

Original Paper

Linguistic Ambiguity in the Language of Law: A Study of Selected Articles from Transitional Civil Code of Eritrea

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Abstract

This paper is a detailed analysis of ambiguities in the legal code language, of Transitional Civil Code of Eritrea (herein after the TCCE). It begins with general definitions of ambiguity in language and in language of the law. Various examples and case studies is used to explain how the language makes the interpretation of law ambiguous. The paper details the necessity to remove such ambiguities, to avoid wrong decisions in courts. Finally, the paper talks about the difficulties faced by the legal community. Owing to the vastness of the study, the research paper is restricted to the legal and linguistic aspects of the TCCE. Many courts have revised the legal codes by professional linguists. Despite many legal dictionaries the problem is intact. Legal dictionaries are subjected to criticism as it offers little information. Traditionally, legal dictionaries on the market are the products of a lexicographical approach to legal terminology listing different meanings of a word and proposing possible equivalents in other languages. Therefore, this research paper, presents the case of the TCCE and findings ambiguity in legal language and its troubling effect on the courts and the public life.

Keywords

Ambiguity, Legal language, Translation, Civil code

1. Introduction

This research paper is about the language of law and its problems in interpretations due to ambiguity. This research paper, assess the Transitional Civil Code of Eritrea (herein after the TCCE). TCCE is a product of former colonizers, as originally been drafted in foreign language. Eritrea was colonized by Italy, Dutch and France, Britain and Ethiopia for a considerable time; hence, its civil code was

originally drafted in other languages. Later, it was translated to English and Amharic consequently, during translation, certain meaning was lost, leading to ambiguity. The introductory part is dedicated to ‘ambiguity of language’ with examples. The Second chapter discusses the problems of ambiguity in translation.

Ambiguity means vagueness or uncertainty of meaning, the possibility of interpreting an expression in two or more distinct ways. In statutory interpretation, ambiguity is to indicate the doubt, a judge must ascertain before his or her verdict can apply a secondary meaning. In ordinary language, it is often confined to situations in which the same word is applicable for distinct meanings.

Clarifying example:

If an artist-model agreement states, “The artist shall paint the model nude,” is it the artist or the model that should appear sans clothing? Is an example of ambiguity; here, contract language can be interpreted in more than one way. Some ambiguities are semantic - a word has multiple meanings - but most are the result of misuse or improper placement of words, making the language confusing or inconsistent and in some cases. For example, one employment contract states that the employee “must wear the uniform in the employee locker.” (Claustrophobic applicants need not apply.)

Another level of ambiguity syntactic. In English, this kind of ambiguity is either due to the order of the words in a sentence or by grammatical properties. Words occur in a particular order and grammatical relationships are established by those orderings. There is the scope for syntactic ambiguity whenever a given order of words is allowed for more than one grammatical relationship. This type of ambiguity is referred by linguists as “scope of modification”. Notice the scope of the word skinny in the sentence: “the skinny general’s daughter was the belle of the ball.” Who is skinny? The general or his daughter? The adjective skinny potentially can modify either noun. Structural ambiguity frequently results due to the placement of a prepositional phrase. Consider the sentence; “John asked Bill to leave on Wednesday.” Did John do the asking on Wednesday, or was Bill to leave on that day? Here the scope of the adverbial modifier ‘on Wednesday’ can be either the main clause or else the contained infinitival clause. Only if the prepositional phrase were to be moved to the front of the sentence, there would be no ambiguity: “on Wednesday, John asked Bill to leave.” Here the scope of the adverbial modifier can be only the main clause (i.e., modifying John’s asking). Similarly, for the sentence: “the general’s skinny daughter was the belle of the ball”, the placement of the adjective skinny before the noun makes it refer unambiguously to the daughter (Note 1).

