lwazi kumntu ongaphandle kwale projekthi.	
Ndiyavuma ukuba yinxalenye koluphando. Mna, kunye noMphandi siyavumelana ekutyikityeni sifake nomhla kule ncwadi yesivumelwano.	

Igama (okanye ugxininiso lomnwe) lalowo uthatha inxaxheba:

Indawo yokuhlala yalowo uthatha inxaxheba:

Inombolo yoqhagamshelwano:

Umhla:

Umtyikityo:

Isibhengezo salowo uza kuqhuba udliwano ndlebe

Mna, Ntombizethu Nyakambi (uMphandi) ndiyaqinisekisa ukuba ulwazi oluyimfihlo oluthe lwavela koludliwano ndlebe na koluphando luza kuhlala luyimfihlo.

Umhla:

Umtyikityo:

Igama le ngqina:

Umhla:

Umtyikityo:

APPENDIX C

Invitation form for research participation

Project topic: The status of African languages in traditional courts with specific reference to Luyengweni in kwaBhaca (Mount Frere), Eastern Cape.

You are invited to participate on the research conducted by Ms Ntombizethu Nyakambi, who is a master's candidate in African languages at Rhodes University. For further enquiries please contact the aforementioned researcher. Interested participants will be asked to sign a consent form.

Research purpose

The research aims at critical analysing the language usage in traditional courts of Luyenweni, and its impact on the fair access to justice. The research aims at improving full and fair access to justice using relevant analysis method.

Problems and dangers that might occur?

There are no dangers and problems that might occur when conducting this research.

Would you like to participate?

To participate in this research, you must reside among the rural areas of Luyengweni.

Participation Remuneration

No payments will be paid to participants in this research.

Will your participation be kept private?

Any information provided by the participant in this research will be kept private. No information will be shared without the participants consent. Ms Ntombizethu Nyakambi and her supervisors will use the information provided by the participants for the sole purpose of the research.

Is your participation an obligation?

No. your participation is voluntarily. It depends on you whether you want to participate or not. All discussions in this research will be recorded. Answering questions is optional, participants can or cannot answer some questions. Participants have the right not to take part in this research should they choose to.

Right of participants

For further questions related to your rights as a participant, please contact Mr Siyanda Manqele email: s.manqele@ru.ac.za Tel: **046 6030 7727** Ethics Coordinator, the researcher: Ms Ntombizethu Nyakambi email: ntombizethunyakambi3@gmail.com **(cell. No +27796190969, Supervisor: Professor Kaschula email: R.Kaschula@ru.ac.za Tel: 046 6030 8222**

APPENDIX D

TRANSLATED INVITATION LETTER

Incwadi Yesimemo kwabo bafuna ukuthatha inxaxheba

Isihloko seprojekthi: Izinga elikuzo iilwimi zesiNtu kwiinkundla zamatyala zesiNtu, ngokujongene ngqo kwiinkundla zamatyala zesiNtu zaseLuyengweni kwaBhaca (eMount Frere) eMpuma Koloni.

Lowo uza kuthatha inxaxheba obekekileyo,

Uyamenywa ngokuzithoba obukhulu ukuba uthathe inxaxheba kuphando olwenziwa nguNkosazana uNtombizethu Nyakambi, owenza izifundo ze*Masters* kwicandelo lezifundo zelwiimi zesiNtu eRhodes University. Ukuba kukho into kwesisibhalelwane ongayiqondiyo ungabuza lo Mphandi ubiziweyo ngaphezulu. Ukuba uzimisele ukuba yinxalenye, uza kucelwa utyikitye iphepha lesivumelwano.

Iinjongo zoluphando

Olu phando luza kuphanda nzulu ukusetyenziswa kolwimi kwiinkundla zaseLuyengweni, nasekuqinisekiseni ukuba amalungelo abantu ngokuphathelele kwezomthetho bayawaxhamla ngokukuko.

Iingozi kunye neenxaki ezi nokuvela

Akukho bungozi na zinxaki ezi nokuvela ngoku thatha inxaxheba koluphando.

Ungakwazi ukuthata inxaxheba?

Ukuze ukwazi ukuthata inxaxheba kule projekthi, kufuneka ube ngumhlali waseLuyengweni.

Intlawulo xa uthathe inxaxheba

Akuzi kufumana ntlawulo ngokuthata inxaxheba koluphando.

