

Language and the Law

Global Perspectives in Forensic Linguistics from Africa and Beyond



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MOZAMBICAN POLICE INTERVIEWS

The interaction between official language and legal pluralism

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Introduction

Concerns about access to justice and procedural fairness in Mozambique have been expressed in the literature over many decades. This prior research has identified the tendency for poor Mozambicans to be targeted by police and prosecuted for minor crimes while “wealth and a high-status position seem to correspond to Prosecution being less likely to occur” (Bertelsen & Chauque, 2015:3). In this chapter, we present findings from a study of police interviews undertaken in high crime neighbourhoods on the outskirts of Mozambique’s capital city, Maputo. Specifically, we focus on the narrative turns of suspects who have the difficult task of effecting a defence through a second language. For many suspects whom we observed in Maputo, the challenges of being interviewed by police and the difficulties of navigating the complex Mozambican legal system are compounded by their lack of proficiency in Portuguese, the official state language.

We examine the impact of language proficiency on justice outcomes more closely, taking a micro-level view of the interactions between suspects and police, and documenting the precise point at which access to the official language intersects with access to justice in a criminal investigation. Besides providing readers with the policy and cultural context of language planning in Mozambique, this chapter analyses and discusses the data in relation to access to justice and procedural fairness, presenting examples of police-suspect interactions to demonstrate how the reality of linguistic diversity is expressed in the face of an official policy of monolingualism.

Mozambique is a multicultural country with a mid-to-high linguistic diversity. Robinson (1993:52-55) defines “high linguistic diversity” as “a situation where no more than 50% of the population speak the same language”. As Robinson points out, the degree of language diversity should not be based on the number of languages spoken in a country, but rather on the number of speakers of any single language. Thus, according to Lopes

(2013), among all languages spoken in the country (around 20), the most-spoken Bantu languages are Emakhwa (spoken by an estimated 27%) and Shangaan (spoken by 11.3%). If Robinson's criterion is considered, neither language would claim to be the majority language. The relatively high percentage of Emakhwa speakers places Mozambique somewhere in the middle of the scale of linguistic diversity. Despite this, there is no doubt that Mozambique is one of the African countries with high linguistic diversity. Indeed, the latest census held in Mozambique in 2017, despite not being itself a pure language census, suggests that the above percentage of Emakhwa and Shangaan could be higher at the present moment, where the population of Mozambique is estimated at 30,832,244 as for 2021, according to official figures released by the country's National Institute of Statistics.¹

The study adopts a qualitative research design with aspects of a descriptive research methodology. Findings indicate that suspects who adopt linguistic and discourse strategies, such as code-switching and negative transfer from their mother tongue into Portuguese, Mozambique's only official language, are more likely to self-incriminate. Moreover, to resolve conflicts, Mozambican police often adopt methods that are highly influenced by Customary Law techniques. We propose to demonstrate here how aspects of Customary Law could usefully be adopted into Mozambique's judicial system, and more urgently, to show the country's need for a more inclusive language policy, given that more than 90% of the population have an African language as their mother tongue.

Language policy in Mozambique

Neither the Mozambican Constitution adopted at independence in 1975, nor its revised 1978 version, provide a clear statement of the country's language policy (Lopes, 1997a). Even the 1990 Constitution and its 2004 (most recently updated) version fail to clarify the role of the Mozambican African languages in terms of language policy. (República De Moçambique, 2004:7; see Appendix for the original Portuguese version). The language issue in the Constitution of the Republic is enshrined as follows:

Article 9
(National Languages)

The State shall value the national languages as cultural and educational property and shall promote the development and growing use as vehicular languages of our identity.

¹ População Moçambicana para. 2021. *Instituto Nacional de Estatística*. ine.gov.mz [Accessed 27 January 2022].

Article 10 (República De Moçambique, 2004:7) states the following regarding the official language:

In the Republic of Mozambique Portuguese shall be the official language.

Notably, neither article provides a clear indication of the role of Bantu languages. Rather, Articles 9 and 10 suggest a vaguer interpretation, whereby the use of Bantu languages could be tolerated in all but the most official settings.

Thus, the Mozambican Constitution is imprecise regarding the right of Mozambicans to use their mother tongues. This is an example of so-called *avoidance* in language policy formulation, as Bamgbose (1991) has pointed out; and it is, indeed, a widespread technique used in a range of African countries. Governments who adopt this technique, where the role of the local African languages is not clearly indicated, free themselves from the unpleasant consequences of making any pronouncement on language policy that some would find objectionable. In other words, in a multilingual country like Mozambique, if a certain language or group of languages is promoted, it is very likely that speakers of other African languages of Mozambique would find such a decision objectionable. However, the absence of a statement does not mean the absence of a policy (Bamgbose, 1991).

What tends to happen is that the youngest countries end up inheriting the official language policy of the former colonial power. Mozambique is one such country where there is no clear statement on the language policy for the African languages spoken across the country, but the use of Bantu languages, mother tongues to more than 90% of the population, is implicitly forbidden, if not actively discouraged, in official settings.

Given the remarkable denial by the government and policy decision makers, including Parliament, to debate and pass a resolution on a more inclusive language policy in the country, Lopes (1997b) has labelled the language policy question in Mozambique as “taboo”.

Language and the justice system

In Mozambique, for a number of social and cultural reasons, one of the most widespread practices for punishing offenders, especially in rural areas, is Customary Law, based on traditional methods of finding someone guilty or innocent. Discussing such Customary Laws, Gluckman (1966:9) finds that:

It has been established that African customary law, like any system of law, consists of a variety of different types of principles, norms, and rules. Some of them are state wide and general principles of morality and public policy to constitute an apparently enduring ideological framework for justice. Such principles of wide connotation, stated in multivocal terms covering many referents of wide range of actions, are flexible and can be adapted to changing conditions and standards.