Consider a contract between a lawyer and a client that provides for payment of the attorney’s out-of-pocket expenses. The clause states that: “These [out-of-pocket] expenses include court reporting services, expert witness fees, and reasonable travel expenses, if any, fees paid to trial witnesses and the cost to create demonstrative trial exhibits.” In this case, the client argued that the word “include” was a term of limitation that should be interpreted as “include” only. Therefore, he should not have to pay for anything that was not on the list, such as photocopies and online research. The lawyer argued that

“include” was a term of expansion, used to preface a few common examples. In other words, the client had to pay for all reasonable out-of-pocket expenses, whether or not they were on the list (Note 2).

The court agreed that both interpretations were reasonable but concluded that as a matter of public policy-and perhaps, poetic justice-ambiguities in attorney fee agreements should be construed against the attorney, who after all wrote the agreement. The client did not have to pay the extra fees (Note 3).

Lexical ambiguity is another common type. It potentially occurs whenever a word has more than one objective or dictionary meaning. The ambiguity is potential because it is only in certain contexts that more than one of the meanings may be possible. For example, the word ‘bank’ can refer to a financial institution or the edge of a river or stream. The sentence, “I will meet you at the bank at three o’clock”, written or uttered in isolation, is ambiguous between the two meanings. Yet, most of the time, we are unaware of any ambiguity, and in fact, we find none because other linguistic features from elsewhere in the discourse, or even nonlinguistic clues, render only one of the readings possible. Thus, if someone had said, “I will meet you at the bank because I have to go there to cash a check”, the meaning to be attributed to the word bank is quite unambiguous.

1.1 The Codes: Transitional and New Drafts

The classical and oriental understanding of Eritrean legal history begins with western colonization. Though, customary laws, traditional dispute settlement mechanisms and the effect of customary law on the Eritrean society has not been studied well; Eritrean legal history can be traced to a time before western colonization. For instance, historical facts show that the laws of Adkeme Melgae and Logo Chewa dates back to the fifteenth century.

Western influence in Eritrean legal history begins with the Italian colonization. Lidia Favali and Roy Pateman categorized this history into five periods. These are; the civil law tradition based Italian period, the British Administration Era which incorporated certain common law concepts, the Federation years, the Annexation era of Ethiopia and lastly the post-independence era. All these phases of legal history had accepted customary laws as long as it does not contradict with state law. Moreover, with the exception of codification of major codes during the 1960s all the five periods have seen minor or no changes in the legal system.

On eleventh of May 2015, the government of Eritrea published new draft civil, penal, civil procedure, and penal procedure codes. Though the drafting process of these laws took several years, accompanied as it was by profound research and examination of relevant customary laws and universally recognized legal principles and norm, yet ambiguity of language and the misunderstandings of the legal codes in several cases is persistent. The drafting process involved professional legal experts and extensive consultations of governing authorities.

The main reason for this problem in the Eritrean legal code is its translation in local languages. Until 2015, the Eritrean legal constitution has used the legal codes published during its colonization by Ethiopia. However, while adapting its own legal code and new laws, the government of Eritrea started drafting major codes in 1997 under the auspices of the ministry of justice. The drafting committee was

composed of local and expatriate experts. Until recent, major codes been prepared but never promulgated. The main causes for the delay of promulgation of these laws is the lack of resources to translate the codes into native languages.

1.2 The New Draft Civil code of Eritrea

The TCCE is persistent governing law for the past 25 years and still in effect. Nevertheless, the Ministry of Justice has recently released a finalized version of new draft Eritrean Civil Code of 2015 along with other three codes. In 2015, the Government of Eritrea, through the Ministry of Justice published four new, original codes. These codes are the draft Eritrean Civil Code, the draft Eritrean Penal Code, the draft Eritrean Civil Procedure Code, and the draft Eritrean Criminal Procedure Code. The Government has for long planned to renovate Eritrean laws by replacing old codes, inherited by colonizers. However, the new codes are not in effect. It is planned to oust the older codes and replace them with the new one. For the time being, the time of transition is unknown to the public. The issue of language and law resurfaces again, as the Eritrean Civil Code (ECE) is drafted in three languages: first in English and then translated to Tigrinya and Arabic. The issue of authoritative text is still unknown.