Ingaba indima yakho koluphando iza kufihlwa na?

Lonke ulwazi olufumaneka koluphando ngakumbi oludibene nawe luza kuhlala luyimfihlo. Ulwazi olu njalo liza kutyhilwa ngemvume yakho okanye ukuba luthe lwafunwa ngumthetho. UNksz uNtombizethu Nyakambi nabaphathi bakhe baza kusebenzisa ulwazi oluqokelelwe koluphando kunye neminye imipapasho.

Ingaba ukubandakanya kwakho sisinyanzeliso?

Hayi, akunyanzelekanga uthathe inxaxheba. Kukuwe ukuba uyafuna ukuthata inxaxheba koluphando. Zonke iingxoxo zoluphando ziza kurekhodwa. Ukuba na nini na uziva ufuna ukurhoxa koluphando, uvumelekile ukurhoxangaphandle kwetyala. Uvumelekile nokuba ungavumi ukuphendula imibuzo ongafuni ukuyiphendula. Unelungelo lokurhoxa koluphando na nini na.

Amalungelo abantu abaza kuthatha inxaxheba

Ukuba unemibuzo enxulumene namalungelo akho nje ngoMphandi othabatha inxaxheba, ndicela uqhagamshelane Mnu: Siyanda Manqele imeyile: s.manqele@ru.ac.za Tel: **046 6030 7727** umlungelelanisi weenkqubo zokuziphatha (ethics Coordinator), noMphadi: uNksz Ntombizethu Nyakambi, imeyile: ntombizethunyakambi3@gmail.com (iselula: +27796190969, uMphathi woMphandi/ ikhankatha: Njingalwazi Russel Kaschula kwi-imeyile: R.Kaschula@ru.ac.za Umnxeba: **046 6030 8222**

APPENDIX E

School of Languages and Literatures

(African Languages studies)

P.O Box 94

Rhodes University

Makhanda, 6140

South Africa

The Chief of Luyengweni

Luyengweni A/A

Mount Frere

5090

RE: The status of African languages in traditional courts with specific reference to Luyengweni in kwaBhaca (Mount Frere), Eastern Cape.

My name is Ntombizethu Nyakambi, I am a candidate for Master of Arts in Language and Law student at African Languages department at the Rhodes University. In fulfilment of the requirements for this degree, I would like to conduct a qualitative research in Luyengweni. The title of my research topic is "the status of African languages in traditional courts with specific reference to Luyengweni in kwaBhaca (Mount Frere), Eastern Cape" under the supervision of Professor Russell Kaschula a lecturer in the Department of African Languages.

The aims of the study are as follows:

1. Identify the linguistic challenges encountered by litigants in accessing the traditional courts of Luyengweni in obtaining access to justice;
2. Record the opinions, thoughts, and experiences of Chiefs, advisers, litigants as well as the broader community who reside within the aforementioned jurisdiction, on the usage of English in traditional courts;
3. Based on findings, possibly propose that isiXhosa be made an official language in traditional courts of the Eastern Cape, as it is the mother tongue language spoken by the majority. This will serve as base for a fair trial between people who have an English background and those who do not;

4. To critically analyse the constitutional provisions, legislation and policies regulating traditional courts in South Africa;

5. To critique the status of African languages in traditional courts; and to propose that language rights be fully implemented for African language speakers in traditional courts with the aim of:

6. Promoting the use and development of African languages in the customary law system.

The research will require ten participants, the Chief, three Advisors, two customary law expects and four community members which will consist of three females and three males. This is an explorative study and all participants will be interviewed in a natural setting at the place to be agreed upon with the participants. The interview will take approximately 20 to 30 minutes. Ethics will be adhered to. The participants' human dignity and their informed consent will be respected. Participation is voluntary and the participants have the right to withdraw at any time should they wish, without being penalized. None of their friends or community members will have access to their response. Also, there are no wrong or right answers in the questionnaires. I simply ask for their opinions

If my request is approved, please provide me with a letter to this effect. Looking forward to your positive response.

Yours sincerely

Ntombizethu Nyakambi

APPENDIX F

ILETA YESIVUMELWANO

School of Languages and Literatures

(African Languages studies)

P.O Box 94

Rhodes University

Makhanda, 6140

South Africa

The Chief of Luyengweni

Luyengweni A/A

Mount Frere

5090

RE: Izinga elikuzo iilwimi zesiNtu kwiinkundla zamatyala zesiNtu, ngokujongene ngqo kwiinkundla zamatyala zesiNtu zaseLuyengweni kwaBhaca (eMount Frere) eMpuma Koloni.

