INTERPRETING THE ADMINISTRATION:

Burkina Faso's courts in translation

DISSERTATION

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As is usual the world over, taking pictures in the courtroom during trials was strictly prohibited. My friend Caro van Leeuwen is a gifted graphic artist and she has contributed drawings based on the text of this PhD thesis and on my verbal elaborations. So the drawings are, by definition – or by necessity, if you wish – themselves an interpretation of how Caro understood my telling of the story. They add visuals to this text. All material is the property of Caro van Leeuwen ; please do not copy or distribute without her explicit consent (©Caro van Leeuwen: caroleeuwen@gmail.com).

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A short word on language use is warranted: All four interpreters I worked with in Bobo are men. I have encountered one woman who used to work as a court interpreter in the 1990s, Bintou. We will get to know her shortly. Since all interpreters today are men, I use the masculine form to describe the work and role of court interpreters. All names in what follows are pseudonyms.

CHAPTER 1: INTRODUCTION

Prologue – A day in court, Part 1

Commercial court, Bobo Dioulasso, Burkina Faso, 8am. A Monday morning. It is dusty and hot and the ceiling fans seem to suffer from old age, they squeak rhythmically. We had arrived just in time, the judge and I, for him to pull the black robe over his head, sign of his profession, grab the files of the cases to be heard today and to briefly introduce me to his colleagues. I am allowed to take pictures, he tells everybody, a privilege that was not to repeat itself. So I settle myself in the audience of the courtroom, notebook on lap and camera ready, waiting for the first trial to start. An orderly snaps his fingers at me, gesturing for me to uncross my legs. The long row of black plastic seats, fixated to the floor and with a slight frontward slant, allows for minimal sitting comfort. Finally, the court members walk in and there, among the three judges, the scribe, and the prosecutor is another man, who seats himself between the judges and the scribe. The interpreter. The play begins.

Later he will tell me how he feels called to help the innocent: *"Quand tu interprètes là, tu es en train de sauver un innocent qui ne comprend pas quelque chose"*. It sounded like I had found the new Messias. Jean, who feels that he is saving innocents who do not understand something fundamental, is a member in one of the newly founded evangelical churches that have sprung up all over Bobo. He is also the interpreter for the commercial court. Jean had been translating at his church before starting the job as court interpreter. For this reason and because he is very vocal about his calling, the judges at the commercial court jokingly call him *le pasteur*, the preacher.

My friend Mohamed, the judge presiding the trials at the commercial court today, speaks Jula fluently – in fact, he is also imam at his local mosque, where he preaches in Jula, the language of everyday communication in Bobo. The language the defendant knows. Watching the interpreter, I am fascinated by his presence and the fact that Mohamed keeps telling the defendant – in French – to look at him, the judge, while talking, not at the interpreter. This the interpreter translates for the defendant, who turns his head back and forth between the judge and the interpreter who are both talking to and at him. Knowing Mohamed speaks Jula makes the situation really strange to me. The defendant – glasses, shaved head, bulky body – seems quite intimidated. He is standing with his back to the

audience and in front of the three judges, who are seated behind a long desk on a raised platform at the head end of the courtroom. Who would not be intimidated? Here is a defendant who quite obviously has no clue as to what is going on and how he should behave. Defendant speaks Jula, interpreter translates into French for the benefit of the judges and prosecutor, who have already heard and understood the defendant's Jula version, the judge continues his questioning in French, the interpreter gets his turn translating this into Jula for the benefit of the defendant and so on and so on. It was absurd. The interpreter is saving an innocent defendant. From what?

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OFTEN what we see or hear makes sense only later, or at least after we have had time or distance or other experiences with which to interpret and understand what we have been witness to. In Burkina Faso, the court, as a state organization, defines and sets the rules of the game in what regards the handling of trials. Just like anywhere else. What seemed so bizarre in this first encounter was that the court apparently held on to a procedure that complicated communication instead of making it clearer. Why would court personnel want to keep this situation upright?

In spite of around 60 languages (or 71, depending on who counts) being spoken in Burkina Faso, French is the only official language, codified as such by the constitution. What "official language" concretely means is not defined and nobody seems to be able to tell me, either. Because it is the official language, French needs to be used in court, I am told. Watching my friend Mohamed, the judge at work during the trial described above, speaking French and having an interpreter translate him into Jula, was so fascinating it became the subject of my four year long search for answers and explanations, for an understanding of a situation that seemed to be so absurd – somewhat kafkaesk.[1]

On the one hand, I will describe daily bureaucratic practices in the judicial system in Burkina Faso and their forms of rationalization, drawing on the work of the court interpreter. On the other, I will analyze the challenges to and shortcomings in these rationalization processes. The goal is to understand the place of French in Burkina Faso's courts and, by extension, the role the interpreter is supposed to play – who insists or demands on using French in the courtroom? Why? In a highly plurilingual society such as Burkina Faso interpreting is and always has been a mundane practice, by citizens generally, by specialized groups of professionals, and by specifically educated and trained individuals. It is, in this sense, an occupation which has known different degrees of formalization by society or the state and different degrees of acceptance or skepticism by them as well. In this research, the court interpreter, his work, and interpretation will serve to illustrate another formalization process, namely the ongoing bureaucratization of a state institution, the justice system.

[1] That the justice system can become an elaborate – and infinite – run through the state's bureaucracy is shown in the movie *Kafka au Congo* (2010) by Arnaud Zajtman and Marlène Rabaud, see trailer here: https://www.moviesthatmatter.nl/english_index/festival/programma_en/filmprogramma_en/film_en/487/kafka-au-congo or here https://www.youtube.com/watch?v=UiUfrvIZjb4

In order to do this, I will focus on aspects specific to today's courtroom communication, asking how court interpreters operate within the larger bureaucratic domain which is the judiciary in Burkina Faso. Interpreters are both part of the court and they are not; they are employees of the Ministry of Justice, hired by the state. At the same time, their profession as court interpreters is not officially recognized by the state that has hired them. It all seems somewhat confusing. It makes this research all the more exciting, however. Court interpreters are variously lauded, ignored, despised, praised, forgotten about, and reluctantly accepted by other court members. My immediate field of analysis is the courthouse in general and the courtroom in particular, which are the two action arenas of court interpreters. There they can explore their options in terms of what decisions to take, whom to ally themselves with, and how they present themselves. The only space in the courthouse where they in fact can act as interpreters and are treated as such is in the courtroom, we will see.

As anthropologists we are trained to stay tuned to the pitfalls of eurocentrism and to avoid comparing social phenomena in our research to what we know from home. When looking at court interpretation in Burkina Faso we need to take the justice system and, more generally, the Burkinabe state and its functioning "as it is", to say it with Blundo and Olivier de Sardan (Blundo & Olivier de Sardan 2006: 108). Taking it as it is, then, includes stating that the justice system in Burkina Faso is modelled on a European, a French style system. So even while avoiding normative characterizations of the Burkinabe justice system, which, in the end, would boil down to an enumeration of its deficits, it is a fact that the official Burkinabe state justice system has been imported to West Africa with French colonization and it remains a French system in structure, organization, procedure, definition of posts and careers, laws, regulations. And, most importantly to this description and analysis of the court interpreter and his work, the imported system creates the conditions for the court interpreter to emerge while it settles in Burkina Faso. What, exactly, needs to happen locally for the court interpreter to become necessary and how the bureaucrats running the justice system deal with, apply, or uphold the structural form of the imported system, is the object of the following discussion.

Burkina Faso has ratified the International Covenant on Civil and Political Rights in 1999, which, among other things, is a Human Rights law guaranteeing one's right to the free assistance of an interpreter if one does not understand or speak the language used in court.

This human right is mandatory only in penal[2] courts. The Ministry of Justice in Burkina Faso mandates the individual penal courts, the *tribunaux de grande instance* (TGI) and the appeals court, *la cour d'appel*, to recruit interpreters in order to fulfill this ratified Human Rights convention. This poses serious challenges to the individual courts because there are no trained court interpreters in Burkina Faso for the simple reason that no interpreter training for court interpreting exists, neither in Burkina Faso nor in any other West African state – with the noteworthy exception of Senegal. The decision to hire a court interpreter in Burkina Faso is based solely on bureaucratic criteria and not upon merit or education and training.

What lends the presence of standard French[3] in court in Burkina Faso a special touch is that it is the language of the minority. In practice, French is indeed the language used in court; court personnel speak and use only French, particularly in all public encounters, but also among colleagues. So French is also the language of what I will refer to as the educational elite, those citizens having obtained higher education degrees through several years of schooling at university level. We will get into a detailed description of elite research in chapter three. The educational elite in Burkina is also referred to as *intellectuels* by citizens, a respected, almost revered designation reserved for those who have, variously, a university degree and, if lucky, also a good job corresponding to this university degree. Interpreters again are hard to categorize – it is in the eye of the beholder. While citizens might see them as important members of the court, others and particularly those court members we will get to know as the experts of the system, do not see them at all beyond trials.

Penal trials, like most trials, are public hearings allowing for an audience. In fact, a court trial does not only have an audience, but the individuals participating in the trial – judges, prosecutor, court scribe, defendant, and interpreter – can very well be seen as actors in a play. The performance they stage is not limited to the simple speaking of justice but is much more than that. A penal trial in Bobo is a complex and elaborate play put on in French; the language itself plays its own, specific role. One recurring explanation I got for the fact that French is used in court, is that all people present in the courtroom, audience included, need

[2] I use the somewhat unfortunate terms penal court (and not criminal court) and penal law in order to avoid confusion with and to differentiate the institution (the court) and the process (penal law, in French *droit pénal*) from the two branches of penal/criminal law in the French system, termed *criminel* and *correctionel*.

[3] Sometimes written with a capital S, Standard French. Here, I do not want to engage in a linguistic debate, but rather want to make explicit the difference between the standard form of French as taught in school and the oral form as used in the everyday, which I will refer to as Burkinabe French.

to be able to follow what is being said. This explanation is absurd or at best astonishing in a country where the majority of citizens can use only rudimentary French, or what we will refer to as the Burkinabe variety of French, and much less follow what is being discussed in a court proceeding with its complex procedures, incomprehensible rituals, and legal French.

What I am describing here is also the encounter between a highly formalized institution – the court – and lay people, a phenomenon we can find in many places in the world. In Burkina Faso, the French language adds another, a complicating layer. Here, we will look at the role and work of the court interpreter, how he acts and is made to act, in order to get an understanding of how the employees of the court deal with this complex phenomenon that is the imported justice system and how they make it work in the local setting of Burkina Faso and Bobo Dioulasso. What we are also looking at is how the work of the court interpreter is functional to the reproduction of the system of justice as it is run by the state.

Traditionally and in the past, interpreters as intermediaries had and were accorded a lot of power as linguists (*jeli/jeliw* in Jula[4]) – the French call them *griots* – and as colonial interpreter-translators or *écrivains-interprètes* as they were called in colonial French West Africa, the *Afrique occidentale française* (AOF). The rise of nation states in the late nineteenth century in Europe came with a redefinition of belonging, which was also defined and enforced from above via language. Ideas of nation – often conceptualized as monoglot – came with linguistic homogenization and the elaboration of standards, all of which flowed into the creation of the idea of national languages. Language politics became ubiquitous in Europe at this time. They were also carried into and imposed in the colonies.

Today's court interpreters in Burkina Faso resemble traditional linguists in that they need to translate between parties who are both speakers of the same language, but for reasons of protocol cannot use this language to communicate directly with each other. They resemble colonial interpreter-translators in that they are employees of the state, who defines their working conditions. Today, the state hires them in order to comply with ratified international laws. International laws, moreover, based on an ideology of national language and on the idea that only this single national language can express legal concepts. In the colonies, interpreters were needed to assure communication between the colonial

[4] The ending on -w ist he Jula plural form.

administration and the colonized. Interpreters thus worked and work for state-run institutions and to reproduce the status quo.

But contrary to linguists or colonial interpreter-translators, today's court interpreters occupy the lowest rung in the court personnel hierarchy. During trials they are controlled by judges and outside the courtroom they have little bargaining power, as this study will show. This includes the fact that court interpreter as a professional category does not exist in Burkina Faso – or rather, it is not officially recognized by the Ministry of Justice, i.e. the state.[5] All men working at the two penal courts in Bobo had been hired for another job and came to add interpreting during trials to their workload somewhat by chance, we will see.

None of the four men have trained either as interpreters or court interpreters, and their individual itineraries and backgrounds are widely different. Not being trained as a court interpreter is nothing out of the ordinary, however. Training programs for court interpretation into languages other than the usual "big" ones are rare also in Switzerland and Europe. What is unusual is the fact that an interpreter needs to be present in the first place in a situation, where everybody *could* communicate without his intervention.

What I want to look at is how interpreters operate, how they handle not only the position they are accorded by the institution that has hired them, but also the very concrete situation of translating during trials. My very first assumptions and hypotheses were based on the per chance visit to the commercial court in March 2015 described above. At the time I was in Bobo gathering information for my MA thesis. Watching this day of trials and the interpreter Jean at work was fascinating and the beginning of four years of intense thinking about state institutions, court interpreting, and how bureaucrats function.

Many ideas circulated in my mind before heading out to Bobo Dioulasso for research to look into the daily lives and work of people working at the penal courts, particularly the four court interpreters. Concretely, my first hypothesis was that interpreters saw themselves and acted as self-appointed lawyers of defendants, assisting them during their trials so they could find their way through an incomprehensible justice system. This idea germinated in my mind after having spoken to Jean about his work as court interpreter at the commercial court.

[5] As of 11. September 2019, this professional category does officially exist, albeit with no practical or concrete consequences for interpreters and their work as to date. See https://gulmu.info/conseil-des-ministres-du-mercredi-11-septembre-2019/, accessed 23 September 2019.

He had described himself as the savior of innocents, we saw. So, I set out for my fieldwork, looking out for the interpreter-savior as I had first encountered him.

The situation is, of course, not as transparent or straight-forward as it had seemed to me after my first talk with Jean. I came to see interpreters and their work in new, often changing ways; it took other, different hypotheses, I had to evaluate and test various analytical tools until I got a clearer picture of how interpreters operated that also fit with the way they presented themselves, the way their superiors talked about them, and what I saw and could watch. Not all interpreters in Bobo see themselves as saviors of innocent defendants.

The focus of my research is thus the work and role of the court interpreter. Specifically, I am looking at how he carves out a space for himself in his local court surroundings and hierarchy, among the educational elite in particular and the civil servant or *fonctionnaire* landscape and system of justice in general. Through interpreters' work and role, I will show how the justice system as a foreign imported state institution is appropriated by certain individuals within the system, how they make it work. Each chapter is preceded by a prologue, a continuing story in six parts based upon my field notes and diary, observations, daily encounters and talks I had with people and with the court interpreters, particularly Antoine, whom I watched in action for uncountable hours. The story describes one day at court from his perspective and from the perspective of Musa, the defendant whose case study we will look at in chapter four. Or rather, the story is how I imagine or deduce or conclude Antoine and Musa would describe their day at the courthouse.

This written part of my thesis is subdivided into four thematic themes: After the first chapter, which is this introduction, chapter two deals with the theoretical frame and concepts that underlie this description of interpretation and bureaucratization at court. In the third chapter, I will elaborate on the qualitative methods I used. Here, a discussion of gaining access to conduct ethnographic work in the judiciary is elaborated on, particularly the concept of "researching up". In chapter four, we will travel back in time, to how the French language came to be institutionalized in the AOF. Here, the educative system and the historical implementation of a specific variety of language in state institutions is our focus. A detailed description of the work of interpreters then and now concludes this section. Then, in the fifth chapter, I will show how communication during penal trials is made to function, with examples of what I will refer to as courtroom speak. Chapter six, drily entitled "Discussion",

brings together these four themes to illuminate how the justice system is made to work by its experts in Burkina Faso through our understanding of the court interpreter's role therein. The story ends with what is usually entitled "Conclusion"; I prefer the designation "Outlook" because interpretation at court in Burkina Faso and the bureaucratization of the state institution of justice is nothing conclusive or finished, it is ongoing. In this story, I give glimpses into these ongoing processes via the lives and work of four court interpreters in Bobo.

The first topic in chapter two describes the fields of research and the concepts in which the present discussion is embedded: (court) interpretation and the bureaucratization of state institutions. Quite an amount of literature exists analyzing aspects of courtroom talk. All of the published literature is based on research carried out in Europe, the United States, or Australia. Some few texts on court interpreting in Africa exist, but they are scarce. Since interpreting in plurilingual Burkina is not a new concept, an overview of the historical literature will show the many faces interpreting has taken in Africa. I will limit this discussion to the literature describing interpreting and interpreters in the former French colonies.

Indeed, there is a vast amount of historical literature, consisting not only of scientific publications, but also of autobiographies, stories, ethnographic reports, and works of fiction and faction (fact + fiction = faction; we will discuss faction and literature later). These accounts enrich this research in a polyphonic way, adding points of view to the academic analyses of the work of interpreters and interpretation across time. They also constitute a historical narrative, description, and account from Africans' point of view, the majority of written documentation of French colonialism having been done by Europeans. Works of faction thus allow insights into the lives and the work of men working as interpreters and clerks for the colonial administration in French West Africa, the AOF, as they themselves recount it.

The literature on what we might summarize under the label "bureaucratization" will be of particular interest. First, we will look at how imported, foreign systems are appropriated or domesticated into a new reality and how those who run these systems make them work locally. This research has been carried out mainly by German social scientists, all men, who have elaborated theories on domestication. On the micro-level of trials, Erving Goffman, another man, has a prominent role by lending his *Presentation of Self in Everyday Life* to our description of interaction and communication in the courtroom. Goffman's insights into impression management are valuable as well to understand how court members in general and interpreters in particular present themselves.

Describing in detail the methodology employed during work in Bobo is elaborated on in the third chapter, particularly the "how" of going about gaining and maintaining access to the judiciary. By gaining and maintaining access I refer for the most part to the logistical, bureaucratic-administrative itinerary needed to legitimize my presence in this particular place, but also to its discussion in the literature and of how my interlocutors chose to interact with me. Like in other delicate terrains such as researching migrants' lives in refugee camps (e.g. Fert 2020; Massa 2016), court personnel employed various techniques to avoid saying anything substantial or allowing me to obtain detailed accounts of courtroom communication. As such, it seems for example, that all important sociolinguistic publications on court interpretation can base their analyses on audio recordings of trials. These texts feature elaborate transcripts of courtroom talk. How did these researchers obtain permission – what bureaucratic itinerary did they need to follow – to be allowed to record court proceedings? Most researchers are silent on this subject. Access to the judiciary in Bobo was, at best, viscous. Audio recordings were largely out of the question, we will see.

Why the judiciary should be delicate terrain is, of course, an empirical question. Negotiations to conduct field research, i.e. the series of steps (making contacts, oral or written exchanges, introducing oneself to stakeholders, etc.) taken to obtain the right to carry out the research, is an essential preliminary step of any data collection. Often perceived just as "a condition for carrying out the investigation" and not as "an object of research in its own right and ... real material for analyzing the field itself" (Darmon 2005: 99), I argue that these field negotiations themselves are rich in information (Derbez 2010). Therefore: how do researchers negotiate their entry into the field and maintain it? How do these negotiations engage in the very nature of research, problematizing it and its methodology? And what happens when anthropologists become potential spies? How to deal with a denial of access to a particular institution? For instance, can being refused access to one of the penal courts in Bobo lead me to define my chosen research topic as "delicate"? But why should this be more sensitive than other topics?

The fourth chapter is dedicated to a detailed look at how the French language became what it is today – the official language used in all government run institutions, thus having attained an indexical position denoting speakers' (hierarchical) place in society and, by extension, in the courtroom. Here the interpreters themselves will describe their work and present themselves to the reader. We will also get to know how other court members see

interpreters and their work. Then we travel back into Bobo's and western Africa's past, looking at how linguists or *griots* assured kings' communication with their peoples. Later, French conquest and colonization came with its own rules and how to go about doing things, also interpretation. Colonial interpreters occupied a prominent place in the conquest of territory and the installation of colonial rule, they were crucial to French administrators who did not speak any African language. This background knowledge is needed for a description of courtroom speak I will describe in chapter five.

Here I describe how trials are conducted at one of the two penal courts in Bobo in two case studies selected from the corpus of transcribed audio recordings. The transcription of audio recorded trials – I was allowed to do so for some few trials – will show us moments of interpreted courtroom communication, which is analyzed in light of the interpreter's contribution to the construction of a specific type of defendant.

In chapter six, Discussion, I bring together historical background and a description of today's penal trials in order to describe and come to an understanding of the court interpreter's role working in the justice system. Communication at court is, on the one hand, a mirror image of how citizens interact outside the courtroom space and it is, on the other, its motor. This discussion flows into the last chapter, entitled Outlook (or Ongoing Discussion), pointing to the unfinished nature of courtroom talk, the continuous choices experts are dealing with when appropriating the justice system to the terrain of Bobo and Burkina Faso, and particularly pointing to the ongoing negotiations interpreters engage in to find their role and place at court.

THE following pages describe individuals' strategies to obtain, maintain, or further their social standing within and through a state institution. In other words, they describe how civil servants advance, promote, and use bureaucratic processes to their advantage. The institution is both aim and tool. They also describe the processes of how these same civil servants adhere to a system they deem worthy of upholding. Most prominently, with this research I hope to illuminate the life world of today's court interpreters and how they navigate the institution that employs them.

This book is the first to focus explicitly on the life and work of court interpreters in the former French colonies in West Africa today; language at court in a postcolonial setting remains a largely neglected topic in linguistic anthropology and the social sciences in general.

I thus address a significant gap in the literature on the history and lives of interpreting at court. By looking at civil servants at work from a linguistic anthropological viewpoint, this study adds to the field of "states at work" from an innovative, a new angle. The perspectives of French West African court interpreters as civil servants have been mostly ignored, at best marginalized within the disciplines of linguistic anthropology and cultural anthropology, translation and interpreting studies, and in the study on bureaucracies.

Hence, this text contributes first of all to the field of research looking at the workings of state institutions in Africa. Moreover, it contributes to the literature published on court interpretation, but from an angle largely neglected so far, namely court interpretation for citizens needing to use a foreign language at home. And as importantly, this text on court interpretation in Burkina Faso closes a research gap by giving insights into the work and lives of present-day court interpreters working in so-called francophone West Africa, contributing and adding to the literature on African interpreters that we know from historical research. Up to date (2021), there are no publications in linguistic anthropological or in the language-related scientific literature that look at court interpreters and interpreting in francophone West Africa.[6] So, my research is innovative on two planes: it contributes to the existing literature looking at states at work in Africa through a language lens and it gives innovative insights into both the languascape of the judiciary in West Africa and into court interpreters' lives. This combined look – interpretation at the state-run institution of the justice system – allows us to see bureaucratization processes at work from a new and different angle, namely through the work of court interpreters, who are both a part of the system and outside of it.

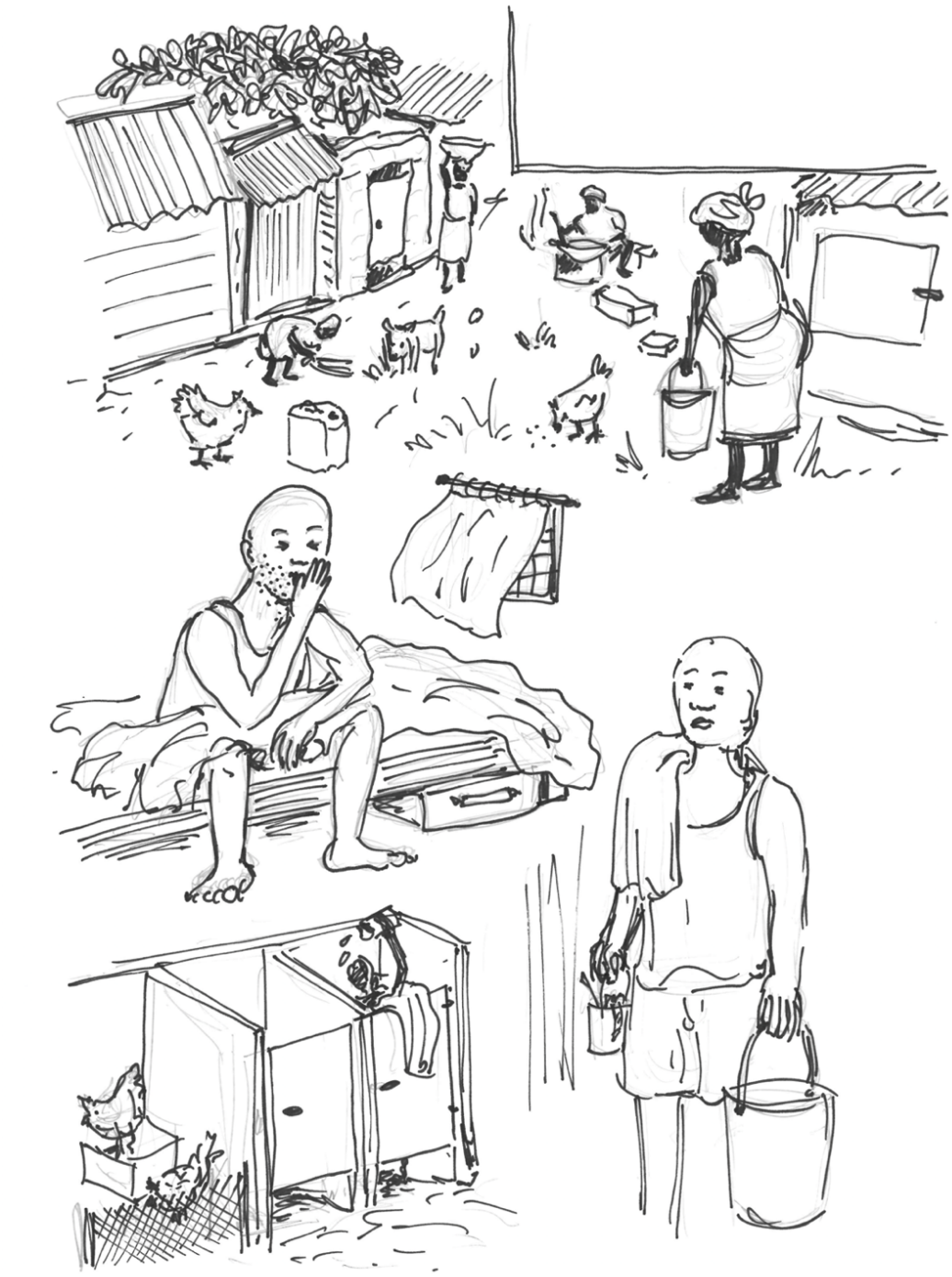
[6] Thanks to my PhD supervisor Elísio Macamo at the University of Basel, I was made aware of a recent paper by sociologist Habibou Fofana (2018) discussing interpretation at court in Burkina Faso.

CHAPTER 2: THEORETICAL FRAME AND DEFINING CONCEPTS

Prologue – A day in court, Part 2

Quartier Bolomakote, a large, popular neighborhood in Bobo Dioulasso, one of the oldest parts of town. It is six am and the usual ffffffft ffffffft of sweeping brooms signals the start into a new day. Roosters crow, goats bleat, women carry wood, firing up stoves and girls sweep compounds. Antoine gets up as well, his wife has already put a large pot of water on the fire and is now outside their *chambre salon* – a one-bedroom railroad apartment with a living room – busying herself around the inner courtyard of their compound. Their small daughter is still asleep, profiting from the last minutes before having to get up and get ready for school. Antoine sits down on the couch, waiting for Rosine to bring him his warm bath water in a bucket. Then he disappears to the other end of the courtyard to the shower, towel over his shoulder. Across from his *chambre-salon*, his mother is feeding the chickens and guinea fowl he keeps in a pen on the other side of the huge mango tree sitting in the middle of the oblong courtyard. Antoine has always enjoyed raising chickens and used to have a small business selling animal feed before coming to work at the court of appeals almost ten years ago. Animal feed and cassettes. A rare combination.

After his bath, he sits back down on the couch, Rosine brings him his cup of tea. They do not exchange many words. Antoine has put on a pink, long-sleeved shirt and black pants today, accurately ironed down the middle of the leg. He sips his tea, waiting for his wife to bring him food, and listens to his mother outside, clicking her tongue at the chickens. Today there are leftovers from yesterday's evening meal, Antoine is happy to see, so that he can put something in his stomach before heading out to the courthouse for work. That is good because today is Tuesday and a long day of trials awaits him at court. He knows the deal. Today's team of judges is headed by judge D.M. He never inserts any breaks into the working day, only short, five-minute sessions, during which the audience does not even leave the room. All the more important to start out with something solid in his stomach to sustain him.



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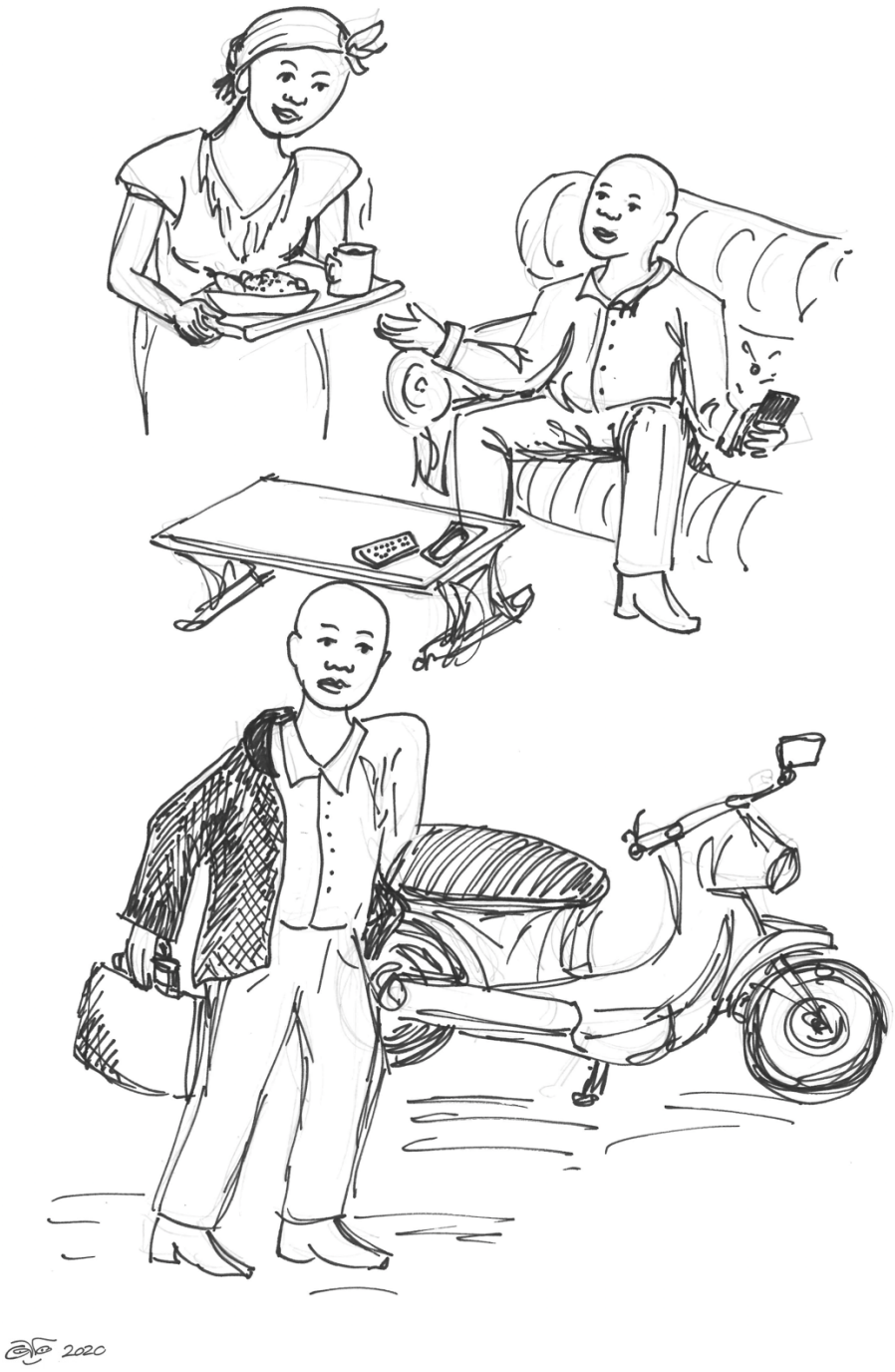
Antoine is ready, grabs his jacket and heads out to fetch his motorcycle. On his way, he goes to check on his animals, one guinea fowl had a near escape yesterday, hysterically flapping around, hacking at the chickens and trying to get by and out the door when his mother went in to feed them. And now, towards the end of the year, he gets many orders. People

appreciate his chickens because he makes fair prices and the fowl is well fed. Maybe he'll expand and get some turkey as well. His mother comes out of the chicken coop and calls for his older brother: "Sogossira!?". Irritated, Antoine asks himself once again, why everybody always calls him by his Christian name while his brother François is addressed with his traditional Bobo name. It is a bit after seven o'clock. Once on the paved road, traffic is dense.



2.1. Basic texts on the two main topics: court interpreting and the bureaucratization of state institutions

At the courthouse, the annoyance Antoine feels at home by being addressed with his Christian or French name, gives way to a diffuse sense of pride. It is a feeling that he puts into words by describing himself as being part of something important. At court, the language used is French, so being addressed as Antoine here evaporates the feelings of exasperation he always experiences at home.

Researchers who have analyzed language use in court have found that court personnel have a distinct view of interpretation – of the how and the when, but particularly the how. Antoine, too, is subject to these views when he interprets trials at the penal court in Bobo, views put into practice by his immediate superiors, the judges. They, like judges the world over, believe it imperative that he translate their questions or interrogations *verbatim*. Indeed, the judiciary in many, very different places throughout the world is astoundingly similar in its attitudes towards court interpretation and its ignorance or non-interest in what, exactly, the work of interpreters entails. So not just Antoine, but interpreters in many other places as well are expected to act as so-called conduits, translating judges' and prosecutors' words faithfully, to use the term employed in Bobo.

In the following I want to introduce the main topics and concepts that are at the heart of this investigation. Next to considerations pertaining to interpreting and bureaucratization, as the title of this chapter suggests, I will extract those concepts from the infinities of social scientific deliberations that are pertinent to my description and, later, analysis. Translation is one such concept, or rather, it is the one concept that ties this entire investigation together. It is at the same time a sibling to interpretation, carrying a message from one language to another, but it is also a lot more. As a sibling, translation is referred to as being the written transmittal of a text into another language, while interpretation is relaying a spoken message from one language into another. Indeed, we are looking at the work of the court interpreter – how he carries out and is allowed to carry out his job – which will help us understand how a foreign bureaucratic system is appropriated locally.

And this is where translation as more-than-a-sibling to interpretation comes in. Academically, translation has been opened up to include more and other meanings, like translating ideas across disciplines or concepts across cultures. Translation has also come to

mean the integration into a new environment of objects, ideas, institutions that have been moved across space, i.e. geographically from one place to another. Bierschenk and Olivier de Sardan call these moved objects, ideas, institutions transversal objects (Bierschenk and Olivier de Sardan 2014: 24). A modern state bureaucracy is a wonderful example for a transversal object. For us here this means bringing to light how the Burkinabe have and are continuing to appropriate the justice system, a modern state bureaucracy that has come to them from someplace else, to fit local reality and their needs. And not only the justice system per se, but all that comes with it – how it is administered, the jobs, the rules and regulations. Before we go into any more detail on that, however, we will look at court interpreting – what it means to translate during a trial, the role interpreters have played in West Africa in the past, and how interpreters and interpretation is discussed also in works of fiction.

Legal professionals and particularly judges stress the importance of word-for-word translation and the unalterable nature of laws and paragraphs (Angermeyer 2014: 434; Eades 2003: 118; Gibbons 1999: 162-163; Hale 1997: 39-40; Hale and Gibbons 1999: 206). These studies have been carried out in migration (Angermeyer 2008, 2009, 2014) and asylum-seeking contexts (Inghilleri 2005; Määtä 2015; Merlini 2009; Rienzner & Slezak 2010) or deal with the situation of linguistic minorities (Berk-Seligson 2008; Hale 1997; Hale & Gibbons 1999; Hale et al. 2011). One aspect found in all of these studies and which I will elaborate on shortly, is civil servants' strict adherence to the rules of a state-run bureaucracy.

Another aspect these studies have in common is that they look at court proceedings in which the defendant comes from somewhere else: asylum seekers, newly arrived foreigners, temporary workers ("saisonnier") and thus speaks a language different from the one spoken in the place s/he is being judged in. The communication problems encountered by these foreign defendants and the potential (negative) impact on their hearings do not much differ, however, from a situation in which different varieties of one language meet in the courtroom.

Diana Eades has been investigating court hearings conducted between speakers of different varieties of English in Australia since the early 1980s (she wrote her PhD in 1983), the standard English spoken by judges and defendants' Aboriginal English (cf. e.g. Eades 2000, 2003, 2008). Eades demonstrates how and why Aboriginal witnesses are silenced in court by both the judge and their own lawyers (Eades 2000). A combination of cultural misunderstandings, insistence on the question-answer format of communication, and an

obsession with legal procedure contribute to a situation, in which Aboriginal witnesses are not allowed the space necessary to be able to recount their side of the story. Moreover, Eades shows that we need to look more closely at our stereotype of the judge as neutral arbiter (Eades 2000: 187). He or she, together with lawyers, contributes to the silencing of Aboriginal witnesses, she found.