1.3 Research Problems

How do courts interpret ambiguity? What other things connected with ambiguity? What are the possible solutions to avoid misunderstandings? The main objective of this study is to analyze the TCCE: studying different kinds of ambiguities in the legal language of Eritrean code. Creating intelligibility among the part takers of the legal code

2. Literature Review

2.1 Language and the Civil Code

The Eritrean codes, when drafted originally as Ethiopian codes, took foreign languages. The civil code was originally drafted in French, translated into English and Amharic respectively. Thus, the civil code is expressed through three different languages. In the act of translation certain part certainly lost, its clarity diminished, hence ambiguity enhanced. During the official promulgation of these codes in the 60's, the Imperial Ethiopian Government decided that Amharic, the third language in the translation chain, would be the authoritative text- meaning any kind of ambiguity between the Amharic, French and English versions would be solved as interpreted according to the Amharic version.

However, Eritrea attained its independence in 1991 and the previous colonial legal regime changed. One of the main changes introduced was the revision of the existing codes by EPLF through amendments and repealing certain provisions. The revised version of the Ethiopian Civil Code was officially promulgated to the Eritrean society under Proclamation of 2/1991 (the second proclamation in Eritrean legal history). The addition of Tigrinya intensified the effect of varying languages, Tigrinya was used in this proclamation. Thus, TCCE has been the product of four languages. After independence, the authoritative privilege of Amharic was certainly relinquished in Eritrea. However, 'till now there is no guide in the Eritrean law as to which version is the authoritative one.

Thus, these four languages had played their role as the law's mouthpiece. The original language the code 'French Language' quickly lost because of the rarity of legal professionals and practitioners in Eritrea and Ethiopia. English thrived successfully in the realm of tertiary education both before and after independence. Obviously, Amharic was predominant in Ethiopia. It was the language of the people, used by the people, judges and practitioners in the courthouse. However, it is noteworthy that before independence, the journal of law was written both in Amharic and in English. Tigrinya found late entry; it was the language of the proclamation that amended the code. However, Tigrinya replaced Amharic to be the language of communication at the courthouse. As of now, judgment of cases, notices, contracts, applications, motions, memos and other law documents are written predominantly in Tigrinya.

As mentioned above TCCE underwent the act of translation.

Translation is the subsequent production of an equivalent text that communicates the same message as in other language. The text to be translated is called the source text, and the language that it is to be translated into is called the target language; the final product is sometimes called the target text. Firstly, it is based on text-translation. Secondly, the definition involves two languages. Replacing a text by another text in the same language is often termed rewording or rephrasing. Translation is always between two languages. A text may appear in several languages but basically every time the process of translation is practiced; it takes place between two languages only (Note 4).

In addition, translation is defined as an intellectual and intuitive operation, which requires the translator to decode the meaning before re-encoding it in another form. It depends as much on translator understanding and judgment of the source language text as in the target language text. Translation produces a result, a new text, which should be able to stand independently of the source text that generated it, that translation as an excise (Note 5).

Equivalence is essential for translation. For a text to be considered a translation of another it must be equivalent in one way or another to the original; otherwise, it not qualifies as translated text. The most common, but not the only, basis for equivalence is meaning. The translated text is said to be equivalent to the source text in meaning. This implies that the proposition that they express is it same (Note 6).

2.2 Ambiguity in Language

The meaning of the word 'Ambiguous' as given in the 'Merriam Webster Online Edition' is – "Doubtful or uncertain due to indistinctness or something which can be interpreted in various ways" (Note 7). Coming to the legal aspect of the world, Black's law dictionary defines ambiguity as – "Doubtfulness, doubleness of meaning; indistinctness or uncertainty of meaning of an expression used in a written instrument (Note 8). Whereas Lectric law library says that – "when an expression has been used in an instrument of writing which may be understood in more than one sense, it is said that there is an ambiguity (Note 9). Thus, Ambiguous language can be defined as a language that is difficult to understand mostly because of its doubtful and uncertain nature (Note 10).