Igama lam ndinguNtombizethu Nyakambi, nongumfundi kwisidanga se*Masters* kwicala lwezoMthetho nolwimi, kwisebe lwezelwiimi zesiNtu kwidyunivesity yaseRhodes. Ngokwemiqathamgo ebekiweyo ukuze ndibe ndiyasipasa esi sidanga, ndicela ngokuzithoba okukhulu ukuba ndenze uphando eLuyengweni. Isihloko solu phando sithi "izinga elikuzo iilwimi zesiNtu kwiinkundla zamatyala zesiNtu, ngokujongene ngqo kwiinkundla zamatyala zesiNtu zaseLuyengweni kwaBhaca (eMount Frere) eMpuma Koloni" phantsi kweliso lika Njingalwazi uRussel Kaschula nongumhlohli kwisebe lwezelwimi zesiNtu.

Iinjongo zolu phando ziyalandela:

1. Ukujonga imiceli-mngeni ngokolwimi ejongene nabantu abasebenzisa iinkundla zamatyala zesiNtu zaseLuyengweni, ekufumaneni kwabo iinkonzo zezoMthetho;
2. Ukushicilela iimbono, izimvo namava eeNkosi, amaphakathi,abamangalelani kunye nabemi baseLuyengweni, ngokuphathelele ukusetyenziswa kwesiNgesi nesiXhosa kwiinkundla zamatyala;
3. Ngokusuka kwiziphumo zophando, nikwe iingcebiso zokuba kusetyenziswe isiXhosa njengolwimi olumiselweyo kwiinkundla zamatyala zaseMpuma Koloni, kuba uninzi lwabantu luthetha isiXhosa. Oku kungangenye yeenzame zokuqinisekisa ukuba abantu bonke bayalufumana uncedo ngezomthetho kwabo bangasiqondiyo isiNgesi kakhuhle;
4. Ukuphanda nzulu ngamalungiselelo aqulathwe ngimgaqo siseko ngokuphathelele imithetho nemigaqo-nkqubo ephethe ukusebenza kwenkundla sesiNtu kweli loMzantsi Afrika;
5. Ukuphanda nzulu ngezinga lweelwimi zesiNtu kwinkundla zamatyala zasiNtu; kunikwe iingcebiso ekubeni amalungelo aphathelele ulwimi ukuba ayafunyanwa ngabo bantetho isisiXhosa kwinkundla zamatyala ngeenjongo zoku:
6. Zokukhuthaza nokuphuhlisa ukusetyenziswa kwelwiimi zesiNtu kwinkqubo yeenkundla ezisebenza phantsi komthetho wesiNtu.

Olu phando luzakusebenzisa abathathi nxaxheba abalushumi elinesihlanu, abathathu abangamadoda, abathathu abangamaphakathi, abathathu abazingcali kumthetho wesiNtu, abasithandathu abangamalungu asekuhlaleni, apho isithathu sawo izakuba ngamadoda esinye isithathu sibe ngamabhinqa. Kolu phando abathathi nxaxheba bazakwenziwa udliwanondlebe kwindawo abaza kukhululeka kuyo nekuyindawo abavumileyo ukuba luqhutywe kuyo. Udliwanondlebe luzakuthatha imizuzu elishumi elinesibini ukuya kwelishumi elinesithathu. Isidima sabathathinxaxheba siza kukhuselwa yayo bazakuxelelwa ngamalungelo abo, nomabakulindele kolu phando. Ukuthatha inxaxheba kwabo akusosinyanzelo yaye bangarhoxa nanini na befuna ngaphandle kwesohlwayo. Inkcukacha zabo noko bakudizileyo kudliwanondlebe kuyimfihlo, akukho lungu lasekuhlaleni okanye nabani na oza kuzazi ezo nkcukacha, yaye akukho zimpendulo zichanileyo okanye ezingachananga. Endikuvunayo nje zizimvo zabo yaye ndizakubuza ngazo.

Ukuba isicelo sam siyamnkeleka, ndicela undazise ngeleta enje ngale. Ndokuvuyiswa kakhulu yimpendulo yakho.