Eades has also found that not only do official court transcripts record only standard English utterances so that the original utterances have no legal status (Eades 2000: 187), but that the decision to use an interpreter lies solely with the presiding judge (Eades 2003: 115-116). She also repeatedly stresses that we cannot ignore the context in which courtroom talk takes place, the wider societal power structures and social inequalities that get carried into the courtroom (Eades 2008: 37, 42). In her research on Aboriginal witnesses being heard in court, she stresses that "[a]t macro-level analysis, there is no denying that Aboriginal people are the most powerless social group in the country and the group most dominated by the legal system" (Eades 2000: 190).

When analyzing communication during trials, we need to show – and not only mention – how a powerful group can limit the freedom of action of others and also influence their minds (Eades 2008: 40 and chapter 2). Hierarchical language concepts – French first, then Jula, Moore, and all other national languages including Burkinabe French – and the invention of bounded linguistic entities such as standard French, popular Burkinabe French, or Jula are indexical for social classes. Indexicality describes the "real linkage of language to culture", as Silverstein put it (1976: 12). How we speak denotes for example etiquette, or where we come from – it marks a speaker's identity. The indexical form of an utterance only makes sense within a specific context (see i.a. Eckert 2008; Hanks 2000). For us this becomes pertinent when we look at communicative practices in the courtroom, and particularly how speech variety ("accent" or "dialect") puts speakers' in certain so-called indexical categories, which are also highly ideological. For instance, historically dominant languages became standards for comparison, relegating all other languages to subordinate positions (Howland 2003; Mignolo and Schiwy 2003). In the courtroom, Jula speakers can only participate in their trials through the mediation of an interpreter.

Angermeyer for example describes interpretation into Spanish at small claims courts in New York, showing how the core principle of language ideology in US society is monolingualism (Angermeyer 2014). Bilingualism is positioned as a skill only interpreters are

supposed to possess, all other courtroom actors cannot benefit from their bilingualism because the societal importance of Spanish is not acknowledged. Here we find parallels to social reality in Bobo, were Jula and all other national languages are not recognized as functionally equivalent means of communication to French in government-run institutions such as at court or in school or in politics. Monolingualism is seen as the norm in Burkina Faso's state institutions as much as it is in the USA (Angermeyer 2014: 444). These monolingually constructed situations prepare the ground for interpretation; it becomes necessary. The interpreter is vital to the very functioning of the monolingually conceptualized space. Next to describing the reasons for (Halaoui 2002: 352), we also need to look at the consequences interpreting can generate (Eades 2008: 37). These consequences – good or bad – of interpretation from legal or standard French into Jula for illiterate or barely educated defendants during trials at the penal courts in Bobo will be examined in detail in the empirical chapter entitled "Is this Jula?".

Linguistic anthropologists such as John J. Gumperz had, as early as 1974, pointed out how social realities have an effect on communication. Dell H. Hymes as well had always insisted on a contextualized study of language use, on a sociolinguistic or linguistic anthropological view on how humans actually use language (see a.o. Hymes 1963). In fact, it was Dell Hymes who eventually coined the designation sociolinguistics in 1974 after having used the term linguistic anthropology a decade earlier (Bucholtz & Hall 2008: 402). What today are seen as the two intersecting, largely overlapping, sometimes distinct disciplines of sociolinguistics and linguistic anthropology, have a long-term common history, in which sociolinguistics from the very beginning was making use of anthropological methods, Gumperz and Cook-Gumperz (2008) contend. The two disciplines "shared a theoretical view of the local community as the site of language use and a methodological commitment to using fieldwork as the best way to obtain information about such language use" from the beginnings of research on language, culture, and society (Gumperz & Cook-Gumperz 2008: 534). Together, John Gumperz and Dell Hymes edited a collection of pioneering essays into what has become a classic in sociolinguistics and linguistic anthropology*, Directions in Sociolinguistics: the ethnography of communication* (Gumperz & Hymes 1972). They have thus contributed considerably to bringing society into the courtroom, so to speak.

Mary Bucholtz has looked at how recorded telephone conversations between suspects speaking a non-standard variety of English in the USA are transcribed by the police

into standard English for the police log (Bucholtz 2009). These transcriptions for legal reasons foster an ideology of institutional neutrality by presenting recorded talk as objective facts. Bucholtz also finds that "[t]his process allows legal institutions to create their own reality by regimenting talk through textual representation in order to promote their own authority and interests" (Bucholtz 2009: 503).

During penal trials in Burkina Faso, the court scribe responsible for the protocolling of trials carries out this legal transcription in French and in a highly prescribed form, writing by hand in the trial logbook, *le plumitif*. Since this record is written in French, defendants' Jula utterances get recorded – and thus preserved – in the interpreter's translated, French version only. "Transcripts obscure the voice of the transcriber and privilege the voice of the speaker, while logs subordinate the voice of the speaker to the narrating voice of the institutional monitor" (Bucholtz 2009: 517). This is what happens during trials in Bobo, so following this definition by Bucholtz, the court's written protocol, the *plumitif*, can be thus designated as a logbook and will here be referred to as such in English.

The manipulation of legal documents is also investigated by Mirco Göpfert, who describes how gendarmes in Niger go about writing their reports (Göpfert 2013). They are guided by a sense for the aesthetic value of their written creations and not only by pragmatic and legal considerations. First of all, Göpfert found, gendarmes translate the everyday language of their (mostly illiterate) clients into a "legally exploitable text" (Göpfert 2013: 329). And not only do interrogations at the police station need to be translated from spoken into written language, they also need to be translated from "a local language" (ibid. 2013: 329; Göpfert does not specify which African language) into French. For the gendarmes themselves, this manipulation of written records is an expression of their self-esteem and respect for their work; writing the report in good and readable French by leaving out the detours, the gendarme is giving the document and thus the case it documents legal credibility (Göpfert 2013: 329f).

That the official language gives legal documents credibility when put into writing is not a thought unique to the West African judiciary. Also in German speaking Switzerland police officers are expected to write their reports in German, translating their clients' Swiss German variety into the so-called high language. They need to write in a way so that a judge can immediately understand the police report without leaving room for unanswered

questions.[7] What is different in the West African context is the double translation that is needed, a formalization that takes place from an African language into French and from an oral version into a standard, written version of French. The place the French language is accorded in the justice system in Bobo today is that utterances only have any legal weight in a written, formalized form, which, by definition, is in French. The written police reports and the written protocols of trials are the legal basis upon which a case rests and according to which any potential future appeal can be formulated.

There is an ever-growing amount of literature, which looks at variations of "states at work" (book title by Bierschenk & Olivier de Sardan 2014; see i.a. Alou 2001; Halaoui 2002; Le Roy 1997). How bureaucrats go about their jobs and the often intricate, everyday corruption, is the subject of study in publications writing about the justice system (Alou 2006; Bierschenk 2010; Blundo 2001; Hamani 2014) and beyond (for example in the health sector in the South West of Burkina Faso, see Ouattara 2002 or during elections in Ouagadougou and Pô, see Kibora 2019). Also anthroplogist Sten Hagberg, who has been conducting research in Burkina Faso for decades, has published on what he terms big and petty corruption (Hagberg 2002: 218). Of course, the justice system in Africa is not only discussed in terms of corruption (Gijsegem 2006 for example describes witchcraft trials in today's Côte d'Ivoire). Publications pertaining to translation and interpretation specifically at court in Africa remain rare, however.

In *States at Work*, Bierschenk and Olivier de Sardan (2014) ask themselves the general question what do states do when they work? They unite articles in their book which look at this through an exploration of the jobs of public or civil servants, how they carry these out. By studying the public service, the state at work "in its empirically existing form" (Bierschenk & Olivier de Sardan 2014: 11), we are looking at the real power center of the state, they believe. States deliver services through bureaucracies which are managed by public servants. The public servants, whom we are dealing with here are the judges, prosecutors, clerks, and particularly the court interpreters working for the Ministry of Justice. Here, I refer to all state employees as civil servants, *fonctionnaires*, as is generally agreed upon in the literature as well as colloquially. Not all civil servants are bureaucrats, however, this designation being

[7] See www.tagesanzeiger.ch/zuerich/stadt/deutsch-macht-polizeibewerbern-muehe/story/12738736, accessed 3 February 2020.

reserved for those individuals, who are an active part of *how* the state institution is made to function.

Alou in his 2001 exploration of the justice system had lamented the fact that this terrain of the public service industry as well as bureaucracy is still largely ignored by the social sciences (Alou 2001). This has changed over the past 20 years and quite some research has been dedicated to both the justice sector and to bureaucracy, as stated above. Alou had, innovatively at that time, looked at how and if citizens in Niger are granted access to justice. He did this by looking at the daily work and individual strategies of actors within the justice system – the judges, clerks, secretaries – and without, those who need to use the system, the users or citizens, and also of those that are in a sort of in-between position. These are the lawyers, interpreters, or the judiciary police as known in the former French colonies in West Africa, whose job it is, at least in theory, to serve both the users and those within the system of justice.

Alou found that there are many factors that make it difficult for citizens to access justice, be these of a structural nature like poor coverage geographically, the plurality of norms or the opacity of colonial texts still in vigor, or be this by certain restrictions imposed on the conditions of delivery of justice, such as insufficient funds allocated to the justice sector. Almost the entire budget, according to Alou, that the justice sector has at its disposal, goes to the payment of salaries (Alou 2001: 64). The "symbolic opacity" as Alou terms the complexity and maze of rules, the theatrical and impressive demeanor of court personnel during trials, and the texts of different origin (French, Muslim, customary or traditional) all confuse and intimidate users and contribute to a negative image of state rendered justice in their eyes.

It would of course have been interesting for us here if Alou had described in more detail what he had found in 2001 in terms of the plurality of norms he cites. That professional bureaucratic norms are particularly heterogenous in West Africa, often contradictory, equally often outdated (inherited from colonization), or also incomplete (leaving important sectors outside official regulations), makes these norms ill adapted to the local context (see also Bierschenk 2010: 13). This, in turn, leaves more room for informal practical norms and for the translation and appropriation of the system according to local social ideas. Alou's focus had been another one in his article. Concluding, he notes that the justice system as it is run today – or was run in 2001 – is far removed from the norms and ideals that are its foundation (Alou

2001: 78). This seems to be still valid today, as we will see below in Fofana's text (2018) about the distance of the justice system from/to its users.

There is a vast amount of historical research that has been carried out on the role of interpreters and clerks during colonialism in Africa (Austen 2011; Bandia 2005; Diagne 2017; Lawrance et al. 2006; Mopoho 2001; Osborn 2003). The role of colonial interpreters in the British colony of Nigeria has been made into a movie series called *Icheoku* by the Nigerian Television Authority and discussed by researchers from literary-linguistic (Akoma 2009) and historical points of view (Akinwumi 2017; see anecdote below). There is also historical scientific work dedicated to the French system of justice in colonial French West Africa, the AOF (Conklin 1998; Ginio 2006; Jézéquel 2006; Mann 2009; Rodet 2011; Spittler 1973).

There are quite some works of faction[8] – accounts, stories, reports – recounting the lives and jobs of African clerks working in the colonial administration. They comprise autobiographies and biographies, most prominently Hampâte Bâ's *Mémoires* I and II (1991, 1994) in which he describes how he grew up in the French Sudan and entered the colonial service as clerk in the early 1900s. Wangrin, the colonial translator-interpreter par excellence, was eternalized in Hampâte Bâ's seminal work of faction[9] *L'étrange destin de Wangrin* in 1973. Here, Hampâte Bâ describes the life of a colonial interpreter who helped colonial rule establish its control over the West African territories in the early 1920s (Hampâté Bâ 1973). As a high-ranking African clerk, he enjoyed great prestige – and was feared as well – among the local population and the colonial administrators alike. Wangrin had received a specialized education at the French colonial schools, which we will look at in our chapter on the educative system (chapter 4.2.).

Also Bernard Dadié's autobiographical novel *Climbié* (1952) or *L'Odysée de Mongou* by Pierre Samy (1977) narrate the lives of men working during and for the French colonial

[8] I had referred to faction as fact + fiction = faction. In the literary sciences, faction is a genre that uses historical events or people and recounts these in fictional form, albeit against a historically accurate background. One doyen of this genre might be Tom Wolfe, who started his career as an investigative journalist and intellectual. Thanks to him, we get a glimpse into investment banking, capitalism, and the lives of the super-rich in 1980s New York City (Bonfire of the Vanities 1987) and again in the 1990s, this time in the US American South (A Man in Full 1998).

[9] On the classification of Hampâté Bâ's work *L'Etrange Destin de Wangrin* as novel or biography, fiction or non-fiction, see Jean-Marc Moura (2006). In anthropology, the method of transcribing observations or lived experiences long after the actual happening is considered debatable as reliable source of information. That is why I prefer designating the work *Wangrin* as faction and not as the "autobiography of a dead man" (Moura 2006: 91).

administration, while *Le vieux nègre et la médaille* by Ferdinand Oyono (1956) describes the workings of the colonial administrative apparatus through the story of old Meka, who is supposed to be honored with a medal from the French administration. The colonial interpreter features prominently, not only translating – more often than not ending his translations of the French commander into Mvema with a "… and something like this" – but also ordering the African inhabitants around, telling them how to behave in the company of whites, a behavior not appreciated in the least by the colonial interpreter's compatriots.

In fact, what they did not appreciate was being bossed around by a fellow they considered to be their inferior and, anyway, "who does he think he is, this grandson of Pygmies? Since when do slaves impose silence upon princes? The whites have completely turned traditions in this country upside down! So now a good-for-nothing allows himself to impose silence upon kings!..." (Oyono 1956: 122).[10] We note the promotion from princes to kings within the same paragraph. We will see how existing Burkinabe social hierarchies are equally overruled by bureaucratic decisions when jobs are allocated to individuals in state-run institutions.

Amadou Kourouma eloquently describes the unstoppable crumbling of a fictive kingdom in western Africa and the take-over and installation of colonial power in *Monnè, outrages et défis* (Kourouma 1990) and the role the interpreter plays in this decline. The interventions, the way the colonial interpreter Moussa Soumaré interpreted and translated helped this process considerably. Some few publications can be classified as ethnographic reports by literate Africans, written by schoolteachers or native chiefs, giving us insights into their ideas and lives and how they worked with and also profited from the colonial administration (Jézéquel 2006).

By the 1930s, Jézéquel (2006) writes, the French colonial administration believed it important to study customary law and this mainly for practical reasons. The French administration believed to thus better be able to control their colonies. It subsequently established a committee in which European administrators and literate Africans published monographs to facilitate the codification of customary laws. Jézéquel cites the example of the native chief in Fouta Toro, who, supporting the French colonial administration and also

[10] "Qu'est-ce qu'il se croyait, ce petit-fils de pygmées ? Depuis quand les esclaves imposaient-ils silence aux princes ? Les Blancs avaient bouleversé les traditions dans ce pays ! Voilà qu'un rien du tout permettait d'imposer le silence aux rois !..."

knowing how to benefit from it, codified and reinvented customary law so that he could stay in control of land (Jézéquel 2006: 142f).

By now, a system of courts had been long set up throughout the colonies. The installation of the so-called *indigénat,* a regime of administrative sanctions applying to colonial subjects, had followed on its heels and, by the 1930s, had been in vigor for half a century already (Mann 2009). About the *indigénat*, Mann says it provided the "legal cover, however scant" (Mann 2009: 334) for colonial coercion. It was "perhaps the most important element of the administrative tool kit" (Mann 2009: ibid.), allowing colonial administrators to react quickly and often violently to any challenge to their authority.

That the position of native chief itself has been established by the colonial administration, including who was to occupy this post, is demonstrated by Mamdani (1999). The French colonizers invented and supported native chiefs and the aristocracy (Jézéquel 2006: 147), but they did not invent native custom from scratch. More subtly, they dissected individual, existing customary laws in order to utilize that part of each, which served their colonizing interests best. This dissection and support of one specific part of tradition was done mainly by the African allies of the colonial administration, the so-called native chiefs (Mamdani 1999: 865).

> As the civilizing mission ran into resistance, the colonizing power … was compelled to seek local allies. Thus began a protracted process of thinking through "tradition" analytically, of separating its authoritarian from its popular strands. The construction of a "customary" law, whereby authoritarian strands in tradition would form the building blocks of a legal regime disciplining "natives" in the name of enforcing "tradition", began in India, not in Africa (Mamdani 1999: 869).

Some publications also look at the work of interpreters and intermediaries – in the widest sense – in pre-colonial times (Austin & Derrick 1999; Bandia 2005; Bidima 1997; Diagne 2017; Yankah 1995). The situation in the larger Mande world, to which Bobo belongs, is noteworthy because of the role linguistic and cultural brokers have always played in society. Linguists, *griots* or *jeliw* in Mandekan[11], used to be important mediators between authorities and foreigners, kings and the people, religious leaders and the faithful, interpreting, advising,

[11] With Mandekan I refer to all inter-intelligible varieties of Mande languages, which include Jula, Mandinka (Amadou Kourouma's mother tongue), and Bamana, for instance, and which are spoken in a large part of West Africa. *Mande* stands for the ethnic group, the suffix *kan* for language; see also *faransikan* = French language or *julakan* for the Jula language etc.

praising and thus also intervening (see Bornand 1999, 2011; Bornand et al. 2015; Conrad 2006).

Protocol demanded that the king do not address his people directly but pass through his linguist to transmit his message to the populace. Linguists had specific positions as embellishers of sovereigns' words (see Yankah 1995). In the Mossi kingdoms in today's Burkina Faso, for example, the Naaba, the king or chief, was expected to give orders by nodding his head, remaining silent, and letting his spokesperson, the linguist, speak for him. Hagberg calls the West African linguist the master of speech (Hagberg 2002: 237), the art of relaying messages being confined to this specific socio-professional category. Often, the people see the linguist as the servant of power-holders, as the side-kick of a king or other sovereign, in his employ.

According to Bandia (2005), the linguist might embellish the king's words, make them understandable and also palatable to the people, but he never altered the meaning the king wanted to convey (Bandia 2005: 959). This notion is at best problematic. Particularly during conquest, but also later on in colonial times, African sovereigns relied on the oratory skills of their linguists and interpreters, while the French administrators were at the complete mercy of and had to depend on (and trust) their interpreters since the system of rotation in vigor hardly left French colonial administrators enough time for language learning. The French colonial administrators hardly ever stayed in one place longer than one year (Lawrance et al. 2006: 10; Spittler 1973: 211), a situation, which has not much changed in state-run institutions – like the justice system – in Burkina Faso today.

With increasing Arabic influence, also other members of society such as religious figures like marabouts needed the intermediation of a linguist who thus became key to elitist intracultural (and also transcultural) communication. The marabout's esoteric and religious language was not intelligible to the people but needed interpretation through a linguist. In the Wolof speaking world, the marabout's linguist is called *jottalikat*, the relayer of the marabout's message to the community (Ly 2008; see Bornand 1999: 293ff. for linguists in Niger and their competitive relationship with marabouts).

It is possible to compare the work of linguists with that of today's court interpreters in Burkina Faso only with regard to the triadic nature of communication. Kings, marabouts, or most of today's judges spoke and speak the language used in wider society – they could use the language of the populace, but for reasons of protocol they did and do not speak it when

addressing the communities (see e.g. Yankah 1995 for the king's linguist). This is where the parallels or similarities end. The actual job and particularly training for the job of a linguist can hardly be compared to that of today's court interpreter. While today's court interpreters are hired according to no set or agreed upon criteria and receive no formal training, linguists had to go through a long, hard training process. Some still do so nowadays. Since their work is hereditary, it often was fathers who trained their own sons in the art of and the work of a linguist – a linguist is not made, he is born (see Bornand 2011).

In addition, linguists were and continue to be highly respected experts in a domain reserved for them, a domain which consists most visibly and well known of praise singing and recounting, in elaborate artistic form, the history of a people (Conrad 2006).[12] Here it is important to insist that a specific feature of this group of intermediaries was their competence in both the dominant, colonial language as well as in African languages, which in this context were relegated to a position of language of the subalterns. Contrary to what Bandia (2005) writes, interpreters' position enabled them to influence decision-making processes of the most important political institutions in society, as we will see shortly with Moussa Soumaré and Omar Sy.

The French realized that they could not rule the vast West African territories, the AOF, by direct rule, they needed native allies to impose their administration and way of going about doing things. Or, to say it with Mamdani, "indirect rule was born of the crisis of direct rule", never actually replacing it totally, but the two forms of power co-existed (Mamdani 1999: 862). Native chiefs played a crucial part in establishing and keeping French colonial power in place, taking a central role in the "arena of power" (Mamdani 1999: 866).

We just have to look at Moussa Soumaré, a former *tirailleur sénégalais* having served in the French army, who subsequently became the conquering French army's interpreter. In *Monnè,* Ahmadou Kourouma modelled the interpreter translating for the French in their conquest of the fictitious Malinké kingdom of Soba on this man, retaining his real name Moussa Soumaré (Lievois 2007: 45-46). In the Keita kingdom, the known order is being disturbed by incomprehensible happenings occurring with the advance of the French invaders. Nothing the people do, nothing the diviners and the king foresee, makes any sense.

[12] Many *griots* today have careers as internationally acclaimed and celebrated musicians, like Salif Keita or Sidiki Diabate, both from Mali and to name just these two.

What is happening is incomprehensible, by its very nature, because in the Keita kingdom the people have no words with which to express what is going on. Here Soumaré has all the power, being the only person capable of communicating in both the conquerors' and the peoples' language; he functions as intermediary between the king of Soba and the colonial powers, assisting them in taking over and occupying the land by his monopoly on language.

Soumaré addresses Djigui, the king of Soba, as his joking cousin, telling him that, indeed, he, Soumaré, had not translated one single word of what Djigui had said while "bragging" to the French (Kourouma 1990: 37).[13] Kourouma, having known the interpreter, tells us that Soumaré was convinced that he was doing a good thing, siding with the French and being part of their civilizing mission. Soumaré earnestly believed that "bringing civilization" to his people, which he translates as "becoming tubab" (Kourouma 1990: 57) for lack of a better word, was the good and right thing to do. With this comment, Kourouma shows us that the position of colonial interpreter is not as clear cut as it might seem either way – Soumaré did side with the French, helping in the subjugation of his own people, and he did this for reasons he sincerely believed in. But he also made sure, at different occasions, that king Djigui keep his dignity and is spared a death sentence. His role is altogether ambivalent, even though he clearly assists the French in establishing themselves as the new masters of the territory. Interpreters' power diminished when conquest turned to occupation (Lawrance et al. 2006: 20-21), but nevertheless their position continued to be crucial to the maintenance, the perpetuation, and establishment of colonial rule (Lawrence 2016; Conkling 1998; see also Mamdani 1999 on indirect rule).

Omar Sy was also a colonial interpreter, working for the French commander of Mopti, and was involved in an incident not quite as dramatic as the one described above with Soumaré, but which also demanded he take a translational decision. Sy was very attached to his marabout Tierno Bokar, a well-known Sufi spiritual leader of his time. Tierno Bokar was also a constant source of advice and spiritual guidance for Hampâté Bâ, who had been a pupil at Bokar's Coran school as a child. Hampâté Bâ later wrote about his lifelong attachment to

[13] "Je suis ton frère de plaisanterie, donc je te connais. Comme tous les Keita tu es un fanfaron irréaliste. Je n'ai pas traduit un traître mot de tes rodomontades".

Tierno Bokar in his autobiographies (Hâmpâté Bâ 1991, 1994) as well as in various other publications, including a book dedicated to Bokar's teachings (Hâmpâté Bâ 1980).[14]

It is in this book, entitled *Vie et enseignement de Tierno Bokar* (1980), that Hampâté Bâ describes the incidence involving the French commander's interpreter Omar Sy in detail, starting out by describing him as being an interpreter of some renown and "[l]ike all grand interpreters, he was an insider to the secrets of the gods and of commanders" (Hampâte Bâ 1980:102).[15] The affair to be dealt with was a difference of opinion in how to pray, which had created disharmony in the Muslim community that the French commander believed to have to eradicate officially. Bokar was seen by the French commander of having incited this disharmony and was subsequently brought to trial in front of the French commander-as-judge.

The interpreter Omar Sy decided to intervene translationally in Tierno Bokar's trial, saving Tierno Bokar from himself, so to speak. When the French commander asks Bokar a yes/no question, Sy understands that Bokar needs to answer with yes and so makes sure to elicit from Bokar this visible yes answer that will release him from punishment and end the affair (Hampâté Bâ 1980: 104f). Sy falsely translates the interrogating French officer's words to provoke this positive answer that the French commander wants to hear. Omar Sy understands the context, he takes the big picture into account and had prepared the ground for his translational intervention accordingly. This incidence also "illustrates the challenges of translation in particular cultural contexts … particularly against the background of asymmetric relations such as that of colonialism – where the work of translation is differently deployed by the dominant and the dominated to serve their different locations in the political economy of colonial relations" (Diagne 2017: 309).

In addition, colonial interpreters, just like court interpreters today, were expected to carry out their jobs by translating verbatim, like a machine, by the authorities they worked for – like a *truchement*, a tool or instrument, as Diagne names it (Diagne 2017: 311). Interpreters' function was always seen as linked to, as an extension of, and thus as biased by authority, a view that does not do justice to interpreters' agency (see for example Akoma

[14] See for example an interview given by Hampâté Bâ, recorded on vinyl: www.discogs.com/de/Amadou-Hampaté-Ba-Tierno-Bokar-Le-Sage-De-Bandiagara-Entretiens-Sur-Tierno-Bokar-Avec-Amadou-Hampat/release/9680415, published in 1957, last accessed 21 January 2020.

[15] "Le 'grand interprète' du commandant de Mopti était alors Oumar Sy, lequel était fort attaché à Tierno qui était son marabout. Comme tout grand interprète, il était dans les secrets des dieux et des commandants."

2009) or self-serving behavior (Akinwumi 2017; see also Rottenburg 1996: 208). What these examples also show is that the definition of "authority" and whom to side with or serve lay largely with the interpreter himself. If and how it continues to be possible – or relevant – for court interpreters in today's Burkina Faso to choose whom to side with is up for discussion. It will be deliberated on when we look more closely at language use at court in chapter five.

In the following satirical anecdote, I want to take a small step back and briefly illustrate the position and role colonial interpreters created for themselves in the translating process. The Nigerian Television Authority created a series set in the middle stages of British colonialism, in roughly the period from 1842 to 1926. The court clerk commissioned to interpret uses his own linguistic form, mixing Igbo and English when speaking to the local community. He also gave this soap opera his name, *Icheoku*. Here is a short excerpt from the transcription of the film videotapes (Akinwumi 2017)[16]:

> **Icheoku**: Court sidon and shut-up.
> **Judge** (passing sentence): It is sad that we have a bully amongst us in our community and to serve as deterrent, the defendant will be punished by clearing bushes around the market square.
> **Icheoku** (interpreting): the offender go waka naked around the market square and him go come my house come sweep my compound, him go carry 300 shillings come my house, him go also bring two tubers of yam and one he goat. Na wetin the judge talk be that o. No be me talk am.
> **Judge**: Very good Icheoku, I trust your interpretation skills.
> **Icheoku**: All alise (Judge walks out).

The link to authority is aptly illustrated by Kourouma in *Monnè*, where Soumaré is convinced of being a good interpreter doing the right thing. Also Omar Sy is linked to authority, even in two senses: he is, as the French commander's official interpreter, working for the French authorities during colonialism, and as such is the only person comfortable in both languages. But for him, Tierno Bokar is the bigger authority, more important than his French employers, and so he translates in Bokar's favor. As for Soumaré, he is a figure difficult to capture, he is cunning, even a trickster, says Le Quellec Cottier (Le Quellec Cottier 2008: 111ff). He makes

[16] Olayemi Akinwumi, professor of African History at Nasarawa State University in Keffi, Nigeria, kindly let me use his slides presented as "'The more you see, the less you understand': Translators and Abuse of the Judicial System in Colonial Nigeria" at the conference *African Agency in the Construction and Reappropriation of Anthropological Knowledge*, University of Dakar UCAD, 22-24 March 2017.

use of his linguistic skills and of being the only speaker of both French and Malinké – just like Omar Sy does, just like Wangrin does – and Soumaré uses his monopoly on language in support of what he deems and believes to be the good and right thing to do, the French conquering the Soba kingdom and West Africa.

Some few studies look at and analyze interpreting at court in African legal contexts today (Fofana 2018; Kiguru 2008, 2014; Lebese 2011, 2013, 2015; Moeketsi 1999; Ouattara 2018; Simporé 2009; Tarr 2017; Tarr & Sambou 2021). Moeketsi has done pioneering work in South Africa through her research on *ad hoc* interpreters and has consequently developed court interpreter training programs (Moeketsi 1999). These programs never got institutionalized, however, as described by Lebese, who laments the fact that court interpreter training programs continue to be conceptualized for and by European (or western or northern) contexts (Lebese 2011, 2013, 2015). Like this, South African court interpreters do not have any adequate models to follow that take their working environment into account (Lebese 2015).

Kiguru has looked at court interpreting in Kenya from a linguistic point of view, analyzing interpreter mistakes and their coping strategies during trials (Kiguru 2008). He also looked at court interpreters' strategies when confronted with difficult translational situations, such as legal jargon, slang words, or culturally bound expressions (Kiguru 2014). Kiguru's empirical investigations show that court interpreters act in multiple roles in the courthouse and during trials (Kiguru 2014: 114). In order to cope with linguistically challenging situations during the interpreting process, they resort to a number of strategies, not always successfully, as shown in the different errors they commit.

Like Lebese for South Africa, Kiguru found that court interpreters in Kenya did not receive clear instructions on the role they were expected to perform during trials. And more than that, they, again, should carry out their work as "an objective medium through which information is transferred from one language to another" (Kiguru 2014: 111), just as we have seen above in publications investigating court interpreting in Europe, the USA, or Australia, or in the French commander's attitude toward and expectations of "his" colonial interpreter.

Ouattara has herself worked as a court interpreter in Ouagadougou in the late 1990s, a profession she has consequently abandoned in favor of training as chief court scribe (*greffier en chef*). She wrote her *mémoire de maîtrise* (roughly the equivalent of an MA thesis in terms of duration of training) on court interpreters and interpreting in Burkina Faso (Ouattara 2018).

Before her, Simporé has written on court interpreting in Burkina Faso for the same degree (Simporé 2009). Both of these *maîtrise* theses were written at and for the state-run administrative training school for court personnel, the *École nationale de l'administration et de la magistrature* (ENAM), and are mainly descriptive. They allow insights into the working day of court interpreters in Burkina Faso from personal experience. With the exception of Fofana (2018), social scientific research specifically analyzing how untrained court interpreters are selected and consequently hired by state institutions, how they operate professionally, and particularly the role they are expected to play by authorities, is non-existent for the former French colonies in West Africa.

Fofana (2018) looks at what he calls legal distance (*distance judiciaire*) that the justice system has to those that are judged, the defendants. In a courthouse in a secondary town in western Burkina Faso, most people being judged are rural inhabitants; they are largely illiterate citizens who have a hard time following the institutionalized and rigorous court procedure. The court interpreter's translations into Jula do not make their trial more understandable or procedure clearer to them. As a consequence, many defendants are left stranded – they know neither how to carry themselves nor are they instructed on how to do this. This sounds very familiar to what is going on in Bobo, a large city, equally in the West of Burkina Faso, and second only to the capital. In fact, it sounds familiar to situations found the world over. We will get back to this point shortly. Here, Fofana insists that it is not only the interpreter's linguistic know-how that can assist defendants, but that the legal system itself needs to be rethought and be brought closer to the social realities of defendants.

In a comparative study conducted in the penal courts of Dakar and Bobo, Aly Sambou and I have looked at how interpretation at court is handled (Tarr & Sambou 2021). In Senegal, a court interpreter training program has been up and running since 2014, kickstarted by a judge, who had always felt uncomfortable having to conduct trials in French. He consulted a linguist at the University of Dakar, the *Université Cheikh Anta Diop* (UCAD), and together they compiled a glossary of legal terms in Wolof. One thing led to the next and soon he was mandated to set up a training program for court interpreters.

Now, all *criminel* trials in Senegal are translated into the six national languages designated as such in the constitution. Professionally trained court interpreters are on stand-by at courthouses throughout the country. In Dakar, two of the interpreters also translate from and into Arabic and English. And the *correctionel* trials are all conducted in Wolof.

What the writings on the judicial system in these countries agree upon – be this in Burkina Faso (Fofana 2018; Ouattara 2018; Simporé 2009; Tarr 2017; Tarr & Sambou 2021), Niger (Alou 2001, 2006; Hamani 2014; Göpfert 2013), Benin (Bierschenk 2008), and "French-speaking Africa" in general (Halaoui 2002) – is that the language of the court is French, in both its spoken version and in writing. In addition, the language of the court is not merely French, but a "technical French littered with archaisms inherited from the French legal tradition" (Alou 2006: 168). Or, to name it with linguists, in the courtroom, legalese is spoken by the court members – and by them alone. All courtroom participants other than court personnel and particularly defendants and witnesses or plaintiffs – in some cases including the interpreter – have to cope with and accept this formalization of French and the impact it has on communication during trials and beyond. Here, we just have to think of the written court protocol, which is the basis for any future appeal. We will look at the practical impact French and interpretation can have on communication during trials in select court cases in chapter five.

A research gap exists in both linguistic/language studies and the social sciences in what regards interpreting at court in former French colonies, where the entire justice system is French-oriented – linguistically, administratively, bureaucratically, in terms of procedure. Continued and exclusive use of the official language French in Burkina Faso's courts seems counterproductive in this plurilingual country. Why continue using French if most people, particularly defendants, cannot speak it? No recent statistics are available documenting the use of French in daily life in Burkina Faso; a survey conducted in 2004 states that less than 0,01% of Burkinabe use French as a family language (Diallo 2004: 14). Hagberg remarks that even those citizens who can read and write rudimentarily are hardly able to read and understand newspaper articles (Hagberg 2002: 227); these same citizens would not be able to follow court proceedings, either. And why is Wolof spoken in court in Dakar in the *correctionnel* trials, while Jula is banned from the courtroom in Bobo? Who benefits if only judges and prosecutors can use French?

We need a more thick description by looking at language policies and ideologies across time and also at the rules a state-run institution imposes upon its members, expecting them to follow and adhere to them. A state-run institution imported from elsewhere, moreover, where it had been created according to local social realities which differ from the ones found in Burkina Faso. The rules and concepts, practices, and the bureaucracy created and which

made sense at one point in time and elsewhere are then carried along and across time and space. Here, it becomes pertinent to understand not just the why, but how these concepts, practices, and rules continue to be applied and used by individuals – court members, in our case, and their use of French, but also by the public, the everyday citizens. One highly visible example of a practice imported from elsewhere under conditions of colonialism is the wigs court members still wear during trials in some former British colonies such as in Ghana; a usage largely abandoned in Britain, from where it had been imported to Africa originally.

The continued use of French in the courtroom might not be as conspicuous as the wearing of wigs, but has become a habit, a "rule of the game" citizens seem to agree upon. Even without it being specifically codified in writing, everybody "knows" – and agrees – that French is the language to be used for all government affairs. The institutionalization of French at court might have its origin elsewhere and in the administration of colonial rule, its reproduction is assured also through what Bourdieu defined as habitus (Bourdieu 2013), an internalization of the social order.[17] The practices we are investigating here might be less "visible" than white wigs on African judges' heads, but the role the French language plays at court and during penal trials in Bobo today continues to interfere with and impact ordinary people's lives.

The institutionalization of French at court in Burkina Faso is more than citizens following unwritten rules (and/or not questioning these), however. It is also one aspect of a bureaucratization of government work, in which civil servants are instructed and taught to adhere to a set of rules and to codified laws. Constellations of power and knowledge are thus created through education, made visible in the present-day courtroom in the continued, mandatory use of French, the *Amtssprache* in Burkina Faso. I prefer this German term because it captures more honestly the functional and bureaucratic nature of a language of the state, of what is designated as official language in English or *langue officielle* in French.

The power asymmetries inherent in an institution using and imposing an *Amtssprache,* a language of state bureaucracy and of the *fonctionnaire*, the civil servant or bureaucrat, are

[17] Olivier de Sardan does not believe the concept of habitus as defined by Bourdieu is really applicable in the way Bourdieu had intended it. Olivier de Sardan finds that is has "two major weaknesses: (a) it has no real empirical foundation and remains a black box; (b)… it is almost exclusively centered on the internalization of the process of domination" (Olivier de Sardan 2014: 408). I have a hard time agreeing with Olivier de Sardan and believe that, indeed, Bourdieu has something to offer us in terms of understanding the use of French by citizens in Burkina Faso.

immediately graspable, it is almost palpable, in the designation *Amtssprache*. Only those who have trained for a state job, an *Amt*, often for many years in addition to formal basic schooling, have also been trained in and can use this language in their working life and outside with ease. But to those Burkinabe, who have had little schooling in formal education and who are confronted with an *Amt* in form of the court, this language used in state institutions is not accessible. Designating French as *langue officielle* hides these inherent power asymmetries between the (educated) *fonctionnaire* and state institution and the (uneducated, illiterate) citizen. And indeed, the majority of defendants being tried at either of the two penal courts in Bobo are illiterate or barely educated young men (see also Fofana 2018).