Ambiguity may arise due to various reasons. It may arise because of lack of understanding between the writer and the reader. What the reader was able to interpret from a certain text, may not be the same as what the writer wanted to convey through it. The major reason for the existence of ambiguity in the English language is as stated by the oxford dictionary – “the existence of as many as 23 different meanings on an average for the 500 most used words in the language” (Note 11). In addition, language can sometimes become ambiguous due to the use of homonyms, i.e., words that have same spelling and pronunciation but different meanings. For instance, the statement – “I don’t like flying planes” resembles an ambiguous statement. The various reasons being –

- a) The lack of any context whatsoever
- b) No specific meaning derivable
- c) The use of ‘planes’, which can either refer to an airplane or a plane surface.

Ambiguity is not a specific figurative device that may be chosen at will for decoration; it is not, says Empson, ‘a thing to be attempted’. Rather, it is a natural characteristic of language which becomes heightened and significant in verse. The link between content and form is indirect and arbitrary; hence syntactic ‘accidents may occur, syntax realizing two or more meanings in the same signal. Linguists say that one ‘surface structure’ may conceal two or more ‘deep structures.’ Ambiguity is common in ordinary language, but we do not notice it because context usually selects just one of the alternative meanings.

2.3 Causes of Ambiguity in Relation to Translation

There are plenty of things that leads or causes "Ambiguity" in a sentence, in word or in others here are some of them:

- (1) Modern linguists tend to believe that English ambiguity is embodied in four aspects in terms of linguistics. i.e., phonology, lexicology, syntax and parts of speech (Note 12).
- (2) Phonological Factor.

It is one of the phonological factors, the transition from one sound to another in speech. The glide of a phoneme to another during speech through which different combinations are produced, lead to different meanings. For example, my younger brother had a / greidei / the sentence can be heard in two different ways (a) my younger brother had a grade A. (b) My younger brother had a gray day. During the communication, although the ambiguity caused by different junctures is not easily eliminated, proper stop can be used to make clear what the speaker wants to express (Note 13).

Lexical Factors

Word having more than one meaning in the sentence, tends to be ambiguous. It is also called polysemy, which may exist in nouns, verbs, adjectives etc., for example, I went to the bank:

Land sloping up alongside of a river or canal, or Establishment for keeping money.

This sentence above has more than one meaning. To figure out the exact meanings of such words, it demands language-learners’ careful consideration of specific context. Especially, when translating a text of any kind, (legal text in this case), it requires more attention on the purpose of the communicational situation (Note 14).

Parts of Speech

If a word can be used as different parts of speech, we always call it a multifunctional word. The sentence containing such words easily presents different deeper structures, then causing different comprehensions, for example; the doctor saw the Indian dance.

(i) adj. “Indian” modifies “dance”

(ii) n. “Indian” refers to “a specific person” In English, present or past participles are always confused with adjectives, verbs, which then cause ambiguity.

Syntactic Factor

Sentences are made up of phrases and phrases are made up of words. Thus, there exists a kind of syntactic relation, i.e., a hierarchical relation. The way the words are arranged hierarchically has an important role in determining the meaning. It is also because of this ambiguity is produced. IC Analysis (Immediate Constituent Analysis) proposed by Leonard Bloomfield can be used to reveal the hierarchical structure of a sentence. Take the following for instance: John saw the man on the mountain with a telescope. Who has the telescope, the man on the mountain or the mountain (Note 15)?

Types of Ambiguity

A word, phrase, or sentence is ambiguous if it has more than one meaning. For a particular language, this information is provided by a grammar, which systematically pairs forms with meanings, ambiguous forms with more than one meaning. There are two types of ambiguity, lexical and structural (Note 16).

(1) Lexical ambiguity: is by far the more common. Everyday examples include nouns like chip, pen and suit, verbs like call, draw and run, and adjectives like deep, dry and hard. There are various tests for ambiguity.

(2) Structural ambiguity: occurs when a phrase or sentence has more than one underlying structure, such as the sentences, ‘The girl hit the boy with a book’ and ‘Visiting relatives can be boring’. This ambiguity is said to be structural because such a phrase can be represented in two structurally different ways. It is not always clear when we have a case of structural ambiguity. Consider, for example, the indirect sentence, ‘Perot knows a richer man than Trump.’ It has two meanings that Perot knows a man who is richer than Trump and that Perot knows man who is richer than any man Trump knows, and is therefore ambiguous (Note 17).