The use of spoken rather than written language is one of the most notable aspects of Mozambican Customary Law; and the verdict for each case is founded on the basis of “common sense”. Worth noting, too, is the exclusive use of the local language in Customary Law settings. As well as being a shared communicative code, the local language serves to link the participants with their ancestors – who always play a symbolic role in the resolution of a problem. In Mozambican traditions, most principles, norms and rules are believed to be directly formulated and governed by ancestor spirits (see also Mabasso, 2012b).² As in an adversarial courtroom, participants are given turns to tell their side of the story, thus producing narratives that enable a jury of peers to reach a verdict.

Despite the widespread use of Customary Law to resolve disputes and punish offenders, Mozambique’s Constitution formally recognises only the Romano-German Law System for use in courts of law and also in police stations (Mabasso, 2012b). This implies a need to strictly fulfil all legal arrangements provided for in the various laws in use in the country’s justice system. As regards language, the country’s sole official language, Portuguese, is the only language that may be used in courtroom sessions and also in police interviews. The Civil Process Code in its 2010 revised version makes this clear (Issá, Garcia, Jeque & Timbane, 2010:89; see Appendix for the original Portuguese version):

Article 139
(Courtroom Language)

1. Portuguese shall be the language for courtroom sessions.
2. Those who do not speak Portuguese and wish to be heard shall, however, [be permitted to do so] in a language other than Portuguese, provided that, if deemed necessary, a sworn interpreter is appointed to ensure communication.
(*)

Note

* The use of interpreters is necessary not only when foreigners are involved, but also with Mozambicans who speak languages other than Portuguese.

Article 139 clearly states that access to the legal system for non-Portuguese speakers will be provided through an interpreter. Reports predating this article have found that, generally, courts have attempted to provide interpretation services as required, although the quality has frequently been poor. This is particularly true at the district level, where interpreters are not professionals and are often simply drafted in on the day. In fact, in many district courts, if judges speak the local language, they conduct proceedings directly in that language, or play the role of interpreter themselves (Open Society Initiative for Southern Africa, 2006:111). While the more recent amendments

² This may appear quaint to ‘non-traditional’ societies, but in fact it is not dissimilar to the reverence for the past that serves to preserve the use of archaic English and Latin in English-language courtrooms.

of Article 139 make clear that interpreters are required whenever the witness does not speak Portuguese, it is important to note that this Article fails to specify who will pay for the interpreter.

In practice, the responsibility for paying for an interpreter lies entirely with the individual making the request. In a country where a mere 10% live above standard living conditions, in the sense that their wages allow them to cover their cost of living and be able to save some money, and the latest figure on the country's illiteracy rate is an estimated 41%,³ one is prompted to raise the question as to how the majority of Mozambicans would manage to afford such services. This, of course, leads one to view the above law as an appeal for the maintenance of the status quo, namely that Portuguese will remain the only language in use in the whole justice system.

Given these conditions, a consistently high number of suspects appear in police stations and courts without witnesses and adopt linguistic and discursive strategies, such as code-switching and negative transfer (interference) from their mother tongue into Portuguese. Due to their poor education – most have not managed to complete primary education – these suspects are more likely to self-incriminate, often leading to imprisonment. Thus, this research supports Bertelsen and Chauque (2015) in proposing that there is a correlation between education (which can be translated into mastery of the only official language) and a higher chance of imprisonment for certain types of summary offences such as robbery and corporal offences, which are the most common offences among this socio-economic class. As suggested above, the majority of people in this class live below the average living standard and therefore lack basic living conditions. As one of the main findings shows, police officers who, overall, lack basic skills (Open Society Initiative for Southern Africa, 2006:12), adopt interactional methods more commonly associated with mediation when interviewing suspects. Basic skills include technical training in, for instance, the best interviewing models to be adopted for individual cases (cf. Mulayim, Lai & Norma, 2015) and other related skills.

These methods are highly influenced by the tradition-based techniques used to resolve conflicts in Customary Law. Given that, in Customary Law, it is expected that narrative responses will be provided to questions, suspects in court must then struggle with the difficult task of telling their side of the story by building narratives in a language that is largely alien to them.

³ A country report of the CIA states that 73.3% of men over the age of 15 and 45.4% of women over the age of 15 can read and write (United States Central Intelligence Agency, 2016).

Very recently and probably as a result of some vagueness in the above Article 139, the newly approved Penal Procedural Code, through Act no. 25/2019 of 26 September⁴ has come up with a more detailed approach on the language issue. Article 102 (1) (2) reads as follows:

Article 102

(Courtroom language and appointment of interpreters)

1. Portuguese shall be the language for procedural acts, both written and spoken, otherwise the act shall be deemed null.
2. In the event of a participant who is not competent enough in the official language, a professional interpreter shall be appointed with no charges held on to him, even when the person in charge of the procedural act or either party are speakers of that language.

Notwithstanding the above, the new law on language seems to be still far from being fully put into force by the judicial authorities because both the 2019 Penal Procedural Code and its previous 1929 version are still being used concurrently. Noteworthy that the data used in this chapter were collected before Law 25/2019 of 26 December was decreed.

The field and target group

Research was conducted in a sample group of four police stations located in various neighbourhoods on the outskirts of Mozambique's capital city, Maputo. A total of 20 interviews were recorded for the study; 30% (n=6) involved domestic violence; 40% (n = 8) involved traffic accidents; 25% (n=5) were cases of theft and 5% (n=1) represents a case of fraud. The interviews were conducted in locales where crime is always present due to a number of poverty-related factors, such as poor education and joblessness (Paulo, Rosario & Tvedten, 2007; Tvedten, Roque & Bertelsen, 2013). The target population comprised police officers and suspects. There is a special focus on the difficult task of the latter in producing a defence through a second language. Overall, this target group was made up of individuals whose ages ranged from 14 to 44; and they were mostly poor.⁵ The majority of the suspects who appeared for interview at police stations had not managed to finish primary education (Grade 5); and their mother tongues were predominantly Shangaan and Ronga, two sister languages which belong

⁴ República de Moçambique. 2019. *Lei da Revisão do Código Penal*. Lei 25/2019. Maputo: Imprensa Nacional de Moçambique. BR_248_I_2019.indd (reformat.co.mz) [Accessed 22 January 2022].