In practice, French is the language of the public service and it continues to "colonize" peoples' lives. In Burkina Faso, this colonization-through-language starts with the first day of school, when children are confronted with the official language French, often for the first time in their lives (see Mayrhofer-Deák 2009) – we will discuss the *Amtssprache* in the formal educative system in chapter 4.2. below – and it continues in everyday situations such as on written street signs or at any government office. And it culminates in the written French instructions glued to the courtroom wall prohibiting the use of cell phones in the TGI in Bobo – not as a pictogram, but in writing. Indeed, the irritation Antoine experiences in being addressed with his French or Christian name at home gives way to very different feelings when he is at court because here, being called Antoine is proof of him belonging, being a member of the court and by extension a member of the larger community of Burkinabe *fonctionnaires*.

By researching interpreting practices in a courtroom in Burkina Faso, we are looking at procedures and how they are adhered to by court members, bureaucrats who are employees representing the state. In order to understand why French is the mandatory language in court, we need to look at these procedures and analyze them as social-political and discursive processes which deal with the past and with the institutional setting of order and protocol – of how things are done. And of how things that were once imposed become internalized habits (Bourdieu 2013). We are also looking at how the state is represented.

This representation has created a space for the institutionalization of specific power relations, which pose challenges to some actors and offer opportunities to others. This specific aspect of how a government institution is run, we will look at more closely when we discuss the translation or appropriation of a system into a new place below. The situation at

court and during trials in Burkina Faso *is* quite extraordinary because the vast majority of trials need interpretation. What we are looking at are procedures in a highly prescribed environment that are obsessively (Eades's words, see Eades 2000: 189) adhered to by the civil servants working at court– as if they were following a script in a play.

In fact, the justice system functions in a highly formalized manner – be this in Switzerland or in Burkina Faso, or anyplace else, for that matter. It functions as an institutional apparatus based on norms which are, on the one hand, derived from a specific culture, but it also pursues specific normative objectives. And lastly, the justice system only operates in the way that its functionaries, the civil servants and especially the bureaucrats among them, interpret it locally. They, as representatives of the state, are the performers or "imposers" of these rules that have been authored by the state. They do this – they appropriate the justice system – also to their own ends.

2.2. Translation, appropriation, domestication: the travelling bureaucracy

We have spent a lot of time discussing translation and interpretation in its purely linguistic meaning. The literature presented above is by far not exhaustive, but allows us a pretty good grasp and an understanding of what interpretation entails practically and how those who commissioned it expect interpretation to be carried out. We could now, of course, go into detail on what exactly interpretation entails in practical-technical terms – how Antoine and his colleague Salomon at the appeals court consult the penal code or talk about legal terms with their superiors, the judges, and also the memorization, quick thinking and decision making during trials. For a description of the work of court interpreters in Bobo and Burkina Faso, on the institution and bureaucracy that guides and dominates it, more detail on the actual act of interpretation is not conducive. We get the picture. As announced earlier, I will rather bring our discussion to another concept or theory in the social sciences which is also referred to as translation and which directly applies to our investigation at hand – cultural or ethnographic translation (Asad 1986; Bachmann-Medick 2009; Clifford and Marcus 1986; Leavitt 2014; Mignolo & Schiwy 2003 also speak of colonial translation). What role do the court interpreters play in this, what is their part – will we find the savior of innocent defendants?

With the increasing globalization of world society or increasing global cultural encounter, it has become more and more important to develop and put a name on the translation of concepts across cultures (and disciplines) that the social sciences and particularly anthropology have in fact always engaged in. In academia, various and varied debates on inter- or transdisciplinarity, on an understanding of the contact zones that have emerged between disciplines and the tension therein, feed into these ruminations as well. The discussion came and stayed and it got a name: Bachmann-Medick designates the acknowledgment and the entry into academic research of new ways of conceptualizing translation as the translational turn (Bachmann-Medick 2009).

This opening up of translation to a broader meaning had been under way at least since James Clifford and George E. Marcus curated *Writing Cultures* in 1986. This book might not have directly pertained to translation per se, but constitutes a turn in academic thinking about ethnography and how we anthropologists go about doing our jobs. And this includes how we analyze our data and how we present our findings, how we translate the knowledge we have gained.

Beyond the designations cultural, colonial, or ethnographic translation, the translational process has yet experienced another, related nuance in that it discusses the transfer or the move of objects into a new environment and their embedment into this new place. It is variously discussed as appropriation or domestication in the literature (see i.a. Beck 2001 *Aneignung*; Behrends, Park & Rottenburg 2014 *venacularization*, *appropriation*; Callon 1984 *domestication*; Hahn 2004 *appropriation*; Kohl 2001 *Aneigung*; Rottenburg 1996 *intercultural translation*; Kaufmann & Rottenburg 2012 *Translation*; Spittler 2002 *Aneignung*).

Beck (2001) discusses the process of appropriating a thing into a local context, focusing on the creativity of the appropriators in making this thing workable, the modification and change it needs in order to be usable for their ends and in their environment. In “The Appropriation of the Machine” (Die Aneignung der Maschine), Beck describes how a diesel motor was reappropriated by farmers in the Nile valley in Sudan, replacing a perfectly functionable 2000 year-old technology they had been using to irrigate their fields.

The introduction of new technology also necessitates a reorganization of the technical environment, Beck finds, and a new institutional embedment (Beck 2001: 71). The vocabulary Beck uses shows the direction his specific discussion of the redefinition of a technological apparatus takes. Next to the most prominent use of “appropriation”, he talks about

assimilation, recontextualization, and social appropriation. Beck also insists that even though creativity, a talent for improvisation, a certain affinity for technological craftmanship were all necessary to make the diesel motor work in its new, dry, hot environment and fulfilling its new function – to pump water from the river to the fields – this appropriation had nothing to do with inventing or making something from scratch (Beck 2001: 77).

It is rather a redefinition of this thing the diesel motor, a redefinition that comes with the freedom and flexibility of those who were not instructed, educated to use it according to its original function. They can thus modify this thing to make it work for them and according to their own needs. The farmers in the Nile valley were not subject to any orthodox tradition defining what this diesel motor was supposed to and should do and this gave them the interpretive freedom of action necessary to appropriate it and to make it work for them.

In his publication reflecting on consumption and on global goods, Hahn too talks about appropriation (Hahn 2004). Whereas Beck described one specific object that was appropriated locally, Hahn's focus is on a more general discussion of concepts of consumption. He dissects the process an object is subjected to on its way from being a commodity available on the market to being a personal good (Hahn 2004: 218). Hahn also enumerates the terminology researchers apply in their discussions on appropriation: domestication, taming, and nostrification emphasize the active side of appropriation. In fact, without a creative aspect, Hahn contends along with Beck, appropriation is not conceivable (Hahn 2004: 221).

At the same time, however, creativity of appropriation does not necessarily mean something was appropriated voluntarily. More often than not, people had never asked for these things, they had had no say so in their appropriation, such as soap in Zimbabwe, for example. It took 30 years for soap to enter the everyday lives of Zimbabweans, who today refer to soap as being important (Hahn 2004: 223). So, certain forms of rejection or negative connotations are also a form of appropriation, Hahn finds. In the end, appropriation as a process can explain how global goods become recognized as being part of local identity and can show up new ways of dealing with the familiar (Hahn 2004: 226f).

Like Hahn, also Kohl discusses appropriation and globalization, but right at the beginning of his article reminds us that it would be more honest to speak of Euro-Americanization or westernization than of globalization (Kohl 2001: 8). Globalization is often resisted – international scientific conferences in France receive government funds only if the

official conference language is French – and can equally often reinforce or revitalize local cultural habits (Kohl 2001: 8f).

The appropriation of global goods into local contexts is also a very pragmatic undertaking and coupled with the attractiveness of specific articles allows consumers to partake in the prestige of the exotic (Kohl 2001: 16). Kohl here mentions that the African mask on a German living room wall and the refrigerator in an African house fulfill the same purpose of putting objects of prestige on show and thus endowing their owners with a certain air (aristocratic, elitist, important at the least). Kohl also emphasizes the fact that appropriation of objects is a creative process, a type of Levi-Straussian bricolage. Here, too, the "appropriators" make use of that which is already there, the original intended use of the appropriated object being irrelevant (Kohl 2001: 17).

What these discussions of appropriation so far agree on is that appropriation of goods, be this technology like the diesel motor or consumer goods like soap or objects of prestige like a fridge, is a creative process in which something that already exists in some form is made into something new adapted to local needs and circumstances. Rottenburg (1996) complements this discussion by adding his description of the translation of a system of formal organization. Not only physical objects are transferred or moved someplace else and appropriated by the locals to fit their needs, also institutions and how they are run are moved and subsequently adapted. Rottenburg thus directs the discussion towards the present examination of the import or move and subsequent appropriation of the French system of justice and all it entails – its organization, bureaucracy, and formal/institutionalized rules and regulations – into local Burkinabe society.

Rottenburg begins his discussion by laying down the fact that "the import of western artifacts, ideas and models has, of course, not come to an end with liberation from colonial rule…. However, the fact that the model of formal organization has spread all over the world … [allows the observation that] the structures modelled on those of the western, usually the ex-colonial powers, function totally differently in practice" (Rottenburg 1996: 192f). So organizations base their orientation upon a model that, in their view, is successful. Rottenburg calls this process of imitation modeling (Rottenburg 1996: 194). The goal of the imitators is to appear more modern and rational. Modeling does not automatically lead to success or to a reduction of uncertainty, however. Indeed, there seems to be a contradiction between the

wide distribution and popularity of certain organizational models and their ineffectiveness in many parts of the world (Rottenburg 1996: 202).

This contradiction Rottenburg explains through an examination of how local conditions governing the emergence of formal organization must look like, particularly in the context of informal networks as we find them on the ground in many African societies and certainly in Burkina Faso (his research for these observations was carried out in southern Sudan). Take bureaucracy and gift exchange as related to networks. Gift exchange is one crucial aspect of reciprocity, which, in turn, is a prominent way of establishing, creating, maintaining, and grooming relationships – of networking, if you wish, and to translate it into a pragmatic European expression.

When the local world view is based on an "ideology of kinship" (Rottenburg 1996: 203), which demands certain forms of reciprocity, this does not automatically mean that all partners in the exchange are equals exchanging equal values. On the contrary, "in societies that praise generalized reciprocity people have an indisputable right to be different and to be treated differently" (Rottenburg 1996 ibid.). The conditions for the exchange are already established and have to do with aspects relating to age, social status, gender, seniority. Institutional organization, bureaucracy, challenges this right to be different, so the people working within a bureaucratic system have to negotiate between different legitimacy discourses, as Rottenburg terms it (Rottenburg 1996: 205) or, stated differently, they constantly have to navigate between the exigencies of their job as civil servants and their obligations towards friends and family. Different conceptualizations of hierarchy meet – or clash – in the courtroom; the administrative-bureaucratic exigency that all citizens be treated equally and local Burkinabe ideas on the social hierarchization of citizens.

The core of formal organization as found in a bureaucratic organization such as the justice system lies in a certain form of rationalization. This rationalization is based on the principles of efficiency and of symmetry, which means selection of the most expedient means for any given purpose and the identical treatment of identical cases (Rottenburg 1996: 210). The essence of this is a certain way of organizing reality through the introduction of order, which is made possible by the keeping of files – only what is written down has any value and can be used in court, as mentioned above.

On the one hand, then, bureaucratic organization is an ideal strived for, it bestows an air of modernity and prestige upon its adherents the civil servants or *fonctionnaires* and on

the bureaucrats. On the other hand, however, the functioning of a bureaucratically run organization is contrary to local social values such as social hierarchization or reciprocity and the right to be different – certain relationships can simply not be ignored, be this in the allocation of jobs or in how cases are treated. It is a slalom walk for actors who handle this tension by choosing and alternating between the different legitimacy discourses at the right moment.

Ultimately, "the reciprocity ethos is only a representational model, though. There is always enough scope in practice for people to see to their own advantage" (Rottenburg 1996: 208). The tension between an imported model and its installation and functioning on the ground are resolved by actors' pragmatic decisions and careful weighing of options allowing them, ideally, the best of both worlds. This decision-making we can also designate as a kind of shopping – actors decide according to how they believe they can achieve a most favorable result, shopping among the possibilities open to them. We will later discuss tools actors have at their disposition and that they consequently can shop for.

What bureaucratic organization also brings with it is a system of experts, since only people schooled accordingly can run the apparatus. Civil servants – in our specific case judges, prosecutors, court scribes – must navigate different and differing legitimacy discourses in the running of the imported system. As the experts who keep it running, it is them who can decide how, exactly, they make the system work. This aspect of appropriation is evoked by Macamo and Neubert in their chapter "The New and its Temptations" (2008), where they also elaborate on the figure of the expert.

The diesel motor facilitating farmers' lives in the Nile valley did not need any experts to function properly. On the contrary, the bricoleurs who adapted it to their needs did not have to undergo any kind of schooling; they were experts in their own right. The civil servant working in the justice system in Burkina Faso, on the other hand, is at the same time the expert who makes the imported system function and also the appropriator of this system, an expert-bureaucrat, making it function according to needs, possibilities, and personal preferences.

In spite of their successful appropriation and handling of the diesel motor, the farmers did not construct it or make it from scratch, we have seen. They are dependent on others to develop and make this product; they are dependent on experts (Macamo & Neubert 2008: 293). Macamo and Neubert discuss products of modernity and embed this discussion in the

concepts of globalization and modernization. Like Hahn and Kohl, they want to shed light on processes involved in translating a global product into a local context and on the agency of local actors involved in this process. The appropriation of things and influences coming from the outside are, in fact, a result of local actors' agency, but individual agency is never all encompassing, as we have also seen with the Nile valley farmers and their machine (Macamo & Neubert 2008: 272).

Macamo and Neubert's central question here is how do people react to the new, to outside influences? They enumerate as examples not only things (industrial products, technology), but also ideas such as democracy and freedom. And an important aspect of this question we need to keep in mind is: is the imported thing or idea attractive or a threat or simply unimportant to actors (Macamo & Neubert 2008: 272)? The discussion is organized around the spread of institutions throughout the world, institutions which come with a culture of experts. The process of translation is under continuous negotiation by the experts the institution itself breeds.

Along similar lines as Rottenburg, Macamo and Neubert direct our attention to the fact that the expert system, upon which the institution rests, introduces forms of social differentiation into the local community that differ from established social hierarchies (Macamo & Neubert 2008: 297). This forces users to rethink their own values and ideas on status, prestige, and the role individuals play, for example, and brings to the fore issues of power and trust. Tradition is not static.

Macamo and Neubert use as an example modern medicine as the first expert system to be introduced in developing countries (Macamo & Neubert 2008: 294ff). Apart from the claim to being the first product of modernity to be transferred – we also find the designation transplantation in the literature, see Tamanaha 1993 (discussed later in the chapter on legal pluralism) – to Africa from the global north, their observations pertain to the justice system as well. Burkina Faso, like most African countries, cannot afford to produce or maintain what Macamo and Neubert call products of modernity; they are dependent on other countries for access to such products (Macamo & Neubert 2008: 284). Translating the justice system into local Burkinabe reality includes keeping a system upright and running without the resources required to do so (see also Bierschenk 2008).

We have established that actors need to rethink their own value systems when they are confronted with an institution imported from someplace else. Some products people can

ignore or reject, but others they are constrained to deal with. The justice system, like modern medicine, have both come to stay and they influence the everyday permanently. Macamo and Neubert also point out that these expert systems might be alien to local thinking and thus remain isolated. This does not mean that local ideas and norms cannot be changed, but it means that we need to look closely to see if these expert systems are accessible for local agency (Macamo & Neubert 2008: 300). As long as they cannot be accessed by citizens they continue to be perceived as somewhat bizarre, exotic, or simply incomprehensible and out of reach. How citizens adapt and appropriate these institutions is, then, a constant balancing act which reaches into the very heart of societal organization, Macamo and Neubert conclude.

Now let us look at how actors or experts within this particular expert system which is the justice system and the court go about their everyday jobs. To start with an example, I want to put a penal trial in Bobo on stage, replete with actors, props, audience. A penal trial lends itself wonderfully to be described as a play simply because by its very setting (the delimited space of the courtroom is like a theater), form (actors with their designated roles are on a stage; audience in its own, designated space), and procedure (recognizable beginning and end; script) it resembles a play. For this we will ask Erwin Goffman to lend us a hand. In fact, with Goffman we can see the theatrical appearance of a trial and go far beyond the setting, form, and procedure. Goffman will also help us understand why certain actors act the way they do.

2.3. Erwin Goffman's dramaturgical take on trials – performance and impression management

Goffman is an analyst of the everyday, of people going about their mundane occupations, which he is particularly sensitive to and describes in great detail. His approach in research is bottom-up, says Hacking, because he "scrupulously noted the social exchanges between individuals, not only the words, but also the tone, the accent, the body language, the gestures, the withdrawals, the silences" (Hacking 2004: 278). Goffman starts with individual face-to-face exchanges and develops an account of how such exchanges constitute lives – from the particular to a more general "making up people" (Hacking 2004: 278). In his *The Presentation*

of Self in Everyday Life (1956)[18], Goffman quotes examples from studies conducted in restaurant kitchens, gas stations, shipyards, and factories.

At the same time, Goffman is difficult to place, says Posner, describing him as a kind of "enigma in academic sociology" (Posner 1978: 67) because of his silence in what regards theory or methodology. Goffman seems to have exasperated his colleagues, who saw him as a snob and consequently ignored him, while students adored his accessible style and presentations full of real-life anecdotes (Posner 1978: 67, footnote 3). It is, indeed, a dearly held cliché in academic writing, particularly outside the English-speaking world, that the more difficult a read you are, the better and more valuable your insights must be. Goffman, who wrote "painstaking analyses of the nooks and crannies of everyday life" (Posner 1978: 70), had a style bordering on what could be termed contemplative narrative – he wrote accessibly, with profound insight and thoughtfulness (Goffman 1989: 124)[19], providing many examples which were often extremely funny in an everyday or down to earth kind of way.

Goffman employed a dramaturgical world view, outlining basic themes of social life that are a central aspect of many of his publications. For us, *The Presentation of Self in Everyday Life* (1956), his notions of personal front, of front region and back region or stage behavior and the "complex art of impression management" (Posner 1978: 69) are the lens through which we will look at the action taking place during penal trials in Bobo.

These follow a predictable choreography, visible to the frequent observer and known to court personnel. The enactment of a trial is complete with all things needed to perform a play: props, costumes, roles clearly defined, an audience, and a script the actors follow, performing their assigned character. Often the play is a drama, like when two defendants get down on their knees crying, begging the judge to not send them to prison for too long. Sometimes it is a comedy, for example when a barely literate defendant insists on speaking French to the amusement of both judges and audience. But it might depend on the spectator.

The legal system in the former French colonies in West Africa is based on civil law, procedure is inquisitorial. This means interrogation of defendants, witnesses, and victims or

[18] The published version of *The Presentation of Everyday Life* is 1959; it is this version authors usually quote. The version I am working with here is an earlier manuscript dated 1956 which is available online. To my knowledge, it differs only in page numbering from the later, printed version of 1959.

[19] In 1989, Lyn H. Lofland published a transcribed and edited version of a tape-recorded speech Goffman gave at the Pacific Sociological Association Meeting in 1974, where he talked about fieldwork, a topic he never published on. I will here refer to this text as Goffman 1989; see https://journals.sagepub.com/doi/10.1177/089124189018002001.

plaintiffs during trials is carried out by judges and prosecutors; there is no jury.[20] This system indeed attributes clearly defined roles to the participants in the courtroom space. The prosecutor, who brings the case to trial as the accusing instance, is by definition the bad guy in this play, like anywhere in a trial, for that matter. Judges are, again by definition, the neutral instance or arbiters, this is their role: they need to listen to everybody's side of the story in order to come to a fair and adequate decision, the verdict. This in theory at least.

With Eades we had seen that this neutral role of judges is highly contested (Eades 2000: 187). Indeed, in Bobo judges practically always accept the prosecutor's accusation, translating it into a guilty verdict, we will see. In most cases, no defense lawyers are present. The whole trial is thus imbalanced, giving a lot of room to accusation, almost none to defense. This, too, needs to be taken into account.

In the courtroom in Bobo, we further find ourselves in what Mary Louise Pratt calls a contact zone, a space where "cultures meet, clash and grapple with each other, often in contexts of highly asymmetrical relations of power…." (Pratt 1991: 34). The institutional organization of the justice system meets a local world view. Two ways of conceptualizing social hierarchies and what (hierarchical) space specific individuals can and are allowed to occupy meet and sometimes clash in the courtroom; also different conceptualizations of how to speak justice meet here. And of course, languages meet and clash, grappling with each other: Burkinabe defendants speaking Jula are judged by julaphone Burkinabe judges speaking French. Accompanying this meeting of two different ways of conceptualizing we also find social class, socioeconomic background, and education of participants in the courtroom that meet and clash.

In this dramaturgical model people are thus constructed as actors, their lines largely already written for them and their roles predetermined by the format of a play and the setting (Davies and Harré 1990: 54f). When people appear in court as defendants, their aim is, normally, to make themselves understood to the court, to being heard. For prosecutors and in particular for judges, the aim is to gather enough material for a solid verdict. We are

[20] Until recently, and while research was being carried out, during assizes trials, held ideally once or twice a year at the appeals court in Bobo, a jury of six men and women was sworn in from a pool of citizens who have been chosen prior to the beginning of the assizes' session (field journal, Bobo 13 June 2016). It seems that this practice has been abandoned since, the jury now consisting exclusively of legal professionals, see www.facebook.com/permalink.php?id=1534293386675084&story_fbid=1714727741964980, last accessed 26 November 2019. This defeats the very purpose of a jury, which consists of randomly chosen citizens living within the court's jurisdiction. Like this, it is believed, a verdict will be pronounced more neutrally.

treading on judges' and prosecutors' territory, insiders who are clearly at an advantage, who know the ropes, carrying out – performing – their profession in this space daily. They know how to act, they have studied and learned their script by heart in years of higher education and subsequent professional experience. Interpreters, through years of carrying out their work translating trials, know how to act as well. Their position at court might be undefined or hazy, but since they have been performing their duties as secretaries, liaison officers, and interpreters, they, too, know how trials are performed and what is expected of them.

So, the courtroom provides the space for this play, the trial, to be performed. The team of actors consists of three judges, one prosecutor, and one court scribe, all clad in the black robe, insignia of their profession. "In general … a set of individuals who co-operate in staging a single routine may be referred to as a performance team or, in short, a team" (Goffman 1956: 48). The court interpreter is not immediately recognizable either as a member of the team or as court interpreter. Later in our discussion we will see that the question of him being or not a member of the team is highly contested. For now, describing a trial as a play, the reason why he is not immediately recognizable as either a team member or as court interpreter is the simple fact that he does not wear the black robe. In addition, he also officiates as the clerk preparing the courtroom prior to the opening of trials, which means he does not enter the courtroom together with the visibly recognizable team members. He is, until this point, neither part of the team nor of the play.

But then, as soon as trials are opened, this officiating clerk transforms into the court interpreter and acts during the show; he knows the script and the procedures to follow. In this sense and on stage, he is clearly a member of the performing team. Hence, as a person, he is both – a member of the team (as interpreter) and not a member of the team (as court clerk). This simultaneous belonging and not belonging is one aspect of the position and role of the interpreter at court. We will get back to this in more detail in chapter 4.5.

Also defendants are difficult to place according to the three basic roles Goffman distinguishes according to their function and necessity for the performance of a show: performer, audience, outsider (Goffman 1956: 90). Defendants are both outsiders because they come to the courtroom from outside the building and they are performers because they are an integral part of the show.

According to Goffman, anybody in the performing team can theoretically be its director, but usually this privilege falls to the individual who "dominates the show" (Goffman

1956: 60). Here, this would be the presiding judge, seated in the middle between his two colleagues during the performance. He is the one who allocates turns in speaking, the right to speak, who decides when who says what to whom and in which language. He is thus the director of the show, while at the same time playing an active part in the performance he directs.

While the performance is well known to and thus a routine to the team performing the show, it is a struggle for others. The members of the court know the procedure and the choreography of trials by heart, but the audience, defendants, witnesses, and victims/plaintiffs – in short, those coming from the outside – are not familiar with courtroom procedure. And why should they? Going to court is not an everyday situation, but quite an extreme occurrence, something out of the ordinary for anybody not working at the court.

The performative nature of trials is visible not only in the robe clad bodies of the civil servants working there, but also in the geographical or physical arrangement of the courtroom and its props, including impressive furniture, chosen according to hierarchical position of performing actors. The three judges' and the prosecutor's chairs are large black office chairs, upholstered in fake leather, complete with a high back you can rest your head against, armrests, and wheels. These chairs can swivel. The court scribe sits on a chair not quite as large. The interpreter also has his own, designated chair, similar to the one the court scribe sits on. That we are attending a play is further visible in the costumes court personnel wear – with the exception of the interpreter, we have seen.

Goffman notes that court personnel "will be arranged in the manner … so that the eye, starting from any point in the room will be led to the royal centre of attention. The royal star of the performance may also be dressed more spectacularly and seated higher than anyone else present" (Goffman 1956: 62). Even though the star of the performance at the penal courts in Bobo, the presiding judge, might not be royal, he is quite impressive seated in his high-backed chair behind the huge desk and flanked by his two colleagues.

In this strategic context there are two planes for activity which serve as a framework here to further explore courtroom interaction and communication: front region and back region or backstage (Goffman 1956: 13ff). During trials we are in what Goffman designates as the front region, open to the public, where court members behave according to front region rules and etiquette and where they present a personal front adapted to the occasion. They enter the front region from a place neither visible nor permissible to the audience, the

backstage. There, rules of behavior are more relaxed. Individual actors moving between the two spaces need to adapt their behavior accordingly. So not only do court members need to navigate between the local world view and the rules that come with the running of the justice system, they also need to switch modes of how they present themselves according to where and with whom they are interacting. As soon as the five court members enter the front region for a trial, they adapt their facial expressions and how they carry themselves to the solemn situation at hand, walking into the courtroom slowly and with dignity. This is, of course, not a particularity of Burkinabe courtrooms, but visible in Switzerland and other places as well.

The front region thus also includes, next to the physical equipment or props, what Goffman designates as the "personal front" (Goffman 1956: 14ff). Actors accompany their performance with certain expressive equipment, like insignia of office or rank – their black robes – and by their posture, gestures, facial expressions, and speech patterns, among other characteristics. The interpreter seems slightly apart from the other court members, not only because he is the only one not wearing a black robe. He is not immediately placeable, or classifiable, and differently than the robe-clad solemn court members, his performance can be quite nonchalant – he lies in his chair, legs outstretched, or consults his cell phone while translating. What does his behavior express and what does it mean? That trials are a performance is thus visible both in the décor, in the dress, and in the attitude court members adopt – the solemn air of the robe-clad members as well as the interpreter's apart performance and casual attitude.

From the point of view of judges and prosecutors, the role the interpreter is expected to play is that of the so-called conduit, translating *verbatim*. We have read that this is the attitude judges and prosecutors hold in regard to the court interpreter's work in many and different places the world over. Goffman describes another type of role, of "… performers [who] will be concerned with the appearance that they make and concerned with little else…. It may be remarked that an individual with [such] a purely ceremonial role need not have a dramatically dominant one" (Goffman 1956: 64). If, indeed, there are ceremonial roles acted out during trials and if we can describe the court interpreter's role as purely ceremonial, will be part of our analysis.

In the back region or backstage (Goffman 1956: 70ff), actors can let down their hair. In the front region activities are performed in the presence of others, so certain aspects of an activity need to be suppressed in favor of the impression we want to give. In the back region,

on the other hand, these suppressed ways of going about an activity can make an appearance. Commonly, the back region or backstage is located near to where the front region activity takes place, but is shielded and separated from it. It is here the performer knows that no member of the audience will intrude. Goffman goes on to note that it is a widely practiced technique of impression management that the entire back region be kept hidden from the audience since it is here that performers behave "out of character" – control of the backstage is vital.

Control of access to the front region is a point Goffman takes up as well, saying that the original two kinds of bounded regions – front and back regions – need to be extended. A third space needs to be defined, a third region he names the outside (Goffman 1956: 82ff). The two regions front and back can be rooms within a bounded area or building and can serve both as a front or as a back region, depending on the situation. These rooms are cut off from the outside because of the natural boundary of the walls of the building. Those individuals who are on the outside of the building and who come inside for one reason or another we can call outsiders.

Goffman's description of outsiders conforms to how he allocates function, information, and place to the individuals present during a performance. In this sense, he differentiates between the performers, the audience, and outsiders. All contribute, in their own, allocated way, to the smooth running of the show. And all these roles can be described on the basis of the regions to which the role-players have access: the performers have access to both the front and back regions, the audience appears only in the front region, and the outsiders are excluded from both regions (Goffman 1956: 90). This poses a dilemma for us here because above, I have identified plaintiffs/victims, defendants, and witnesses as outsiders. They are outsiders but they have a part in the performance, I have argued.

As Goffman has also warned, we need to handle the notion of outside with care or we might get confused or misled (Goffman 1956: 82). He concedes as well that "in actual fact", description of roles according to function, information, and place is not as clear cut as theory would have it. There are what he terms discrepant roles certain individuals play – he names the traitor, turncoat, the spy, or the go-between or mediator, among others. How and if we can make use of a Goffmanian allocation of roles, discrepant or conforming, is left to be seen further on.

Goffman gives insights into the performative nature of how trials are conducted by actors. The civil servants performing this play, particularly judges and the prosecutor, work as experts in a system, which at the same time creates and maintains subordinate members in Burkinabe society. Or rather, the justice system as it is run by the bureaucrat-cum-experts, keeps those members of society subordinate who were already subordinate citizens to start out with. By looking at the language politics in vigor at courts in Burkina Faso, we can come to an understanding of the part language plays in the production and maintenance of inequality. The courtroom and trials are a mirror image of the socio-economic and linguistic realities of the everyday larger society in which "[l]anguage is one particularly important means for the construction of relations of social difference and social inequality" (McElhinny 2016: 279) even if not the only one. By virtue of their socio-economic status, their poor educative *niveau*, their lack of funds to pay for a defense lawyer, and particularly their moderate or non-existent French skills, defendants are left with no bargaining power to either navigate or influence their trial. They, too, perform according to their allocated role.

What Goffman cannot assist us in understanding, however, is how the system of justice as it is came into being "and what organizations of thought and statements have to do with our thinking of [it] as natural, as part more of the found order than the order of things made by people" (Hacking 2004: 299). For this, we have looked to other methods and tools, like the "appropriation school" of the German social scientists discussed above – Kurt Beck, Karl-Heinz Kohl, Hans Peter Hahn, or the "translation theory" as reflected upon by Richard Rottenburg and Elísio Macamo and Dieter Neubert.

In addition, and in the justice system "as it is" (Blundo & Olivier de Sardan 2006: 108), then, judges and prosecutors are seconded by the court interpreter during trials. The role interpreters perform is indeed indispensable to keep the justice system as it is. Interpreters' room to maneuver as interpreters – that is carrying out the work of translating from French to Jula and back – is delimited, being restricted to the courtroom and to the time trials are held on the one hand, and by the fact that the work they do there is controlled by Jula speaking judges, on the other.

To these theoretical reflections on performing yourself and your profession, I want to add another, a strategic element: new institutionalism in social anthropology, in which the issue of translation is embedded. One critical question we have already hinted at in our above ruminations is if interpretation at court cannot be boiled down to the anti-politics element

(Ferguson 1994), the interpreter functioning to support the upkeep – the "as it is" – of the system of justice, which continues to be translated into local Burkinabe society by the experts running the system.

Indeed, interpretation at penal courts in Burkina Faso functions like an anti-politics machine in that it supports and reinforces bureaucratic state power (Ferguson 1994: 255); the concept of interpretation acts as an "anti-politics machine", hiding the historically grown and ideology-driven processes of dependency and subordination by powerful insiders in the system of justice, the experts. The problem of not understanding the language of the court is solved by the state in that it offers interpretation during trials. The more immediate, pertinent question of why the Burkinabe justice system does not switch to using national languages everybody speaks and understands is not asked – or is restated such that the current system functions well as it is and thus does not need to be replaced or questioned or updated.

What we do not know yet is how, exactly, the civil servants go about their work in a system they appropriate and bend to local needs, social reality, and their own ideas. Rottenburg and Macamo and Neubert introduced above have allowed for first insights. Here, I want to introduce a tool I believe can help explain this *how*, complementing the insights we have gained. It is a tool usually applied to methodological considerations in economic or political science and anthropology: The New Institutionalism perspective and the idea that actors shop for institutions.

2.4. New Institutionalism and shopping

The anthropological part of the New Institutionalism theory is firmly grounded in the empirical and highlights the importance of including historical research for analysis. So far it does not differ from classical, basic ethnographic enquiry. In our description of communication at penal courts in Bobo, New Institutionalism can be the tool with which to tease out *how* the justice system is appropriated by the civil servants working in it, to attain their own, various ends. Institutions are understood to be all those factors, which, formally and informally, make up the rules of the game, "any form of constraint that humans devise to shape human interaction" (North 1990: 4) – laws, codes of conduct, values, norms, constraints (North 1990: 4; Haller 2007: 10).

According to political economist Ostrom (2005), institutions specify what people may, must, or must not do under particular circumstances and with particular costs for non-compliance. It is important to stress that informal institutions that are embedded in the everyday are as successful as formal ones. One prominent example would be the informal rule – tacitly agreed upon – of using French in all governmental-bureaucratic settings, such as at court, but also in school, when you renew your driver's license, or need to formalize your ownership of a piece of land. The institution we are most interested in here is language and how it gets used by whom and for what.

For my analysis of how the justice system and actors within it operate, I follow Tobias Haller's research on resource use in the commons, where he employs the new institutionalism tool to analyze his findings based on a model developed by Jean Ensminger (e.g. Ensminger 1992, see also Haller 2007; Haller 2019; Haller et al. 2016). His perspective can be applied to an account of court interpreting in Burkina Faso. Most pertinently, Haller has coined the concept of institution shopping (Haller 2007; Haller et al. 2016), which in turn I will make use of in my analysis.

Employing the term "shopping" asks for an explanation. Shopping implies payment. This transactional aspect of shopping – giving something in return for the institution chosen/picked out – is done in its classical form, namely in kind and not in money. Payment in this sense can be choosing to carry or present yourself in a certain way, in compliance with tacitly agreed upon rules of behavior, or adhering to codified legal regulations rather than to social norms, or vice versa, in exchange for a job, or not losing your job, or because you deem this to be advantageous to yourself in one way or another.

Actors, in our case the bureaucrats or civil servants working in the courthouse, as well as everyday citizens, have choices when shopping for institutions. These choices are limited and depend on who you are and what your role is in the particular situation at hand. At court, judges clearly have more choices than the everyday citizen or user of the court service in deciding how business will be conducted; the institution that will guide the transaction depends on the judge's (or clerk's, or prosecutor's) choice, whim, decision.

That it is often indeed judges or prosecutors deciding in their own best interest, we can look at through the lens of New Institutionalism. New institutionalists' basic assumption is that the individual is a rational and self-interested actor who attempts to secure the best possible outcome for him or herself. The social anthropology version of new institutionalism

boils the issue of rationality down to the impact power relations have on the process of choosing this best possible institutional outcome. Communities have rules and norms regulating interaction. Monitoring and sanctioning boards make sure these rules and norms are being followed. These boards can be the neighborhood chief, age classes or councils of elders, as well as state institutions such as the police or the justice system. The expansion of the western world – the French conquest and colonization of western Africa – and subsequent independence from the colonial powers are two milestones significantly shaping the formation, evolution, decline, and use of institutions (see Haller 2007).

Today, we find a co-existence of local social norms and of imported, appropriated institutions, as we have seen with Rottenburg's example of the local world view and its rules as to kinship obligations meeting (or clashing with) the institutional norm of equal treatment of all at court. Codified laws can lead to ambivalence and insecurity among users. Macamo and Neubert point out that the appropriated institutions – the products of modernity in their discussion – are a Trojan horse. People appropriate certain products and ideas according to their needs but are also forced to accept that some institutions come with an expert system, making local users dependent on these experts' know-how (Macamo and Neubert 2008: 290). Just see the Nile valley farmers in Sudan Kurt Beck discusses above. They successfully appropriated the diesel motor to their needs, but cannot make the thing themselves and are thus always dependent on engineers and designers to develop it.

Also Macamo and Neubert mention the Sudanese farmers in their article and highlight the fact that here, historically grown local knowledge was replaced by scientific knowledge. And this indeed comes with an expert system. Citizens accept or reject appropriated products, always balancing adjustments society has to make to accommodate their structural features. Indeed, "fundamental social changes accompany the impact of the structural features" of imported institutions (Macamo & Neubert 2008: 290). This balancing act also contributes to institution shopping.

The term institution shopping was first introduced as "forum shopping", coined by K. von Benda-Beckmann (1981) in her analysis of how participants in legal (mostly land) disputes in Indonesia choose between customary law and western laws based on the French and Dutch legal systems. Here, I apply the term institution shopping as introduced by Haller (e.g. Haller 2007; Haller et al. 2016) to the context of the imported, appropriated justice system by looking at court interpretation. The different actors both within and outside the bureaucratic

system that is the court navigate the system according to their possibilities and needs. One point Haller stresses is the fact that it is not always the best institutions that are selected, but those that survive are those which usually serve the people with the most bargaining power (Haller 2007: 16). French has certainly survived and is alive and kicking in the justice system.

