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**Opinion piece**

**08 March 2016
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**Taking the right to equality seriously: the duty of the state to provide ‘appropriate’ sign language interpreters**

The news report titled ‘Bail hearing for deaf pupils postponed’, which appeared in Dispatch Live on 7 January 2016, tells us about much more than the tragic death, as a result of multiple stab wounds, of the deputy principal of the Efata School for the Blind and Deaf in Mthatha, Eastern Cape. The report also highlights the age-old communication barriers that deaf people experience in criminal justice systems the world over, and also in South Africa.

It was reported that five of the school’s deaf pupils had been arrested and charged with the murder of the deputy principal and were being held in custody awaiting trial. Putting aside the postponement of the bail hearing due to the fact that the presiding magistrate was on leave, and the implications of this situation for the fundamental right of an accused person to be released from detention if the interests of justice permit, the case raises another serious issue: as part of the rights to equality and a fair trial, defendants have a fundamental right to be tried in a language they understand. If the language that the court ordinarily uses is not the language of the defendant, it is incumbent upon the state to have the language of the court interpreted into the language that the defendant understands. This right is not only enshrined in the South African Constitution (implicitly in section 9, which guarantees the right to equality, and explicitly in section 35(1)(k), which guarantees the right to a fair trial), but is also guaranteed by article 13 of the United Nations Convention on the Rights of Persons with Disabilities, which guarantees the right to effective access to justice. South Africa ratified the Convention in 2007, even before it became operational in 2008.

At the bail hearing, the defendants asked to be provided with a ‘relay sign language interpreter’. The point made on their behalf by Deaf SA Eastern Cape was that the existing arrangement by the state to only provide a single sign language interpreter to serve both the prosecution and the defence did not adequately accommodate the defendants’ communication needs, which constituted a denial of their right to a fair trial. What was needed was an additional interpreter in the form of a relay sign language interpreter in order to serve as a second layer of interpretation in sign language in the particular dialect used in Mthatha, which is the dialect understood by the defendants. The defendants were not questioning the competence of the sign language interpreter appointed by the state. Rather, they were making the important point that more was required in order to accommodate their own particular sign language in the Mthatha dialect. In short, the state had fallen short of effectively providing for their specific communication needs.

It cannot be stressed enough that to ensure the right of deaf persons to a fair trial in the criminal justice system it is crucial for the state to adequately accommodate their communication needs from the moment of arrest and throughout the subsequent proceedings. A ‘one size fits all’ accommodation of communication needs clearly will not do justice as it is apt to be discriminatory. Deaf persons are not a homogeneous group whose communication needs can be assumed to be met by ‘standard’ South African sign language. Meaningful equality calls for an acknowledgement in all sectors of the diversity that exists among deaf persons, not least in the criminal justice system. It requires not a uniform approach but, instead, taking into account the differences among the country’s and, indeed, the world’s many varying sign languages. The lesson that should be learnt from this is that, even within a single country such as South Africa, sign languages are as varied as the linguistic communities that use them to communicate.

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