⁵ Through much of its past history, there have been only two classes in Mozambican society: a large majority of poor people, and a tiny proportion of wealthy people (said to make up only about 10% of the population). Nevertheless, there is a growing belief that professionals, for instance, academics and medical doctors, represent a growing middle class in the country.

to the S Language Zone (S53 and S54 respectively), according to Guthrie (1967). As already noted, the former is the country's second most commonly spoken language; the latter is the language spoken by people originating in Maputo.⁶

As a consequence of their poverty, the people represented in this study were very vulnerable and considered likely to commit certain types of offences such as robberies⁷ and corporal offences (as noted above), and to be involved in road accidents. Although the latter are not regarded as criminal offences at first sight, road accidents are likely to involve criminal charges, particularly when they are caused by excessive consumption of alcohol.⁸

The data used in this study were collected in the sample group police stations by the first-named author who then proceeded to produce transcripts of the recorded interviews. Interviews were semi-open or open, conducted by one of two police officers in charge, depending upon the situation. The researcher did not interfere in the process, except when collecting demographic details of the suspects. Features, such as hesitations, interjections, stuttering, silence and even poor quality of recording, have been noted in the transcripts (cf. Gibbons, 1996). This is because such features are important to the interpretation of accounts, and also because some features, especially hesitations and silence, can produce a number of different interpretations in the course of the legal process (cf. Goldflam, 1997; Heydon, 2011; Mabasso, 2002).

The use of linguistic and discursive strategies in police stations

One of the main findings of this study was that, due to their lack of proficiency in the official language, most suspects adopted particular types of linguistic and discursive strategies, such as negative transfer from their mother tongue, and code-switching, which are communication strategies identified by Tarone, Cohen and Dumas (1983). For the purpose of this chapter, the language segments where discourse strategies occurred should be viewed as superordinates, in the sense that they are the key indication for the segment itself, with the linguistic ties appearing at the lower level of the segment. For the analysis of the segments, the study will adopt a formal approach consistent with Halliday and Hasan (1976) and De Beaugrande and Dressler (1981). From a cognitive

⁶ Maputo is the name for both the country's capital, and the region in which it is situated.

⁷ Most robberies committed by these people are mobile phone "jacking", removal of small car parts, such as mirrors, indicators and headlights, and theft of wallets, as well as jewelry, mostly worn by females.

⁸ It should be noted that, although drunk driving is severely punished within the scope of the new Mozambican Road Traffic Act, most deaths on the country's roads are caused by people driving after consuming alcohol beyond normal levels.

perspective, the research adopts the views of Carrell (1983) and Widdowson (1983), among others, although a deeper analysis of cognitive aspects of message processing mechanisms is beyond the scope of this chapter.

As far as discourse analysis is concerned, drawing on the same linguistic material, the discourse strategies mentioned above will be addressed in terms of samples of infelicitous discursive fragments uttered by suspects in cases taken from the selected police stations. Here, the notions of theme/rheme and of new/given information will be combined to explain the impact of the phenomena on the information processing as a whole.

The following examples of use of negative transfer from the mother tongue have been taken from Mabasso (2010) and here they will be re-numbered for the purposes of this chapter. Given that the original texts are in Portuguese, a free translation is provided for the understanding of the individual linguistic phenomena. Literal translations are provided for those linguistic segments deemed critical to identifying the linguistic phenomenon being analyzed. For the sake of time and space, some extracts from the interview data will not be provided in full, given that most are rather long narratives.

In the following linguistic segments, a police officer questions a suspect involved in a case of petrol pump fraud, a typical crime in the sampled police stations.

Extract 1: Police interview with suspect of petrol pump fraud at a local police station in Maputo, Mozambique:

No.	Speaker	Utterance	English gloss
1	Police:	o XX está aqui? Eh ... o Sr. X, esse de três bombas injektoras? Diga lá!	is XX here? Ehm ... Mr. X, the one involved in the case of the three petrol pumps? What is it?
2	Suspect:	(...) Tirei a bomba, fui lhe entregar ... quando vou lhe entregar, passou alguns dias,	(...) I took the pump off and gave it to him ... when I went to deliver the pump, after a few days.
3	(<i>Suspect contd</i>)	fui ter com ele, ah ... venha amanhã às ... venha amanhã às 9. Vou às 9, fico lá todo o dia.	I went to see him ... come tomorrow at ... come tomorrow at 9. I went there at 9 and stayed the whole day there.
4	(<i>Suspect contd</i>)	Ah ... venha às 15, ah ... quando acaba o dia ... venha amanhã ou manda o miúdo.	Ah, come at 15, ah ... <i>when the day finishes</i> ... come tomorrow or send the little boy.
5	(<i>Suspect contd</i>)	Mando o miúdo, chega lá o miúdo <i>acaba o dia</i> , aparece-me logo a tardinha, digo como é quê?	I send the little boy, the little boy arrived there, <i>the day finishes</i> , he came later in the day, I ask him "How is it?" [the status of the pump repair].