Here, actors shop for institutions, choosing among laws (customary, penal, religious, informal rules, traditional values, etc.), languages (French, Jula, Moore, Burkinabe French), between prosecutors when filing charges, between a state-run court or the neighborhood chief. The social control practiced in small scale societies or groups is also an institution. Institutions do, of course, change over time, they evolve and "the influence they have on the economic strategies of individuals and groups are issues debated by different theories in economic history, political science and anthropology" (Haller 2007: 10). The idea that only French can express the complexities of the legal system is an institution, which impacts ordinary citizens' lives to different degrees. And which is referred to by specific actors within the justice system who have the power to choose this institution over another.

Actors' strategies are thus also shaped by existing power relations and the bargaining power individual actors have in a given situation. Individuals' bargaining power stems from their social status, wealth, their ability to manipulate ideology, for example through their hierarchical position in a given pecking order, or from their religious practices. During trials in the penal courts in Bobo, judges and prosecutors have more bargaining power than defendants, being in their own professional domain and able to use the language that has become institutionalized as the language of the court system, namely French in its standard and legalese varieties.

Wealthy and well-connected defendants have more bargaining power at court than poorer, uneducated individuals. In fact, rich, well-connected people accused of a crime have the resources to either appease the court before their case gets to the point of being brought before a judge at a trial, or they manage to not have their file become a case in the first place. Those with higher bargaining power do not go to court. One judge told me that he regularly got anonymous threats in connection with cases – or to say it laconically with Thomas Bierschenk, money and social status help advance or accelerate a file (Bierschenk 2008: 129f).

The practices promoting French as only admissible language during trials replicate a system of inequalities, which has been developed during colonialism and translated into a bureaucratic and legal procedure. This process of appropriation is ongoing and very dynamic.

Burkinabe society has, partly reluctantly, partly enthusiastically, adjusted to the fact that French is the language of all communication with the government. It has become an unquestioned, deeply ingrained habit, which Bourdieu designates as habitus (Bourdieu 2013; see also García Villegas 2004 on Bourdieu's legal thought).

Habitus is the physical embodiment of cultural capital, another concept coined by Bourdieu, and refers to the dispositions we have learned over the course of our life and the experiences we made. Habitus allows us to successfully navigate social environments. Growing up in Burkina Faso we learn that when we need help from a government office, like when we have to renew our ID, we have to ask for that help in French.

2.5. Theoretical conclusion, discussion of research question and hypothesis

In the courtroom, interpreters act and are made to act, translating between speakers who, in any other situation outside the courthouse, would communicate with each other in Jula. Interpreters, judges, prosecutors, as well as defendants, victims, plaintiffs, and witnesses adjust to varying degrees to the appropriated justice system as it is. Here the main question I ask together with Macamo and Neubert is whether and how the institution of the court "and the expert system linked to it [is] accessible for local agency? As long as access is precarious and expert systems cannot be influenced by local people, [appropriated institutions] appear strange…." (Macamo & Neubert 2008: 300).

The research question pertains to just this. By looking at the work of the court interpreter, I am teasing out how bureaucrats and civil servants, the experts, domesticate an imported foreign system and what form this then takes. My first encounter with interpretation at the commercial court in Bobo gave birth to a first hypothesis on court interpreters' work, seeing them as intermediaries called to guide ignorant defendants through their trials. We recall the savior of innocents. This first working hypothesis was somewhat diluted by the literature on court interpretation, which did not reveal any hints at interpreters-as-saviors of defendants. I was not to be deterred, however, so I embarked upon fieldwork in Bobo in June 2016 with varying ideas in my mind on how court interpreters operated and were made to operate. What, exactly, does it mean when the court interpreter sees himself as the savior of innocents?

How the court interpreter acts and is made to act can show how experts deal with codified rules that are part of the foreign, imported, and appropriated – or translated – system of justice. My hypothesis departs from the premise that the court interpreter-as-institution is crucial to keep the system up and running as the experts would have it be. By interpreting, court interpreters are coproducing the existing social order. This aspect we will look at more closely in chapter 5.1. describing select court cases. Judges and other experts, again, translate normative assumptions of the imported justice system into local norms or into individual assumptions.

Experts' domestication efforts are geared towards keeping the system up and running as that what this system had originally been conceived for – keeping the social order upright by "speaking justice". The organizational order of the justice system is based on an all-pervading bureaucracy which prescribes, strictly and narrowly, how civil servants working within it can act. As opposed to the Nile valley farmers, who were free and unencumbered by ideas of what the diesel motor had originally been constructed to do, the experts of the justice system do not have this freedom. They come with the system itself, so their translating or appropriation efforts are concentrated on making the foreign system work as that what it had originally been intended to be (the justice system) and in the way it originally worked (organizational order, bureaucracy) also on local soil.

There is a contradiction between the wide "distribution and popularity of a particular organizational model on the one hand, and its manifest ineffectiveness in many parts of the world on the other….", Rottenburg points out (Rottenburg 1996: 202). In many non-western societies, he explains, a sequence of events unfolds because the objectives and structures of formal organization run counter to historical and socio-cultural realities. These events, in turn, make the organizations themselves ineffective (ibid: 202). Nevertheless, the popularity of a foreign model among citizens has nothing to do with its actual success.

In the face of tensions existing between certain local social sensitivities – we discussed the incompatibility of reciprocity found in local ideas of gift exchange with the idea of the equal treatment of all cases – as well as structural constraints – such as the absence of technical material to conduct forensic investigations – experts need to become creative. They resolve this tension by being not only creative, but also pragmatic. Because in the end, there is always enough room to maneuver; the experts can decide to act to their own personal advantage.

We will see, for example, that at the beginning of a trial, judges ask defendants what language they want their trial to be held in. This is a fake choice, if you wish, since the vast majority of defendants cannot speak the official language French, the *Amtssprache*, used in court. This contributes to their difficulties in accessing the justice system. And it legitimizes the presence of the court interpreter in a space, where only local defendants are being judged by local judges and not foreigners with no Jula language skills. The city of Bobo has accommodated the imported system in its midst because the experts that the system comes with have translated and continue to translate the system according to their own ends and what they have been taught is the norm.

Like the medical services Macamo and Neubert use as an example of an appropriated institution, also the justice system remains distant from the everyday lives of ordinary citizens. This distance or inability of people to access the justice system or the medical services they have become accustomed to makes them reflect on how they perceive their own social structures and how they relate to external influences (Macamo & Neubert 2008: 297). So, also the existing, local social norms and values change; traditions are not static. The "formal models", as Behrends, Park, and Rottenburg call these institutions, concepts, objects, interfere in domains such as law or organization (Behrends et al. 2014: 8).

In terms of interpretation as the transfer of an utterance from one language into another, a marginalization through bureaucratic practices is happening within the translated justice system in Burkina Faso. It creates – or rather, it maintains subordinate members in society. Legal continuity, fairness, and equal treatment of all pose a dilemma for Burkinabe civil servants translating these normative assumptions of the foreign justice system into their own, local, or individual assumptions. As Rottenburg has pointed out, there is a clash between the foreign justice system's idea of all deserving equal treatment and local sensitivities that are grounded in a right to be different and to be treated differently, according to their status in society (Rottenburg 1996: 203).

But within the bounded limits of the courthouse, it is the civil servants who run the system, which gives them – the experts – maneuvering space and thus the most bargaining power within the institution. Indeed, the justice system is a system which comes with its own experts, who hold the knowledge relevant to the system's functioning (Macamo & Neubert 2008: 275). During penal trials, the expert with the most bargaining power is by procedural

definition the presiding judge. Beyond the fact of him calling the shots, judges' bargaining power rests upon two forms of power identified by Gramsci (1971), hegemony and coercion.

Coercion is direct domination, exercised by legislative or executive powers such as judges in our case, who are on their home turf at the courthouse and during trials. And through hegemony, a dominant group secures the consent of society. The tacit agreement among citizens that French is the language of administration and government is both internalized and upheld. It is the outcome of a long and ongoing process of positioning the French language as the language of civilization, learning, upward mobility, and the coveted accessory of a desirable social status. This process is being perpetuated both by the powerful – be this judges or prosecutors in our case, or teachers, professors, or the minister of education – and by ordinary citizens alike. Both forms of power are present in the courtroom, where "a powerful group may limit the freedom of action of others [coercion], but also influence their minds [hegemony]" (Van Dijk 1993: 254 quoted by Eades 2008: 40). That French is the language of the court is an expression of this ongoing process. Equally part of this process is that it is not questioned, neither by court personnel nor by citizens in general.

During (moments of) interpretation, there are significant power asymmetries, like the top down decision of the judge who decides for the defendant that the trial is to be held in French (see also Eades 2003: 116) or which passages during a trial get to be translated and which will not. Here we see that also the court interpreter is made to act. In fact, his very presence is functional to the reproduction of the justice system as its experts make it work. The interpreter follows the instructions as to which parts of a trial need a translation and which remain untranslated and thus not communicated to the defendant.

In addition, translations are never simply repetitions – the interpreter is not the conduit that law personnel see him as and want him to be – but like other forms of reported speech, translations "convert the speech of one group into evidence for another group's project" (Gal 2015: 231). What this project might be and for whom we will proceed to tease out in our exposition of the communication happening during individual trials below in chapter five.

Goffman had pointed out that his designations outsider, performer, audience, are not set in stone; we have seen that by coming inside the courthouse, defendants become, in addition to being outsiders, performers. Anderson's concept of white space is helpful here to see how they become performers (Anderson 2015). Defendants-as-outsiders are made to fit

the courtroom space by being translated into French. So here, the interpreter plays a crucial functional role in achieving defendants' fit. Vigouroux discusses the designations people who migrate are given by the locals depending on if they are welcome or unwelcome immigrants (Vigouroux 2005: 243f). Like the concept of white space, Vigouroux finds that "outsiderness" is a typically social construct of exclusion. Despite having been shaped to fit the courtroom through the intervention of the interpreter, those coming into the courtroom from the outside and who are part of the play, which is the trial, are not only treated as outsiders, which they of course are, by the insider civil servants, but they are also actively constructed as "others". This active construction of an outsider or an "other" is done by the judge(s) and the interpreter together, we will see shortly.

One last point on linguistics. We have seen that the civil servants in Burkina Faso's justice system, be this judges or other court personnel, state that French alone has the vocabulary to express the terminological complexities of legal language. Saying, in short, that legal terms do not have an equivalent in Jula, that they are not translatable. Remains to be seen how, then, these civil servants conceive of interpreters' work translating precisely these legal terms and concepts into Jula. Kwasi Wiredu had remarked that untranslatability, even though problematic, does not automatically imply unintelligibility (Wiredu 1990: 11). He plead that more attention be paid to conceptual universals because inter-translatability between different languages lies in the commonality of concepts (Wiredu ibid.).[21]

How Wiredu's idea can find entrance into court interpreting is left to the practitioners. It seems to be possible, in any case, to find equivalents in Jula for French legal vocabulary and concepts. Just see court interpreters at work in Bobo and the glossary compiled by Wedirawogo and Buda (2002), translating French legal vocabulary into Jula. There is thus a contradiction between a stated conviction, i.e. what judges say – only French – and lived daily practices – the interpreter translates legal expressions into Jula. So the construction of an outsider (or an "other") has a structural, a functional, as well as a linguistic aspect.

Interpreting in plurilingual African societies is nothing new – between speakers of different African languages, as linguist for the sovereign and the people, or for colonial conquerors, later administrators, bureaucrats, and Africans. Linguists and court interpreters

[21] A similar point is made by Barbara Cassin in the *Vocabulaire européen des philosophies. Dictionnaire des intraduisibles* (Cassin 2004), where she and a team of over 100 scientists have spent time thinking about concepts and their (in)translatability into different European languages.

today both translate between parties that speak the same language, but who cannot communicate with each other directly for reasons of protocol. Attempts at an explanation of court interpreters' work by looking at the literature on traditional intermediaries and linguists does not capture how today's court interpreters operate, we have seen. It only captures the fact that interpreters and interpreting are nothing new or unknown in Burkinabe society.

A comparison of working environments of today's court interpreter and colonial translator-interpreters yields a bit more concordance. Today's court interpreter translates, like the colonial interpreter before him, in situations of unbalanced power and like the colonial interpreter, the court interpreter today is hired by the party for whom he translates, who is, at the same time, that party with the most bargaining power. This has implications not only for those being judged, defendants, but also for how interpreters can carry out their work.

Colonial translator-interpreters' itinerary – socially-culturally, educatively – was quite different from today's court interpreters', however. Often chosen from among what the colonial administrators thought to be the local elite, future interpreters were sent to be educated as clerks and interpreters to the French colonial schools in Senegal. In terms of their work as interpreters, they needed to translate for French colonial administrators with no African language skills, translating and interpreting between French and two, often more, African languages. They had the monopoly on language and thus the freedom to influence and manipulate situations to their advantage, as we saw with Omar Sy or Moussa Soumaré. Today, everybody in the courtroom speaks Jula; the fact that there needs to be an interpreter translating during trials is a construction. It also means that today's court interpreter does not have the freedom Soumaré, Wangrin, or Sy had to translate as they wished because today the court interpreter in Bobo is supervised and controlled by Jula speaking judges.

Hence, taking a historical perspective and looking at works of faction can only take us this far towards an understanding of court interpreters' work in the present-day courtroom. It can, however, explain certain attitudes citizens have towards interpretation and the work and role of interpreters – particularly those translating for an *Amt*, an imported foreign institution. Here our focus so far has been on strategic maneuvering of civil servants and bureaucrats, of the experts that come with and who run the justice system. We are also looking at a state institution and its way of functioning which is modeled on a western institution. The Burkinabe justice system continues to be a western or French institution, also

if it has been (and continues to be) translated into the Burkinabe space and appropriated by the bureaucrat-experts working it.

Everyday citizens, however, see the Burkinabe justice system as a European, French, or foreign institution. In the julaphone space, ordinary citizens, i.e. all individuals who are not civil servants or working for one or the other government institution, refer to all *fonctionnaires* as *tubabubaarakela*, as, literally, people doing a European or a white person's job (Jula: *tubabu* = white person or European or French; *baara* = work; suffix *ke* = action; suffix *la* = a person). All civil servants at court are *tubabubaarakelaw*.[22] The *tubabubaarakelaw* are, again by definition, part of the educational elite of Burkina Faso, also designated as *intellectuels* by these same, ordinary citizens. By virtue of their education at university they have become *intellectuels* (see for example Rossatanga-Rignault 1993 on the definition of *intellectuels*) and by attaining a good job reflecting this education, they are part of the elite of the country (see Banégas & Warnier 2001 on elites in West Africa). Judges and prosecutors are also civil servants and are thus seen as both *tubabubaarakelaw* and as *intellectuels* by citizens.

We will also see, in the next chapter, how, exactly, I collected my information. My analysis relies mainly on information gathered while watching trials and during informal talks with the civil servants working in the two courts. You will have noted my avoidance of the verb "to observe", which I am indeed reluctant to apply together with the designation of carrying out research abroad as "fieldwork". Both expressions are well known to anthropologists, internalized expressions, which are applied, used, and reused without giving much thought to all they entail, I believe. Let us now look at my presence in the daily working lives and beyond of the civil servants/bureaucrats/experts running the penal courts in Bobo for the short six months I was allowed into and tolerated in their midst. A *tubabu* among *tubabubaarakelaw*.

[22] This is not a new observation, as can be seen by the entry in Dumestre's Bambara-French dictionary, where *tubabubaarekela* is translated as *Européen-travaileur* [sic]*/employé de bureau, commis d'administration, fonctionnair*e (Dumestre 2011: 1001).

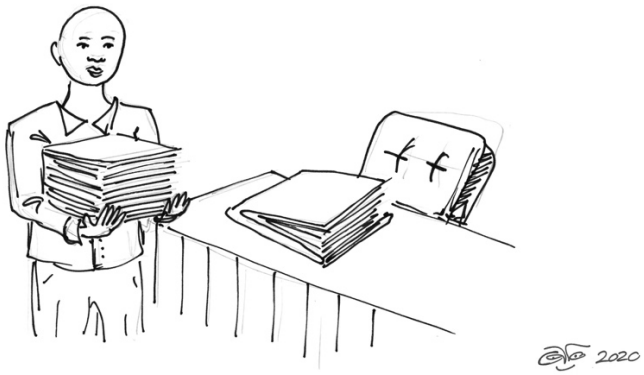
CHAPTER 3: METHODS

Prologue – A day in court, Part 3

It is, once again, Tuesday and when I arrive at the courthouse a bit before 8am, I find Antoine loitering about in the hallway on the first floor. He doesn't have the key to the judge's office, he tells me, where he needs to go get the case files for today's trials. The defendants should be arriving soon from the prison, where they wait for their trial and Antoine needs to get the courtroom ready for today's session. For now, he is waiting outside judge D.M.'s office, today's presiding judge.

2020

So I keep him company for a bit and we chat about this and that while he waits for the judge to arrive and unlock his door so that he can enter, grab the files, go up to the second floor, deposit them in the courtroom on the judges' desk, and then go down to the ground floor to the chief court scribe's office to get the *plumitif*, another large book, where the trial protocols are recorded by the court scribe. Then back up to the second floor, always hoping to be one step ahead of the court session's members.



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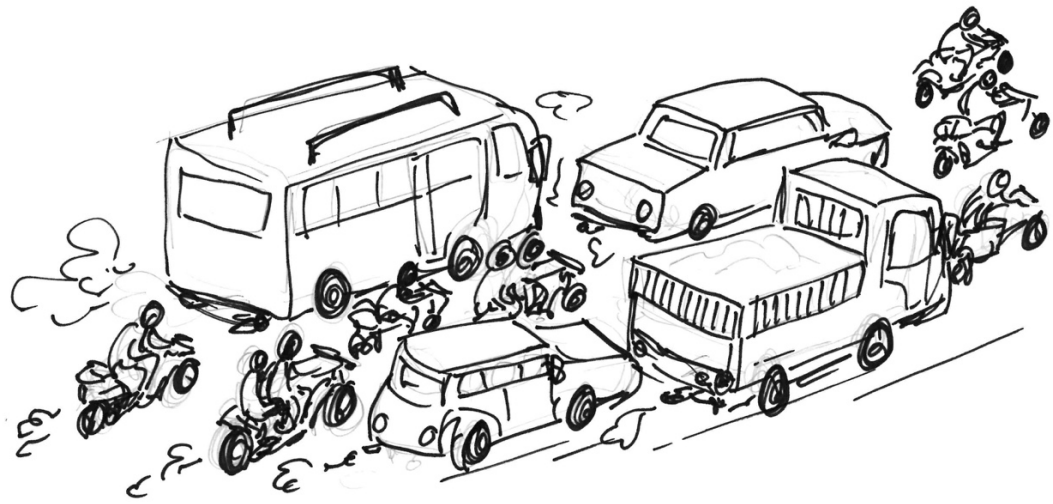
But for now, Antoine is waiting, roaming around the hallway, talking with me and trying to look busy at the same time until he can go about his job getting the courtroom ready. He also likes being in the room when the prisoner-cum-defendants arrive, to look after things, he informs me.

The first case today will involve a young man, Musa, accused of having stolen two metal bars out of a garage. His French is as good as nonexistent, so he asks for his trial to be conducted in Jula. Antoine relaxes in his chair, leaning his head back into it and stretching out his legs. He does not take any notes – he never does, which is quite amazing and I ask myself again how he manages to remember everything the judge wants him to translate. Every once in a while, he consults his cell phone, types something in it, and continues to translate without looking at the defendant. Later he will tell me that as far as he is concerned it is unprofessional to take notes while interpreting; not like his colleagues who always have a notebook at the ready. When he consults his phone, he says, it is to look up words.

Musa's trial ends. He is acquitted. The next trial involves a young man, who chooses to defend himself in French. Antoine gets up and leaves the room, slowly, he is in no hurry. His interpreter colleague working at the *tribunal d'instance*, situated in the same building, has a desk in the court clerks' office, right next to the courtroom. So, on his way out, Antoine goes to visit his colleague, Paul by name, greets everybody, goes on his way. Antoine was not given any office space or a desk in the huge office the clerks of the TGI share. So now, Antoine goes knocking on doors, greeting court members and checking if there are any errands to run, any work that he could do for them. In fact, this is what he is hired as, a so-called *agent de liaison*, a liaison officer who does precisely this – run errands for the various members of the TGI, at the courthouse here and in town, zooming into and across town on his motorcycle.



3.1. Qualitative inquiry and fieldwork – living and working in Bobo Dioulasso

Ethnographic fieldwork has usually consisted of an immersion in the local environment under study, of long periods of time spent there. Once in the "there", anthropologists engage in a methodology termed participant observation, in which they supposedly go about doing that what they study. This can be watching a cockfight like Clifford Geertz and his wife did in Bali in 1958 (Geertz 1973) or working in the vineyards in southwestern France, like my advisor in college, Robert Ulin, did in the 1980s (Ulin 1996). It is doing ethnographic work. The *graphic* part of ethnographic work of course implies something is written. Interestingly, ethnography can refer both to that which anthropologists do while they work, namely the keeping of a field journal/process of writing down their experiences, and it can also designate the end product of this work and its analysis – the book, article, or paper. The work itself, we have seen, is referred to as ethnographic fieldwork – or just fieldwork or ethnography (see for example Nyamnjoh 2012 on fieldwork).

In this chapter I would like to, in a first section, describe details of where and how I went about collecting information, later to become data (see Dey 1993: 16). This includes reflecting on the drawings I had commissioned from my friend, graphic artist Caro van Leeuwen, and on how they came about and why they are in this book in the first place. Caro will herself recount her experience in being asked to do this work. I will also discuss some of

the terminology we anthropologists seem to have always applied to the work we engage in, often unquestioningly, I contend. In a second section of this chapter, flowing from the first, I will talk about experiences made while researching among the elite. Goffman will once again assist us in understanding how and to what ends the civil servants I engaged with presented their selves in the way they did. This presentation of themselves and their work at the court was pertinent to the question of access to the domain and the terrain I carried my research out in, the trials at the penal court. It can explain their reluctance to say anything of substance when talking to me.

When I started writing the part of my PhD thesis concerned with analyzing communication during trials, I felt that I needed too much description to invoke the atmosphere of the courtroom. Too many words to paint the picture. My ruminations about how to solve this dissatisfaction led me to ask Caro to contribute drawings of how a day of trials in Bobo looked like. Caro is an experienced social science researcher who has done fieldwork in West Africa, mainly in Ghana. Since she is also a graphic artist having worked for different humanitarian and development agencies, I asked her if she would be interested in translating my descriptions into a graphic novel.

In Caro's words:

There is the saying: a picture says more than 1000 words. Media (especially *social* media) and increasingly academic research know this, but it is not always easy to access or produce pictures for research. In delicate fields like the courtroom this is especially true.

In an early phase of Natalie's PhD thesis, we discussed her problems with the production of pictures for a presentation, an article, a poster, and eventually her thesis itself. Being a researcher in a courtroom is sensitive in itself. Natalie is white and European, she is a critical scientist, both not easy preconditions in a courtroom in Burkina Faso. From her stories I knew already that it was sometimes a challenge to get an interview with a judge or translator not to mention taking a picture. Taking a picture secretly would not only be ethically wrong but also qualitatively insufficient. It was during one of these conversations that I came up with the idea to illustrate a court situation for her.

My passion for drawing was reawakened when I did an internship at a development agency. I have always loved to draw and paint but during my studies (where I met Natalie) it was nothing that I paid much attention to nor did I develop it any further. Only for my side

job as a German teacher this talent always came in handy when oral language could not explain something anymore. During this internship I started to illustrate topics on public health for an internal shareweb as well as flipcharts or posters for presentations. I kept this going after the internship, too, and was able to do a few assignments as a graphic recorder for some events.

In numerous discussions and more sketches and notes Natalie and I drew out how the courtroom in Burkina Faso would look like. I am a lay when it comes to court situations, so I had to fully rely on Natalie's vivid explanations and corrections. I have been in some countries in West Africa so I could imagine some sceneries and styles but for the arrangements inside I had to rely on imagination.

As I had made a few drawings for presentations and articles and the reception had been positive, Natalie and I developed a plan for the illustration of her thesis. First it was supposed to be a full chapter drawn as a comic with the title "a day in the life of a translator". It would be accompanied by a prosaic text by Natalie that she would use as introductory sections to her chapters. After I had drawn the introduction of the translator and his background as well as a view of the prisoners/defendants, the drawing of the court situation and trial turned out rather dull: there is not much action or change of situations, it is a ping-pong between the judge, the defendant, and the translator. I could pick out some pointy situations, but everything would be accompanied by quite a lot of text – which I had not written yet. I had struggled with speech bubbles: how much text was necessary? Should it be English or French? I wanted to finalise this together with Natalie.

In the course of this challenge – the language issue as well as the trials – Natalie decided that it would be better to have the pictures without text and that the comic pages or single outtakes of them would be inserted in the chapters. Ergo no single chapter on the graphic story of the translator. I was certainly fine with that as it is Natalie's thesis and she knows her research best. Instead of a proper ending to the graphic story I did pick out single situations like the bored illustrations of the translator or the judges insulting a young defendant when he was acquitted of his charges. The closing of the court has come short in my opinion in contrast to the opening. However, the day ends with the translator having some drinks with his colleagues in a small bar.

I see the illustrations as a means to help readers come to an understanding of the court room and trial situations in Burkina Faso. It should emphasise the sparse arrangements,

the overcrowded court room, and the sheer discrepancy of power between the judges and the defendants. Although the translator is not part of the elite himself, he sees himself on the ranks of the judges, using his own power in translating what he decides is necessary. From my point of view, the illustration is not meant to be a comic that can stand for itself (although I would love to make one in the future). It is simply supporting the reader's imagination of a court room in Burkina Faso.

In total, I see this collaboration with Natalie as an innovative approach to picturing research in social science and of course I value it as a great way to be part of my friend's research. It has been equally inspiring to both of us I think, so we can call it a win-win situation!

OF course, these kind of drawings – commissioned, carried out following a verbal description or explanation – are an interpretation of courtroom happenings. Moreover, they are an interpretation both by the artist and by the anthropologist who has asked for the illustrations to be made according to her ideas. So, they need to be seen as just that: a reflection or an interpretation of a day of penal trials in Bobo. In spite of this, the drawings contribute to making the text come alive, they interact with the written word, complementing it.

This study is based on social anthropological qualitative research at the two courts in Bobo Dioulasso, where penal trials take place: at the Regional High Court, le *Tribunal de grande instance* or TGI, and at the Appeals Court, *la cour d'appel*. The largest part of data for this research comes from the TGI: sitting in on *correctionnel* trials, talking to and with members of the court, reading official court documents, and photocopying these for keeps. Four audio recordings of trials, recorded interviews, and most talks informal and formal come from members of the TGI. The semi undercover aspect of recordings has been at the root of many a debate and headache on the part of this researcher. The ethical aspect of collecting and then using material gathered half-clandestinely is described, explained, and discussed below.

The language the empirical or data collecting part of this research was conducted in should be briefly mentioned, particularly since the project pertains to a language related topic. Language plays a prominent role in the production and dissemination of knowledge in academia, where English has become the (imposed) language for all those who want to be read and taken seriously. This debate is ongoing and very ideological (see for example Ammon

2012 on linguistic inequality in scientific discourse; Canagarajah 2007 on multilingual communities and language acquisition; Dedieu 2007 on translation into French in African Studies; House 2003 on English as a potential threat to multilingualism; Van Parijs 2007 on the inherent advantages of being an English native speaker). It is pertinent here insofar as this thesis is written in English on a topic researched in French in a French speaking environment.

It is also pertinent because this research has been carried out in French in a country where French is an imposed language inaccessible to most citizens. Thoughts as to what language should and can be used in interviews, talks, in terms of fluency, for example (Gibb & Iglesias 2017), and how working with an interpreter can and does influence the collection and analysis of data (Borchgrevink 2003) were, for the present study, thought about and deemed dispensable.

Here, all talk, all communication, in writing or orally, indeed all documentation at the two courts is in standard French (as opposed to the everyday Burkinabe variety of French), the language of the law in Burkina Faso and everyday language of court members at work, both among each other and with the outside – and sometimes even with their families. I thus saw no inconvenience or imposition in conducting my research in French. The language of the educational elite. And the language court members used when conversing with me.

The fact that this thesis on the translation of an imported system which comes with a prescribed language, French, and which looks at interpretation and language use is written in English deserves attention as well. The installation of English as the lingua franca of academia is not too recent. It continues to be debated. The French and the *académie française* have reluctantly realized that it will no longer be their language that will serve as language of larger expansion, allowing people across the globe to communicate, but that this language is now English (Miller 2010). This does not mean it has been accepted, as we have seen in the example given by Kohl above, in which he mentions that in France, international conferences are only funded by the government if the official conference language is French (Kohl 2001: 8). Often, the use of English as academic language is boiled down to being a US American imposition. It can be seen as this, too, for a variety of reasons – one being the dearly held cliché that US Americans speak nothing but English – but it is also more than that (Ammon 2012).

English is certainly easier to learn than French – or Japanese, for that matter. Ammon points out that for Japanese, leaning English is very difficult, which excludes them from much

of social scientific discourse (Ammon 2012). No institution such as France's *académie française* protects and shields English from taking on new, non-English vocabulary or to evolve or mutate in any way. There is a vibrant research community studying what is known as Global English, the language non-native speakers have in common and use to communicate. And there are so many varieties used today, enumeration takes up quite some space: British English and American English are just the better-known varieties, formerly standards, but there is Australian English and there is also Aboriginal Australian English, as we have seen with linguist Diana Eades' work. Nigerians and Ghanaians do not speak the same variety, and people from Kenya use a different English than Gambians. And so on. Speakers of English as lingua franca might not conform to the norms of standard English – whatever "standard English" might now be – or the usage of native speakers, which in general are taken as benchmarks of competence in the language. But communication is assured, also if it makes certain purists' toenails curl.

The reasons why I choose to write this thesis in English are soundly pragmatic. My writing virtuosity in the French standard is limited. In spite of a buzzing research interest and output studying and publishing on the varieties of the French language across the planet, academic works going to press need to continue to fulfill rigorously defined linguistic standards. The French language continues to be defined in an armchair in Paris – the *académie française* is very much alive and kicking – it is highly normative and does not allow for creative deviations even if these correspond to oral usage and are understood.

First, I believed it would be suitable to have the finished thesis translated into French so as to be able to give a copy to the Ministry of Justice in Ouagadougou. Court personnel might be able to profit in one way or another from insights gained and data presented, from experiences recounted with the outsider's eye. This is, of course, every social scientist's secret hope (and wish). Or at least, the Ministry and the two courts in Bobo can receive a copy for the court's library or archives – a purely symbolic gesture since both courts in Bobo have neither. On the other hand, it is an academic piece of writing, written for peers and for interested individuals in the academy and there, we have discussed it above, English is the lingua franca.

As we know, this study focuses on how the foreign, imported institution or system which is the justice system is appropriated on the ground by, mainly, the experts who come with the system. Like this I hope to throw some light on the processes a bureaucratically

organized foreign system goes through on the way to being installed locally. This appropriation process is depicted through an analysis of the court interpreter's work, specifically, and by looking at how civil servants carry out their jobs as judges, prosecutors, court scribes. In the previous chapter, I have introduced the theoretical and historical background and the concepts that accompany these ruminations and against which we will look at the bureaucrat-experts and the interpreter at work. I am still excluding the interpreter from being part either of the bureaucrat and the expert category. As far as I understand it until now the court interpreter is still hovering outside any of the slots so far established for the civil servants working in the justice system in Burkina Faso.

The act of interpreting and the person of the court interpreter are looked at as both a continuation of historical and colonial interpreting practices, but and also as a spin-off or by-product of the "appropriation work" local civil servants engage in to make the justice system local. He and his work come, more broadly speaking, with the bureaucratization of government work in the former French colonies in West Africa. And more narrowly, the interpreter and his work translating trials are essential to the way the justice system is made to work locally by the experts. Without the interpreter interpreting, the entire system could not function.

Designating this study as "field"work is stretching it a bit, since all data collected, all talks with law and language experts stem from, mainly, the city of Bobo Dioulasso and some from the capital city of Ouagadougou. In fact, both the research site and this researcher are firmly anchored in the urban – in terms of work, living, upbringing, researching, and studying. "Fieldwork" or "the field" are terms we anthropologists continue to use since their beginnings in the hazy colonial past of anthropological endeavors.

These terms need to be rethought, I believe, both for the rural-urban dichotomy they imply and for the definition of "being in the field" as opposed to being at home? Or at work? Sitting at a computer? "The field" implies being removed – emotionally, geographically, intellectually – from there, where we usually live, work, and play. This, too, needs to be rethought, also in view of thinking about "outsiderness" (Vigouroux 2005), which is no guarantee for better or more insightful research (Nyamnjoh 2012). And since we are re-thinking – why do we anthropologists insist on the continued use of a methodology most anthropologists cannot engage in, namely participant observation?

Anthropology's core methodology. What was I supposed to participate in during my research of civil servants working in the justice sector and on the court interpreter's work? The judiciary is, at best, a delicate terrain to enter for an outsider. Participation was out of the question quite simply because I cannot translate penal trials from French into Jula and vice versa. I am neither an interpreter nor trained in law. Here it is worth citing Wolf Bleek at length – also for its anecdotal nature on his research looking at the equally delicate topics of suspicions of witchcraft, sexual relationships, and birth control practices in rural Ghana some decades ago:

> My doubts about the word "participant" arise from an impression that most fieldworkers who use this word to describe their research method hardly participate in the subject of their research, if at all. I am no exception. My participation in sexual relationships was slight, in birth control insignificant, and in witchcraft nonexistent. Ironically, anthropologists tend to be most interested in those transactions and affairs least accessible to them, those in which they cannot participate. This irony, I suspect, also applies to other research traditions. The inaccessible arouses curiosity; what is open to the public soon may lead to boredom (Bleek 1987: 315)

Second guessing the concept – not necessarily the methodology – of participant observation is, of course, not a new thought. Ever since Bronislaw Malinowski set up his tent on the outskirts of a community in the Trobriand Islands, "liv[ing] as a native among the natives" (preface to *Argonauts of the Western Pacific* by James G. Frazer, 1961 [1922]: vii), anthropologists enthusiastically engage in participant observation. This enthusiasm often also extends to throwing ourselves into what we term "the field" with nonchalance.

On the other hand, we can argue that by carrying out empirical research, by being there and present, we researchers are sort of participating. My visible presence in the courthouse and during trials certainly influenced the setting to a certain degree. Here, I want to use the adjective "participant" in its purely active sense. The researcher participates in a trial when she interprets trials or speaks justice as a judge or writes the minutes of the trial in the court logbook, for example. For obvious reasons, I could not partake in any of these activities and I feel that by not being able to do at least some of what I research and write about, I cannot say that I am a participant observer.

Even though well prepared in terms of being academically *à jour*, updated in our reading, background information, and so on, questions of gaining access, permissions to conduct research, engaging with our colleagues working in the country we carry our research

out in – what Francis Nyamnjoh calls for and terms convivial scholarship (Nyamnjoh 2012, 2019[23]) – of how we communicate and collaborate with each other, of how we share our results, also with the community we study, are not new thoughts. But they still do not seem to be standard working fare.

The term observation, in its turn, was historically a practice of the police of absolutist 18th century France to prove someone guilty of a crime – and it continues to be practiced in this sense by the police the world over today. In legal procedure, the expression "observation" is standard terminology, a vocabulary used, for example, during trials when the judge hands over the word to the prosecutor, asking him for his observations in relation to the case at hand. The Duden dictionary on foreign words explains the verb *observieren* as being 1. scientific watching (*wissenschaftlich beobachten*) and 2. police surveillance (*polizeilich überwachen*) (Duden Fremdwörterbuch 2001: 687), cementing the connection of anthropological research to police work.

In spite of the Duden definition, the act of observing fits more with the practices of the judiciary in Bobo, where the overwhelming amount of penal cases are classified as *flagrante delicto* cases, than with the researcher's applied methodology. *Flagrante delicto* designates being caught red handed – and thus seen, i.e. observed – in the act of committing a crime. We will get to this and the presence of *flagrante delicto* cases in Bobo and West Africa in general in our discussion in chapter four on the French language or *Amtssprache* at court. To conclude, let me say with Till Förster that observation as a legacy of positivist anthropology is a very special and narrowly framed way of seeing (Förster 2019).[24]

So, I did not participate, and I prefer the term "watching" or seeing, along with Förster (Förster 2001), to "observing" when describing the empirical research process of what I did at the courts in Bobo. Of course, substituting the term observing with watching and seeing does not alter the fact that I was there, very visibly present during trials and around the courthouse. That the physical presence of a foreign researcher has an impact on the carryings-on being watched, is a fact we have to live with, and which has been noted and discussed in anthropology for quite some time, in textbooks (see i.a. Dey 1993: 16; Yin 2011) and beyond.

[23] "Decolonising the Academy: A Case for Convivial Scholarship", keynote address presented at the conference "Africa and the Academy in the 21st Century" in Basel, Switzerland, 1-2 November 2019.

[24] Seminar conducted at the University of Basel by Till Förster, fall semester 2019. See https://vorlesungsverzeichnis.unibas.ch/de/home?id=237705, accessed 7 January 2020.

That a penal trial allows for an audience to be present may have somewhat counteracted the fact of me being present, albeit more visible than the rest of the audience.