Ozithobileyo

Ntombizethu Nyakambi

(079)6190969)

APPENDIX G

NCOME TRADITIONAL COMMUNITY
NKOSAZANA B. MEHLOMAKULU
BOX 321
MOUNT FRERE, 5090
Sign ..... Date 13-10-2022

NCOME A/A
MOUNT AYLIFF
NO. 22

MNA BUYISWA MEHLOMAKULU NDAZISA NGO NTOMBIZETHU NYAKAMBI OSUKU' APHA ELUYENGWE MKHONGO NOPHAMDO LOKUSETYENZISWA KOLWIMI EZINKUNDLENI KE NJOMKE UFIKILE APHA SAMPAKELA KE BATHEKANI BAMA NDZAMA UKUNCEDISANA NAYE I.D.NO 9110251003081 Cell 0720298455

SIKHOSI
BUYISWA
MEHLOMAKULU

APPENDIX H

Human Ethics subcommittee
Rhodes University Ethical Standards Committee
PO Box 94, Grahamstown, 6140, South Africa
t: +27 (0) 46 603 8055
f: +27 (0) 46 603 8822
e: ethics-committee@ru.ac.za

www.ru.ac.za/research/research/ethics
NHREC Registration no. REC-241114-045

03/11/2020

Ntombizethu Nyakambi

Email: g18n8239@campus.ru.ac.za

Review Reference: 2020-0676-3268

Dear Professor Russell Kaschula

Title: The status of African languages in traditional courts with specific reference to Luyengweni in kwaBhaca (Mount Frere), Eastern Cape.

Principal Investigator: Professor Russell Kaschula

Collaborators: Miss Ntombizethu Nyakambi,

This letter confirms that the above research proposal has been reviewed and **APPROVED** by the Rhodes University Human Ethics Committee (RU-HEC). Your
Approval number is: 2020-0676-3268

Approval has been granted for 1 year. An annual progress report will be required in order to renew approval for an additional period. You will receive an email notifying when the annual report is due.

Please ensure that the ethical standards committee is notified should any substantive change(s) be made, for whatever reason, during the research process. This includes changes in investigators. Please also ensure that a brief report is submitted to the ethics committee on the completion of the research. The purpose of this report is to indicate whether the research was conducted successfully, if any aspects could not be completed, or if any problems arose that the ethical standards committee should be aware of. If a thesis or dissertation arising from this research is submitted to the library's electronic theses and dissertations (ETD) repository, please notify the committee of the date of submission and/or any reference or cataloging number allocated. Sincerely,

Prof Arthur Webb

Chair: Rhodes University
Human Ethics Committee,
RU-HEC cc: Mr. Siyanda
Manqele - Ethics Coordinator

APPENDIX I

Name of interviewee (s): Four members of the Luyengweni court council

Occupation (s): The Chief

Advisor to the Chief

Headman (usibonda) and

A retired court councilor (iphakathi)

Type of interview: Focus group

Date: 18/10/2020

Time: 1Hr

Place: Luyengweni main court

Recording: Digitally recorded and transcribed

Questions:

Moderator: ILuyengweni le ingaphantsi kolawulo likabani?

1st Participant: *Ingaphantsi kolawulo lam mna Nkosazana ndinene ezihlangwini zikatata wam ongasekhoyo. Apha kuKomkhulu apho zonke iilali ezi ezizezinye zingaphantsi kwalo.*

2nd Participant: *Ewe siphethwe nguye sincedisa yena thina njeba nawe usibona silapha.*

Moderator: Zingaphi ezi lali ziphantsi kolawulo lwalapha komkhulu?

1st Participant: *Apha kuKomkhulu lona limi apha eLuyengweni ngaphantsi kolawulo lwalo ibe zilali ezisixhenxe eziphantsi kolwawulo losibonda bezolali, kodwa bebonke aba sibonda kwezi lali baripota apha Komkhulu. Ezi lali ziyabonakala xa umi apha phandle ezinye zazo nangona ezinye zisithele ziquka Chwebeni, Sivumela, Maxhegwini, Ntsimekweni, Zigadini, Machibini kunye neNcome Springs.*

Moderator: Xa kuxoxwa enkundleni nisebenzisa oluphi ulwimi?