No.	Speaker	Utterance	English gloss
6	(<i>Suspect contd</i>)	Diz ah ... “aquele Sr. anda a dar voltas, no ... no ... no ... sempre está a dizer	He said ... that man is telling stories, eh ... eh ... eh ... he's always telling me.
7	(<i>Suspect contd</i>)	espera ... espera ... espera, ah vem ... sei lá o quê! Ah ... cansei, isso parece brincadeira	to wait ... wait ... wait, ah come on ... I don't know when! Ah ... I'm fed up this seems like a joke.
8	(<i>Suspect contd</i>)	agora, acontece que eu pensei que talvez se eu me dirigir à Esquadra, coloco à Polícia,	now I thought that maybe if I go to the police station, and tell the police.
9	(<i>Suspect contd</i>)	pode me ajudar, porque a bomba do carro está parada. Uma bomba está parada desde o ano passado,	I can get help because the car pump is not working. A pump has not been working since last year.
10	(<i>Suspect contd</i>)	outra está parada há ... há ... há três meses. Ele pediu dinheiro para comprar material,	and the other has been faulty for ... for ... three months. He asked for money to buy the spare parts.
11	(<i>Suspect contd</i>)	eu dei, tá ver não é? Eu dei um na... na...na essa bomba que é dois milhões, <i>a outra ele foi dado</i>	I gave him, you see? I gave for ... for ... for that pump two million [meticals] and <i>for the other he was given.</i>
12	(<i>Suspect contd</i>)	<i>Mil e quinhentos.</i> Nunca, nem uma, nem outro, nunca me deu as bombas. Concorda?	<i>one thousand and five hundred</i> [meticals]. Never, neither pumps, he never returned the pumps. Do you agree?
13	Police:	O senhor é mecânico?	Are you a mechanic?

Moçambicanismos: How language contact affects Portuguese

Analysis of the above fragment finds that the police officer in charge of this case has elicited a narrative from the witness (*diga lá?* – “what is it?”), which is a widespread practice in everyday interpersonal exchanges within the Bantu people’s culture in general (cf. Mabasso, 2002). The suspect then has to tell his side of the story in a language which is alien to him. The first item highlighted with italics in the fragment *acaba o dia* (the day finishes) is an example of negative transfer from a locally well-known expression in Shangaan, *kuheta siku/masiku*, and it is very likely to be uttered by persons with very low level of proficiency in Portuguese. Negative transfers as in the above fragment occur very often in Mozambican Portuguese as a direct consequence of the contact between the official language and the Bantu languages, and of a poor command of the contrastive aspects emerging from both codes.

The study by Lopes, Siteo and Nhamuende (2013) is probably one of the most important works on typical Mozambican Portuguese indicators of language change – such as, for instance, words, phrases, idiomatic expressions, etc. – the so-called *Moçambicanismos* (Mozambicanisms). In Table 2.1, there are examples of these types of expression sampled from the data collected in Maputo police stations:

TABLE 2.1 Examples of Moçambicanismos in the data

No.	Linguistic fragment (with context of use)	English gloss	Type of transfer from the mother tongue
1	(...) Sabe onde você vendeu? Ele ... “está aí no Mercado de Estrela Vermelha”. Então prontos, saímos, viemos aqui na esquadra para <i>queixar o problema</i> .	(...) Do you know where you sold it [the headlight]? Then we left and came to the police station to <i>complain about the problem</i> [i.e. to file the case].	Syntactic negative transfer from the Shangaan expression <i>kumangala mhaka</i> [lit.: to complain about the problem].
2	Eh pá, a vossa mulher esteve cá em casa, mas eh pá, <i>encontrou com problemas</i> , assim, assim, explicar a família do marido porque o marido está na África do Sul.	Your wife was here at home, but she <i>met problems</i> [i.e. came across some trouble] of this and that sort. You should explain that to the family of her husband because he is in South Africa.	Syntactic transfer from the Shangaan expression <i>kukumana ni timhaka</i> [lit.: to meet the problems].
3	<i>Amanheceu aqui 7 horas</i> , quando eu ia chegar, saí de novo para casa dele, hoje.	<i>He spent the dawn here until 7 o'clock</i> [i.e. he spent the night here until 7 o'clock] and when I was about to arrive, I left to his house today.	Syntactic transfer from the Shangaan verb <i>kuxisa</i> [lit.: to make the dawn come]
4	Meu marido me mandou-me ir comprar <i>carvão</i> , quando eu ia comprar <i>carvão</i> , tive com essa senhora.	My husband asked me to buy <i>cooking coal</i> [which is <i>carvão</i> in standard Portuguese] and when I went to buy <i>cooking coal</i> I met this lady.	Phonological transfer from Shangaan which is a language of the word form CVCV (consonant-vowel-consonant-vowel).

It is important to note that despite the fact that, on a few occasions, suspects or witnesses adopting the above features are more or less likely to be understood by their police counterparts, the use of these features can be strongly linked to poor education and therefore proneness to commit certain criminal offences (see also Mabasso, 2010). This is because, as mentioned earlier, poor proficiency in Portuguese is connected to lack of job opportunities and poverty, and therefore to a need in some cases to commit robberies to survive. In the particular case of phonological features such as in segment 4 in Table 2.1, and despite the impact of suprasegmentally uttered segments not particularly dealt

with here, the rise of voice tone by the suspect or even the complainant/plaintiff can be problematic. Police officers tend to be less tolerant and eventually more suspicious towards participants whose voice tone does not lie within the standards established for the so-called *Português afinado* (“pure” Portuguese). The impact of the use of this feature, which has already been discussed elsewhere by a few sociolinguists (Firmino, 1998), is somewhat peculiar among speakers of Mozambican Portuguese.

Passive forms and language contact

Returning to the earlier extract from the petrol pump case, it is useful to consider the second fragment: *a outra ele foi dado mil e quinhentos* (for the other he was given a million and a half meticals). What turns the whole formulation infelicitous, however, is unrelated to the discursive role of the items themselves, but rather lies in the linguistic properties of the verb “to give” in Standard European Portuguese (SEP), which also serves as a norm for Mozambique. Despite the fact that such constructions might not create communicative problems as such, given that, overall, most speakers of Mozambican Portuguese would understand the message concerned, such constructions would reveal a poor command of the official language. As a result, when used in formal settings in general (and particularly in a police interview), such constructions are likely to increase others’ suspicion of the suspect. These kinds of verbs (other examples could be “to die”, “to beat”, “to be born”, etc.) are the so-called “intransitive” verbs in Portuguese and, by their very nature, cannot be used to construct passive sentences. Of course, this might sound unusual for a speaker of passive languages, such as English, in which the passive form is used to place any given item at a focal position in the sentence (Lopes, 2004).