As mentioned, there are two penal courts in Bobo, the TGI and the appeals court, where the two categories of penal trials recognized in the French legal system as practiced in Burkina Faso are held. Despite not being welcome to conduct research in any form at the appeals court in Bobo – we will discuss this topic in detail in the next chapter – I sat in on its *criminel* trials, watching the court interpreter Salomon at work. Trials are, we have just read it, open to the public. Trial-watching makes up a large part of this study, in which a combination of ethnographic methods was employed.

In addition to watching trials, some few formal, recorded, and many informal talks and interviews took place with civil servants working at the two courts. At the local prison, the *maison d'arrêt et de correction* popularly referred to as MACO, I could do two group talks with convicted men and women, former defendants, whose trials had been conducted in Jula. The informative aspect of chatting, gossiping, hanging out with different interlocutors – not lastly members of the Bobolese family who accepted me in their midst and friends – and other informal talk should never be underestimated. And as Förster had so poetically remarked, we need to pay more attention to what we see also when we are not watching or observing; the everyday "normalized" seeing allows us more and more in-depth insights if we only pay attention to our surroundings (Förster 2001: 481).

Selecting participants for formal and informal interviews and talks was done according to availability. Out of a total of five men, employees at the penal courts, who were asked to translate during trials, only two were actually working as interpreters in practice, Antoine and Salomon. Paul was the designated interpreter of the *tribunal d'instance* or TI, the district court located in the same building as the TGI and where civil cases are dealt with. Also Jean was part of my pool of interpreters in Bobo. He used to translate at the commercial court, but has moved on, nobody knows where to.

Another selection criterion for interview partners was the many actors present at penal trials and the different professional orientations reflecting the range of people working at the court: members of the audience, witnesses, victims, and interpreters, judges, prosecutors, scribes, and various clerks. Differences between interlocutors at the court are of degree only in what concerns their professional education. With the exception of interpreters, all the civil servants, employees of the court and thus the Ministry of Justice,

have some education in law. They have all gone to the *École nationale de l'administration et de la magistrature*, ENAM, the in-house training institution for civil servants in law and administration – where bureaucrats are made. In terms of sex, all judges, prosecutors, and court scribes working at the two courts during the majority of the time of my research in Bobo were men; there was one female court scribe and some few female secretaries. Only at the very end of my stay in 2017 two women took up work at the courts, one as prosecutor at the appeals court, the other one as a judge at the TGI. All court interpreters in Bobo are men.

The four interpreters employed at the different courts in Bobo during the time of my research (2016-2018), have only these things in common: they are Christian and they are men. All four belong to the same evangelical church, where sermons are interpreted every Sunday. And these church services can run on for hours. Both Salomon and Jean started their work as interpreters at the church before being hired as volunteers or clerks at the court where they subsequently were asked to interpret trials. But beyond religious affiliation, the four men have little in common. In age, they might belong to the same age class or generation except for Antoine, who is considerably older.

I watched Antoine at work in over 30 days of *correctionel* and Salomon in some few *criminel* trials. Antoine has barely finished primary school, has started his own business selling animal feed, expanded to include cassettes and was quite content. He eventually came to work as driver at the court through the intervention of a parent. Salomon, on the other hand, has completed his high school studies with the BAC and then ran his own business as well. He ran a photo studio and was regularly asked to eternalize important events in peoples' lives such as weddings or baptisms. Digitalization made it increasingly difficult for him to live off of his photo studio, so he responded to a government campaign offering young citizens jobs at state run institutions. He came to work at the court and is now interpreter at the court of appeals.

The French justice system in vigor in Burkina Faso divides penal law into the two sub-categories *criminel* and *correctionnel* according to type or gravity of offense and subsequent sentence (see table). The 30 days of trials I witnessed at the TGI, where Antoine works, amount to about 400 individual cases. This means that during the two days a week that *correctionnel* trials take place at the courthouse, one case after another gets treated. In one day up to 10 or even 15 individual cases can get decided on. Personally, I was present at about 200 cases, of which at least three quarters needed interpretation. Since access to the appeals

court was difficult at best, most data stems from the TGI and from the *correctionnel* type of trials, as mentioned above.

Table 1: Cases tried at TGI and appeals court in Bobo:

	Penal Courts in Bobo Dioulasso	
	Regional high court – *tribunal de grande instance TGI*	**Appeals court** – *Cour d'appel*
Type of trial acc. to penal law and procedure	*Correctionnel* cases: petty theft, abuse of confidence	*Criminel* cases: armed robbery, murder, rape, Assizes court 2x / year
Sentences acc. to penal law	max. 5 yrs prison	max. 20 yrs prison
Number of days / week trials are held in Bobo	2 x week	Unpredictable
Number of days researcher attended	25	6
Number of cases researcher witnessed	200	~10
Court-appointed lawyer acc. to penal law	no	yes
Number of cases interpreted into national languages (mostly Jula) acc. to researcher's statistics[1]	2015: 39/50 2016: 42/50 2017: 38/50	Not available
Total cases (UNICEF statistics) / Bobo / year[2]	2015: 503 2016: 765 2017: 634	2015: 674 2016: 1020 2017: 723
Number and % of flagrant délit /Bobo/year (UNICEF statistics)[2]	2015: 502 2016: 503 2017: 469	Not listed
Convicted / year[1+2]	2015: 325 / 369 2016: 388 / 485 2017: 525 /655	Not available
Acquitted / year[1+2]	2015: 36 / 369 2016: 57 / 485 2017: 75 / 655	Not available

[1] 50 cases were selected randomly for the years 2015, 2016, and 2017

[2] See http://www.justice.gov.bf/wp-content/uploads/2018/06/ANNUAIRE-STATISTIQUE-2017-DE-LA-JUSTICE-V4.pdf, last accessed 15 January 2020. UNICEF does not state how numbers were obtained for this report.

[1+2] UNICEF statistics do not show numbers of acquitted versus total number of cases. These were calculated from the TGI's own statistics and UNICEF statistics combined. Acquitted numbers here include acquitted defendants and proceedings that were dropped due to a time limit reached (*action publique éteinte*), which explains difference in total numbers: convicted + acquitted = total – dropped cases → total listed here

Shadowing implies going along with a person throughout their (working) day to see things from their perspective. This was, again, delicate terrain to pursue. I was invited to accompany one judge to his house twice for talks, the courthouse not really being adequate for in depth discussion, he believed, after we had talked through various interruptions in his office there. In addition, he said he wanted to avoid making it too obvious to his colleagues that he was talking with and to me. One never knows, he said, what his colleagues might think he was telling me if they saw us together. Why he felt he needed to be cautious in being seen with the researcher everybody at court knew was there, looking at the interpreter's work, demands the question of trust be brought up.

Ideas of trusting or not trusting were constant companions before, during, and after work in Bobo. The president of the appeals court had refused me access to his terrain. He was reluctant to let me into his court because he thought I was a spy. Not wanting to be seen with me or believing researchers are spies is not a novel experience for an ethnographer. But why should the terrain of the judiciary be more delicate, sensitive, complicated than other places and topics of research? Over the entire course of data collection, I was confronted with the almost unanimous, agreed upon attitude from members of the court that I was not to be told anything relevant, anything of importance – and certainly not in a recorded interview. Only three men granted me a formal and recorded interview: the judge mentioned above, one prosecutor, and one interpreter. The judge positively inclined towards recordings, who is the one who insisted upon talking to me outside his office and the courthouse, granted me a recorded interview – which took place in his office.

Going to his house allowed insights into him switching roles between his courthouse self, the front performed during trials as the presiding judge, and his backstage performance both at the courthouse after trials and particularly his relaxed self in his own home. Also Salomon, the appeals court interpreter, made appointments with me outside the courthouse off limits to me. Salomon pursues different translating jobs around town in addition to his job as interpreter at the appeals court. How else could he feed his family, he once rhetorically asked? We met a couple of times at a *buvette*, a small drinkery, in the center of Bobo or at a garage where he had taken his car to be fixed. Salomon had chosen this pseudonym for himself during one of our talks at the buvette. Also Antoine had met me outside the court. In fact, he had invited me to his house on several occasions, introducing his family and explaining his business of raising chickens and guinea fowl to me. He, too, needs the extra cash because,

like Salomon had remarked, the salary he earns at the TGI is barely enough to feed his family. But designating this as shadowing is stretching the definition of the endeavor beyond its natural limits.

Coding and anonymizing notes and trial transcripts was done by hand; I did not use a software program. This, I believe, allows for a more palpable, thorough, physical – quite haptic – interaction with the data necessary to get in touch, recall sensually and in detail what every day brought with it. Repeatedly reading notes, transcripts, and listening again and again to recordings that come with this "mechanical" methodology allows for a more thorough engagement with the data.

Data collection itself was conducted during three separate trips over the period of two years and for a total of six months. This allowed me to, first, organize access and explore the hitherto unknown field of the court and trials, and to be introduced to court personnel – the administrative-bureaucratic trip. During this first trip I made myself visible at the two courthouses, hanging out during the day, wandering the hallways, getting to know the who is who. I knocked on doors, chatted with interpreters, judges, prosecutors, and clerks. This trip also gave birth to the impression that indeed this was delicate terrain I was embarking on, a terrain and research topic I had chosen to engage with and where, it seemed, important people took on the function of gatekeepers.

During the second, longer trip, formal interviews and many more informal talks with my different interlocutors were conducted, I sat in on trials and thus spent hours at court almost every day – the data gathering trip. I stayed in Burkina Faso for a total of four months this time but took a three-week vacation with my family who came to visit for Christmas and New Year. In fact, during the entire four months my daughters were with me, first the younger one, then, after our vacation through Burkina Faso, the older one stayed on with me. My status as a married woman and a mother, the fact that my children were in Bobo with me, certainly influenced the perception, classification, and subsequent interaction my interlocutors engaged in with me.

As importantly, my age – atypical for a PhD student in a European or African context – allowed me an amount of nonchalance in dealing with realities at a penal court and with the educational elite I would have had to struggle for had I been younger. For example listening to reports of victims and alleged perpetrators in rape cases, to men accused of murder, and to uncountable varieties of deceit all day long certainly took its toll on my mood momentarily. So actual research in Bobo during this second trip was conducted for three months. The final trip to Bobo I embarked on exactly one year later, at the beginning of 2018 – the follow-up cum wrap-up trip. More talks, more hanging out at the courthouse, but this trip was mainly dedicated to talks and to gathering written, official documents – complementary or additional data.

In Bobo, I was invited to live in the family compound of a man I had interviewed for my MA thesis in 2013. He gave me the second room in his so-called *deux chambres-salon* and his family and I share the communal spaces – outdoor shower, toilet, and the large courtyard, where dishes, clothes, and small children are washed and family members gather to sit together, work, play, and chat. Our individual three-room building is one of five similar ones constructed around the courtyard. There, a huge mango tree that has just the right age to produce wonderful mangoes twice a year is the source of shade for all of us. Being able to live with a Bobolaise family, children, chickens, rabbits and all, allows me to connect with and be part of the daily lives of an averagely comfortable family. It is especially relaxing and an antidote to the many hours spent at the courthouse; flips flops instead of heels.

Watching and listening to judges, prosecutors, interpreters, court clerks, gives the impression of people who, at times, are far removed from those they judge every week. And even though probably most of the civil servants at court were also born into and grew up in

an average Burkinabe family such as the one I was living with, the concerns and struggles of people such as those of my Bobolaise family often seemed beyond their grasp. Because why would a judge threaten a young mother with her baby on her lap, waiting in line outside his office for her appointment for hours, to kick her out of the courthouse if she did not make sure her baby stopped – immediately! – to wail? In French, of course. We will look at what I will refer to as "courthouse speak" in the chapter on thick description below.

Permission to audio record trials was granted by only one judge for the trials he personally presided. Again, it was the same judge who had consented to do a recorded interview. Is he, then, a so-called key informant? He did the recording of the trials for me himself. They were done "undercover" or clandestinely for fear of not obtaining permission to record from the presiding judge's two colleagues. He recorded the trials with my cell phone sitting on the desk in front of him. In Burkina Faso it is not unusual for people who want to come across as wealthy or "important" to perform this importance by possessing two or three different types of cell phones and by handling them all at the same time. Cell phones – preferably a brand or type not obtainable in Burkina Faso – are a much appreciated *accessoire* to underline their bargaining power and status in society (see for example Banégas & Warnier 2001: 9f). Never was a judge or lawyer seen with just one phone. Or some interpreters, for that matter.

It was thus not further conspicuous for the presiding judge to have one more phone sitting on the desk in front of him. Unfortunately, my phone being of the type not obtainable in Burkina and thus not well known in its handling, the presiding judge first recorded with the microphone facing towards him instead of into the room and towards the defendant and interpreter. The recording quality consequently suffered quite a bit. The fact that the presiding judge recorded trials for me while not letting his colleagues in on it feeds, again, into my ongoing preoccupation with trust.

The fact that recordings were obtained in this semi-secretive way demands thinking about ethics in research. It is an unanimously agreed upon fact that material should never be obtained secretly; this is highly unethical. At the least, the data collected in this way cannot be used for analysis and publication. Since the data obtained through the recordings was gathered with the explicit permission of the presiding judge – the one in charge of trials, the boss – who then even did these recordings for me, we could conclude that it is permissible to

go ahead and use the data. The judge had decided that it was ok for me to have this material and so we should not worry about him. This is one way of looking at the matter.

Other voices do not agree with this way of seeing things, however, insisting that the recordings were still done secretly and can thus not be used in any kind of way. The judge might get into trouble, I might get into trouble. This debate, or these different opinions are in line with the issue of trust in research that has accompanied this project from the very start. It is also in line with the silence researchers often keep in regard to how they got access to their topic, terrain, and data, specifically how they got permission to record, in this case.

The texts on court interpretation I have read are all based on research working with audio recordings (Angermeyer 2008, 2009, 2014 looks at interpretation in small claims courts in New York; Eades 2000, 2003, 2008 has done extensive sociolinguistic research on Aboriginal English speakers at court in Australia; Hale 1997, 2014 and Hale et al. 1999, 2011 have investigated translated trials in the UK, to name just these among a large pool of research on court interpretation). How easy or how difficult it was for these researchers to obtain permission to record – how they got permission in the first place – is not mentioned, however. This leaves the reader with the impression that it is easy, that it is, in fact, the standard working fare. Which immediately makes me ask myself what it is I have missed, not understood, done wrong?

So, I had to make a decision about my data and if and how I could use the audio recordings and their transcriptions. Taking the two opposing views into account, I have answered this ethical dilemma for myself in the following way. I decided to use the recordings and transcripts for analysis insofar as I could combine this data with my own notes gathered while watching the trials and after (memory protocols). The combination of material gathered in full view of all and the data collected in a half secretive way allows me to use the material, I believe.

In terms of data collection and methodology, my interlocutors immediately felt they needed to talk slowly, thoughtfully editing what they were about to say, as soon as my phone took on the visible function of a recording device. This consoles me somewhat to the fact that nobody wanted to grant me recorded interviews in the first place. Salomon, for example, was willing to do a formal, recorded interview with me (the only interpreter who did so), but as soon as my phone was turned on, he talked as if lecturing on interpreting techniques 101, textbook style. That interview partners react reluctantly, carefully weighing what they are

about to say when confronted with a recording machine has inspired anthropologists to become creative in how to go about remembering their talks and interviews (see e.g. Förster 2002: 102f).

The tedious work of transcribing poor-quality recordings was outsourced. First, the French passages in all four days of recordings were transcribed by four Master students in linguistics at UCAD in Dakar.[25] They took turns transcribing for a fee. In Burkina, two different native speakers of Jula transcribed the Jula passages, inserting them into the already existing text with the French passages, completing the transcripts: my colleague Mamadou Lamine Sanogo, a sociolinguist researching the Bobo variety of Jula, researcher at the *Institut des Sciences des Sociétés* INSS in Ouagadougou, and a nameless native speaker with neither expert status nor Jula writing skills. Both were instructed to translate all Jula passages as spoken by defendants and the court interpreter back into French. All transcripts were discussed and checked, again and again. Because of the bad quality of the recordings, understanding the utterances is often a challenge.

The question of trust became pertinent again during analysis when I realized that it was sometimes almost impossible to hear what people said but transcription was done anyway. For me, certain passages sounded different than the transcription I had commissioned. Maybe precisely because of the transactional aspect of their job the transcribers felt like they had to find a conclusive way to write down what they heard. Some passages could have been transcribed differently, I heard something else – or understood nothing at all due to the poor quality of the recording – when going over my material again during analysis. Some material was thus useless.

The head of the *correctionel* court scribes, the *greffier en chef* at the TGI, needs to be mentioned separately, because he seemed to trust me with sensitive court documents. He copied court files for me, *dossiers,* of trials I had witnessed so as to have some quantitative data to compare with my own notes and observations. And more than that, he also gathered statistics for me of the last three years – by hand, painstakingly going over individual trials to check for the information upon my request. No court documents, be this files, trial protocols or logbooks, defendants' dossiers, are digitalized in Bobo.

[25] In order to have an idea of how penal trails are handled in another, formerly French West African colony, comparative material was gathered at penal trials at the *tribunal de Dakar*, the courthouse housing all types of trials in the capital Dakar, during trips to attend conferences and workshops there (see Tarr & Sambou 2021).

So, the main challenge was getting access to the judiciary and then maintaining it through the periods of my absence and upon return. At the end of my second, long trip to Bobo, a prosecutor, seeing me waiting for a taxi outside the courthouse, greeted me and added "you are still here? – vous êtes encore là?", giving voice to his feeling of incomprehension towards my seemingly long stay. Which I seemed to have overstayed.

3.2. Gaining and maintaining access

"You could be a spy, Madame, or a criminal, who knows for sure? We've had to deal with that before". The president of the appeals court was adamant. He was not going to tolerate me doing research at "his" court. Here, all *criminel* trials take place, the appeals and the assizes court are held twice a year. The president of the TGI, where the *correctionel* trials are held, was, by contrast, open towards academic research, graciously giving of his time and supporting me in getting access to the court's files or rooms. The president of the appeals court, however, was suspicious and stayed suspicious. I had been introduced to both presidents by my friend Mohamed Sanou, the president of the commercial court in Bobo and as such their colleague. This introduction seemed crucial and it helped in one case, it did not in the other. That access to conduct research is denied is an experience, researchers can make in many and quite different environments (see Massa 2016 on conducting research among Eritrean migrants in refugee camps in Ethiopia; Amadou & Tarr 2019 on ethnographic research as a local or a European in West Africa; Darmon 2005 and Derbez 2010 on refused access to conduct research in hospitals). Mistrust also seemed to be contagious, because I was consistently refused recorded interviews by interpreters, judges, or prosecutors, with three exceptions.

Before starting to collect information in Bobo, I had contacted a former judge, now working at the Ministry of Justice in Ouagadougou, whom I knew from previous research in Bobo. A Bobo native, he had been transferred to the capital and was now responsible for a new department, which allocates state funds to pay for lawyers in *criminel* cases. He is the DG called "dégé", the *directeur general* and highest-ranking official I know at the Ministry of Justice. It was important to get his blessing, so to speak, for my research.

But not only that, we discussed strategy, ruminated upon the best way to go about my work, particularly the aspect of getting access to doing research at the courts in Bobo,

convincing the two presidents of my purely academic intentions. My friend, the former judge – lets call him Philippe Somé – decided to not involve the Minister of Justice because not doing so was more conducive to my research. The two presidents in Bobo should act and decide themselves and not upon the Minister's orders what they were going to allow me to do or not at "their" respective court. That was fine with me; being able to rely on Philippe's judgement, get advice, as to how to navigate the intricacies of researching the justice system was an opportunity I was not going to disregard. Our mutual friend Mohamed Sanou was to introduce me to the two presidents of the penal courts.

This introduction, however, did neither smoothen the way to accessing court members, nor did it automatically encourage interpreters, judges, or prosecutors to be particularly open towards me. Even though friendly and selectively willing to talk to me for short periods of time (no recording!), judges and particularly prosecutors at the TGI were champions in talking without saying much, or, like Salomon, in talking as if reciting directly from a textbook.

Not only the initial access was problematic, also keeping up a good communicative relationship over the period of two years and especially during my absences from Bobo proved to be difficult. My main informants have not yet installed an email address for themselves; some few use WhatsApp, mainly the younger people. So staying in touch was a challenge. And even those people initially open and talkative, such as the one presiding judge who recorded his trials for me, granted me a recorded interview, and invited me to his house for undisturbed talks, seemed taken aback with my continued presence. He did not have any time to meet me during the month I spent there wrapping-up and gathering last information and ideas. For a short five minutes I went to see him in his office to give him a copy of the transcribed trials he had recorded for me. I had promised to give him this copy also in the hope of discussing certain aspects of courtroom communication with him. To my surprise (and utter disappointment, I might add) he took the transcript, looked at the first page and remarked that he was not literate in Jula. And put the file away.

Cunliff and Alcadipani (2016) lament the fact that even though gaining and maintaining access is crucial to the success of any research project, it is rarely described in detail in the literature (Cunliff & Alcadipani 2016: 536). And it is particularly scant in what concerns qualitative research in state institutions and organizations. This is indeed lamentable, because the process of obtaining permission to conduct research shows up

attitudes, hierarchies, and power relations within the institution and towards the researcher and project – and of the researcher towards the subject of his or her research as well. Like this, it can also show up how often logistical issues – obtaining research permits, collaborating with local colleagues, asking for permission to access whatever domain the research is going to be carried out at in the right hierarchical fashion, etc. – in conducting research abroad and the production of knowledge are silenced by us researchers.

In practical terms, members of both courts in Bobo were reluctant to varying degrees to consent to interviews or even engaging in informal talks with me. Recording too was almost totally out of the question. The president of the appeals court flat out refused me any kind of permission to do research. His very vocal elaborations on why I was not to do any kind of research at "his" court were quite atypical in a society, where refusing a request is usually embedded in a friendly and polite dance avoiding the word "no".

It is, I am told, often difficult to gain access to research among the elite in any society. Researching elites – or studying up, as Nyamnjoh puts it (2012: 73) – and gaining and maintaining access to delicate environments such as the judiciary (Bergman Blix & Wettergren 2015), to state institutions (Cunliff & Alcadipani 2016) or the fact of being an outsider (Bleek 1979, 1987; Nyamnjoh 2012; Nyamnjoh & Page 2002), both in terms of background – being a westerner, a woman, a white, coming from Switzerland, "Le pays où on fabrique l'argent"[26] – and education, like not having a background in law, might all have played a part in the attitude court members adopted towards them and their work being looked into and researched. Of course, being an insider doing social science research in your country or even city of origin is no guarantee for smooth access either (see Amadou & Tarr 2019; Siwale 2015). It is not even a guarantee for being taken seriously as a scientist having another perspective to offer on a specific topic, even within the community of researcher-colleagues (Nyamnjoh 2012).

My working definition of the educational elite in Burkina Faso pertains to those citizens who have completed university studies and have a good job corresponding to these studies, as we have read above. Coquery-Vidrovitch (1992) uses the expression "educational elite", which she defines as distinguishing itself from the majority of the population through

[26] "Wo Milch und Honig fliessen", translatable as "Where milk and honey are abundant", was commissioned by the Swiss State Secretariat for Migration (SEM) as a play, developed by the late social anthropologist Noemi Steuer from the University of Basel and director Clemens Bechtel in Mali with local actors in 2010. A movie of its evolution was realized by Laszlo I. Kish. See https://vimeo.com/7282870, last accessed 14 January 2020.

three main criteria: education, their way of living, and the social prestige they enjoy (Coquery-Vidrovitch 1992: 25). I like the designation educational elite because it captures two attributes at the same time: being educated and being part of the elite. Combined, they very well describe the upper echelon court members. The judiciary as a whole is thus elite terrain. Of course, many employees working there are not part of the educational elite according to these criteria, such as the court interpreters. They act within this terrain, they are civil servants, *fonctionnaires*, that is they are hired by and work for a state-run institution, the Ministry of Justice.

Yet their job category as interpreters does not exist administrative-bureaucratically, but their job as interpreters exists in practice – they translate during trials, but as far as the Ministry of Justice is concerned, it does not. On an administrative level they thus do not figure as interpreters, their salary slips read "secretary to the president's office" (Paul at the TI) or "liaison officer" (Antoine at the TGI), for example. As we have read above, only that what is written actually exists according to bureaucratic rationalization. Reality is organized through a specific kind of order and this order is maintained through the keeping of files (Rottenburg 1996). As long as interpreters do not figure as interpreters in the court's and the Ministry of Justice's employee registry, they do not exist as such. As long as there is no officially recognized job category with all that entails in terms of job description, hiring conditions, and so on, they will continue to be seen and handled and paid as liaison officers and secretaries.

So how do interpreters deal with this situation? They are part of the bureaucratic apparatus which is the Ministry of Justice. They move within a terrain which is the home turf of the educational elite, who present and carry themselves in ways corresponding to this terrain. We will look more closely at interpreters' self-presentation in chapter 4.5. below. All four court interpreters in Bobo seem to strive to adapt their appearance, the way they carry themselves, how they talk, how they communicate, and what they say – the presentation of themselves – to their working environment. They model their behavior and appearance on the educational elite they work with daily, following or copying a model they perceive as being successful (Rottenburg 1996: 194).

As anthropologists we need to be able to improvise and be prepared to work with situations as they present themselves – change tactics, come up with new strategies, use our imagination any time during our field research. Particularly in what gets termed elite research

or researching the elite in the literature, gaining access – and maintaining it – is described as complicated and difficult. Bergman Blix and Wettergren define the elite as

> people who have power, prestige and money, based on their positions in key institutions. Sharing similar social backgrounds, they belong to overlapping circles within the upper-class stratum of society. The elite differ from ordinary people in being 'in command' of things beyond the control of ordinary people, such as the … judicial power. … They enjoy high salaries and secure employment terms (Bergman Blix & Wettergren 2015: 692).

These attributes can definitely be ascribed to the upper echelon of court members – judges, prosecutors, head scribes (*greffier en chef*), who have all had the same educational itinerary in terms of studying law and going to ENAM, the state institution where training for legal professionals takes place.

Abbink and Salverda (2013) suggest that the elite consists of people who are defined as such by themselves or by others: "an elite is a relatively small group within the societal hierarchy that claims and/or is accorded power, prestige, or command over others on the basis of a number of publicly recognized criteria. ... Elites are dominant in some sectors of society on the basis of certain (im)material characteristics, skills, achievements, and this can be in any socially relevant field…." (Abbink & Salverda 2013: 1). This definition has the advantage of taking into account the social structure where elites act and power structures at work. Abbink and Salverda insists on the fact that "elites do not exist in a vacuum", but that they "... only exist vis-à-vis other social groups – be they the marginalized, dependents, supporters, or the counter-elites" (Abbink & Salverda 2013: 16).

The elite in Burkina Faso cannot, by virtue of their success alone, be described with the sociological notion of "style of life". Rather, the success of the elite becomes visible through putting on a show of specific objects, mediated by money. Banégas and Warnier had identified the four Vs – *Villa, Voiture, Video, Virement* (villa, car, video, and money transfer) that accompany a certain performance of the self through clothes, a certain way of carrying yourself, consumption, choice of food (Banégas & Warnier 2001: 9f). A decade after Banégas and Warnier published their paper, the four Vs have shrunk to three Vs, Steuer tells us, now being updated and modernized into: *Villa, Voiture, et Verger*, that is a villa, a car and a piece of land are now the main accessories denoting success (Steuer 2012: 91). It is a materialist and mundane conception of success securely anchored in emic materialist imaginaries,

Banégas and Warnier contend (2001: 10; see also Newell 2012 on bluffing). If we take into account the number of cell phones judges and prosecutors handle, then they are definitely part of the elite even though cell phones do not strictly fall into the four V categorization of showy elite behavior.

Bergman Blix and Wettergren discuss their difficult process of gaining access to the judiciary and the particular case of researching elites in Sweden as "outside" researchers (Bergman Blix & Wettergren 2015). With outsiders they refer to the fact that they, as anthropologists, do not come from the same professional-educational background as their interlocutors. Although their focus is on the emotion work in qualitative research, their observations on questions of access and the work required in ethnographic research in elite situations are pertinent to my own experience. Of course, researching among lawyers and judges – university graduates – could have also facilitated communication between anthropologist and interlocutors because of our *similar* educational background – we all went to university. In the end, gaining, securing, and maintaining access to the delicate terrain of the judiciary was, quite simply, unpredictable and was obtained only with limits.

The educational elite I am looking at here is also perceived or designated as *intellectuels* by the population at large: judges, prosecutors, and all upper echelon court personnel. Which, again, seems to rub off on interpreters. Historically, interpreters were vested with a lot of prestige, power, and respect, even fear from both the local population and colonial administrators, we read. In contrast, interpreters today are equally needed, albeit for different reasons; they are hired and then largely ignored. Without them, the bureaucratic organization of the justice system and particularly the way it is run by the experts in charge, could not function. The French language can only be used during trials because of the mediation of the court interpreter.

Their being both needed and ignored puts interpreters in an ambiguous or difficult to define position; they are, as individuals, interchangeable and replaceable in their work on the ground, having been hired on a "right place, right time" basis and mainly for bureaucratic reasons. They are also needed to legitimize the running of an organization modelled on an imported system, which includes a ratification of international Human Rights laws. How far interpreters can act for and by themselves is clearly defined and delimited both by the organizational rules and the bureaucracy their superiors subscribe to, and by the control their superiors exercise over their work interpreting. Where interpreters are free from in-house

protocol is in the way they choose to present themselves and their work to outsiders such as plaintiffs, defendants, or this researcher.

When I returned for final, wrap-up research in early 2018, it was Salomon who backpedalled. “Some judges [of the court of appeals] are getting on my case, accusing me of taking money from you in exchange for information. The president says you are a spy. I don’t want to lose my job, Natalie, so I cannot continue our conversations”. During the entire two years of my research the president of the court of appeals had not changed his mind, I understood. On the contrary, he got the *criminel* court interpreter to abandon his talks with me after a while by threatening him that he might lose his job. Also the judges were informed to not, under any circumstances, talk to the foreign spy and imposter, as he labelled me. Or so Salomon, the appeals court interpreter, told me.

3.3. Concluding: Self-reflections of an anthropologist in Bobo, subject of detouring and deferring strategies

The unanimity of judges and prosecutors on the use of French in the courtroom baffled me at first, particularly their insistence upon it. They appealed to the higher order of the penal code and the constitution, deferring responsibility and making sure I, the uninitiated, knew, that they knew what they were talking about. Judges or prosecutors also made comments such as “you know, Madame, it is difficult for a lay person to understand”. Yes, indeed, why did I choose to do research in an area – “the law” – I have had no training in? This comment automatically puts the researcher in a position of ignorant outsider and the judge or prosecutor in a position, where they do not feel pressed to answer or to continue the conversation.

Everybody who studies law knows this, I was assured. And anyway, how could they hold a trial in Jula? They had neither the vocabulary necessary nor the education to administer justice in a language other than French. They are not aware of the existence of dictionaries (for example the Bambara-French dictionary by Dumestre 2011) or the translation of the constitution into Jula (Sanogo 1991), or of the existence of glossaries that had been created for Jula legal language (for example Wedirawogo and Budo 2002). As my colleague and I have asked elsewhere (Tarr & Sambou 2021), it seems that even though efforts to create vocabularies and glossaries in African languages exist and for a number of different domains,

communication between those producing the literature and the professionals meant to use them is practically nonexistent. It also seems like the entire self-conception of judges and prosecutors is based on a conviction that the law does not need to explain itself and this law is to be administered in French.

When asked where it is written and defined that French is mandatory in court, judges and prosecutors consistently state that, indeed, it is written, that this law or paragraph exists, and they will surely be able to find it for me. They are lying, as Bleek drily labelled the tactics of his informants (1987), because it is not written anywhere. Even if I would not voice it in Bleek's terms, I never got a conclusive answer to my question. How could I? It *is* not written anywhere.

But this question might not be the one to ask. The self-determination of judges and other high echelon court personnel is delimited by codified texts written in the official language French. These legal texts are not only written in French, but also discussed, taught in law school, implemented to real cases, validated, and so forth, in French. The link between the official language and the law as spoken in a court thus exists through writing. We have seen that only what is written down exists according to the rationalization of a bureaucratically run institution. Any decision taken by members of the court needs to be based on a written, legal text, which, again, is written in the official language. So, the official language is by default the language of the law even though this is not eternalized in writing anywhere.

It is this and more. In the next chapter we will see how the French language has historically been positioned as the only language in Burkina Faso deemed capable of transporting knowledge. French has and is promoted as language of learning, of upward social mobility, and as an asset for a good social status in society. The expert-bureaucrats running the justice system adhere to rules and regulations they see as successful. These rules and regulations, codified laws, are an integral part of the system just as they, the experts, come with the system as well. Following rules is a rule in itself.

As we have determined earlier, citizens today have internalized the idea that French is the language of government institutions, like judges and prosecutors have, to a certain extent, internalized certain ways of going about speaking justice. These practices, however, are not only embedded in internalized behavior such as habitus, but are an integral part of practices applied to create boundaries. In this sense, we should not see silence, reluctance to

say anything relevant, even lies, as strategies meant to hide something or as obstacles to be overcome by the researcher. From a methodological point of view, they are essential parts of the analysis.

So, the question might rather be how something becomes generally accepted as mandatory – how something becomes a fact in social reality. "Bourdieu made us attend to the ways in which patterns of behavior … become internalized, automatic, unconscious manifestations of who we are", Hacking declares (Hacking 2004: 288). The ingrained habits often make people mistake them for something natural, instead of seeing them as culturally developed and perpetuated by those with the most power. Who has the power, then, to institutionalize rules, construct them as facts, and make them part of the social imaginary? Since we are in a legal environment, this question becomes even more pertinent because it shows up moments of "law-making" and of who has the power to decide on the procedure to follow.

The law-making comes with the system. The imported justice system that came to Burkina Faso came with the French language, it came with its own educative institution, and it came with law texts already written. Judges and other high ranking court personnel might support and perpetuate the exclusive use of French, they did not institutionalize it, however. As employees of the Ministry of Justice they agree to follow its rules, regulations, procedures, to adhere to a pre-determined way of going about doing things, of carrying out their jobs. Just like everybody else working alongside them as *fonctionnaires*; they are the victims of a machinery that is bigger than them, to put it dramatically. Or, as judge D.M, had expressed it: "Yes, in Banfora [where he used to work as investigating judge] we did everything in Jula, you understand each other better, the mother tongue is closer to the heart, there's a certain familiarity, a trust that develops between speakers. This allowed me to advance quickly in Banfora contrary to here in Bobo where they force us all the time to speak French" (judge D.M, Bobo 9 February 2017).[27] Here in Bobo at the TGI, the judge told me, it is too much work and too much prescription on how you have to go about doing things. As an investigating judge (*juge d'instruction*) you can schedule your day as you wish, but here in Bobo, trials can go on until 6pm. A long day.

[27] Oui, à Banfora j'ai fait tout en dioula, on se comprend mieux quoi, la langue maternelle, c'est sentimental, il y a une familiarité, une confiance qui naît entre vous. Cela m'a permis d'avancer très vite à Banfora par rapport à Bobo où on nous oblige à tout moment de parler français.

Court interpreters subscribe to certain ways of acting as well, conforming to the overall, unwritten rules. They imitate certain forms of behavior, the process Rottenburg refers to as modeling, that they perceive as successful in order to appear more modern and rational, as being an integral part of the legal environment. Antoine repeatedly told me how he has to deal with highly confidential material and he refused a recorded interview, imitating judges' or prosecutor' rationale.

Deferring tactics extended to other situations as well. When I asked the chief of police if I could interview him, he was very forthcoming, obeying the unwritten rule of Burkinabe social conduct to never outright refuse a request. Of course, he will do an interview with me, he told me, in time. I should call him. The interview never happened, the chief of police being absent or too busy every time I called. I wanted to get more insight into the production of a police report, the document which precedes and justifies a subsequent accusation by the prosecutor. We talked for a short while in his office.