1st Participant: *Sithetha isiHlubi mixed with isiXhosa thina apha kulenginqi yethu. Isizathu soko ikukuba apha ekuhlaleni kuthethwa isiHlubi kodwa esikolweni*

kuthethwa isiXhosa njengolwimi olumiselweyo. Lonto yenze ukuba sizixube ke ezi lwimi zombini xa sithethayo. Siyanyanzeleka kengoku kuba amaxesha atshintshile ngoku nezinto ziyatshintsa kuyabheda nje, sizakufa thina basale bona bethetha lento yabo ixubayo ixhaphakileyo ngoku. Futhi ngoku naba bantwana bayakhumsha naba badala sebapntshela nabo bathetha isiNgesi kuyaxutywa nje kunzima, kodwa ke phaya komkhulu siyevana kulo mxubo wethu akhonto.

3rd Participant: *Injalo kuyaxutywa nalapha enkundleni kuthethwe lo mxube ke kuba akhonto singayenza, kodwa umhlaba wona ngowamaHlubi. Bekumele kengoku kuthethwa isiHlubi esingeyongxubevanga ummo lo wakhona ntonayo ke akwazeki kuba asifundiswa esikolweni sona. SisiXhosa esifundiswayo phaya.*

Moderator: Ngaphandle kwesiXhosa nesiHlubi ingaba zikhona na ezinye iilwimi enizisebenzisayo apha enkundleni?

4th Participant: *Ewe lukhona kodwa lisetyenziswa ngamaxesha athile, sisiSuthu xa kuxoxwa ityala lomSuthu. Ntokunayo saziwa ngabantu abambalwa apha ekuhlaleni sona. Apha kubancedisi beNkosi sithi.*

3rd Participant: *Ewe bebekhe banceda apha enkundleni kwityala lomSuthu kwathetheka satolika lagqitywa ityala, bathathu ndim owesine siyasazi isiSuthu. Siyancedisa apha enkundleni. Thina siyazazi kakuhle kuba sasisebenza nabo ezimayini eGoli, bakhona nabanye abasaziyo ezondao nezondawo kodwa siyatolika ukuze wonke umntu ave.*

1st Participant: *Kwimicimbi edibanisele nezinto ezibhalwayo ezifana neeleta ezikhutshwa apha komkhulu ezinye zazo zifuna isiNgesi. Ndibhala iileta ngeleta ezinye zezamanxiwa nezifuneka ezikolweni, kufuneke ke ngoko ndizibhale ngesiNgesi. Ingxaki ndiyazithumela imeyila ndizithumele ngqo ebalungwini. Andinokwazi ke uzubhala ngesiXhosa yilonto kufuneka ndaze isiNgesi. Ndikwazi unceda. Ezalapha ekuhlaleni uninzi lwazo ndizibhala ngesiXhosa kodwa zikhona ezifuna ubhalwa ngesiNgesi nazo. kuyaxhomekeka nje manditsho.*

Moderator: Xa kuxoxwa ityala ingaba liyaricodwa?

1st Participant: *Kubhalwa phantsi encwadini kuba asinazo ezi zinto zalamaxesha ezifana nerecoda nekompyutha. Lonto yenza ukuba izinto ezininzi ezibhaliweyo ngunobhala zilahleke xa kulahleke lo ncwadi zazibhalwe kuyo. Umzekelo; mna*

njengenkosi ephetheyo ngoku andiwazi amatyala ayekhe axoxwa ngaphambili kusaphethe utata nezoncwadi azisekho, ezikhona bayala ngazo. Kaloku ndisabangiswa ubukhosi ngako ke lo matyala ayafana nokuba zange axoxwe kuba akhonto itshoyo ibhaliweyo ngaphandle kwabo babekhona mhla ethethwa. Amanye ke mna ndadisemncinci ukuxoxwa kwawo.

Summary of the interview

Summary of the above group interview that was held at Luyengweni main court with the Chief, the headman and two of the Chief advisors. The interview was conducted and transcribed in isiXhosa as it was the language that was requested by most of the interviwees, as it the language that they speak and understand as opposed to other languages that are spoken in Luyengweni namely; isiHlubi, isiXhosa, Sesotho and English. Following are the sub-themes that emerged form this interview:

i. There are four languages that are spoken in the community of Luyengweni namely; isiXhosa, isiHlubi, Sesotho, and English.

ii. Due to migration there are Sotho speaking people that migrated to Luyengweni for employment purposes.

iii. The language that is used in court proceedings in Luyengweni courts is what they term as a mix-up (mixture of isiHlubi and isiXhosa).

iv. English is used mostly when writing letters such as proof of residence and other letters depending on request.

v. Traditional court of Luyengweni is a main court (ikomkhulu) ruling over ....villages that are operating under the ruling of headman (sibonda).