Again, the grammar of the mother tongue, in this case, Shangaan, plays a major role in the formation of the above passive, as these languages use the passive as one of their basic strategies. Regardless of this, a person with a reasonably high proficiency in Portuguese would rather use an active sentence. The following could be one such possible example:

TABLE 2.2 Example of typical Standard Portuguese usage

	Discursive fragment	Proposed translation into English	Relative discursive appropriateness
1	Em relação à segunda bomba, paguei-lhe mil e quinhentos.	Regarding the second pump, I paid him one thousand and five hundreds.	This would be infelicitous in its English version, in the sense that a passive sentence would be more appropriate for a native speaker but would, however, be acceptable in SEP.

In the following table are further examples of infelicitous passive forms uttered by suspects.

TABLE 2.3 Examples of infelicitous passive use of Portuguese in the data

	Discursive fragment	Proposed translation into English	Reason for discursive infelicity
1	É uma coisa clara. <i>Ela foi batida</i> , não é uma coisa para esconder!	One thing is clear. <i>She was beaten</i> , there's nothing to hide about that.	Linguistic properties of verb "to beat", which is intransitive in SEP but transitive in most Bantu languages such as Shangaan.
2	Eu queria para ele <i>ser dado chapada também</i> , e ser fechado também na cadeia, para não continuar a fazer [a bater nas mulheres].	I wanted him also <i>to be given a slap</i> and kept in custody so that he stops doing that [beating women].	Linguistic properties of verb "to give", which is intransitive in SEP but transitive in most Bantu languages such as Shangaan.
3	Eu não há-de fugir para lado nenhum! Eu sou daqui e <i>fui nascido aqui!</i> Fugir para quê?	I won't flee to anywhere! I'm from here and <i>I was born here!</i> Why flee?	Linguistic properties of verb "to be born", which is intransitive in SEP but transitive in most Bantu languages such as Shangaan.

These examples further illustrate how the use of non-standard European Portuguese passives by non-native speakers of Mozambican Portuguese creates a high sense of defiance towards the police by suspects. This effect is heightened when the non-standard utterances are produced with a raised pitch and volume, as was the case here. As a consequence, in most cases where this occurs, suspects are more likely to be found guilty if their evidence is forwarded to a court of law, or adversely affected by a police decision, if the case is dealt with directly by the officer. The above extracts are representative of a few of the numerous cases which are ultimately resolved by the police at a police station. The use of non-standard Portuguese constructions, alongside other aspects, such as physical appearance, skin colour, social status and features associated with poverty, are viewed as key indicators for the police to ascertain whether the case should be dealt with "seriously" (by the court) or at the police level.

Here we observe that low Portuguese language proficiency is a marker of poverty and poor education for these suspects. Moreover, it is important to note that this combination of easily identifiable vulnerability and poor administrative oversight can be a gateway for corruption (see also Mabasso, 2010).

Code-switching

Code-switching is another second language communicative strategy that was used by most suspects who attended Mozambican police stations. The same circumstances which apply to the adoption of negative transfer from the mother tongue would also apply here. Speakers, in their attempt to produce utterances in Portuguese, tend to switch from the official language to their mother tongues. Code-switching is, however, culture switching in the sense that, whenever one chooses to use one code or another, culture also contributes to the interpretation of meaning (Lopes, 2004). The following fragments have been taken from the same case of petrol pump fraud described earlier:

Extract 2: Police interview with suspect of petrol pump fraud at a local police station in Maputo, Mozambique.

No.	Speaker	Utterance	English gloss
13	Police:	Olha Sr., o Sr. vai ter que me desculpar, mas como primeiro passo, primeiro passo, vão lá fazer isso. Levam a bomba à sua oficina, na sua casa, vão fazer esta experimentação.	Listen sir, I apologise but, as a first step, first step, go and do that. Take the pump to your workshop, to your house and test it.
14	Plaintiff:	vamos, vamos, eu não...	let's go, let's go, I don't ...
15	Suspect:	<i>ahi para unichovachova mina!</i>	<i>I don't want you to push me!</i> [Vernacular: Don't push me!]

Extract 3: Police interview with suspect of petrol pump fraud at a local police station in Maputo, Mozambique.

No.	Speaker	Utterance	English gloss
16	Police:	entendem bem, podem ir. Então como ele anda a desmentir? Mas melhor ... é ... não, podemos ir! Podemos ir é porque eu quero acabar com esta máfia. <i>Eh pa, já alava kupeta</i>	you must understand it well, you may go. Then how come he is denying? You'd better ... no, we can go now! We should go because I want to
17	Suspect:	<i>svitoriya sva mafiya</i> . Aquilo é um camião, está parado há décadas...	<i>halt this mafia. Huff, [switches to vernacular] now he wants to tell stories of mafia.</i> That truck has been faulty for decades ...

The code-switching exemplified in these extracts can, of course, render the suspect or witness's message partly or completely incomprehensible to a police interviewer, depending on the interviewer's own linguistic background. Sometimes the police interviewer might speak the same local language as the suspect but, given the level of linguistic diversity in Maputo and in Mozambique more generally, there is no guarantee that this will be the case. Even if the same local language is shared by all parties, their levels of competence in that language might be significantly different. Strikingly, but not

surprisingly, there are also police officers who, despite fluently speaking the suspect's local language, would pretend not to understand it when other interlocutors code-switch into it (see also Mabasso, 2010).

Again, suspicion is very likely to fall upon those suspects (and witnesses) who adopt this linguistic strategy; and the case represented in these extracts was, indeed, not forwarded to court. It is difficult to show a causal relationship here, but the lack of Portuguese proficiency evident in both the suspect and the complainant's speech could allow corrupt police officers to take advantage of the situation by accepting a bribe. It should be noted that a second country study on corruption, conducted by the Centre for Public Integrity (CIP) and published in a newsletter, has indicated the police as one of the most corrupt institutions in Mozambique.⁹

Lopes (2004:123), in his book, *The Battle of the Languages*, points out that, in multilingual and multicultural communities, speakers tend to alternate the languages according to the necessities of the occasion, following the functions and roles played out in a particular context. On occasion, he says, a speaker will use one code for intimate situations, another for formal contexts, etc. In sum, speakers not only switch in terms of code but also switch in terms of culture. As he later emphasises, "they do not only code-switch but also culture-switch" (Lopes, 2004:123).