> *I get to the commissariat a bit early and wait in the ante-room of the* commissaire principal de police's *– the chief of police's – office after getting my visitor's badge with no delay. His assistant goes to tell the* adjoint*, the second in command, that I am here. I take a secret picture of the two piles of narrow-backed grey books and folders in pink, white, yellow, red on top of the assistant's white metal desk and wait.*
>
> *When the* adjoint *knocks-enters, everybody shoots out of their seats and slaps their outer thigh. He is a rather short man, today in a suit with shirt, no tie, which is the first time I see him without uniform. The* adjoint *shakes hands with everyone and tells them to* "Repos!"*, to relax, they deflate but only sit down when he tells them to. He proceeds into the* commissaire principal's *office and re-emerges a bit later, telling me to come in.*
>
> *Now an extended massaging-stroking begins, me flattering the* principal*, listening to his excursions on how much he enjoyed writing his thesis, which he did in 2005, talking to people, writing it all down at night after a day's work. The police school uses teachers from university and the state is now in the process of giving equivalency to diplomas not obtained from university. His thesis title was* "Le contrôle de circulation des personnes au Burkina Faso"*, a topic he chose because he is a believer of free movement, he tells me.*
>
> *In spite of my flattery and uncharacteristic patience, still I only get a* "oui, on verra, plus tard" *from him to do a recorded interview with me. He gets uncountable phone calls, I flatter him again by remarking on how much people need his advice, he likes it, but still does not grant me a definite ok. I insist, waiting again for him to get off the phone after he told me that we were done, to ask if I then can go ahead and do an interview with his* adjoint *while I wait for him to grant me one.*

> *Every time I talk the chief yawns and watches the TV which is high up on the wall behind me. Once he picks his nose while looking at me, both nostrils. He looks me in the eyes with his finger in his nose and it looks as if he is very far away. I think I did not flinch.*
>
> *While we talk, he not only gets constantly interrupted with phone calls, but people march in to have him sign various documents. He does not only sign, but also corrects them – orthography, general content – and he comments on how these people tire him out in a tone, which suggests he likes being informed of everything.* C'est pas facile*. One man giving him something to look at has a swollen lower face due to a tooth ache. The* principal *gives advice, acting as dentist – an important man with many talents. One lady had made a typo, writing the name of a place Zogona instead of Dogona, which both exist and which in this case could have entailed unwanted consequences.*
>
> *He finally says yes, go ahead. This very small victory is paid for dearly, even more so when I go say good-bye to the* adjoint*, wanting to fix an appointment at the same time. The* adjoint *cannot give me an interview before his boss has not given me one. I know that his boss is very busy, however, and will probably not have the time. In addition, it is him, the* adjoint*, who is closer to the basis of things and can tell me more about what happens daily on the ground. He agrees, smiling, but still tells me his hierarchy does not allow him to go before his boss. But if I see that the chief cannot make it, he will talk to me, no problem* (Commissariat de police central, Bobo, 1 February 2017).

In the end, I could not do a formal interview with either the *adjoint* or the *commissaire principal*. My short visits allowed for short conversations. They also allowed for insights despite conversations refused. It seemed like the judiciary in Bobo, be this the penal courts, the prison, or the police headquarters, were delicate terrain – but why? What makes the civil servants in law and law enforcement protective of information as to how they carry out their jobs? Trust was indeed a recurring topic throughout research in Bobo.

The reluctance to talk to me and the suspicion were not necessarily obstacles to be overcome or wasted time and material, however, but they constitute information in themselves. The reluctance, the silence, and the mistrust I encountered throughout my research were as important as the information that these attitudes or practices veiled. During the analyzing process and while writing, I came to understand that mistrust and silence are as important as gossip or informal talks. The mistrust can be seen as a protective strategy against outsiders. The court members use silence to overcome or to hide their conflict of constantly having to navigate or choose between local social expectations of them and the

demands of a highly structured institution. In addition, suspicion and mistrust, even lies, can also be analyzed as part of historically rooted strategies people have always employed in situations of unequal power relations such as colonialism – we remember Moussa Soumaré, Wangrin, and Omar Sy – or in postcolonial imported, appropriated institutions.

In researching elites, Bergman Blix and Wettergren describe the strategic emotion work "researchers in the field" need to perform to build up trust and to gain and maintain access (Bergman Blix & Wettergren 2015: 692). Their findings are relevant to anthropological methodology generally. To my own research I deem the following two points they make particularly on target. One theme they discuss is "the power issue", the constant renegotiation of status between researcher and interlocutor.

Why did interlocutors, who were friendly and granted me of their time at first, become reluctant, even cold and would not talk to me again after a year? Judge D.M. had been interested in receiving a copy of the transcribed trials he had presided and recorded for me, but when I gave him the copy, he was not only disinterested, he was dismissive, putting it away after a short glance. Our meeting was signaled to have thus ended. I must have overlooked something.

Every research project depends on fair and sustainable access, not only researching elites, I would say (see also Cunliff & Alcadipani 2016: 536). Impression management can indeed be strategic. It included presenting myself adapted to the circumstances at hand. My dress code became more formal, because the people I was around all day long at court showed up for work dressed sharply. We have seen that dressing nicely is not only a prerogative of the civil servants working at court, but is part of citizens' everyday presentation of themselves as successful and important (Banégas & Warnier 2001: 9f).

So, in the end, being strategic went both ways: for my interlocutors at court, presenting themselves as a part of the machinery that is the justice system, it was essential to come across as being in control, to being successful. For myself, presenting myself adapted to the environment I carried my research out in, it was strategic so as not to feel totally out of place. Of course, I also wanted to inspire trust and solicit a willingness to speak with me from court members. The idea of trust was a constant companion.

We will now look at language use and language policies in Burkina Faso in retrospect, travelling back in time and then looking at how language is handled today. Bobo Dioulasso is

accorded much attention, a city, where the large, internationally used language Jula is the language of the public space.

CHAPTER 4: INSTITUTIONAL LANGUAGE USE – *Amtssprache*: the way it was and the way it is

Prologue – A day in court cont., Part 4

How on earth would Antoine translate the prosecutor's speech that he just held, and the judge's verdict, releasing Musa on the benefit of doubt? When I ask him this he tells me that it had taken him years to get all the phrases correct, the difficult standard French and even more so the legal expressions, "on benefit of the doubt" being among the easier ones; a straightforward translation. By now, he has developed a routine, he says. His former boss, the president of the appeals court, had encouraged him to consult law books he had lent him, to look at and memorize certain legal expressions. He had tried to read these books, it was difficult, so he preferred listening to what the president explained to him. He needs to stay attentive during the entire duration of a trial.

Now, the judge had just corrected him quite vehemently. It looks like a tricky situation altogether. All the many legal expressions he masters now, repetition and routine making them manageable. Or so he says to me later. It is all repetition after a while. Antoine relaxes back into his chair, stretching out his legs in front of him, locking his fingers on his belly. Musa's interrogation goes on.

4.1. The languascape of Bobo Dioulasso

Bobo is the second largest city in Burkina Faso in terms of both population and industrial production and it is the center of tourism in the country's South West. Travelling overland from Ouagadougou to Bobo, the countryside becomes increasingly green. In the otherwise dry landscape Bobo seems particularly rich in vegetation and especially after the rainy season the cashew and mango trees that dot the landscape shimmer in various shades of green. The city is, compared to the capital Ouagadougou in the center of the country, very lush and green.

Geographically-linguistically, the city of Bobo is situated towards the eastern border within the larger Mande language space. Across this vast region, reaching from Senegal to Guinea and from Mali over Burkina Faso to Côte d'Ivoire, various inter-comprehensible varieties of the Mande language continuum are used. The Jula language in one of its forms is also a trade and vehicular language that can be used in a large part of western Africa. In Bobo

itself, an own, urban variety of Jula has evolved. This variety has become the main language spoken in the city, often as first or even only African language of its inhabitants (Sanogo 2013: 266).

The city of Sya (or Sia), as Bobo Dioulasso was first called, has its origins in the 11th century, when agriculturalists of the Bobo ethnic group lived in different settlements in the region of today's Bobo Dioulasso (Sanou 2000: 386; Sanogo 2013: 262). Some researchers therefore designate the Bobo ethnic group as autochthonous or indigenous to this geographic area, while others have found that they are an immigrant Mande people (Roth 1994: 36). Roth describes the region as Boboland. Like Sanogo, she, too, dates their presence in the area at about the year 1000, while Sanou cites historians Sanou and Sanou, who set the date at between the 13th and 14th centuries (Sanou and Sanou 1994 quoted in Sanou 2000: 386).

Whoever the original settlers or autochthonous inhabitants were, they were progressively joined by peoples coming from various parts of the Mande world. After the dissolution of the Mali empire in the 15th century, many peoples immigrated to Boboland from there. The Mali empire had encompassed a huge area covering territory from the Atlantic coast all the way to Gao along the river Niger. Many different ethnic and linguistic groups had lived in the Mali empire, inspiring Kouadio to the question of how or by which criteria could a citizen of Mali be identified (Kouadio 2004)? He answers his question by stating that

> the empire's citizens were the Mandinka. This term designated both those who came from Manding lands (i.e. natives of the Manding ethnic group) as well as all those living in the empire (also non-native Manding). All citizens thus enjoyed a type of supra-citizenship which transcended ethnic groups and was multilingual and multicultural. A kind of collective, federal citizenship. This plural identity was formed from a common language which linked these different populations to each other. The framework which the empire created reinforced points held in common and reduced divergences and internal fights with a naming system, cousin-relations and joking relationships…. (Kouadio 2004: 4).[28]

[28] "Les ressortissants de l'empire étaient des Mandenka. Ce terme désignait à la fois celui qui venait du pays mandingue (c'est-à-dire natif de l'ethnie mandingue) ainsi que tout ressortissant de l'empire (même non natif mandingue). Tous les ressortissants jouissaient alors d'une espèce de supracitoyenneté qui transcendait les ethnies et était multilingue et multiculturelle. Une citoyenneté collective et fédérale en quelque sorte. Cette identité plurale s'est forgée à partir d'une culture commune qui liait ces populations entre elles. Le cadre créé par l'empire renforça les points communs et atténua les divergences et les querelles intestines à partir du système de correspondance des noms, des liens de cousinages et de parentés à plaisanterie….".

Another noteworthy immigrant group are the Zara, whose origin is not definitely clear, but they themselves designate themselves as *venus du Mandé*, having come from the Mande area, as Roth tells us (Roth 1994: 38). Today, the Zara are considered to be part of the most ancient or even autochthonous inhabitants of the city of Bobo, many of them living in Koko, one of the oldest parts of town. With the Jula of Kong (in today's northern Côte d'Ivoire) another important Mande immigrant group came to Sya, moving northwards as conquerors and eventually settling in Boboland in the 18th century.

There is considerable confusion over and there are many different ideas that have formed as to the designation of ethnic groups and languages, not only for the Mande region of West Africa. Jula, for example, is an expression used at the same time for an ethnic group, presumably originary of Kong, then for Muslim traders travelling and working all over West Africa, and finally for all those who have converted to Islam. For methodological, historic, political, and ideological reasons, many of the assignations in use today were codified during colonialism, ossifying momentary indigenous ideas of ethnicity and belonging that were much more fluid.

One of the first and best-known scientists to describe languages in the AOF, colonial administrator and professor at the *École des langues orientales* Maurice Delafosse, classified Malinke, Bamana and Jula as dialects of Mande (Delafosse 1901).[29] He lamented the fact that it was difficult to trace boundaries between these supposed dialects, categorizing the Mande languages according to linguistic criteria of his time (Canut 2008, particularly ch. 2). The idea that languages are identified with nation states or have borders is as much a result of a European way of thinking and ordering the world as the idea of linguistic or ethnic groups. They are European constructs and have much to do with colonial hygiene.[30] It was also an instrument for social stratification in Europe "…to see how Europe came to be 'deprovincialized', how ideologies and practices tied to a specific gender, race, class and time were reframed as universal, timeless knowledge of 'man'" (Baumann and Briggs 2003: 68).

Colonial administrators were under political pressure to identify languages that could serve as ethnic labels and by extension as territorial and political divisions needed to establish

[29] Delafosse's publication can be found under http://gallica.bnf.fr/ark:/12148/bpt6k5440988h/f11.image. Maurice Delafosse is well known to researchers studying Mande languages.

[30] Johannes Fabian (2000) talks about tropical hygiene, when discussing colonial administrators' collecting, cataloguing, reducing to writing, etc. of languages and vocabularies.

colonial rule. Europeans only saw what they knew and in unknown, new surroundings they imposed their categories in order to understand the world around them. This need for categorization was also a sign of the times. In the late 1700s and early 1800s, European scientists were busy measuring the world, travelling far, collecting and creating data (Harries 1987 on South East Africa; Fabian 1986, 2000 on East Africa; Irvine and Gal 2000 on francophone western Africa[31]). Through Jula it can be illustrated how French colonial administrators interpreted and molded the world around them.

In fact, Jula as a vehicular language had been known and used in large parts of West Africa for centuries and long before French invasion (Djité 1990; Iliffe 1995; Lüpke and Storch 2013). Used as a vehicular and trade language, Jula linked people across West Africa, allowing them to communicate across linguistic boundaries.

> Such [trade] networks extending across environmental borders were the main form of West African commercial organization. The earliest comprised the Soninke traders of Ghana…. [M]any Soninke formed the nucleus of a larger, multiethnic, Muslim, Mande-speaking trading class, known most commonly as Dyula, who chiefly traded gold, kola, and cloth [as early as in the thirteenth century]. While many Dyula were travelling merchants, others settled in foreign territory, established local ties, and created a diaspora through which trade could pass across political and ethnic borders from the forest to the desert and from the Atlantic to Hausaland…. (Iliffe 1995: 85).

The term Jula literally means "salesperson" (*commerçant*, Kouadio 2006: 181), but over time, Jula became an ethnonym, designating an ethnic group as an extension of the language name: "… ethnologists, historians or linguists realize again and again that many ethnic groups known today have only been defined as such during colonial times" (Werthmann 2005: 223).[32] Delafosse, who was interested in making the Jula language accessible to his fellow colonial administrators, was crucial in creating and naming this ethnic group in his influential publication Haut-Sénégal-Niger of 1912 (cited in Werthmann 2005: 223; Canut 2008: chapter 2; see also Delafosse 1901).

[31] The expression francophone western Africa is a very unsatisfying designation I only use for reasons of brevity. The former AOF might show pockets of an appropriated and localized variety of French like in Côte d'Ivoire (see i.a. Kouadio 2007), but as a whole, no part of Africa can be designated as francophone (or anglophone or lusophone, for that matter), as Guy Ossito Midiohouan has already stated over 30 years ago, but julaphone or moorephone or wolof-phone – in short, africanophone (Midiohouan 1988).

[32] "…Ethnologen, Historiker oder Sprachwissenschaftler [stellen] immer wieder fest, dass viele der heute als Ethnien bekannten Bevölkerungsgruppen erst in der Kolonialzeit als solche definiert wurden".

This reification of linguistic and ethnic boundaries evokes an ethnicization of populations perfectly in line with occidental, colonial Africanist research. In other words, the "ethnic" components were constructed and imposed by colonial ethno-linguistic researchers such as Delafosse. Actually, Delafosse went even further, wanting to find the "pure", the authentically African in the Mande languages, uncontaminated by occidental and Islamic influences. This he found in what he designated as South Mande languages, which were, contrary to the North Mande languages, less influenced by Arabic (Canut 2008: 77). Like this he did not only create an ethnic group and geographically bounded language varieties, but an ideal, pure, authentic Africa. But West African populations had been highly mobile long before, during and after colonization (Amselle and M'Bokolo 1999), so linguistic hybridization, language mixing, plurilingualism, and thus also interpreting have always been part of daily life.

Even though there are no clear-cut linguistic boundaries between the different Mande varieties, as Delafosse had already noted, Jula the language and Jula the ethnic group are today known as such in Côte d'Ivoire and in Burkina Faso, while in Guinea and Senegal they are known as Mandinka and in Mali as Bamana (see Amselle 1990: 79ff on the creation of the ethnic group Bambara or Bamana in Mali; Werthmann 2005: 223f). Werthmann shows how speakers apply the designation Jula differently over time and according to political sentiments and context. Using the recent history of violence in Côte d'Ivoire, she shows how, first, Jula was used to designate a socio-professional category, standing for Muslim trader. Then, the term Jula was used to point to those living in the North, the Northerners. And in the end, it became a nationalistic hate symbol, the Jula were the foreigners (Werthmann 2005).

According to Sanogo, the name Bobo Dioulasso was given to the city of Sya in 1904 by French commander Caudrelier (Sanogo 2013: 263). Historians Sanou and Sanou, however, remark that the name had been used long before Caudrelier by explorers passing through the region and who used the name Bobo Dioulasso in their report (Sanou and Sanou 1994 quoted in Sanou 2000: 286). The name of the city, Bobo Dioulasso, is made up of Jula – transcribed in French as *dioula* – and Bobo, the names of the two most ancient ethnic groups and languages present in the city. The suffix *-so* stands for house in Jula. We are in the house of the Bobo and the Jula. In fact, when Thomas Sankara renamed the country from Haute Volta to Burkina Faso in 1984 in his quest for more self-determination and autonomy from France, he chose a name that allowed the two most prominent ethnic groups of the nation state of

Burkina Faso, the Moore and the Jula, to become visible: *burkina* is Moore for honest, upright, and *faso* is made up of the Jula words *fa* for father and, again, *so* for house. Burkina Faso thus stands for The Fatherland, i.e. Home of the Upright or Honest People.

Today, we find, next to Bobo and Jula, the two main languages spoken, many other languages, which do not become visible beyond family or personal interactions with the exception of Fulfulde – or *peul* as it is called in French – and Arabic. Bobo Dioulasso is situated at a crossroads, on the north-south axis of the trans-Saharan trade route and on the east-west axis of sub-Saharan trade. Bobo has thus always been an important place, a hub of trade. What is noteworthy for us here, is that in Bobo everybody speaks Jula at least as a second language; it has become what sociolinguist Sanogo calls a pan-dialectal, urban language for the city's inhabitants, a particular Jula that is designated as "the Jula of Bobo" or "the Jula as spoken in Bobo" by inhabitants/its speakers (Sanogo 2013).

Jula, as a large lingua franca used all over West Africa, is of course also used in other parts of Burkina Faso, such as in Ouagadougou, eternal rival of Bobo Dioulasso for attention in what regards development of infrastructure or work opportunities. Even here, Jula has its place, particularly in commercial contexts. The Ouagalais are usually described and also describe themselves as solid speakers of Moore and French, Jula not really figuring within their immediate horizon. French is, if course, the other large or visible language spoken in West Africa and by many Burkinabe in different varieties. Officially, the French language does not know or allow for any varieties, there being, according to the keeper of the French language, the *académie française*, only one standard form. In the 60-odd years since the end of the colonial period, French has evolved into many regional forms in Africa, which has attracted a considerable amount of research.

Calvet, for example, has looked at how the French colonial administration installed the French language and civilization through schools and with force, marginalizing African languages (Calvet 1974, 2010). According so some linguists and sociolinguists, French has long been made into an African language by its speakers (Calvet 2010; Dumont 1990; Mengara 2000), a heatedly discussed topic and a discourse loaded with political and moral ideas. French linguist Gisèle Prignitz has investigated form and content of Burkinabe French in many publications since the mid-1990s (see e.g. Prignitz 1996) and has analyzed recordings of the revolutionary trials during the Sankara years in Burkina Faso, where Burkinabe French became standard (Prignitz 1998). Sociolinguist Kouadio, too, has looked at local varieties of

French, particularly in Côte d'Ivoire, and has published extensively on Ivorian French and nouchi, an Ivorian variety of French heavily impregnated with Jula syntax and vocabulary (see e.g. Kouadio 2006, 2007, 2008).

In spite of French being an African language today, as some contend, it has not entered Burkina Faso's state-run institutions in its Burkinabe variety. On the contrary, at both the TGI and the appeals court in Bobo, it is not the Burkinabe variety of French that is current for communication, neither between civil servant colleagues working at the courthouses, nor between judges or prosecutors and defendants during trials.

Bobo is a buzzing city, second largest in Burkina Faso, and thanks to its industry and university there is always an influx of new, young people from all over the country and West Africa. The Bobolais are speakers of a variety of Jula that has been literally born and bred in Bobo, an urban Jula. Newcomers to the city need to learn to speak Jula in order to feel to be a part of the city.

Throughout Burkina Faso, French has become the language associated with social mobility, bargaining power, and the marker of a certain standing in society. French is, today, the language of the elite in its standard variety, while "street French" is spoken by the barely or little educated. Not only to gain access to the elite social strata of society are French skills crucial, but French is a mandatory prerequisite to be able to get a job as a *fonctionnaire*, a public or civil servant. There, French defines the working day since all government jobs, all *tubabubaaraw*, be it in education, politics, or in the judiciary, rely on the oral and written French skills of their employees, the work of *fonctionnaires* being based on documentation written in French.

This is the result of a concerted and continuous effort on the side of, first, the colonizing administrators, military forces, and politicians as well as of post-independence language politics and policies. The first presidents of many former French colonies were men, who had been educated in the French colonial schools and in France. They were, for the most part, positively inclined towards France and its African language politics and extended these into today so that we now find French installed as official language in Burkina Faso and mandatory language in court.

Although French has only come to West Africa with colonialism, it is today the only language of instruction in the formal educative sector in Burkina Faso. And even though Jula has been used for centuries in both written (in both Latin and Arabic script, adjami) and

spoken forms and continues to be a lingua franca used all over West Africa, it has been kept out of formal education also in Bobo. There, we find only two bilingual schools teaching in both French and Jula today.

4.2. *Amtssprache* French in the formal educative system

Until this day, no formal educative institution or government run school in Burkina Faso teaches in any of the over 60 African languages spoken in Burkina Faso, but exclusively in the official language French. There are no up to date statistics showing the relationship of Burkina Faso's inhabitants to the French language, so we need to content ourselves with the survey mentioned above and which was conducted in 2004 by linguist Issa Diallo working at the national center for scientific and technological research (CNRST, *Centre national de la recherche scientifique et technologique*). This study shows that 56% of the total hours of education during the six years of primary school are dedicated solely to the acquisition of the French language, neglecting all other needs of instruction (Diallo 2004: 14). And even though French has been the official language in Burkina Faso for over half a century, less than 0,01% of the population use French as a family language, according to Diallo (ibid.).

Children in Bobo grow up speaking Jula – at home, with their friends, around town. When children start primary school, and according to World Bank statistics almost 80% of children in Burkina Faso were enrolled in primary education in 2017[33], the six-year olds are confronted with a wall of French. Teachers speak and teach exclusively in French. Some institutions support the acquisition of the French language through a rigorous policy of French-only on the school premises, a habit introduced during colonialism and which continues to be employed today (Mayrhofer-Deák 2009: 23).[34] Some private primary schools hire a second teacher to facilitate teaching in the first grade of primary school by translating and explaining some things in Jula for a couple of hours every week. But most schools do not

[33] See http://datatopics.worldbank.org/education/country/burkina-faso, last accessed 24.09.2019. As with all statistics enumerated by organizations who do not state how, exactly, they gather their data, also these results need to be taken with a grain of salt. The *Annuaire statistique national* (2019) states that the total enrollment in primary education for Burkina Faso was 90,7% in 2017/2018. These numbers have been collected by state run institutions (www.insd.bf/n/contenu/pub_periodiques/annuaires_stat/Annuaires_stat_nationaux_BF/Annuaire_Statistique_National_2018.pdf) and thus need to be viewed critically as well.

[34] The rigorous policy and accompanying punishment was carried into Africa by the French, who themselves had inherited it from the Jesuits. They, ironically, had used it to enforce Latin on their French-speaking pupils (see Weber 1976).

offer this service – no government run primary school does. The fact that a person is hired to help pupils along in Jula does not mean schools have recognized a need for bilingual instruction or instruction in the mother tongue. Jula is supposed to facilitate the learning in and of the French language.

At the end of my fieldwork in December 2018, there were two private bilingual schools in Bobo teaching in Jula and French. The bilingual curriculum prescribes Jula-only instruction for the first of six primary school years, with gradual introduction of French in the second and third in order to conclude primary school with French-only instruction in the last year. So Jula in fact again mainly functions as a facilitator for the acquisition of French. At secondary and tertiary level all teaching is in French only. To my knowledge there is only one (unpublished) study which has looked at questions pertaining to the language of instruction at tertiary, i.e. university school level in the former French colonies of western Africa (Slezak 2016).

Also in France, laws had been passed in the late 1880s, which made elementary schooling mandatory, free of charge, secular, and francophone. Even though nobody seems to have deemed it important to codify this officially, the republican school was from the very beginning pursuing a linguistically centralized agenda. Regional languages such as Breton, Basque, Corse or Provençal were at the time still vividly in use, but they found no place in national education curricula (see Weber 1976, especially chapters 6 and 18). This, of course, did not concern metropolitan France alone, but was carried over into their colonial project as well (Calvet 2010: 57).

In order to understand why French is the main and often only language of instruction in the formal educative system in Burkina Faso, we thus need to go back in time. With the advent of the French colonizers installing themselves permanently in western Africa, came their *mission civilisatrice*, a civilizing mission closely connected to and implemented through the French language. Being able to communicate with the colonized was one of the preconditions for the imposition of colonial power. “This went beyond the (trivial) fact of verbal exchanges, because in the long run such exchanges depended on a shared communicative praxis providing the common ground on which unilateral claims could be imposed” (Fabian 1986: 3). The French settlers in West Africa soon realized that in order to further their colonial project, they had to be able to reach the local population. For this purpose, they needed local, autochthonous intermediaries who were able to speak, write and

read French (Calvet 2010: 18). What happened, was the creation of an African elite through education (Jézéquel 2003; Kamara 2005; Mayrhofer-Deák 2014).

The first French school was opened in Senegal, the first class was held in 1817 in Saint Louis du Senegal (Bamgbose 2000: 75) by the teacher Jean Dard. He used a methodology then that continues to be at the center of debates about teaching in plurilingual settings and the space given to national languages in school curricula in Africa today. Dard studied and published a number of books on Wolof (Hair 1959: 585).[35] Most notably, his students learned to read and write in their mother tongues before continuing their schooling in French. Jean Dard did not get any support from the colonial government. On the contrary, "… introducing Wolof in school meant establishing it as a language, on equal footing with French, which was not part of the general mentality of the time; according to colonial discourse, Africans spoke dialects, not languages…." (Calvet 2010: 24).[36]

The first schools in Burkina Faso were opened by soldiers, who later, at the beginning of the 20th century, handed them over to private persons, civil servants working for and in state institutions, and missionaries (Mayrhofer-Deák 2009: 22-23). It was after the Brazzaville conference of 1944 that the French-only politics were rigorously implemented in schools throughout the French West African territory.

> [D]uring the 1930s an array of high-ranking colonial officials evinced a new openness to the use of African languages for certain kinds of practical education. Striking a different posture, officials at the Brazzaville Conference sought to dispel any ambiguities surrounding language policies, by declaring that "EDUCATION MUST BE IN FRENCH, given that the use of local spoken dialects is absolutely prohibited, in private schools as well as in public schools" (*La Conférence africaine française: Brazzaville*, cited in Gamble 2017: 191, capitals in original).

Formal education in the colonies had thus tolerated African languages up to a certain point in time.[37]

[35] Hair here mentions Jean Dard's publications of 1826, one of which is a dictionary French-Wolof and the other a Wolof grammar.

[36] „…introduire le wolof à l'école revenait à lui reconnaître la qualité de langue, à parité avec le français, ce qui n'était pas dans l'air du temps, le discours colonial considérant plutôt que l'on parlait en Afrique des dialectes, voire des patois…."

[37] Mayrhofer-Deák's research shows that during the entire colonial period African languages were officially prohibited in all schools throughout the French West African territory through various written decrees (2014: 207). This, of course, does not mean that African languages did not get used in practice by teachers.

Colonial governor Louis Faidherbe opened the *École des otages*[38] – later more tellingly renamed *École des fils de chefs et des interprètes* – in Saint Louis in Senegal in 1855 (or 1856, see Mbaye 2006: 291) with the objective of teaching the sons of chiefs. The founding of the federal school system in 1903 then saw another colonial school opening its doors, also in Saint Louis: the *École Normale*. It was later rebaptized *École Normale William Ponty* after colonial Governor General of French West Africa William Ponty died in 1915 (Forster 2007: 211), the name it is best known as. The William Ponty school produced most West African schoolteachers, doctors, and clerks prior to independence. It was the elite training center par excellence and recruited its pupils directly from the upper primary school classes (EPS *écoles primaires supérieures*, Jézéquel 2003: 410) from all colonies in the AOF, a recruiting policy employed by the *École des otages* as well.

The main goals both schools pursued were to educate future African professionals to secure teaching in the increasingly numerous rural schools, as well as to produce allies for the colonial endeavor – interpreters and clerks, for example, who entered the colonial administrative service as intermediaries upon graduation (Bouche 1968: 119; see also Gamble 2017). Education was clearly geared to train locals to assist the colonial project. "Since this time, the larger direction teaching took was to give Africans an applied education…. Teaching in the colonies was developed in the interests of colonization" (Kouadio 2008: 2).[39] Interpreter training was oriented towards learning the French language and civilization and not towards techniques of interpretation (Lawrance et al. 2006: 12).

For Africans, "[t]he teaching profession constituted one of the major avenues of social promotion open to French-educated Africans. Colonial officials hoped that schoolteachers would serve as loyal foot soldiers, as they spread out to staff increasingly far-flung schools" (Gamble 2017: 99; see also Kouadio 2008; Jézéquel 2005). Later, graduates of the William Ponty school were at the forefront of the struggle for independence and many became the first leaders of the newly founded, independent states. Félix Houphouët-Boigny of Côte d'Ivoire, Hamani Diori in Niger, Modibo Keita from Mali, Senegal's Abdoulaye Wade had all gone to the *École Normale William Ponty*. They were highly educated men who, for political-

[38] According to Kamara (2005: 106), Faidherbe himself gave the school this name.

[39] „[D]ès cette époque, les grandes orientations données à l'enseignement visaient à donner aux Africains un enseignement à but utilitaire…. L'enseignement sera développé aux colonies dans la mesure où il servira les intérêts coloniaux"

strategic reasons, took over French language policies and the bureaucratic-administrative system, which includes the justice system, of the former colonizers after independence (see Canut 2010: 146; Midiohouan 1988). In addition, they institutionalized the former colonizers' language as the official language – all former French colonies in West Africa have chosen French as their official language.

So, in the entire French territory, including the colonies, speaking other languages than French such as African languages or non-standard French (or local French varieties such as Breton or Basque in the case of France) was strictly prohibited in school. The French also kept referring to non-French languages in metropolitan France as well as to African languages as *dialecte*, as *patois*, *jargon*, *un parler de sauvages* or *barbares* and never as *langue*, further denigrating these languages (see among others Calvet 1974, ch. II, Weber 1976 for France).

Burkina Faso, at the time of its independence in 1960 still known as Haute Volta, established French as its official language as well. The Senegalese constitution, for example, enumerates six specific languages as national languages, adding that any local language that has been codified is a national language. Burkina Faso's constitution does not name any specific language(s), but by default designates all languages as national languages and thus worthy of support. We can see how nebulous the concept of national language is, just as nebulous as the concept of official language and its apparent exclusive use in the justice system.

It seems like a paradox that linguistic policies and language politics, which had excluded African languages from school during colonialism, were adopted unchanged after independence (Kouadio 2008) – and by those, who had fought for independence. The explanation put forward for this decision is to promote national unity and national identity. Ironically, "[i]n some instances these European languages were seen as having a capacity to unite African peoples against divisive tendencies inherent in the multiplicity of African languages within the same geographic state. … English and French have become the common language with which to present a nationalist front against white oppressors…" (wa Thiong'o 1994: 6-7; see also Dirven 1993; Naguschewski 2003: 25; Kouadio 2008). Another argument stated in favor of the continued use of French in all official situations, is its capacity for international communication, an opening up to the world which is not possible with African languages. In light of the fact that English and not French is the language of international and

particularly academic communication, this line of argumentation needs to be rethought for the so-called francophone African states – and for France as well, of course (Miller 2010).

Hence all formal education in Burkina Faso, from primary school to university, from the many different *concours* candidates take to obtain the coveted government jobs to the various continued education opportunities for civil servants employed in state institutions, continues to be taught in French. In order to become judge or prosecutor at one of the courts in the country, you need to, first, study law. Mohamed Sanou, for example, today's president of the commercial court in Bobo, wanted to do just that. Let us look at his educational itinerary, which is like a blueprint typical of anyone wanting to set out on a career as judge, lawyer, or prosecutor in Burkina Faso today.

Mohamed's story 1:

Mohamed Sanou was born and raised in a secondary town to the south east of Ouagadougou, Tenkodogo, in 1976. After having obtained his high school diploma, the *baccalauréat* or simply *le bac* (A-levels, Matura, Abitur), he went to university in Ouagadougou and studied law, obtaining the *maîtrise* diploma (the equivalent of a MA in law in terms of duration of education) in 2003, at age 27. He then decided that he wanted to enter the public service, become a *fonctionnaire*, in one or the other of the many posts open to law graduates, he was not picky. He embarked on an odyssey of *concours* – taking and failing quite a number of these entry exams. But he persevered and being a deeply religious man, he did not lose faith. The *concours* are tough, standardized, multiple choice, and mandatory examinations, a hurdle to be taken for anyone interested in a job in public service. Mohamed was rewarded for his perseverance, passing the *concours* to start training at the national ENAM school, the *École nationale de l'administration et de la magistrature*, for the profession of judge or prosecutor, the education being the same for both. ENAM is run and administered by the Ministry of Justice. Structural conditions of the education were not quite as tough then as they are now.

In 2010, the Burkinabe state had decided to "bring justice closer to the people" by opening regional high courts or courts of first instance, TGI, in each of the 45 administrative provinces.[40] In order to staff these new courts, the Burkinabe state takes on 100 new students

[40] "La Politique nationale de justice … insistait sur la nécessité d'une promotion de la « justice de proximité [qui] est un moyen essentiel de rapprochement de la justice des justiciables qu'il faut préserver et améliorer »" (Plan National de Justice 2010-2019, quoted in Fofana 2018: 394). By the end of 2018, there were 27 TGI in Burkina

per year at ENAM to train for magistrate jobs – judges, prosecutors, clerks of different ranks such as court scribes – and for the next five years, beginning in 2017. In that same year, 3200 candidates took the *concours* exam for these 100 job openings. So, Mohamed was lucky by being a good ten years ahead of these more difficult times. He trained at ENAM for two years – or rather, for one year because then, the first year consisted of theoretical schooling, where you attend classes at ENAM in Ouagadougou. In the second year of training, the aspiring judges or prosecutors, legal secretaries, or court scribes, go get practical experience as interns at one of the courthouses in the country, participating in the everyday work realities of those employed at the court the student gets sent to.[41]

After successfully completing his two years of training, the Ministry of Justice assigned Mohamed to go work as judge at a court in Ouagadougou; he could also have been sent someplace else and as prosecutor, the Ministry of Justice reserving for itself the right to decide the where and in what position for you. The administration of public service jobs is based on a system of rotation meaning that, theoretically, all judges and prosecutors can be assigned to a new court after two years of service in one place. Now, in 2021, Mohamed has been the president of the commercial court in Bobo for some years, he has built a comfortable home for his family (one wife, four kids as of 2020 and his mother lives with them as well). He also runs a turkey farm adjacent to their home, breeding and selling the animals to make some extra cash. They are quite comfortable. Mohamed hopes that the Ministry of Justice will not assign him to a court somewhere else in the country, sending him and his family away from all they have built for themselves in Bobo.

DESCRIBING the educative itinerary of Mohamed, who was keen on obtaining a job as a civil servant in a state-run institution, allows for an excursion on the position the *fonctionnaire*

Faso, 2 of which were not yet in use at that time (*Direction du développement et de la cooperation* DDC 2018: 5; see also *Annuaire statistique 2017 de la justice*, UNICEF 2018, http://cns.bf/IMG/pdf/annuaire_statistique_2017_de_la_justice_vf.pdf, p. 24, where 25 TGI are mentioned for 2017).

[41] After the revolution in October 2014 and ensuing political reforms, the transitory government had signed a pact to renew the justice system, see *Pacte national pour le renouveau de la justice*, adopted on 28 March 2015 (pdf file online at www.justice.gov.bf/wp-content/uploads/2017/01/Pacte-version-finale.pdf). Article 24 states that the minimum age for magistrates to start work is 25 years and article 25 states that training for any magistrate's position is extended to three years. The explanation given by one aspiring young judge-in-training at the TGI in Bobo is that judges and prosecutors have so far been too young when they started working, but it is difficult to see how being one year older will considerably alter the situation (and what, exactly, is meant to be improved remains unclear in the *Pacte de renouveau*).

enjoys in Burkinabe society as well as of the status and definition of the intellectual in Burkina Faso today. Two aspects are pertinent: the standing public servants – the *tubabubaarakelaw* – continue to enjoy in the eyes of citizens and the continued, fervent wish to attain work in the public service sector in spite of increasingly difficult access to increasingly scarce government jobs.

A person working as a public servant is perceived as being what Banégas and Warnier (2001) designate as *une figure de la réussite et du pouvoir*, a type of person in charge, who has made it and who is invested with a certain amount of power. This is also one among various definitions of elite, as we have already read. In fact, the change in the everyday social realities that Burkina Faso particularly and African societies in general have known over the past thirty years, brought about by structural changes (demographic growth, climate change, desertification, urbanization), has not only fundamentally influenced the political, social, and economic sectors of society, but also individuals' practices, the "moral codes" as much as their "social imaginings" (*les imaginaires sociaux*, Banégas and Warnier 2001: 5).

Yet also moral attitudes, social roles as well as representations of power have undergone considerable changes. Over the past couple of years, these *figures de la réussite et du pouvoir*, who have so far occupied a central space in the popular imagination of what it means to be successful, suddenly saw their image losing the attractiveness and shine it had so far enjoyed. Instead, new figures, with different upwardly mobile itineraries have entered the scene (Banégas and Warnier 2001: 7).

Nevertheless, public servants continue to enjoy considerable prestige among citizens. As intellectuals or *évolués*, to say it in everyday Burkinabe French, judges and prosecutors are part of an "educational elite", as I have called it here. While not all individuals that enjoy elite status are intellectuals, intellectuals by definition are part of the elite. Here, I thus bring together the two figures of the intellectual and the elite in the person of judges and prosecutors and will dedicate a short discussion to teasing out their historical itinerary and how today's intellectuals go about presenting their selves.