APPENDIX J

Name of interviewee (s): Mr. A

Occupation (s): Court secretary

Date: 19/10/2020

Time: 30 min

Place: Luyengweni location (his place)

Recording: written and transcribed

Questions:

1. **Ingaba uzalelwe apha eLuyengweni okanye?**

   Ndizalelwe apha nabazali bam nabo ngabalapha, ikhaya lam nelikwam zilapha.

2. **Unexesha elingakanani uhlala apha?**

   Oko ndahla apha sukela ekuzalweni kwam, ndafunda apha, ndazeka umfazi kwalapha. Ndisahlala apha nangoku ngaphandle kwexesha ebendiphangela ngalo eGoli, kodwa sendapentshina ngoku ndincedisa apha enkundleni njengonobhala.

3. **Wena uthetha oluphi ulwimi?**

   Ndithetha isiHlubi mna kodwa ke ndiyazazi nezinye iilwimi njengesiXhosa, isiSotho kunye nesiNgesi nangona ndisazi kancinci kune ezinye sendizibalile.

4. **Kudliwanondlebe ebendinalo izolo ndiye ndaxelelwa ukuba nguwe unobhala nomntu ongakwazi ukundiphendula kwimibuzo endinganayo. Njengonobhala umsebenzi wakho enkundleni okanye koMkhulu yintoni?**

   Umsebenzi wam koMkhulu kukubhala nantoni na eyenzekayo enkundleni enoba kuxoxwa ityala okanye kukho intlanganiso ethile yabantu.

5. **Xa ubhala oko kuqhubekayo enkundleni okanye entlanganisweni ubhala usebenzisa oluphi ulwimi?**

   Ndisebenzisa ulwimi oluthethwa ngabantu oluyindibanisela yesiXhosa nesiHlubi. Uninzi lwabantu apha bathetha ezo lwimi bazixube ke kumaxesha amaninzi. Kukambalwa apho kuye kufuneke kutolikwe oko kwenzeka enkundleni kwityala eliye lifune oko. Ngokwenkqubo yenkundla siyayithetha yonke into eqhubekayo enkundleni kumanyelwe ngabantu bonke. Ndiyazama ukubhala imiba ebelulekileyo kodwa not yonke, ndiye ndishiywe lixesha kuba ndibhala phantsi encwadini. Abantu bayakhawulezisa kunzima ubaleqa. Ndibhala ngale mix-up kaloku yesiXhosa nesiHlubi kuba ndazi yona nangona isiXhosa ndasifunda esikolweni. Kodwa neSesotho naso ndiyasazi"

6. **Ngamatyala anjani aye afune kuthethwe lwimi lumbi ngokwengxelo yakho?**

   Ngamatyala abantu abathetha lwimi lumbi kuneli silithethayo thina apha. Umzekelo apha siphila nabeSuthu abanye babo bayasazi isiXhosa kodwa hayi bonke. Kwimeko ezinjalo kuye kunyanzeleke ukuba batolikelwe apho bangaqondi khona.

7. **Njengoba usithi uyakubhala okuqhubekayo, ubhala phi?**

   Ndibhala encwadini kwi-exercise book. Yiyo le sibhala kuyo kwaye kungahlwa sibhala xa singabhala kwanto, yaye akhonto inokuqhubeka. Umntu angathetha igama libelinye kaloku ngexesha ukuba kunjalo. Sigqibe nini ke?, akunakulunga. Unobhala wenzela nje ukuba sikhumbule okuthethiweyo ngexesha elithile kuphela kwaye akagqibi naye side simkhumbuze nathi.

8. **Kubaluleke ngantoni ukubhalwa koko kuqhubekayo enkundleni?**

   Kubaluleke kakhulu kuba kuyanceda. Into ebhaliweyo akukho lula ukuba iphikiswe kunento eyayithethwe nje ngomlomo, kuba yona ingajikwa ngulowo wayithethayo athi akayazi okanye

akasayikhumbuli. Kodwa nangona ibhaliwe ayithi lonto ayinakuphikiswa kuba andibhali yonke into koko ndibhala endikubona kubalulekile koko kuthethwayo. Andinokwazi ukubhala yonke into kuba abantu bayakhawulezisa xa bethetha ndingashiyeka nangakumbi.