Thus, code-switching and, consequently, culture-switching occur, depending upon the situation of interpersonal exchange. In the case of official settings such as police stations and courts in Mozambique, the only language authorised for use is Portuguese. Clearly, this implicitly indicates that the use of languages other than Portuguese is strictly forbidden in Mozambican police stations; by extension, those who breach this "norm" risk being regarded as defiant towards the system and are likely to be kept in custody for further questioning.

It is notable that in Mozambique code-switching as a way to manage the conflict between official and other languages can have negative impacts outside the context of police stations. Ricardo (2012:29) examined the use of Mozambican languages (of Bantu origin) in courtroom hearings in one of the District Judicial Courts that, coincidentally, covered some of the police stations used for this study. Her study found that, in most cases, especially when defendants had low or no command of Portuguese, judges eventually suspended the trial or adjourned it *sine die*. Clearly this is a less than desirable outcome for all concerned.

⁹ CIP Newsletter.2012. Níveis de corrupção permanecem bastante preocupantes. 122_CIP_Newsletter14.pdf (cipmoz.org) [Accessed 20 January 2022].

The following fragment is one such example of the use of two codes in courtroom cross-examination. It involves a Mozambican man who sued his wife for not communicating with him and he decided to move and join another woman in another house.¹⁰

Extract 4: Interaction in a courtroom during a trial in Maputo (from Ricardo, 2012).

Turn No.	Speaker	Utterance	English gloss
1	Judge:	senhora X, não foi a senhora quem negou de continuar a manter relações com o senhor Y?	Mrs X, wasn't it you who refused to keep your relationship with Mr Y?
2	Defendant	não, <i>a timhaka i kuvutisa svaku kasi i mhaka mune, só! Se ahitwanane!</i>	No, the problem is just because I only asked him what the problem was! So, we did not understand each other.
3	Judge:	quando é que surge essa casa, antes ou agora que há problemas entre vocês os dois?	When did this house appear? Was it before or now that you are both in trouble?
4	Defendant:	hi svosvi hingani mapurubulema.	It was now that we're in trouble.
5	Community Judge:	no meio do vosso casamento há filhos?	In your marriage, did you have any children?
6	Defendant:	Nada, <i>anipsvalanga na yena.</i>	No, we don't have children together.

The above fragments demonstrate the dilemma facing the Mozambican judicial system as a consequence of the single official language policy in multilingual Mozambique, on the one hand, and the lack of police station and courtroom interpreters on the other. Despite personally being a speaker of Shangaan, the judge, in attempting to comply with Article 139 of the Civil Process Code, struggles to keep the conversation in Portuguese. However, while the defendant understands the questions in the official language, she prefers to present her side of the story in her mother tongue, the only code she can master with ease. In the police interview data collected from the research field here, code-switching (such as, in this example, from a courtroom) was not observed. However, this example confirms that code-switching is indeed a feature of the justice system in Mozambique. Moreover, the phenomenon was widely reported by justice stakeholders in Maputo in recent field interviews conducted by the authors (Heydon & Mabasso, 2018), where informants reported code-switching in a wide range of justice contexts, including police interviews.

¹⁰ While polygamy is prohibited by the law, it is a widespread practice in Mozambique, mostly in the rural areas.

Two conflicting legal systems in police stations?

The use of the formal written law was introduced in Mozambican society with the arrival of the first Portuguese settlers in the fifteenth century and following the subsequent spread of the written language. By contrast, traditional justice based on oral communication prevailed as the only legal paradigm in use from the time early Bantu communities arrived in the territory until Portuguese colonisation. Indeed, even today, most Mozambicans, particularly in rural areas, rely a great deal on traditional methods of justice based on “common sense” to ensure that order prevails in their communities. In their interactions, the traditional leadership and the “suspects” emphasise narratives as the basic genre to tell their side of the story (see also Mabasso, 2012a).

The linguistic and discursive strategies used by suspects in Mozambican police stations are directly linked to the particular approach to questions and answers that is adopted by police officers when interviewing suspects. This is an approach in which police questions trigger long, narrative-type answers. Here, suspects have to struggle to provide detailed and lengthy answers to the questions in a language which is alien to them. This conversational pattern differs a great deal from that used in, for instance, Western societies (cf. Shuy, 1997), although, notably, it is consistent with “best practice” investigative interviewing, where the interviewee’s narrative account is given primacy in the interview (Heydon, 2012). Another unusual aspect of interviews in Mozambican police stations is the reliance by both suspects and plaintiffs on the support of family members or friends who join them during the interview. In most cases, they behave as if they were witnesses summoned by the police. In summary crimes, for instance, they might pressure the police to release their family member(s), offering character references and arguments in favour of the suspect’s innocence (Mabasso, 2010). This is typical in Customary Law settings where relatives and community members play a critical role in the “verdict” of the case (cf. Gluckman, 1966).

Given that the police officers hold the same cultural values as the suspects, they generally tolerate the presence of the suspects’ relatives and friends and, as a result, these supporters often play a major role in the way the case will be addressed (cf. Elias, 1956; Gluckman, 1966). This would not occur, for instance, in Western societies where the written law is strictly and systematically enforced.