During colonialism, access to jobs in the public sector was a given and a privilege the young "Pontins", graduates of the *École normale William Ponty*, enjoyed by definition, as we have read above (Jézéquel 2003, 2005). This "white person's school" (Jézéquel 2003: 409), first perceived as a constraint, quickly became the privileged place for upward social mobility for Africans (Jézéquel 2003: 410). "The popular label intellectual identified both the new

national bourgeoisie of politicians, bureaucrats, entrepreneurs, and wealthy traders and also the second echelon of clerks, teachers, policemen, and soldiers " (Nzongola-Ntalaja 1970, quoted in Oldenburg 2016: 5). After independence, many intellectuals – mainly of Nzongola-Ntalaja's implied first echelon – occupied strategic and important roles in the construction of the new states.

In fact, economic crises and sociopolitical transformations as well as the structural reforms implemented since the mid-1980s have had a huge impact on the lives of young university graduates, the intellectuals. Today, a university diploma does not guarantee a career or class mobility any longer (Steuer et al. 2017) and university graduates' status is at best described as precarious in comparison to the elitist prestige their predecessors had enjoyed, complete with financial security and an exclusive social status (Banégas and Warnier 2001; Oldenburg 2016; Steuer et al. 2017). Despite these constraints to their comfort and everyday lives, university graduates are nevertheless seen as and respected as *intellectuels*.

The situation university graduates find themselves in today has thus changed considerably. But even though getting a university degree comes with many and increasing uncertainties, it still is a rare resource and represents hope for good (job) perspectives. Many young people continue to sign up for university studies and an increasing number of graduates or *diplomés* look for increasingly rare job opportunities corresponding to their education. Until today, defining yourself as an intellectual is still accompanied by a certain elitist rhetoric making a distinction between yourself and others, between an urban, cultivated, progressive university identity and a poor, rural, backward identity bound to life in the fields (Oldenburg 2016). It is within this tension, oscillating between under- and over evaluation, that today's intellectual (elite) operates.

And it is the action arena of interpreters, who fit neither into the hierarchical space reserved for the elite, nor are they part of the social strata of intellectuals or *évolués*. Having neither pursued any kind of university education nor having sat for the *concours* exam, court interpreters' rank, prestige, and standing at the courthouse is very low. As employees at a state-run institution, they automatically are civil servants, however. And, as we have read above, as civil servants they enjoy a certain prestige among citizens, even if not among court personnel at the courthouse. They got the position of *fonctionnaire* by way of a short cut, so to speak – they occupy a kind of third space.

Bintou, for example, had worked as court interpreter in Ouagadougou in the 1990s, having no formal training in interpretation or a university degree of any kind at the time. And even though she had successfully passed the BAC, the final high school exams, and had later taken (and passed) different *concours* exams and subsequent training and is now a *diplomée* employed as head of court scribes at the commercial court in Ouagadougou, she does not enjoy the respect she feels her hard work and position entitle her to because she has not studied law. In the eyes of her colleagues at the courthouse, university graduates in law, this makes her eternally inferior to them. They bicker that she has gotten around university studies and is now in the same position as them, a fact they can hardly tolerate, she told me. And on top of it she is a woman. But let us listen to Bintou telling her story herself:

Bintou's story:

Bintou was actually not very interested in working as an interpreter at the penal court in Ouagadougou. On the contrary, the idea of sitting in a courtroom all day long, translating one case after another did not figure very high on her list of priorities work wise. And days can run very long at penal courts in Burkina Faso, forcing court personnel to stay put for up to eight hours with no or only very short breaks. In 1998, Bintou was in her last year of high school, about to sit for the *baccalauréat* or BAC exams, she had a baby to take care of and she was pregnant with her second child. All she wanted was to successfully finish her high school studies, have her baby, and start looking for a decent job. "Decent" meaning a job corresponding to her qualifications: Bintou already had a diploma in accounting and very soon she was going to pass the BAC exams. In fact, accounting was what she loved doing and was good at. Consequently, the interpreting job at the court did not qualify as decent, in her view. The pay was miserable and the required hiring criteria ridiculous – all the Ministry of Justice asked a court interpreter to bring to the job was a primary school diploma. Why suffer through the BAC exams if, in the end, she took a job that hired according to criteria well below her qualifications?

But her older brother insisted. He was the head of the department of administration and finances at the Ministry of Justice and told Bintou that the penal court was desperately looking for interpreters. Burkina Faso had only just ratified the Covenant of Political and Civil Rights, which states that all defendants in penal cases have a right to be tried in a language of their choice if they do not understand the language of the court. Since Ouagadougou is the

capital of Burkina Faso, it was imperative the penal court there found and hired an interpreter as quickly as possible – as an example for the rest of the country, she told me.

On the other hand, working for the Ministry – for any Ministry – means being hired as a public servant, a *fonctionnaire* and being employed as a *fonctionnaire* conveys upon a person not only a certain status society regards as worthy of respect, but also comes with a reliably paid salary even if this salary is ridiculously small. In Burkina Faso, many high school students dream of the security a job as *fonctionnaire* represents. So, in the end, Bintou took the job as court interpreter in spite of her reservations. Once hired as a government employee, there are opportunities to advance and rise within the system after a certain number of years of service, she figured. And this is what Bintou did.

During her work as court interpreter, Bintou had to learn to be tough. Not only were the days long, the salary ridiculous, and recognition and respect from other employees of the court near zero, the toughest of all was you had to translate cases that were hard to bear. Once, Bintou had to translate in a rape case, the victim was a four-year old girl. “You are a human being, a mother, so I could not just turn off my feelings … listening to this small girl and having to translate her words was almost unbearable for me”, she told me. Indeed, observing penal trials for months on end did not make certain facts any more bearable, but at least I, the Swiss researcher, did not have to repeat and translate what victims and defendants said. “I was crying, tears streaming down my cheeks, all the while I continued to translate the little girl’s words for the judge just as my job demanded I do”, Bintou continued.

Today, Bintou is not working as court interpreter anymore, having taken advantage of the system that allows *fonctionnaires* to climb the career ladder from the inside. Her children are both at university, studying medicine. Bintou is now head of court scribes at the commercial court in Ouagadougou – and does not miss interpreting one second.[42]

[42] This is the shortened version of: Tarr, Natalie 2021. Bintou and Alain. In: B.A.S.S. Meier-Lorente-Muth-Duchêne, eds. Figures of Interpretation. Pp. 34-38. Bristol: Multilingual Matters.

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CONSIDERING Bintou's struggle for acceptance among her colleagues in spite of her education, training, and professional work, it is not surprising that today's penal court interpreters Antoine and Salomon in Bobo do not enjoy a high standing in the eyes of the civil servants working at the court. Let us remember that occupational hierarchies at court, like in all state-run jobs, are prescribed by the government, who clearly defines access to and the precise career itineraries for individual positions. All civil servants working at the two courts with the exception of the interpreters had to sit for some *concours* exam or the other, they had all studied at ENAM (and some also at university) for varying numbers of years depending on the job they were training for. The only thing Bintou, Salomon, and Antoine (and Paul and Jean as well) have in common is that they are *fonctionnaires* working for the Ministry of Justice. Later, the interpreters will describe their work and present themselves; we will also get to see more of what their superiors and other civil servants say about them and their work. For now, we will dedicate some more pages to how French has become and still functions as the *Amtssprache* it is today.

4.3. *Amtssprache* French in the justice system and in court

The public space in Africa has always been that place, where justice was spoken through an institution Bidima terms *la palabre* (Bidima 1997, 2014).[43] This public space can be the chief's house, the home of the eldest person in the highest age class, or under a tree, depending on the political-social organization of the society at hand. The choice of the space is extremely important because it becomes the place where relationships between the subject, law, and the forbidden, between nature and culture, are expressed (Bidima 1997: 12). According to Bidima, *la palabre* is not only an exchange of words, but also a social drama, human procedure, and interactions. *La palabre* is thus staged, it is ordered, and it is put into words (Bidima 1997: 11). In many societies this institution of *la palabre* was responsible for the solving of conflicts. Here, citizens were judged publicly by varying constellations of participants and speakers, often involving an entire community. The goal was not to punish, but to seek a consensus and reparations for the damage caused. Reconciliation was sought in an ongoing *palabre*, which continued after the public trial, where a sentence had been spoken, so as to repair relationships, re-establish peace and social harmony in the community as a whole.

Consensus, however, should be viewed critically, Bidima continues. Simply because conflicts were resolved publicly did not automatically mean that nothing could be hidden. On the contrary, words and speech are "opaque and can – in certain cases – form a screen between the subject and reality" (Bidima 2014: 31). In certain cases – Bidima cites as example the njobi secret society in Gabon – consensus becomes repressive. The basis of the traditional power of la *palabre* is metaphysical; authority can function without force because of myths, symbols, and customs. Collective adherence is thus founded upon a mythical threat – those that provoke the authority of njobi are secretly assassinated so that everybody can continue believing in the power of the gods (ibid: 47ff.).[44]

Societies who traditionally practiced *la palabre* are the most adamant in pursuing justice through institutions copied from western societies, Bidima remarks at the very outset

[43] There is an English translation of *La Palabre* entitled *Law and the Public Sphere in Africa*, edited and translated by Laura Hengehold (Bidima 2014). It includes other writings of Bidima as well. If not noted otherwise, all translations of the original French Bidima text of 1997 are my own. The English version by Hengehold is cited as (Bidima 2014).

[44] This balance between adherence to tradition and living it in a newly constituted world is vividly recounted in a work of fiction, *Ceux qui sortent dans la nuit*, by Mutt-Lon (2013).

of his book (Bidima 1997: 9; see also Le Roy 1997: 321). Le Roy describes this as being the professional ideology of legal personnel, who believe in – and utilize – imported codified texts regardless of the abyss between this legal discourse and the everyday behavior of ordinary citizens (Le Roy 1997: 313). African political and intellectual elites despise *la palabre*, as Bidima stated it, preferring a superficial legalism directly copied from the West. Today, informal mediation is introduced more and more in societies which did not know this way of resolving conflict, while those societies that used to apply it spontaneously in their tradition want to codify everything according to an imported, rigid justice.

Certain strictly structural similarities between a French court trial and a *palabre* as Bidima analyzes it exist. In the performance of both, the hierarchy of courtroom/*palabre* participants is visible, for example in who decides when who may speak. This follows a prescribed procedure, with one big difference. During a *palabre*, the crowd – *la foule* (Bidima 1997: 24) – gets the word as well; being present at a *palabre* means there are no passive spectators. In a courtroom trial, on the contrary, the audience is ordered to keep silent. Another purely formal similarity is that in *flagrante delicto* cases, no pre-*palabre* takes place, just like in codified law, where no preliminary hearing/interrogation of defendants happens at the court. In cases classified as *flagrant délit*, defendants are brought directly to the prosecutor and to trial.

Bidima criticizes occidental penal trials in that they concentrate more on procedure than on the actual case at hand (Bidima 1997: 28). In her sociolinguistic analyses of trials and of codified texts in Australia, Eades, too found that particularly judges obsessively follow courtroom procedure (Eades 2003: 125; see also Halaoui 2002; Le Roy 1997; Fofana 2018: 407). In addition, Bidima continues, "in Africa today, users [of the justice system] often do not understand the language in which justice is rendered. … To linguistic and legal difficulties we might add other obstacles: high costs or the slow legal procedures. A trial can take many months while an informal resolution of conflict does not take more than half a day" (Bidima 1997: 27ff).

As importantly, going to court constitutes a moral socio-cultural obstacle, it shames not only the defendant, but his entire family. In order to preserve the family's honor, Bidima remarks, conflicts should be dealt with within the family. Nothing is more important to traditional Africans than honor, he states (Bidima 1997: 16). Informal conflict resolution procedures do not leave defendants to their own devices but would restore defendants'

dignity because they operate within their cultural imagination. They can thus understand what they are being reprimanded for (Bidima 1997: 31). So, how the concept of justice is handled needs a political philosophy which can operate as a frame of reference for meting out justice (Bidima 1997: 33).

According to Bidima, penal justice today progresses also due to Islamic and Christian conceptions of fault. Colonial repression, where the police or gendarmerie took on the role of judge, also supported this penal vision within society. The goal of the penal justice system then and now is to find a culprit and to punish according to codified, written laws. Punish in French, that is, the standard variety of which has become the language of power in all state-run institutions, in all matters bureaucratic, administrative, educative, and thus also in the system of justice, while national languages or "street variety" French are relegated to subaltern positions (Kouadio 2008: 6).

Until 1903, a system of French style courts existed only along the West African coast, installed to serve Europeans and Africans with French citizenship. Until then, there was no French legal system inland (Ginio 2006: 116). After 1903, this system of justice was subdivided into two separate jurisdictions, making a distinction between citizens and subjects: now there were French citizens, Africans and Europeans alike, and there were African subjects and they each had their own, separate jurisdiction or justice system.

This "branding" (Mamdani 1999: 864) of the vast majority of inhabitants into subjects was a strategy employed by the colonial power to exclude them from the rights of citizens (see also Conklin 1998: 433f). Together with their local allies, the French used this indigenous system of justice to better control local populations (Rodet 2011: 174). At the same time, these local allies of the French colonial power were crucial in deciding what, exactly, was to be defined as customary law which could then be used as a basis to decide cases on (Mamdani 1999: 865). So now, there were two parallelly existing systems of justice. African subjects, as opposed to African citizens, could bring their cases before an African magistrate, who was supposed to judge according to local customs "as long as these did not contradict the principles of French civilization" (Ginio 2006: 117). The citizens were subject to French law/codes and procedure.

The problem of speaking justice was more complex, however. French administrators could neither speak the languages in use nor did they know local customs in the territories under their control. This gave rise to the urge to codify customary law, but since customs

differed even between neighboring villages, this turned out to be a real challenge (see Jézéquel 2008 below). It was a challenge also to the magistrates who, unless they came from the village where a case was being judged, could not speak justice according to this custom simply because they did not know the local customs either (Ginio 2006: 118).

Until 1911 and adding another complicating layer, Arabic was allowed as language of indigenous courts in the AOF; African secretaries could write protocols and verdicts in Arabic (Ginio 2006: 122; Mbaye 2006: 292). But after that, Governor General William Ponty prohibited the use of Arabic in all legal correspondence and for the records of the indigenous courts (Rodet 2011: 179), making French "the official language of all communication within the colony and the French West Africa Federation" (Mbaye 2006: 292). Record-keeping was continuously intensified and after 1912, religious status was officially recognized, adding another attribute to registered individuals' files. Together with a defendant's ethnic status, it needed to be fixed in writing and taken into account by the indigenous courts during trials (Rodet 2011: 174). The population took advantage of this legal pluralism by choosing which court to go to in order to win their case. Women particularly tried to take advantage of the rivalry between traditions and court systems to detour traditional power (Rodet 2011: 175).

In the early 20th century, Governor General William Ponty started drawing a picture of Islam that saw people like El Hadj Omar, who resisted French conquest for a long time, as destroyers of traditional society and of imposing tyrannical Muslim chiefs on the population (Rodet 2011: 178; see also Dramé 2016 on the "criminalization" of Muslims, particularly marabouts, in colonial Senegal). Arabic was banned from all legal documentation.

Today, the application of codified, written laws needs to be accompanied by interpretation, like during colonial times. But neither Antoine nor Salomon have the freedom to pour their personal interests or opinions into the way they translate because, contrary to colonial interpreters Wangrin, Moussa Soumaré, and Omar Sy, their translational work is controlled by Jula speaking judges.

The way judges and prosecutors see it, the linguistic situation at court demands that the civil servants communicate in French. Major challenges result from this language practice, which allows Jula, the language of the public space, into the courtroom only in tandem with interpretation. At the same time, this practice of allowing only French as language of communication into the courtroom is not challenged by citizens, as we have seen.

Not only can defendants not communicate directly in Jula with judges during their trials, but French in its Burkinabe variety has no place in the courtroom either. Or rather, judges and prosecutors continue to utilize a variety of French – standard French or academic French, as Halaoui calls it (Halaoui 2002: 348) – barely understandable to the average citizen, much less to defendants who, for the most part, have only little or no schooling. The overwhelming majority of defendants in penal trials are day laborers, shepherds, peasants, people carrying out various jobs in the informal sector, or unemployed youth who speak no or only rudimentary French (see also Fofana 2018: 400).

In addition, court personnel use legalese during trials, which is incomprehensible even to fluent speakers of standard French, we might add. Both standard French and legalese do not figure in the everyday life world of defendants and so, in spite of the fact that some researchers deem French to be an African language today, as discussed earlier, it has not entered official or government run Burkina Faso in its Burkinabe variety. On the contrary, at both the TGI and the appeals court in Bobo, it is not the Burkinabe variety of French that is current for communication, neither during trials nor between colleagues. The educational elite, the *intellectuels* in Burkina Faso use standard French.

Yet during a short period in Burkina Faso's history, Burkinabe French was introduced as the standard during trials. The revolutionary period under captain Thomas Sankara only lasted from 1983 to 1987, but the justice system was radically renewed. Sankara became president of Haute Volta through a military coup d'état – nothing new in Haute Volta, where power changed hands through more or less violent methods a number of times since independence in 1960.[45]

After taking power, Sankara proceeded to install a form of socialism meant to strengthen Burkinabe industry and production and the formation of an own, Burkinabe identity, starting by renaming the country Burkina Faso in 1984 (Selhami in Jeune Afrique 1232-1233, 15-22 August 1984: 34). Sankara's reforms, his revolution, focused – among other things – on national market development, the integration of women into the public eye, and the eradication of corruption, particularly in limiting the excessive expenses and lifestyle of

[45] According to Yonaba (1997), Haute Volta / Burkina Faso knew four what he terms constitutional periods, corresponding to the first, second, third, and fourth Republics. These were interrupted at least five times by mostly peaceful coup d'états by the military (Yonaba 1997: 8ff). This does not include the most recent coup, during which citizens (not the military this time) again more or less peacefully, ousted long-term president Blaise Compaoré from power in late October 2014 (see i.a. Hagberg et al. 2015; Tarr 2015).

all government employees, particularly high-ranking ones. Sankara was known for coming to work in a Renault 5, sometimes even by bicycle, repeatedly stating that nobody needs a huge car, also not the head of state.[46]

In order to purge Haute Volta of its former corrupt leaders and their acts, Sankara installed what he termed popular justice, a judicial apparatus with institutions conforming to a new, revolutionary philosophy. This was to do away with the justice system in place, which was perceived as being a neo-colonial and anachronistic instrument allowing a small, privileged elite to stay in power. A system of courts was established, replacing but still along the lines of the "old" justice system.

Known as *tribunaux populaires de la revolution*, TPR, these revolutionary popular trials were created by decree in 1983.[47] The TPR were specifically meant to try political crimes and offenses of former government employees, of *fonctionnaires*. Former leaders had to accuse and defend themselves, starting with the preceding government's members under colonel Saye Zerbo and before Sankara's putshing his way to power in 1983. The TPR differed considerably from a classical, French-style court system in use so far in the composition of its members, in form, in procedure, and in its sanctions. It also differed from any other exceptional or new court system, some of which had been installed in Burkina Faso in the past (Carrefour africain 842, 4 August 1984: 17). All TPR were aired on national radio in real time and summarized orally in national languages before being printed in the press (Benabdessadok in Afrique-Asie 398, 20 April – 3 May 1987: 26).

The TPR courts consisted of eleven members, of whom only one was a person educated in law, one member came from the military or the gendarmerie, and five members were normal citizens, members of one of the numerous local cells of the Committee to Defend the Revolution, the CDR (*Comité de Défense de la Révolution*) (Carrefour africain 842, 4 August 1984: 17). No lawyers were allowed, the accused had to defend themselves. Equally, no prosecutor was present. Sankara believed that in this way citizens could be involved in

[46] Uncountable movies and documentaries, books and newspaper articles exist on Thomas Sankara, for example www.youtube.com/watch?v=wF-otRbvvUc or the 2015 movie by Swiss filmmaker Christophe Cupelin *Capitaine Thomas Sankara* (www.capitainethomassankara.net/pages_deu/boutique.html).

[47] See Ordonnance n° 83-18 /CNR/PRES du 19 octobre 1983 portant création des Tribunaux populaires de la Révolution (Yonaba 1997: 34). The TPR were the penal arm of revolutionary justice and were followed by the creation, in 1985, of the *tribunaux populaires de conciliation* TPC, operating on village or urban sector level, the *tribunaux populaires départementaux* TPD, responsible for meting out justice on departmental level, and finally the TPA, the *tribunaux populaires d'appel*, of which there were 30 alongside the 30 TPR – one for each departmental capital of the time (Yonaba 1997: 24ff).

sanctioning those who had embezzled or "eaten" the funds meant to be used for them, the people.[48]

The French language, however, did not get banned from trials. Sankara firmly believed in the utilization of a popular French, or *petit-nègre* as he called it, the everyday French spoken by the Burkinabe. He illustrated this by stating in an interview that he would appreciate African literature more if authors did not keep insisting on writing in a language not their own, but instead used that language in writing they and other people spoke in their everyday lives. And anyway, he did not like fiction, least of all African novels, which have disappointed him just like African films have disappointed him. In these novels and films, it was not Africans who spoke, Sankara felt, but "…Blacks, who, under all circumstances, want to speak French. This saddens me. The authors should write the way we speak today" (Meuer 1986: 3).[49]

French linguist and sociolinguist Gisèle Prignitz, who has published various studies on oral and written forms of Burkinabe French in the 1990s (i.a. Prignitz 1996, 1998), analyzed the form and use of French in vigor for the TPR trials held between 1984 and 1987. Her corpus consists of audio recordings of TPR trials and the written transcriptions thereof (Prignitz). It might seem strange, upon first sight, that the revolutionary Sankara continued to use French. He explained this with his wish to erase differences between the various ethnic and linguistic groups in Burkina Faso, thus making use of the same rhetoric as his colonial and post-colonial predecessors – a line of argument that continues to suffuse justifications for the use of French today, as we have read. But a closer look at this decision of his is warranted, making sense when looked at in historical context.

In 1984, a bit over 20 years after independence, Sankara wanted to use a language in court that made sure all citizens were equal regardless of ethnic or linguistic affiliations. Ethnic groups and languages in Africa were more often than not a colonial construction, as we have seen. The colonizers were not interested in a united AOF, which would constitute a threat to their small numbers and thin presence on the huge territory that they were claiming as theirs. So, creating, labeling, naming and thus dividing the African population was in the

[48] Here I want to thank Lilo Roost Vischer for allowing me access to her very rich archive of contemporary African and European publications (newspaper and magazine articles, among others) from the Sankara period.
[49] "Man hat den Eindruck, es handele sich um Schwarze, die mit aller Gewalt französisch reden wollen. Das macht mich betroffen. Die Autoren sollten so schreiben wie man heute spricht".

French colonials' best interests. Certain African languages, their designation and even their very creation, were a French construction, geared towards this specific end.

In order to counteract this inheritance from colonialism, Sankara institutionalized the use of Burkinabe French for the TPR trials, that variety of French the people used (and use today) in everyday interactions when they do not have an African language in common. He thus wanted to "totally erase ethnic differences and used French to make all citizens equal…. In addition, the accused are politicians, adversaries of judges, who were often educated in the same university departments, or [they are] high civil servants. They do not share the same values, but they have a social status in common, whose prerogative it is to use French" (Prignitz).[50] Above, we have read that TPR trials were diffused on radio, including translated summaries in national languages. By forcing high ranking politicians to use Burkinabe French, Sankara wanted to de-ideologize the language used by elitist speakers, forcing them to resort to the popular French variety understood and spoken by the masses.

Interestingly, this increased and promoted use of Burkinabe French, which had the objective to overcome neo-colonial ideologies and the reactionary former government, as Sankara saw it, increased the popularity of using French in everyday interactions. The institutionalization of Burkinabe French during trials, which allowed "the people without a voice" to participate in legal disputes, for those to exercise their rights as citizens who were so far faced with the subtleties of a "foreign, Napoleonic" (Sakara quoted in Prignitz) law expressed in an incomprehensible language – privilege of the well-educated – gave the French language an enormous upwind.

Today, Burkina Faso is back to holding trials the way they had been held before Sankara tried to bring them closer to the daily reality of citizens. Defendants in present day penal trials are not well-educated, high-ranking government officials like during the TPR trials, but ordinary citizens, those "without a voice". *Rapprocher la justice des justiciables* (Fofana 2018) – to bring justice closer to defendants – or *justice de proximité* (Yonaba 1997: 28) – a closer justice – continues to be on scientists' and on the government's agenda, even though with a totally different objective than in Sankara's understanding. Now, the government

[50] "La révolution a voulu gommer au maximum les différences ethniques et s'est servi du français pour mettre à égalité les citoyens…. C'est aussi que les accusés sont des responsables politiques, adversaires des juges, souvent issus des mêmes formations universitaires, ou de hauts fonctionnaires. Ils ne partagent pas les même valeurs, mais ont en commun un status social dont le maniement du français et l'apanage" see www.thomassankara.net/la-rhetorique-de-la-revolution-burkinabe-une-mediation-sociale-de-gisele-prignitz/

wants to bring justice closer to the people both in terms of physical closeness by creating more court houses all over Burkina Faso, as well as in terms of adapting legal procedure more to daily lived realities (i.a. Degni-Segui 1995; Fofana 2018; Yonaba 1997), for example by decluttering spectacularly long and complicated legal paths through different institutions to attain a land title (Korbeogo 2015 discussed below). We will get back to this idea or attempt to adapt the justice system to local sensibilities by "domesticating" it, particularly the legal procedure. The limits or shortcomings of these politics of *rapprochement*, of bringing justice closer to citizens, were felt during the revolutionary period as much as they are felt today. Most immediately, out of the 30 TPR established all over Burkina Faso, only seven were operable, for example (Degni-Segui 1995: 452).

After Sankara's assassination in 1987 there followed a political period designated as rectification (Korbeogo 2015: 45; see also i.a. Hilgers and Loada 2013) or rectification of the revolution (Boudon 1997), which, by its very designation, implies that the new regime under Blaise Compaoré wanted not only to change, but to correct things and to set them right. In fact, Compaoré wanted this rectification to be explicitly understood as a kind of glasnost. He had to tread carefully, satisfying both the Mossi elders, whom Sankara had shunned, by rehabilitating customary chiefs (Hilgers and Loada 2013: 194), while also keeping Sankarist rhetoric alive for those who still favored it (Boudon 1997: 132). Renaming Sankara's CDRs – *Comités pour la Défense de la Révolution* – into *Comités Révolutionnaires* or CR, Compaoré appeased those that continued to appreciate ideas associated with the revolution. He thus used the power structure established with the CDRs (which had been set up in all towns and villages in Burkina Faso) when going about installing a constitutional democracy, the Fourth Republic.

The rectification included doing entirely away with Sankarist popular justice in all its forms; the justice system was once again controlled by the Ministry of Justice. The new constitution adopted in 1991 expressly mentions that all texts which describe and define the TPR are revoked and classic jurisdictions are re-established (Yonaba 1997: 27; Fofana 2018: 401). And even though no text or decree states that the official language French in its standard form is the language of justice, trials as of 1991 were once again held in standard French. The pre-revolutionary French legal procedure and code are again the standard.

Like this, the justice system is, once again, far removed from everyday citizens' lives. This does not mean that no attempts were made by the government to bring justice closer to

the people. Let me illustrate this through an example described by Korbeogo (2015) in his study of land acquisition, which allows insights into how the Burkinabe government tries to adapt legal procedure to citizens' world view – he calls it *la domestication cadastrale* (Korbeogo 2015: 48) – and to how, in the end, it failed to attain this goal, namely to make legal, institutional, government procedure accessible to its users.

Korbeogo and his team carried out empirical research also in and around Bobo. The land to the south and west of the city is extremely coveted for its natural water ways and excellent land quality. Nowadays to own land and to prove that you do so you need a number of different documents, obtainable from a chain of various government offices located all over the city of Bobo. The procedure is long and costly. It demands Sisyphean patience. And it remains, to the everyday citizen, totally incomprehensible.

Land had traditionally not been owned, neither by individuals nor by a group, but according to customary laws was used and tended to by a community as a whole.[51] The idea of having to suddenly prove ownership of land, legitimating working it, using its products, and so on, is at best a harassment. In the worst case, it poses an existential dilemma for agricultural users.

The Burkinabe government sees all land as belonging to the state by definition (Korbeogo 2015). In practical terms, this does not mean or change anything for the traditional peasants or land users as long as nobody claims land for him or herself and kick-starts legal processes peasants are not aware of. And even if they were made aware of the bureaucratic relay race, they do not have the financial means to pursue it. As long as nobody proceeds to acquire large parts of land – Korbeogo mentions urban *fonctionnaires*, retirees who have discovered their passion for farming, or one "grande dame" from Bobo, all of whom were unavailable for interviews or meetings, I might add – the traditional land users are left in peace. Because in the end, money always wins out, "[c]'est l'argent qui fait tout", as Korbeogo laconically states (Korbeogo 1997: 55). Just like at court.

Certain individuals' wish to acquire large pieces of land starting at 200 hectares, poses a serious dilemma for traditional land-user peasants, some of whom have worked a certain

[51] Traditionally, land was used by the community or village or lineage as a whole. Not only in what is now Burkina Faso, but in many different parts of Africa (and the world, for that matter) customary usage of land was regulated in this way. This is a richly researched and discussed topic and even though extremely intriguing as subject, goes beyond the topic of this study.

piece of land for generations. Like in many instances of "occidentalization", where the exogeneity (Le Roy's words 1997: 312) of the system itself shows up the clash between local social sensibilities and imported values, the land – we have read above – was traditionally not owned by an individual or a group, but by a community as a whole. Now, suddenly, the "right to land" needs to be proven in the form of specific documents, obtainable through interminable, incomprehensible, and expensive walks through the state-run bureaucracy.

When the bureaucrats in charge of land questions realized that practically nobody was in possession of this documentation – of the 13 people interviewed in one area of Burkina by Korbeogo and his team, none had all the documentation necessary – they wanted to facilitate the procedure for peasants to attain these papers. The state did not question the rules *per se*: the number and nature of papers necessary or the many different institutions involved in providing this documentation was not up for debate. But the state – or rather those that run the state, the *fonctionnaires* – realized that measures were needed in order to assist the population in actually getting all of these papers. Procedures were needed that allowed citizens to obtain all of the required papers. Adapted, modified procedures that allowed the system to continue running as it was.

Korbeogo found that out of the 13 peasants he and his team talked to in the qualitative part of their study, only one actually owned a permit to exploit – and only exploit, not own – the land, which took him one year to get (Korbeogo 2015: 52). This constitutes the first of many more legal documents needed to fully own the land. The government reacted to this paucity of legal documentation in the hands of users. "Procedures were somewhat simplified in order to be accessible (at least according to official view) [and] the rural land plans, [which] already [were] a hybrid (between administrative and customary procedures) and a transitory form of recognition of rural ground law … were not successful" (Korbeogo 2015: 50). According to Korbeogo, legal pluralism and various land programs meant to encourage users to attain legal documentation, only contributed to the proliferation of the uncountable, necessary documents.

This is one example which shows that the state might show willingness to domesticate the justice system by adapting legal procedure more to daily reality. But it does this not by adopting laws – making *new* laws – closer to local world views, but by facilitating *procedure* while continuing to adhere to the existing rules, laws, regulations. Legal professionals and bureaucrats adhere to what Le Roy calls a professional ideology, they follow codified texts

and procedures to the word (see Le Roy 1997: 312ff). The normative assumptions of the legal system are not translated into local norms nor are they questioned.

In the Fourth Republic, which was the result of the "rectification period" (1987-1991), the justice system did also not integrate experiences gained in the TPR trials during Sankara's era by, for example, involving citizens/the audience in the trials "palabre style" or by keeping Burkinabe French as the language of the courts. Quite contrarily, the justice system was transformed back to its "normal constitutional" (Yonaba 1997: 12), pre-revolutionary form. Today, most defendants being judged in a penal court need to be translated – they need to be made to fit (into) the courtroom space, like Elijah Anderson found black Americans need to adapt to a mostly white middle-class life in the USA (Anderson 2015).

Anderson calls the middle-class space in the USA the white space, shaped and largely occupied by white US Americans. African Americans only fit into this space by adapting to it in terms of how they dress and carry themselves and by how they talk. Here, I am applying Anderson's concept of the white space to what we can call the French space, i.e. the courtroom, in Burkina Faso: a place to which some people belong and many do not by virtue of certain characteristics. It is a concept of exclusive belonging. In the French space of the courtroom, the vast majority of defendants do not belong, because of their social class, education, and especially their non- or little command of standard French. To make them "belong", defendants need the intermediation of an interpreter.

But the interpreter too does not belong to this French space, or rather, he has attained a certain precarious status within it by short cutting standard procedure, we saw. He moves within the justice system as a necessary working part of trials. He also conforms or adapts to his environment, terrain of the educational elite, by adopting what can be termed standard courthouse procedure: sharp dress, slow, dignified walk, and a certain amount of downtalking to defendants and the audience. How can we assess the interpreter's position at court, how he carries himself, and his role during trials?

Defendants never receive a script, to return to Goffman, meaning they are the only ones on stage during a trial, who have no or only little idea of what to expect, on how to behave and carry themselves. At the same time, they, too, are an integral part of the play staged. So, one particular feature of courtroom interaction – the use of standard French – is that it transforms the courtroom and hence the justice system in its representation of state authority into an inaccessible space for a remarkable part of society. This is especially visible

through as well as reinforced by the language regime at court, making citizens dependent on interpretation.

Defendants are made to fit the French space of the courtroom through interpretation – the court interpreter intervenes. In Bobo, more than three quarters of all *correctionel* trials need interpretation. Out of a randomly selected 50 *correctionel* trials held at the TGI in Bobo in 2015, 11 trials were conducted in French while 39 needed interpretation, mostly into Jula, rarely into another African language (in 2016, 8 trials were in French, 42 were interpreted and in 2017, 12 were in French and 38 needed interpretation). To illustrate communication during penal trials in more detail, let us look at some specific and often repeated phrases.

Examples from court cases at the TGI:

Courthouse, 24 January 2017, 10:45am, third case: "Vous vous exprimez en quelle langue?" Today the presiding judge has remembered to ask the defendant which language he wants to use during his trial. Considering that often he forgets to ask all together, this is a good start for the defendant. He opts for Jula. Later, in the middle of being questioned by one of the judges, this same defendant responds with a French *oui*; the presiding judge tells him immediately to stick to Jula: "C'est ça le jula? Is this Jula? Make up your mind!". The judge also tells him to speak clearly, which the defendant seems to have difficulties doing to the judge's ears.

In other cases, the judge asks if the defendant can express himself in French: "Vous vous exprimez en français?". Wording the question in these terms puts French in the position of default language, the defendant having to justify using any other language. And, indeed, in half of the cases analyzed, the judge had asked the defendant in which language the defendant expressed himself in. In the other half, the judge either asked if the defendant spoke French or did not ask at all. Often, the presiding judge deems the defendant's French good enough so as to proceed in French. Like in Joseph's trial over ten years ago. As Eades had already remarked, ultimately it is the judge who decides which language will be spoken in a trial (Eades 2003: 115-116).

Ideally, the presiding judge asks defendants this most important question at the beginning of each new case. Once defendants have designated which language they feel most comfortable defending themselves in, they have to stick to it to the end of their trial. Yet judges say that defendants can switch language anytime during their trial, if they wish. In

judge D.M.'s words: "It is always better to let the defendant use the language he understands best, so there is no problem at all to let them switch languages [in the middle of a trial]. There are those who do it on purpose to make the trial take longer, it's a watering down strategy by lawyers or defendants, they create situations to push things back" (Bobo 7 February 2017).[52]

In practice, this is never granted, however. In fact, this same judge told a defendant during her trial to stick to Jula; she had chosen Jula for her trial at the beginning, now she should continue in it (6 December 2016). The same holds for the other way around; here a woman defendant in a case in which I knew one of the plaintiffs, started out in French, as we can read in my fieldnotes:

> *In case 6 (16:08pm), Abou's wife-as-plaintiff finally gets her turn [she had been waiting since 8am]. The woman defendant is accused of having "eaten" all of the money from their tontine. The case starts in French, so Antoine leaves the room, but the defendant, stating her case, soon realizes she'd prefer Jula. Presiding judge A.P. sends somebody to go look for Antoine, who comes back, but then decides to not let the woman continue in Jula after all. This is the second time that it seems once a trial starts, there is no language switch (she can state all the numbers in Jula though).*
> *(TGI, 2 December 2016)*

So here, the defendant was forced to continue using French, which she had reluctantly agreed to use at the beginning of her trial upon the presiding judge's insistence. As usual, after the identity check, the trial began with the defendant getting to state her side of the case. Here, she searched for words, but spoke quickly and breathlessly in rudimentary French. In the middle of her trial, she asked to be able to continue in Jula, which was not granted. In fact, the presiding judge made fun of his colleague, who seemed incapable, in his eyes, to adapt his French to the defendant's when interrogating her. This constitutes the one rare case the Burkinabe French variety was mentioned – not used – during a trial. She was not allowed to

[52] "C'est toujours mieux de laisser le prévenu s'exprimer dans la langue qu'il comprend le plus, donc il n'y a aucun problème de changer de langue. Il y a ceux qui le font pour faire durer le procès, c'est dilatoire (soit les avocats, soit les prévenus), créer des situations pour reporter."

switch. As we have seen, judges believe defendants are using a switch in language strategically to confuse them and the prosecutor.