What evidence is considered?

Courts differ as to what types of evidence they will consider when resolving ambiguities in a contract. For many years, courts looked only to the “four corners” of the document and to the “plain meaning” of its words. In a 1968 case, however, the California Supreme Court broke with the past and considered evidence outside the contract in the interpretation of its meaning.

EXAMPLE: A contractor agreed to indemnify a public utility for any harm caused during the replacement of a turbine cover. (“Indemnify” means that the contractor would compensate the utility for damages.) When the contractor caused \$25,000 in damage, the public utility prosecuted to get the

money back under the indemnity clause. The contractor argued that the indemnity clause was meant to insure only against harm to third parties, not to the utility itself. The words “third-party” did not appear in the contract, but other evidence of trade practices by the parties proved that the contractor’s interpretation was correct. The California Supreme ruled in favor of the contractor stating that evidence outside a contract (extrinsic evidence) should be admitted as long as it is offered to prove a meaning to which the language of the writing is “reasonably susceptible.”

In summary, though courts sometimes differ, external evidence—for example, previous contracts between the parties or previous courses of action between the parties—can generally be used to clarify or explain an ambiguity, as long as that evidence does not vary or contradict with the terms of the contract (Note 18).

Two other things to be considered about ambiguity.

Vague language is not necessarily ambiguous.

A contract provision is ambiguous if it is capable of having two or more meanings (Note 19). Ambiguity is to be distinguished from vagueness, it is imprecision rather than alternative meanings whereas vagueness is a standard drafting tool, ambiguity will generally go unnoticed, at least until sometime after signing. Nevertheless, ambiguity tends to be destructive (Note 20). Common contract terms – for example, ‘reasonable,’ ‘satisfactory,’ and ‘immediately’ -- are vague but not necessarily ambiguous within the context of an agreement.

Plain language can avoid many ambiguities.

Legal language has unusual word order (“as in this deed provided”) as well as obscure language (“therein referenced”). In addition, there is paranoia among lawyers that leads to over drafting—for example, saying, “shall not now, or in the future” instead of just saying, “Neither now nor in the future.” The solution is unambiguous: Use plain language whenever possible.

Sometimes—as in the fee agreement mentioned above—ambiguities are interpreted against the drafter of the contract. In other words, if terms could be reasonably interpreted in different ways, there could likely be a rule, which will be beneficial for the person who did not write the contract. After all, the drafter was responsible for writing the ambiguous language in the first place, and should not be beneficial owing to his/her lack of clarity. Parties that do not want this default rule to be applied can include the following clause (sometimes referred as an “ambiguities clause”) in their contract:

This Agreement and neither party shall be considered the “drafter” for the purpose of any statute, case, or rule of construction that might cause any provision to be construed against the drafter of the Agreement (Note 21).

3. Purpose and Methodology of Study

To study the different kinds of ambiguities in the legal language of Eritrean code. To reduce the misunderstandings. To rerate intelligibility of the legal code and provide comprehensive recommendations.

For data collection both qualitative and quantitative approach is adopted. Qualitative approach is all about exploring issues, understanding phenomena and answering questions. It was used to collect and analyze data regarding the reasons or factors behind the effect of ambiguity in legal codes. The other is quantitative approach. It was used to know the average number of cases and signed contracts that have been categorized under my main investigating term i.e., ambiguity.

3.1 Sampling

“A sample is a smaller number of elements selected from a population, assumed to be representative of that population.” (Note 22) The sampling procedure used is random selection. The researchers took some article as examples for their research and analyzed them along ambiguity. And the articles taken for study are: Art.2427, Art.858, Art.2115, Art.2116, Art.2117.

3.2 Methods of Data Collection

The researcher’s tools or data collection techniques that were employed include interviews and questionnaires.

3.3 Interviews

Interview represents an interaction between three elements: the interviewer, the interviewee and the context of the interview. Thus, the role of the interviewer is a demanding one, as they have to ask questions, record answers and try to keep the interview session interesting and worthwhile for the interviewees (Note 23).