Cases of domestic violence against women¹¹ highlight some of the most problematic consequences of this conflict between law enforcement according to the written legal code, and crime resolution through “common sense”. In these cases, regardless of the

¹¹ Although there are cases of domestic violence perpetrated by women against their husbands in Mozambique, these are rarely reported to police.

degree of the corporal offences committed against the woman, police officers fail to keep the suspect in custody, as the law suggests, because when they attempt to do so, the victims will insist on the release of their husbands on financial and cultural grounds. It seems likely that this is linked to a widespread traditional practice, especially in the south of the country, where prospective husbands have to pay a sort of dowry called “lobolo” (cf. Junod, 1944). This dowry, which could be paid in relatively large sums of cash and/or cattle, turns the wife into a private “property” of the husband; and beating her is sometimes viewed as a demonstration of love and affection. Perversely, in some cases, failure to beat a wife could be viewed as a lack of such love and affection. Therefore, since the wife is the private property of the husband, it would be socially unacceptable for the former to jail the latter. Police officers are aware of this, since they adhere to the same value system as the complainants and suspects (cf. Gibbons, 2001; Linfoot, 2008). The following fragment taken from Mabasso (2010), in which a pregnant woman was beaten by her husband a few miles from a police station, is an example of the way police officers behave when handling cases of domestic violence.

Extract 5: Interview between a police officer and a family violence victim in Maputo, with the offender present.

No.	Speaker	Utterance	English gloss
1	Plaintiff	Eu disse vamos juntos, ele começou a me bater desde lá até agora está me bater desde aqui no cemitério, desde está me bater eu tenho dois filhos com ele ... está me bater desde não estou a mentir, ainda nem lhe dei nem uma chapada, ele esta a me bater, wa nyimba, X! Eu, tua mulher! Está a me bater!	I said let us go together and he started beating me since then; from the cemetery he is beating me and I have two children with him ... he has been beating me, I am serious; I haven't slapped him but he is beating me and I am pregnant, X! I am your wife and you are beating me!

As a response, the police officer, instead of complying with the legal provisions provided for this kind of case, turns himself into a counsellor by appealing to mutual understanding by the couple. The following is the police officer’s intervention on the case:

Extract 6: Interview between a police officer and a family violence victim in Maputo, with the offender present.

No.	Speaker	Utterance	English gloss
2	Police:	Não estamos a discutir aqui mas sim a procura de uma solução. Vocês estão a se exaltar de qualquer maneira ela é sua esposa e ele seu marido. O que acontece é que vocês não sabem brincar, assim que estava sair, explicava de bom modo e você também não havia razão de se empurrar não sei quê! Mas estás a ver alguém que bate alguém em frente à esquadra para dizer que você não tem nada a ver com a polícia ...	We are not arguing here but we are looking for a solution. You are shouting disorderly, she's your wife and he's your husband. What happens is that you do not know how to enjoy yourselves. You should have told your husband in advance that you are leaving and there is no reason for you to push her or do such things. Can you imagine someone who beats another person in front of the police station, as a demonstration of disrespect towards the Police ...

The above fragment demonstrates the delicate role of 'mediator' or 'counsellor' played by police officers in Mozambique. Instead of addressing the case appropriately, especially because a pregnant woman's health is at stake, he attempts to resolve the quarrel in a 'peaceful' way, offering a 'win-win' type of solution. Clearly, this is a tradition-based technique for solving disputes involving couples. When this seems bound to fail, police officers may suggest keeping the suspect in custody for a few hours or days, but this kind of solution is likely to be embarrassing. The following is one such case, as soon as the police decided to arrest the husband.

Extract 7: Interview between a police officer and a family violence victim in Maputo, with the offender present.

No.	Speaker	Utterance	English gloss
3	Plaintiff:	estou a pedir, eu tenho filho pequeno não prende meu marido! Ele não fez nada, eu estava a mentir; não me tocou eu cai sozinha, não me fez nada eu é que cai sozinha é meu marido esse aqui, estou a pedir!	I'm begging you, I have a new-born baby, don't arrest my husband! He didn't do anything, I was lying; he didn't even touch me, I fell down by myself; he didn't do any wrong to me; he is my husband, I'm begging you!

This scene demonstrates clearly why, in cases involving domestic violence, police officers in Mozambique do not hasten to bring an action against suspects who are mostly male and breadwinners of the household. To see how this is relevant to language policy, this analysis needs to be understood in the context of recent activism and legislative reform concerning the legal response to domestic violence in Mozambique.

In 2009, the Mozambican Parliament passed a Bill (Act no. 29/2009) on domestic violence, which implicitly aims at protecting women from being assaulted by men. However, one of the major challenges facing the judiciary is that this legal tool is not appreciated by the vast majority of both victims and potential victims – not even by the few who understand the official language. The main reason for this is the lack of a more effective and comprehensive awareness programme championed by the government with clear steps for implementation. Additionally, the effectiveness of such a programme would urge the policy decision-makers to adopt a more inclusive policy on language that would break the barrier created by the adoption of a sole official language policy and, therefore, make the means of justice more available to more people. The above case is a clear example of ignorance of law by the victim.

An initiative towards addressing the problem of communication in domestic violence reporting in Mozambique has recently been started by the authors (Heydon & Mabasso, 2018); and a central plank of this initiative, as informed by extensive research and stakeholder consultation, is a strategy to address a lack of proficiency in Portuguese legal terms among the target population. The low Portuguese language proficiency is inextricably linked to poor understanding of the law, and a more inclusive language policy would have considerable impact on many Mozambicans' access to justice.

In his recent study and line with the above, Mabasso (2021; 2019) also problematised the impact of the current language policy in the justice system, whereby speakers of languages other than Portuguese are mostly excluded in forensic settings. He also called, among other aspects, for the need to adopt a Constitutional provision on language that protects people with little or no proficiency in the official language when they come before a police station or a court of law (Mabasso, 2021), such is the case of countries like Ghana, as Ansah & Darko (2019) put it.

Concluding recommendations for practice and policy

For suspects and witnesses in Mozambican police stations, the use of linguistic and discursive communication strategies that hinder the dispensation of justice is a direct consequence of the government's refusal to adopt a more inclusive policy on language. Such a policy would allow speakers of languages other than Portuguese to defend

themselves in a language they know best, regardless of their financial means, and to access their rights more equitably. For this change to be realised, full-time qualified police and courtroom interpreters would have to be hired and made available to assist those who do not speak Portuguese to communicate without putting themselves at risk of self-incrimination.