Summary

Summary of the above interview that was held in Luyengweni with the court secretary, following are the sub-themes that emerged:

i. IsiHlubi is most spoken by people of Luyengweni. People who speak isiHlubi are believed to be of origin in the place. Other people speak other languages such as isiXhosa, isiHlubi, Sesoth and English.

ii. To qualify as a court secretary one need to be able to read and write the local language isiHlubi or the mix-up and other languages that are spoken in the village such as Sesotho and English.

iii. The language of record in the courts of Luyengweni is the combination of isiHlubi and isiXhosa (mix-up) language.

iv. Sesotho is used through interpretation on cases that involve Sotho people.

APPENDIX K

Name of interviewee (s): Mrs. B (resident of Luyengweni)

Date: 19/10/2020

Time: 30 min

Place: Luyengweni location

Recording: written and transcribed

Questions:

1. **Ingabe uzalelwe apha eLuyengweni okanye?**

   Ewe ndizalelwe apha ndakhulela kwalapha ukanti ndifunde ndade ndatshatela apha. Nangona ke ndingazange ndifunde xesha lide ngenxa yemfundo yethu ngela xesha, phinde ube ngumntana oyintombazana ke ubuye wendiswe.

2. **Unexesha elingakanani uhlala apha eLuyengweni?**

   Kusukela oko ndazalwa ndihlala apha ndakhulisa abantwa bam kwalapha nangona bengahlali apha ngoku ngenxa yempangelo.

3. **Uthetha oluphi ulwimi wena?**

   Ndithetha isiHlubi mna phofu kwalapha kuvamise sona nangona nesiXhosa sithethwa kuba nam ndiyasithetha. Ngamanye amaxesha nizixube zombini ezi lwimi.

4. **Ingaba inkundla le yalapha ekuhlaleni yindawo esasetyenziswa ngabemi balapha?**

   Isasetyenziswa kakhulu ngabantu kuba amatyala amaninzi enzeka apha ekuhlaleni axoxwa phaya kuba kukude edolophini.

5. **Ngaphandle kokuxoxwa kwamatyala zikhona ezinye iinkonzo ezifumaneka khona?**

   Ewe zikhona kuba neeleta zamanxiwa, nezo zixela ubume sizifumana phaya komkhulu kuba kukufuphi, kwaye phaya kaloku uzafika uyibike kakuhle ingxaki yakho phaya.

6. **Uthetha ukuthini xa usithi ingxaki yakho komkhulu ufika uyibeke kakuhle?**

   Kaloku mna ndimdala ngoku phaya ndizakumameleka kakuhle ndingangxamiswa kwaye ndithetha ngolu lwimi lwam ndincedeke.

Summary of the interview

Summary of the above interview with the senior residence of Luyengweni location. The following sub-themes emerged:

i. Four languages are spoken in Luyengweni community namely; isiXhosa, isiHlubi, Sesotho and English.

ii. The people of Luyengweni still use and rely on traditional courts in settling disputes and other things.

iii. Reasons for using traditional courts is because they are convinient and are in the community, one does not have to travel.

iv. Lastly, a local language is used in the court and this enable everyone to participate.

APPENDIX L

Name of interviewee (s): Mrs. C (resident of Luyengweni)

Date: 20/10/2020

Time: 30 min

Place: Luyengweni location

Recording: written and transcribed

Questions:

1.Ngokuhlala ingaba uhlala apha?

Ewe ndihlala apha nangona ndingengowalapha mna ndize ngempangelo. NdingowaseMatatiele ndisebenza ekitshini.

2. Unexesha elingakanani uhlala apha eLuyengweni?

Yiminyaka onoba idlulile kwemihlanu ndisebenza apha.

3. Ulwimi lona olithethayo loluphi?

Ndithetha isiSuthu nesiXhosa kuba zithethwa zombini kwaseMatatiele apho ndisuka khona. Ndafika ke nalapha sithethwa isiXhosa ukanti nesiHlubi esi siyelelene esiXhoseni siphinde sibenamagama afana neSisuthu.