The interviews were conducted at working hours and at the convenient time of the interviewees. It was two or two and half an hour for each interviewee. The researchers interviewed two judges and two lawyers in two months. The interview questions were both in English and Tigrinya. This was done to enable the researchers to analyze the difference between the Tigrinya and English codes carefully and understand ambiguous words or articles in Eritrean civil code. The researchers have used both the structured and semi structured interviews.

3.4 Questionnaire

Judges and lawyers were given questionnaire, enabling interviewees to read it intensively and answer at their convenient time. Feedback was taken after eight days. “Closed questions are more commonly used, not least because they are easier to code for subsequent analysis. A closed question is the one that allows a limited number of options for the respondent to select. Open questions, on the other hand, allow the respondent to answer in as much detail as he or she wishes without any prompting.” (Note 24)

3.5 Validity and Reliability

Two concepts that are extremely useful in judging that are reliability and validity. Reliability refers to the consistency of the information obtained. “Validity refers to the extent to which an instrument gives us the information we want.” (Note 25), “Triangulation is the combination of methodologies in the study of the same phenomenon.” (Note 26) Thus, the research was triangulated with validity and reliability of the study by using interviews and questionnaires.

4. Data Analysis

The analysis and findings of the study based on the interview conducted with Judge Sium Tekle (Judge at the last appellate Court and commercial bench, former judge at high court civil bench, chief drafter of the 2015 draft civil code and adjunct lecturer at the School of Law), Judge Micheal Woldu (judge at the special court, former research fellow at the Ministry of Justice and assistant drafter of 2015 draft codes) and Mr. Amanuel Gidey (attorney and consultant at law).

The following are few of the several cases of ambiguity in the Transitional Civil code of Eritrea, where the meaning of the provisions is difficult to ascertain due to linguistic obscurity. It can be readily shown in each case that clarity of the provision in the linguistic makeup could have alleviated the problem.

Donation: ‘How some is some’?

Under the TCCE, there are several types of contracts, one of which is donation. Donation is found under Article 2427, which provides as follows:

Art. 2427. — Definition.

A donation is a contract whereby a person, the donor, gives some of his property or assumes an obligation with the intention of gratifying another person, the donee (Note 27).

Initially, this provision seems clear, but when one focuses on the phrase ‘some of his property’, it becomes problematic. As a right, any person is entitled to make give away his property through donation to anyone else under a legal contract of donation. However, how much of his property is he allowed to donate is not clearly defined due to the ambiguity of the phrase.

The intention of the law in limiting in the amount of property given is aimed to protect the interests of other person whom the donor has the responsibility of maintaining. This means while a person is free to give his property through donation, he is also obliged to reserve certain amount to persons over whom he has the duty of maintenance. Hence, the law inserts the limiting phrase ‘some of his property’. The problem arises when lawyers debate ‘how some is some’? For instance, if a person donates his house with all its contents, his car and his money in bank to his friend, while leaving only 500,000 Nakfa to his four children and wife, does it mean he gave away some of his property? It is clear from the dictionary meaning of the term ‘some’ that it signifies something that is not full. And here we can see that the man in our example left some portion to his children and wife. Nevertheless, the interpretation of this article is divided into two mutually opposing views. The first view is that the exaggerated proportion between donation and reserve imply the man gave his property full in violation of the law. Their view is in terms of the law’s intention i.e., protection of the persons to whom the donor is responsible, the proportion of the donation given and reserves left suggests otherwise. The nominal reserve, even if it constitutes a part, is not acceptable.

The second view holds that even if the proportion suggests an exaggeration, as long as the man has left some of his property, no matter how small, to his family is enough for the making of donation. Even though the donation holds 99% out of 100%, the 1% left is accepted by the second view.

Hence, the problem here originated from the ambiguous wording of ‘some’ and our courts today face

this dilemma every time donations of such nature make their way for trial.

Joint will: Several – two or more than two?