Additionally, appropriate training for police officers would be needed to maintain a balance between the interpreter's role of facilitating communication and the information gathering requirements of interview techniques (see, for instance, Heydon & Lai, 2013). Of course, the major responsibility lies with the policy makers who have to allocate the necessary financial and human resources to train and employ these new professionals across the country, as is the case in some neighbouring countries like South Africa and Tanzania. This would prevent people from either struggling with the grammar of their mother tongue in their attempt to speak Portuguese, or code-switching between Portuguese and their Bantu language, which is deeply frustrating for police officers and magistrates, and invokes an adverse assessment by decision-makers.

This study has demonstrated that the use of both code-switching and negative transfer from the mother tongue into Portuguese by suspects is problematic, as demonstrated by the systematic inconsistencies produced in the speech of suspects and witnesses being interviewed by the police in a language they do not speak fluently. The potential for miscarriage of justice is all the greater in the Mozambican system because no electronic recording is made of interviews, with the only record of an interview being a short summary written by the investigating police officer. Clearly this is unlikely to be an accurate rendering of the suspect's version of events, since the suspects, in many cases, lack the proficiency required to properly process the kinds of complex written documents involved; and they cannot therefore challenge what has been recorded as their statement in the matter.

As a result of the language barrier that exists for many Mozambicans accused of a criminal offence, it is clear that good mastery of Portuguese is not only linked to education and, therefore, a pathway to the employment market, but sadly, it determines the likelihood of a citizen's access to justice. In Mozambican police stations, when two suspects with different levels of proficiency in the official language are questioned, the likelihood is that the one with higher proficiency in Portuguese will be viewed more favourably, even by a court of law.

Among other things, this study finds that, in a country where silence is commonly viewed as consent, it is critical that the suspect's rights are adequately articulated in law and protected (cf. Heydon, 2011). Therefore, this study adds further weight to international calls for the use of comprehensible explanations to suspects of their rights

and obligations in the setting of police interviews.¹² It is recommended here that a version of the US so-called “Miranda rights”¹³ be adopted and used as a mandatory police process in the Mozambican judicial system, as in the US, where police officers must communicate a suspect’s rights by saying the five warnings before questioning suspects, to assist them in accessing their right to silence and their right to have a lawyer. When the guidelines for communicating rights to non-native speakers are observed, this helps to ensure a fair and equitable justice process. Likewise, the use of videotape recordings and verbatim transcripts of police interviews are crucial in enforcing the rule of law.

As far as the legal systems themselves are concerned, the use of linguistic and discursive strategies by suspects are a consequence of the type of answers triggered by the police questions, as these require elaboration over a sequence of events – including events that are irrelevant to the case concerned but are part of a story telling norm among Mozambicans. Such events, as pointed out earlier, are described in a language which is alien to most of the suspects and witnesses. Additionally, the use of techniques for dispute resolution based on a traditional value system calls for the adoption of a kind of a joint legal system in which aspects of the widespread customary law are clearly incorporated and safeguarded in the law. This would guide police officers on how to handle certain types of summary crimes, such as domestic violence and other similar crimes, as well as in preventing corruption arising from the use of flexible and sometimes inconsistent “judgement” methods.

The language policy problem in Mozambique that gives rise to the use of communicative strategies in police stations, on the one hand, and the random use of two conflicting legal systems, on the other, calls for a more consolidated role and relevance of the forensic linguistics discipline in the country’s judicial system. However, a successful mid-term or long-term materialisation of the measures suggested above will entirely depend upon the political will of the ruling government.

Finally, the provisions on language provided in the above Article 102 of the Revised Penal Procedural Code need to be enshrined in the country’s Constitution to ensure its effective implementation and hence assure people’s rights and language justice.

¹² See the recent publication concerning the communication of rights in a police interview to suspects who do not speak English as a first language. Communication of Rights Group. 2015. *Guidelines for communicating rights to non-native speakers of English in Australia, England and Wales, and the USA*. <https://bit.ly/3ubUhwk> [Accessed 11 April 2016].

¹³ Miranda Warning.Org: Become Aware of Your Rights. <http://www.mirandawarning.org/> [Accessed 20 March 2022].

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Appendix to Chapter 2

República de Moçambique: Constituição da República (2004)

Artigo 9
(Línguas Nacionais)

O Estado valoriza as línguas nacionais como património cultural e educacional e promove o desenvolvimento e utilização crescente como línguas veiculares da nossa identidade. (Constituição da República, 2004:7)

Artigo 10
(Língua Oficial)

Na República de Moçambique a língua portuguesa é a língua oficial. (Constituição da República, 2004:7)

Artigo 102
(Língua dos actos e nomeação de intérprete)

1. Nos actos processuais, tanto escritos como orais, utiliza-se a língua oficial portuguesa, sob pena de nulidade.
2. Quando tiver de intervir no processo pessoa que não conhecer ou dominar a língua de comunicação, é nomeado, sem encargo para ela, intérprete idóneo, ainda que a entidade que preside ao acto ou qualquer ou qualquer dos participantes processuais conheçam a língua por aquela utilizada.
3. É igualmente nomeado intérprete quando se tornar necessário traduzir documentos em língua não oficial e desacompanhados de tradução autenticada.
4. Ao desempenho da função de intérprete é correspondentemente aplicável o disposto nos artigos 187 e 197.

Artigo 139
(Língua a empregar nos actos)

1. Nos actos judiciais usa-se a língua portuguesa.
2. Aqueles que hajam de ser ouvidos podem, no entanto, exprimir-se em língua diferente, se não conhecem a língua portuguesa, devendo nomear-se um intérprete, quando seja necessário, para, sob juramento de fidelidade, estabelecer a comunicação. (*)

Anotação

* Consagra-se a necessidade do intérprete não só quando se está perante estrangeiros, mas mesmo quando se trate de nacionais que não falem a língua portuguesa. (Issá et al. 2010:89)

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