4. Ingaba wonke umntu waseMatatile uzazi zombini ezilwimi uzaziyo wena?

Kuyaxhomekeka ukuba usuka ndawoni eMatatiele abanye abasazi isiXhosa ingakumbi abeSuthu aba basuka eLesotho. Kulandawo ndisuka kuyo mna siyaziwa isiXhosa kuba namaXhosa akhona phaya sonke siyaluthetha ulwimi lomnye, nangona abanye besazi okwedlula abanye.

***5.* Ngokolwazi lwakho ingaba inkundla le yalapha yinto esetyenziswayo ngabemi balapha?**

Ndingatsho kuba ndikhe ndibone kugcwele phaya ndicinge ukuba enoba kukho ityala elixoxwayo okanye intlanganiso ethile. Mna ndiya khona xa kuqala unyaka ndiyobika ukuba ndikhona. Thina bantu bangazalelwanga apha kuye kunyanzeleke ukuba sibhalise khona. Ndiya ngokuyobhalisa andikaze ndimamele tyala ke kodwa. Kuyafana napha kuthi kuba umntu

ofikayo uqala kwaNkosi abikwe okanye azibike imvelaphi nesizathu sokundwendwela okanye eyomangalela lonto lichotshelwe ke ityala enkundleni nje ngalapha kuthi nqwadalala.

***5.* Zeziphi iinkonzo ezifumaneka khona ozaziyo?**

Ngaphandle kokuxoxwa kwamatyala kufunyanwa neeleta ezithile kuxhomekeka kwingxaki yakho. Ngeli xesha le COVID 19 ezona ebezikhe zaxhaphaka zezi zeproof of residence kuba ibifuneka xa usiya edolophini ngela xesha lika level 3.

Summary of the interview

Summary of the above interview with one of Sotho people living in Luyengweni location. The following sub-themes emerged:

i. The Sotho people who now live in Luyengweni are from Matatiele and Lesotho.

ii. They came on basis of employment and they are working as house keepers and shepards.

iii. Not all Basotho speak and understand isiHlubi and Xhosa but those from Matatiele can speak and understand isiXhosa perfectly.

iv. The Luyengweni court caters for all the needs of the people whether they are originally from there or not.

APPENDIX M

Name of interviewee (s): Mr**.** D (resident of Luyengweni)

Date: 19/10/2020

Time: 30 min

Place: Luyengweni location

Recording: written and transcribed

Questions:

1.Ngokokuhlala ingaba uhlala apha?

Ndizalelwe apha kodwa ixesha elininzi ndilichitha esikolweni kuba andifundi apha. Ndikhona ngoku ngenxa yokuvalwa kwezikolo kule lockdown. Kodwa ikhaya lam lilapha.

2. Ulwimi oluthethayo loluphi?

Ndithetha isiXhosa, isiHlubi kunye nesiNgesi. Zezona lwimi zithethwayo apha nangona isiNgesi singaziwa ngumntu wonke kakuhle. Bakhona ke nabathetha isiSotho.

3. Ngokolwazi lwakho ingaba inkundla le yasekuhlaleni yinto esasetyenziswa ngabantu balapha?

Ewe iyasetyenziswa kuba amatyala axoxwa phaya neentlanganiso zibanjelwa phaya ezingophuhliso lwale lali nezinye. Njengoba kufakelwa umbani ibikhona intlanganiso ebikhe yakhona apha ezintsukwini nam bendiyile.

4. Xa kubanjwe ezo ntlanganiso njengale ubuye kuyo okanye kuxoxwa ityala loluphi ulwimi olusetyeniswayo?

Anikaze ndibekho xa kuxoxwa ityala kuba ndingabikho ixesha elininzi kodwa kula ntlanganiso bekuthethwa isiHlubi nesiXhosa. Abanye abantu bayazixuba zombini ezi lwimi ngaxesha nye.

Summary of the interview

Summary of the above interview that was held with one of the young people in Luyengweni. Following are the sub-themes that emerged:

i. Luyengweni traditional courts are inclusive and do not discriminate. The youth is also involved and participate in court.

ii. Traditional courts are also used as the place to gather for everyone as it is respected, and everyone is expected to be present when called.

iii. Those that have returned due to retirement, still at school are fluent in English, isiXhosa and isiHlubi with few that understand Sesotho.