Under Eritrean law, will have a strict personal nature, meaning leaving will or testament is strictly personal to the deceased (Note 28). That is the reason why a person cannot grant to another person the power to make, modify or revoke a will on his behalf (Note 29). In case he does, the will is of no effect. Article 858 further provides that joint wills are prohibited and it provides:

Art. 858. - Prohibition of joint wills,

Where several persons make their will by one and the same instrument, such instrument shall be of no effect.

The problem in this case is whether the term ‘several’ excludes two people or people more than two. For example, if a husband and his wife write a will in the same paper, is this prohibited? The dictionary meaning of the term ‘several’ may be more than one at times, and more than two in other cases. Some argue that it is prohibited because the term ‘several’ signifies more than one (>1) rendering the fact that two people are engaged in the making of the will void. Other argue that ‘several’ means more than two (>2) that the two people in the will do not make it prohibited. For them, only the number three and above make it prohibited. There is an actual case where some of a family’s children contested the validity of the will made jointly by their parents. The particular court which saw the case referred to an Oxford English Dictionary and decided that ‘several’ means above two and upheld the validity of the will.

Injury to wife: One thousand - for all vs. for each?

For the two kinds of injury people may inflict on others in the TCCE i.e., material and moral injury, there are related compensations. Hence, the law defines certain moral injuries and orders that the person who inflict the injury to pay compensation. Inflicting body injury is principally a material damage and if it committed against the wife of someone, it also entails the moral injury to the husband, where the person who committed, the bodily injury is obliged to pay. Article 2115 provides:

Art. 2115. — Injury in a wife.

(1) Fair compensation may be awarded by way of redress to a husband against a person who, by inflicting bodily injury on the wife, renders her companionship less useful or less agreeable to the husband.

(2) The action which the husband may bring on this ground shall be independent of the action for damages which the wife may bring in respect of the injury she has suffered.

The law furthermore provides that some representative should be designated to act as representatives of the family, in case the victim (in our case, the wife) is dead or absent. Moreover, the maximum amount a person can get for moral injury is only one thousand Nakfa.

Art. 2116. — Custom.

(1) In fixing the amount of the fair compensation provided for in the preceding Articles, and in establishing who is qualified to act as representative of the family, the court shall have regard to local usages.

(2) *The court may not disregard such usages unless they are anachronistic or manifestly contrary to reason or morals.*

(3) *The compensation awarded for moral injury may in no case exceed one thousand Nakfa.*

Therefore, the law gives a guideline as how to choose the representative of the family:

Art. 2117. — Representative of the family.

In the absence of any applicable local usage, the following shall alone be considered as qualified to represent the family:

(a) *The victim's husband or wife; or*

(b) *Failing such or where he or she is incapable, the victim's eldest child who is capable under the law; or*

(c) *Failing such or where he or she is incapable, the victim's father; or*

(d) *Failing such or where he is incapable, the victim's mother; or*

(e) *Failing such or where she is incapable, the eldest of the victim's brothers or sisters who is capable under the law.*

Back to the example, let's say: the woman, a mother of six children, has died due to the bodily injury caused by Mr. X. After asking for compensation for the material damage (her death), her family will move to ask for moral injury (the emotional loss they suffered). In that case, her husband can ask separately for the moral injury he suffered and also represent his six children as a representative of his family. In his personal, separate case he can get his compensation. However, as a representative of his six children, the problem arises whether the court will award them compensation as a unit or individually, meaning, whether the compensation, say 1000 Nakfa, is to be divided among the husband and his six children or they all receive 1000 Nakfa each? The third sub article under Article 2116 proves to be ambiguous as it fails to clearly define moral damage not exceeding 1000 Nakfa apply on an individual claim or as a collective measure.

5. Conclusion

Words are the essential tools of the law and the law is the profession of words (Note 30). In the study of law, language has a great importance; cases turn on the meaning that judges ascribe to words, and lawyers must use the right words to effectuate the wishes of their clients. Undeniably, numerous efforts made by lawyers and judges, to keep the legal language free from the shackles of ambiguity but it doesn't suffice. The meanings of the words found in the TCCE, one of the major legal documents in Eritrea, are not always clear and unequivocal. Some of the provisions could be understood in more than one way. These provisions are doubtful, uncertain or sometimes both tend to have various interpretations. However, the law must be unambiguous. Ambiguity in language has caused misunderstandings of law in various cases. Every now and then Eritrean lawyers and judges have been facing this problem with different cases.

6. Recommendation

When ambiguity arises in law, it becomes a serious matter, as it has the possibility of overturning the decisions of the courts rendering justice to be in unfair, unjust and unreasonable. Therefore, a need to remove such ambiguity from the field of the law arises (Note 31).

Like most other human institutions, law is a product and is dependent on language. Therefore, the relation between law and language is important. Language of the law serves a major to pass resolution of the state resolve disputes. Lawyers and judges are preoccupied with linguistic breakdown and not with linguistic success, for theirs is a job in which the breakdown comes to their attention while the success does not.

The TCCE requires linguistic analysis as it is at transition for the new Draft Civil Code of Eritrea, and the new code must avoid frailties of its former counterparts in terms of ambiguity and fix linguistic problems so that the Eritrean legal community will not be troubled. As per the reports of several judges and lawyers through interviews, it is reported that no real attempt been taken to avoid ambiguity in the new draft, particularly in the English draft code. No substantial attempt been taken because of the paucity of investment and given commentaries in the documents of law. Not only this, but the panel discussions have not been taken into preview among the judges and lawyers which could have been helpful to raise the question of ambiguity and its subsequent resolution. Therefore, it is suggested that the government of Eritrea should pay more attention to the field of the law and recommend more investments in it. Finally, and importantly, a collaboration between lawyers and linguists is recommended as legal codes lack professional linguistic overview.

Annex 1: Questionnaire

1. What was the main reason for the translation of the language of law?
2. Why did the drafting process take 24 years?
3. What is the difference and similarity between the new codes and the former?
4. Was a linguistic overview in the translation?
5. Do you have any ambiguous terms and articles in the old codes? If so, can you name some?
6. How do lawyers and judges manage the ambiguity?
7. Is there any attempt to avoid the ambiguity in the law?
8. Can you give us examples of cases that faced ambiguity?

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- Government of Eritrea, Transitional Civil Code of Eritrea, Proclamation 1/1991
 Article 857(1) of the TCCE.
 Article 857(2) of the TCCE.

Interviews conducted

- Judge SiumTekle, judge at the last appellate Court and commercial bench, former judge at high court

civil bench, chief drafter in the 2015 draft civil code and adjunct lecturer at the School of Law (20/04/16 Time 4:00 Pm)

Judge MichealWoldu, judge at the special court, former research fellow at the Ministry of Justice and assistant drafter at 2015 draft codes (29/04/16 Time 04:00 Pm)

Mr. Amanuel Gidey, attorney and consultant at law (15/05/16 / Time 3:00 Pm)

Notes

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Note 2. (GuerrantV.Roth, 334 App.3d 259, 777 N.E 2nd)

Note 3. (Pacific Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co. 69 Cal.2d 33, 69 Cal.Rptr. 561 (Cal.1968)

Note 4. Peter Newmark, (2004), Introduction to Translation.

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Note 19. GARNER, supra note 1, p. 48.

Note 20. ADAMS, supra note 7, p. 115.

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Note 23. Ibid, at 122.

Note 24. Ibid, at 118-119.

Note 25. Wallen, N. and Froenkel, J. Educational Research: A guide to the process. 2nd Ed. (USA Lawrence Erlboun Associates, Inc. 2001) 86

Note 26. Bui, y. How to Write a Master's Thesis (Washington DC: Sage 2009) 185

Note 27. Article 2427 of the TCCE

Note 28. Article 857(1) of the TCCE.

Note 29. Article 857(2) of the TCCE.

Note 30. David Mellinkoff, "The Language of the Law", Little Brown and Co., Boston, 1983.

Note 31. Sanford Schane, "Ambiguity and Misunderstandings in the law," Continuum International Publishing Group, 2006.