In practice, it is the presiding judge who decides in which language a trial is to be held – or rather, he decides if a defendant's French suffices. "I was forced to use French during my trial in 2005", says Joseph, who is imprisoned for life at the jail in Bobo, "judge P.N. decided my French was good enough – but I only went to school for three years! I asked for Jula in my trial, but the judge did not let me defend myself in Jula. It was very difficult, I did not understand much." (MACO Bobo, 27.02.2018). The judge, who is neither a linguist nor a language teacher or researcher and thus has no competence to evaluate defendants' French skills, nevertheless has the power to force defendants to use French.

Another problem arises if the defendant's native tongue is not Jula but Moore or Bisa, or any other African language. Interpreter Antoine then gets up and leaves the room, like he does when a trial is to be held in French. He interprets from and to French, Jula, and Bobo only. Bobo was never asked for during my research. If Moore is asked for by a defendant, the presiding judge quickly confers with his two colleagues. Then he calls into the audience, asking if there is somebody fluent in both Moore and French and has the courage to come translate. If somebody indeed considers him- or herself courageous enough, they step forward. If the person is over 21 years of age, s/he quickly gets sworn in and the trial can start. In the contrary case, when nobody is available to come forward and translate, the case gets adjourned, and the judge and prosecutor immediately select a new date. The defendant has to wait until the next time his case can be heard and, hopefully, translated.

Judges and prosecutors are unanimous in their belief that French is the only acceptable language to be used in court and particularly during trials, which are open to the public. Neither the penal code (*le code penal*, most recent edition of 1996) nor the code of penal procedure (*code de procedure pénale* 1968) mention that French needs to be used in court. No amendment exists to date demanding the use of French in court. Halaoui designates this situation – the choice of using a foreign language in court, a decision citizens have had no say in – as "une situation de deviance" (Halaoui 2002: 346), which I will designate with the term aberrance.

When judges, by themselves or with the support of an interpreter, use the official language French, a situation of aberrance installs itself. Working with an interpreter does not necessarily improve the quality of communication, Halaoui contends, on the contrary. Since

interpreters are "simple citizens" and not professionals, they, too, contribute to the situation of aberrance (Halaoui 2002: 351f). In addition, it is judges alone who decide when and what an interpreter is supposed to translate for defendants. We will look at courtroom communication in detail in the next chapter.

Most cases treated at the TGI in Bobo are *flagrante delicto* cases – being caught red-handed – which means no preliminary hearing takes place, defendants are brought before the prosecutor and go directly to trial. Usually, they stand trial after having spent several weeks or even months in prison[53], a prison notoriously overfilled, with precarious living conditions.[54] As we have read, during assizes trials in Bobo, crimes committed as far back as in 1989 are now handled at the appeals court in Bobo. This means some defendants have been waiting for their trial to take place for almost 30 years (*cour d'appel,* assizes trials, Bobo 16.06.2016).

In Burkinabe society, like in many African societies, age hierarchies and rules of politeness forbid the direct questioning of an older person by a younger one; this kind of behavior is deemed highly inappropriate and rude. The institution of the "right of age" or *le droit d'aînesse* can only be questioned by royal authority, such as the Naaba in Mossi society, for example, where the king (Naaba), even if young, can have authority over an older person (see also Bidima 1997: 51).

The shape such a clash of institutions looks like in the courtroom, can be illustrated by the following anecdote, which took place during a civil trial I attended at the *tribunal d'instance* (TI), the twin court of the TGI:

> *Today, watching civil trials, Paul [the interpreter] at work. A man is accused of having refused to pay his workers. The judge asks him to take off his hat once the defendant*

[53] According to Bidima, in Niger this "preventive detention" can take as long as seven years (Bidima 1997: 29). See also https://lefaso.net/spip.php?page=web-tv-video&id_article=79290&rubrique4, last accessed 7 February 2020.

[54] On 27 February 2018, for example, one of the days I spoke with Joseph and other inmates at MACO, there were a total of 685 prisoners, counting men, women, and minors in a building originally constructed for 180 inmates. Two documentaries illustrate the living conditions in Bobo's detention center, one produced by rtb, the Burkinabe broadcasting company: "52 Minutes sur la RTB, 21 Mai 2017 'Conditions des détenus de Bobo'", (www.youtube.com/watch?v=BAsB8p7__Ik) and *Dignité en détention* (https://jura-films.ch/production/trois-gouttes-pour-le-futur/). During my research a new, more modern and larger prison complex was under construction on the MACO grounds. Prisoners were used as construction workers, "giving them something to do", as the prison director Monsieur M.D. worded it. It has been inaugurated in the meanwhile, see http://www.justice.gov.bf/index.php/2020/09/18/, last accessed 25 January 2021.

is standing at the bar. Paul translates this into Moore. The man refuses, telling Paul to tell the judge that he is too young ("trop petit") to order him, an older man, around. The only person he will take his hat off for is his king, the Mooro Naaba.
(TI, 6 February 2017)

The defendant was behaving according to the codes of conduct of Burkinabe society, codes of conduct also the judge had been socialized in. The institution of the justice system, however, does not allow laws or codes beyond its codified rules to take precedent. The judge needs to adhere to these codified rules that he had been initiated into during his training in law school and at ENAM. A conflict he lives with daily at work. Being on the home turf of the justice system, the judge needs to follow its rules, not the rules of larger society. This particular case was adjourned, the judge was visibly upset.

The main prosecutor at the TGI, upon my question as to how a young judge feels deciding the fate of an older defendant, expressed it such, saying that age is not the problem, just look at the military or royalty. There, too, younger officers or a young king are venerated by their elders. As soon as you enter the courtroom for a trial the rules are such that the black clad judges are in charge. Judge D.M. is more elaborate, saying that the judges' and prosecutors' black robe assists them in becoming a neutral instance during a trial:

> The color black of the judge's robe (*la toge*) stands for darkness, for night, symbolizing that between the judge and the defendant there is nothing. They do not know each other and the judge is impartial. Even if the judge is very young, he can pronounce a verdict over a much older person. This is unthinkable in larger society, the color black of the judge's robe puts him in a position to treat all defendants equally regardless of age etc. (judge D.M., Bobo 13 February 2017).

This recourse to equal treatment for all puts judges in a dilemma. Social sensibilities and Burkinabe values, which dictate that people be treated according to their status in society, their age, and/or the connection and familiarity they have to the judge, cannot be ignored. As members of the state-run justice system, however, judges are obliged to give precedent to codified rules. How deal with this dilemma or conflict? The trial becomes a performance of legal correctness and adherence. The way the court presents itself, consists of judges and prosecutors wearing the costume of their trade, the black robe, which not only gives them authority in the courtroom, but also protects them from social backfire. This garment and its

black color signal the unquestionable position of the civil servant above and beyond traditional ideas of age hierarchy and behavior towards elders. Because of this piece of clothing also very young judges and prosecutors cannot be doubted on how they act and certainly not on how they speak justice.

Judges cannot be the neutral instance unless they protect themselves. By definition, they should be impartial. At the same time, they are in charge during trials. They show their superior bargaining power from the outset of trials, telling defendants to stand straight, to not put their hands on the railing, to come closer, speak louder and clearer before they can start or else their trial will be postponed, forcing the defendant to wait again for a next trial date. A threat made true we have just seen with the older man refusing to take off his hat for the judge at his trial.

This kind of courtroom speak of judges and prosecutors towards outsiders – defendants, plaintiffs, the audience – is a sign of the trade and it is strategic. In one case, the judge tells the defendant what he, the judge, thinks of his intentions:

> "Mister Diallo, this is too easy (*Monsieur Diallo, c'est trop facile*). What were you doing outside at three o'clock in the morning? You went out with the intention of stealing! (*Qu'est-ce que vous faites dehors à trois heures du matin? Vous êtes sorti avec l'intention de voler!*)", the judge continues, answering his own question. Later, in case 5, the same judge tells another defendant to move backwards some steps to force him to speak louder. If he does not speak louder, his case will be pushed back to a later date. The prosecutor calls this same defendant a delinquent with bad intentions (*un délinquant avec mauvaise foi*) (TGI, 29 November 2016).

An atmosphere of insecurity or even fear installs itself when judges whisper with the penitentiary guards, all equipped with machine guns. During interrogation, judges address defendants with the following statements:

> "You are a guardian, no? The role of a guardian is what?" The man was hired to watch a house during nights. He went to the neighbors', broke in, and stole computers and cell phones there. The presiding judge continues his interrogation: "Are you a guardian or are you a thief? It's ok…"

Third case 10:06am – Jula

The judge doing the questioning says that they, the judges, have a minimum of information at their disposition by the start of a trial.

Questioning judge: "Why are you pulling our leg?" *("Pourquoi vous voulez nous envoyer balader?"*)

At 10:38am the presiding judge calls the machine gun clad penitentiary guard sitting by the left door to him, whispers something to him, the guard nods and goes to his colleague sitting by the door on the right side, also with a machine gun on his thighs, and they leave the room together.

At 10:45am, the prosecutor says to the defendant: "What, in broad daylight, you behave like that? Are you Jango, a Mexican, running around the neighborhood?" *("Comment, en pleine journée, vous vous comportez de cette façon là? Vous êtes Django, un mexicain… dans le quartier?"*)

(TGI, 25 November 2016)

Judges also let the audience know who has the say so in the courtroom:

One young judge tells a man in the audience to sit correctly, then addresses the entire audience, telling them that it shows a lack of respect, not sitting correctly. Later, the audience gets reprimanded again after some people make loud comments on a sentence spoken that they seem to not approve of. They are told to hold their horses ("retenez vos ardeurs") or else they'll end up on the same bench as the defendant-prisoners if they cannot keep their opinion to themselves.

(TGI, 2 December 2016)

When a cell phone goes off in the audience, presiding judge A.P. has a military man go get it "saissisez ce portable – go get this phone" and then, when it's not found, asks into the audience "qui a fait crier son portable? Il n'a qu'à se dénoncer! Who has let his phone squeal? He should come forward and show himself!", but nobody comes forward. Somehow the man is found after all and called to the bar, where he is told off about his loud phone and because he did not come forward by himself.

(TGI, 2 December 2016)

The public gets impatient, shuffling, muttering, making exclamations, when an alleged child rapist does not agree with the accusation. The presiding judge tells the audience to stay calm or he'll kick them all out. This is a tedious trial, straining everybody's nerves. Later, a man in the audience gets up and shouts something unintelligible. One judge almost yells at him "He! Monsieur, sit down!"
(TGI, 9 December 2016).

"If you want to chat, leave the room!" (TGI, 10 January 2017).

Towards the interpreter too judges adopt a tone that makes clear who is in charge. Antoine gets sent on errands during trials, and his translations are corrected, even though not consistently:

Judge D.M. is interrogating the defendant. He addresses Antoine forcefully, interrupting him: "Translate faithfully!". Later, he will again talk to the interpreter, telling him that this is not what he, the judge, had said: "Repeat!"
(TGI, 29 November 2016)

The presiding judge reprimands Antoine for not asking the questions in the way that he had put them. Antoine offers to ask again, but judge A.P. says no, it's too late now.
(TGI, 16 January 2017)

The court interpreter, too, adopts a specific kind of speak when addressing defendants or the audience, which consists to a large part of communicating with hand gestures and finger snapping:

Antoine is in finger-snapping mode. First, he snaps his fingers and waves with arm outstretched in the downward, one-handed gesture at a defendant to come forward, then he snaps at the audience to sit down, waving his right hand up and down. Finally, he snaps his fingers at the plaintiff-victim to come forward with required documents

for the judge. He does not utter one word. Today, power-cut. The air-con is out and it gets stuffy and hot very fast in the courtroom.
(TGI, 2 December 2016).

Antoine calls the defendant loudly to come forward "Na! (Come!)", which he does, walking right up to the judges' desk. "Aaaah, are you ok? You march up on us like this?", the presiding judge A.P. says to the defendant in French, who clearly has no clue as to what is going on. He gets directed to his designated standing place behind the bar-railing by a snap! of Antoine's fingers and a hand wave. This young defendant (born 1997) clearly does not understand the judge's questions, translated into Jula by Antoine. Was he ever decorated? He does not know, does not seem to understand. The interpreter and the judges look at each other, grin. Judge W.S., at some point during the interrogation, remarks: Is the only solution to every financial problem to go steal? ("Est-ce que c'est la seule solution à chaque problem financier d'aller voler?"). No answer. The young man stands accused of having stolen two sheep. Later, in his questioning, the prosecutor switches to the familiar tu-form, asking the defendant if he knew that he could be sentenced to prison? ("Tu savais que tu pouvais aller en prison?") Yes. "Was it the money that interested you? (C'était l'argent qui t'intéressait?)" Yes. (TGI, 6 December 2016)

Addressing a grown-up person with the imperative *Na!* (come!) in Jula is very rude, impolite. This is how small children are called, not adults. Antoine might be emulating the judges' tone, down-talking to this young defendant.

A certain way of sending a defendant who has been acquitted on his way, is equally typical of judges' and prosecutors' courtroom speak. Judges and prosecutors often call after them that they, judges and prosecutors, know they will be back before them in a next trial because being a delinquent is their business. Also those defendants who are found guilty sometimes are sent on their way with threats of future worse punishment, as seen, for example, in these two instances at the TGI:

The prosecutor gives his plaidoyer, which Antoine does not translate. To conclude, the prosecutor asks for six months in prison because the defendant is a first-time offender

on his way to becoming a delinquent. Before the defendant goes back to his seat among the other defendant-prisoners, one judge tells him that when he gets out in six months and continues on this track, he will see the real sentences raining down on him here ("quand vous sortez et vous continuez dans cette voie, vous allez voir les vrais peines tomber ici")

The same day, another defendant, who had just gotten sentenced to five years in prison, gets told that all he needs to do is come back here [into the courtroom to his trial] after the five years and they'd triple his sentence.

(TGI, 6 December 2016)

Later, two defendants stand accused of robbery in another case. One is acquitted, the other one sentenced to twelve months in prison and to the payment of all costs. Before they went back to their seats, one judge called after the one who was acquitted: "Monsieur Sawadogo, you just continue like this and you'll come back here and the next time you will not escape!" *("Monsieur Sawadogo il faut continuer … et vous allez revenir ici, la prochaine fois-là vous n'allez pas échapper!"*) (TGI, 17 January 2017).

The court considers defendants to be guilty by definition. This can be seen not only in the way judges and prosecutors address defendants, but also the fact that the vast majority of cases are closed with a guilty verdict. There are no official statistics available, the Burkinabe jurisdictions not having digitalized their documents (yet). International organizations such as Unicef collect very detailed data pertaining to trials worldwide; also the Burkinabe state collects statistics pertaining to all government institutions country-wide (see Unicef and *Annuaire statistique de la justice*). The Unicef statistics pertaining to the justice sector are broken down by country, city, and courthouse and published annually. They do not, however, state how data is collected nor by whom. Neither can the reader get information as to the relation between the total number of defendants who appear in court and how many get sentenced as guilty, are acquitted, or get probation.

With the support of the chief court scribe at the TGI, I collected statistics to answer this question. Of all *correctionel* cases tried in the year 2015 at the TGI in Bobo, only one in

nine defendants got acquitted.[55] In 2017 out of a total of 655 trials, 525 were found guilty, while 75 were acquitted; 55 cases ended either with the verdict probation or had become time-barred and thus do not figure in the guilty-released numbers. Also in 2016, there were considerably more cases that ended with the verdict guilty than not: out of a total of 485 defendants tried, 388 were found guilty and 57 were acquitted; 40 ended as probation or had already fallen out of the statistics because they had become time-barred.

Court members communicate in a specific kind of language in the courtroom, what I have referred to as courtroom speak. It consists of three layers: the *Amtssprache* demands a form – bureaucratic, functional, prescribed script, strictly adhered to procedure – and a variety – legalese, standard – of French to be used by court personnel. And lastly, the court members deliver their utterances in a very top-down manner, signaling that it is they who are in charge in the courtroom. This courtroom speak, coupled with aberrant translation, constructs guilty defendants who can be condemned.

Bidima states that the ritual of a trial – the black robes, keeping defendants in prison prior to trial, the high costs and lengthy procedures – constructs this object called the accused (Garapon cited in Bidima 1997: 29f). Adding courtoom speak, an accused is being constructed, who is ultimately found guilty. And, we remember, it is not the well-connected or wealthy perpetrators that end up in court. It is those with little or no bargaining power, the young, uneducated, poor, the not well-connected. How can this situation be assessed? In the next section we will look at the legal landscape from another angle, providing more explanations to how the justice system functions and how its members make it work.

4.4. Administering justice in court under legal pluralism

Legal pluralism and new institutionalism both argue that external contexts shape the value of a legal context. They also shape the action arena and affect the bargaining power of actors therein, particularly the way they strategically select – how they shop – among the multiplicity of rules, values, constraints. How actors justify their choices verbally and non-verbally is part of the shopping package and consists in a combination of (former) colonial and local legal

[55] Out of 369 verdicts spoken in 2015, 325 were guilty, 36 were acquitted verdicts, and 8 cases were either sentenced as probation or were time-barred. See also *Annuaire Statistique 2017 de la Justice, V4* www.justice.gov.bf/wp-content/uploads/2018/06/ANNUAIRE-STATISTIQUE-2017-DE-LA-JUSTICE-V4.pdf, which gives the total number of defendants appearing in court, organized by their accusation (Unicef March 2018).

fragments. That these are not always clearly separable has been illustrated in detail by Mamdani (1999), who shows how the colonial powers have unraveled local customary laws to utilize those strands of them that served their colonizing interests best, designating these as customary laws. We will see that the issue is not so much of having invented customary law, but strategically selecting among that what was already in existence.

But which segments of society are affected by legal pluralism, which topics impact the use and choice of language and of interpretation? We have seen that Bidima as well as Le Roy had both remarked that particularly the elite stratum of African societies or intellectuals is the most adamant in adhering to western legal institutions and ideas (Bidima 1997: 9; Le Roy 1997: 317). It is more complex than that, however, which we can illustrate again by asking the president of the commercial court, judge Mohamed Sanou, to act as an example of one *intellectuel*, a man who, by virtue of his education and job position, is clearly part of the elite of Burkinabe society. And who is at the same time navigating among and between different social views, rules, and laws of justice.

Mohamed's story 2:

My friend Mohamed Sanou, the president of the commercial court in Bobo, is a devout Muslim. He has no problem going to work as judge during Burkinabe working hours, which nowadays run from 8am to 3pm, *journée continue* with no break, and to then go preach at his local mosque as imam in the evening. On weekends, he is often called to a baptism or a funeral, he is well known and respected in his neighborhood, and often, people come by his house for his spiritual and religious advice and guidance. He zooms in and out of traffic on his moto in order to get to the office in time, and zooms in and out of roles, going from judge to imam to head of household and father. His colleagues at the commercial court amicably call him Elhadji – not Mohamed and not because he had gone on the pilgrimage to Mecca, but because he is known to be deeply religious.

At home after a strenuous day's work at court and after the last prayer at the mosque, Mohamed is the family father. He sits at the table, waiting to be served dinner. His wife and children often have already eaten. Once he has finished eating and if he has enough energy left, he starts telling fairytales – in Jula, in Moore, in French. These traditional fairytales often have a moral lesson to go with the story; they are part of traditional Burkinabe education. He is a good storyteller.

Moving with ease and seeming nonchalance between different systems of justice and thought – western inspired justice, Islamic law, and traditional morality – does not constitute a challenge for Mohamed. On the contrary, he does not see a contradiction or a problem in integrating these different systems of thought into his everyday life.[56] The nonchalance with which he switches from being an imam and counselor to his religious community, to working as a western educated judge, presiding court trials in French, communicating with the defendant through an interpreter, whose Jula renderings he needs to correct every once in a while, seems to be mundane.

IS this legal pluralism? And who decides if and that legal pluralism exists? Do we speak about legal pluralism if there are several conflict-resolution institutions coexisting or existing parallelly in one space or geographical area, in one nation state? And do they indeed function parallelly, is each responsible for its own designated domain or do they overlap? How does who decide which institution to use to solve which kind of conflict? These are of course largely empirical questions. Before we can look at how justice is administered in the courts run by the state under conditions of legal pluralism, as this chapter suggests, we need an answer to the question "How does legal pluralism manifest itself in Burkina Faso?". Or to put it more dryly: we need a working definition of what legal pluralism means and stands for.

The question has been discussed for quite some time, across and in various disciplines. In fact, there are several journals dedicated to the topic from different disciplinary perspectives, such as the anthropologically oriented *The Journal of Legal Pluralism and Unofficial Law*, published by Routledge, or the German *Journal for Law and Society* (*Zeitschrift für Rechtssoziologie*), in which Gerd Spittler had published an article on legal pluralism as early as 1980. There he investigated citizens' use of different conflict resolving institutions (*Institutionen der Streitregelung*) in the literature as well as empirically. He found that anthropologists commonly oppose "law" and "custom", court and non-court institutions of conflict resolving. But the success of all institutions, he found, is bound up with the existence of state-run courts (Spittler 1980: 6).

[56] See also an article in German, published in NZZ, written by David Signer, a Swiss anthropologist turned journalist: www.nzz.ch/international/geisterpriester-und-zahnchirurg-ld.1369482, accessed 21 August 2019.

Franz and Keebet[57] von Benda-Beckmann have considerably marked the field in their anthropological investigations of legal issues. Particularly pertinent for my description and analysis is Keebet's coining and application of the term *forum shopping*, the term *forum* coming from private international law (K. von Benda-Beckmann 1981). Together with Spittler, the Benda-Beckmans have contributed to making the subject field not only visible, but have found ground breaking ways of defining and seeing legal pluralism in non-western societies. We will here look at reflections around legal pluralism in connection with Africa.

Both Franz and Keebet von Benda-Beckmann had started their careers as legal scholars, they both studied and practiced law, but then turned to anthropology and became anthropologists researching "law". Here, I would like to concentrate on Franz von Benda-Beckmann's detailed discussion of legal pluralism in his publication tellingly entitled "Who's afraid of legal pluralism?" (F. von Benda-Beckmann 2002). In this article he often refers to a publication by Tamanaha – actually engages the author in a dispute – which is equally tellingly called "The folly of the social scientific concept of 'legal pluralism'" (Tamanaha 1993). This article we will look at as well shortly.

We first need an answer to specific conceptual issues before we can decide if legal pluralism is relevant and in what way to our understanding of the bureaucratization of the state institution of justice and particularly to how the court interpreter acts and is made to act. The term "pluralism" points to some kind of complexity, but what type of complexity do we call "legal pluralism"? And with which categories and concepts can we make sense of the complexity? And what definition do we give "law"? Geertz had remarked that "the problematic relationship between rubrics emerging from one culture and practices met in another has been recognized neither as avoidable nor fatal in connection with 'religion', 'family', 'government', 'art', and even 'science', it remains oddly obstructive in the case of 'law'" (Geertz 1983 quoted in F. von Benda-Beckmann 2002: 44). Why is that so?

While in the legal sciences – academic lawyers and judges, for example – predictably assure us that legal pluralism is a myth, anthropologists and historians prefer to define legal pluralism according to cultural criteria (K. von Benda-Beckmann 1981, 1984; F. von Benda-Beckmann 1994, 2002; Kaufmann 2016; Rodet 2011; Spittler 1980; Tamanaha 1993). In other

[57] In her 1984 doctoral dissertation for her law degree, which she wrote on village justice and state courts in an Indonesian village, she calls herself Cornelia Elisabeth.

words, we are searching to define a concept that can be applied cross-culturally. Not only state institutions decide what "law" is, but all socially accepted, functioning, conflict-resolution instances can apply law. Who and what are those institutions?

Tamanaha criticizes this viewpoint of legal pluralists, saying that by defining all types of normative ordering – be they attached to the state or not – as law, we are left with the idea that the legal includes the non-legal; legal pluralists say that the state's definition of law is ideological. This also means, Tamanaha further argues, that with this statement legal pluralists say that their version of law is the right one, the objective one (Tamanaha 1993: 196). What is ideological or not thus depends upon the perspective from which one argues. So it is entirely understandable that the state deems legal pluralism an ideological construct of legal pluralists who want their version of law, i.e. non-state law, to gain as much prestige as state law. So far, so theoretical. Let us put some empirical flesh on this unresolved debate.

After the political upheavals in 2014, during which long-term president Blaise Compaoré was chased from power, and subsequent changes in Burkina Faso's government institutions, the Burkinabe state has noted an increase in certain forms of self-organized defense groups.[58] In rural areas various auto-defense groups, among them the *koglweogo* (Moore for "the keepers of the forest") have organized, working complementarily or contrarily to, often substituting, state sanctioned policing efforts.[59] Travelling overland one crosses paths with these groups of men, all armed and mobile. We could also call them militias, which immediately gives what they do a more unsavory taste reminiscent of war, arbitrariness, and uncontrolled violence. They constitute a dilemma for the state. On the one hand state security personnel is understaffed, forcing the state to favorably accept certain forms of local self-regulatory defense, certain non-state forms of the law. On the other hand, these locally organized groups destabilize the state monopoly on violence through arbitrary sanctioning practices, ranging from (monetary) fines to torture (see summary of research project, footnote below).

Law student Sow expresses it in these words: "With the appearance of the *koglweogo* in Burkina, …, the notion of informal justice is being rediscussed with an eye to the methods

[58] On the Burkinabe state's take on or attitude towards auto-defense groups, see https://lefaso.net/spip.php?article92487, accessed 18 October 2019.

[59] An ongoing research project at the university of Leipzig under the direction of anthropologist Katja Werthmann looks at different forms these self-organized defense groups take in Burkina Faso, see https://gepris.dfg.de/gepris/projekt/418144975.

employed by these self-defense groups" (p.c. 20 May 2019).[60] Of course, "guardians and operators of a single normative universe", as Franz von Benda-Beckmann calls academic or practical lawyers, and judges, like Sow, (F. von Benda-Beckmann 2002: 40), from the internal perspective of state law (Tamanaha 1993: 196), the notion of legal pluralism is inacceptable, because it is the job of lawyers, judges, prosecutors, for example, to teach or to apply "the law" as defined in the normative logic of their own law discourses. Judges, or future judges like Sow, have to make choices through which the complexity of legal pluralism is reduced to "the" law for producing the rationalization and justification of a court decision.

Or they explain that the state system of justice sanctions and accepts these conflict-resolving institutions, thus making them legitimate "partners" in their eyes, helping an overloaded state to carry out its job. In fact, in his PhD thesis in 1970, then still as a lawyer, Franz von Benda-Beckmann quotes himself as having asked: Can we speak of "legal pluralism" if state law, via legislation or court decisions, recognizes non-state law, or can we also talk about legal pluralism independently of such recognition? Later, as an anthropologist, he decided that it is more interesting to disassociate the concept of law from the state (F. von Benda-Beckmann 2002: 40, footnote 2).

Tamanaha (1993) finds that we need to look at definitions of "state law", "customary law", or "normative order" from a different angle altogether. By studying post-colonial situations of transplanted law[61], we need to look at how norms are lived in the everyday and at what state law norms say. These neither exclude one another, nor do they necessarily overlap. In addition, what people say they do and what they do in practice need not overlap either. Both Tamanaha and F. von Benda-Beckmann emphasize the importance of an empirical view, but whereas Tamanaha finds that the concept of legal pluralism is misleading, because, according to him, it is constructed upon an unstable analytical foundation, which

[60] "Je tiens à préciser qu'avec l'apparition des koglweogo dont tu as sûrement entendue parler au Burkina, la notion de justice informelle est en train d'être remis sur la table de discussion avec au regard des méthodes employées par ces groupes d'auto-défense."

[61] Also Etienne Le Roy uses the designation "transplanted" to point to institutions conceptualized in one place and brought to another by quoting the subtitle of Mamadou Dia's book: "Reconciling Indigenous and Transplanted Institutions". Dia was a consultant to the World Bank in the 1990s and favored the idea of accepting the habits of the majority in the renegotiation of transforming institutions in Africa (see Dia 1996 in Le Roy 1997: 318). The idea of transplanting does not really capture, in my view, the introduction, imposition, and institutionalization of the French justice system and law in western Africa. A transplant implies digging up, removing from one place and putting it back in the earth in another place. This is clearly not the case with the French justice system, which continues to exist and to evolve in France.

will ultimately contribute to its crumbling (Tamanaha 1993: 192), F. von Benda-Beckmann shows that a concept of legal pluralism can be upheld.

In Burkina Faso, we find a system of *arbitrage*, in which outstanding personalities such as a successful businessman – *un grand commerçant* – are called on to mediate between parties involved in a dispute over commercial matters in his neighborhood. This system of arbitrage works exclusively outside the formal court system, it is actively supported by the state justice system and officially recognized by state law. In the eyes of state law, it can only be applied in civil cases and never in penal law, I am informed by Philippe Somé, the high-ranking *fonctionnaire* at the Ministry of Justice and a former judge (p.c. 18 January 2018). Like this, the chronically understaffed and overloaded state justice system can delegate certain conflicts to outside systems of justice (see also Bierschenk 2008 on the administering of justice outside the courts in Benin; Spittler 1980 on the successful functioning of legal institutions as bound up with the state justice system). Also the *chefs de quartier* (neighborhood chiefs) are consulted to solve certain conflicts. Other institutions citizens can choose to turn to include high ranking religious personalities such as imams, who intervene according to Islamic law. Fields of jurisdiction thus overlap and are combined in one person, as we have seen with Mohamed Sanou, the judge and imam (see also K. von Benda-Beckmann 1981: 117). Usages by citizens are not always clear cut, one system need not exclude another. People go there where they find their conflict solved to their satisfaction (see Rodet 2011).

The question then is not so much if legal pluralism exists, which it quite clearly seems to do, but how it gets utilized by citizens. We have, on the one hand, people who use conflict-solving institutions: plaintiffs or victims. On the other hand, we have the institutions who "speak justice": the *koglweogo* and other self-organized militias, the "big men" in the *quartiers*, the imams and other religious leaders or advisors, the traditional or neighborhood chiefs, and we have the courts, institutions run by the state. For my research on court interpreting legal pluralism becomes pertinent for two specific reasons. For one, we might ask ourselves why plaintiffs involve a state institution to resolve their problem if it could also be dealt with through customary, local, or traditional law – whatever label one wants to stick on dispute resolving instances that speak justice outside a courthouse. These institutions – the imam as well as the traditional chief, the *chef de quartier* and the local businessman – all speak justice in Jula. Plaintiffs do not need to go through an interpreter as they have to do in a state-run court trial. In addition, court justice is costly and time consuming for plaintiffs,

which leaves us with the question of why plaintiffs would resort to the state at all? And how do people cope in daily life with this legal complexity, with so many choices?

Mohamed as judge, imam, and family father chooses that institution to arrive at a decision which promises the most satisfactory outcome for him and for his clients. It is not always so clear-cut, of course, because how must it feel for judges, who have to apply a law, which runs contrary to their faith? Or a law, which has nothing to do with everyday reality as lived by citizens, but that runs counter to their upbringing, convictions, or cultural sensitivities? As an example, lawyer C.O. points to a new law on "harassment", how it is defined and treated by the law and how certain ways of behaving seen as normal can fit this definition:

> *Talking about imposed values, lawyer C.O. says that indeed, you give up your own values for ones that are imposed ("tu abandonnes tes propres valeurs pour les valeurs imposées"). As an example he names a new law passed in 2015 on* harcèlement*, stalking. The definition of stalking has been taken from a European context. Here in Burkina, if a woman responds to a man's advances upon his first try, she is considered a loose woman, a prostitute even. As a man, you need to work harder to get into her pants, so to speak, but if that then is considered to be stalking, we have a problem* (Bobo 16 February 2016).[62]

Prosecutor F.D., the only female prosecutor working at either one of the two penal courts in Bobo during my research, shows that the situation becomes even more complex, because different ethnic groups have different views on, for example, the definition (and thus punishment) of rape:

> *One major challenge is the interpretation of rape, which is handled completely differently by the various ethnic groups – or rather the interpretation should be adapted to custom, F.D. remarks. In Bobo, for example, before you marry a woman you have to kidnap her and have sex with her – basically rape – but the Mossi do not*

[62] In 2015, a new amendment was added to the penal code: LOI N° 061-2015/CNT, defining harassment, see https://lavoixdujuristebf.files.wordpress.com/2018/03/loi_061.pdf, last accessed 25 February 2020.

do that. So, when she first came to Bobo, she had to figure out how to handle this as a prosecutor – mitigating circumstances, circonstances atténuantes*. Custom needs to be taken into account when deciding on a case, she finds* (Bobo 5 March 2018).

One answer we might find in how Mohamed Sanou moves between different justice systems and systems of thought with apparent ease, not seeing any inconvenience in marrying Islamic law to western concepts of right and wrong, and teaching his children moral codes through African fairytales. Those with more bargaining power had always been in the position to decide what law to apply – or what constitutes a law that needs to be followed. So, in the state-run system of justice, it is in the power of prosecutors and judges to take into account or not traditional ideas concerning rape or harassment, for example, when deciding on a verdict. And it is mostly citizens who decide which conflict-resolving instance they want to refer to.

We have seen how a new system of justice was installed in the AOF by the French colonial powers in 1903. It was separated into French justice and indigenous justice (Rodet 2011). The French colonial administrators collected customary law (Jézéquel 2006; Snyder 1981), codifying that part of African legal concepts which served their interests best (Mamdani 1999). These concepts were searched for, collected, and made into customary law by colonial administrators and by their African allies alike. African chiefs were selected by the colonial administration strategically according to the degree of their political compliance to the colonial endeavor (Snyder 1981: 61) and they participated in the codification and manipulation of traditions to serve their own and their ethnic group's interests (Jézéquel 2006).

In the 1930s, the collection and codification of customary law were at their most fervent; colonial Governor General Brevié believed that understanding it was of practical interest (Jézéquel 2006: 140). The native chief of the Fouta Tooro, Abdou Salam Kane, for example, "invented" the Foutanké feudal system in order to support his own position and to stay in control of land (Jézéquel 2006: 142ff). The colonial stereotype considered African land holding in terms of the European notions of sovereignty and ultimate rights to land, a view consistent with the dominant colonial ideology of African land tenure (Snyder 1981: 69). According to Mamdani (1999), there was, both during colonial times and after independence,

a political divide between rural and urban areas which also affected the institution of the system of justice.

> In some instances, a constellation of ethnically defined customary laws was done away with as a single customary law transcending ethnic boundaries was codified. But even if the result was to develop a single country-wide "customary" law, applicable to all peasants regardless of ethnic affiliation, it still functioned alongside a "modern" law for urban dwellers … In spite of the overwhelming accent on change, there was an important continuity with colonial practices: in as much as these "radical" regimes shared with colonial powers the conviction to effect a "revolution from above", they ended up intensifying the administratively-driven nature of justice (Mamdani 1999: 879).

In many post-independence African states, the single party came to be the alternative to "customary" power; "even if imposed from above, [the militants of the single party] considered the single party preferable to giving the colonial corruption [of the ethnically based system of privilege] a fresh lease on life" (Mamdani 1999: 879f). These were the politics also pursued by the Sankara regime in the 1980s, where the use of a local, Burkinabe variety of French in the new justice system was preferred to giving "a fresh lease on life" to colonially constructed ethnic groups and languages.

Is it at all relevant to the everyday practices of citizens to know that "customary law" is to a large extent a recent, colonial and thus French creation? It is relevant insofar as that plaintiffs, like everybody, act pragmatically, they go there, where they hope to be successful with their claims, resorting to customary law, regardless if it is indeed customary-traditional or a colonial creation (or they knowing about this), or they go to the state, hoping to win their case.

So, what does this mean for our analysis of legal pluralism? Obviously, conflict resolution instances existed before colonization and before the invention of tradition, or creation of codified laws. Today, we find customary laws that may or may not be categorizable as African or colonial in origin. Is it important to sieve out the original African laws from the constructed ones to be able to label them as customary? In our present discussion I believe it is not important. What is pertinent is how people act, to understand what criteria they follow in their decision to go or not go solve their problems outside the state sanctioned system and how, according to which criteria, they choose where to go.

An imam might believe that there is a solution to all conflicts in sharia, Quranic law or in the Quran. Yet, a Muslim judge working at a penal court in Burkina Faso will judge cases according to the French penal code in vigor in Burkina Faso, following the "administratively-driven nature of justice" (Mamdani above) he was educated in. And an illiterate peasant, who has been accused of stealing two sheep by a plaintiff and consequently brought before a court, has had no say so in the matter, he had no choice in who was going to decide in his case. The plaintiff, on the other hand, had decided where he will have his problem resolved, opting for the court and a judge. This time he believed that at court he had better chances of winning his case than with the neighborhood chief, so he goes to court to file charges against the illiterate peasant.

Judge-in-training Sow says that "in the case of two stolen sheep, the law defines this type of crime as a case punishable by the *correctionel* penal code. So, stealing is an infraction exclusively dealt with by the *correctionel* chamber at the TGI" (p.c. 20 May 2019).[63] The state-run justice system reserves for itself the monopoly on solving penal offenses and the definition is quite wide. The cases that get tried at the penal courts in Bobo range from petty offences such as the theft of two sheep to felonies including rape, armed robbery, and murder. The French penal code classifies penal offences into two sub-categories according to severity of crime and subsequent sanction: *correctionnels* and *criminels* (see table 1 above).

Correctionnel trials are held twice a week in Bobo. There, cases that date back two years can be treated along with more recent ones. With no or only very short breaks, the court personnel work uninterruptedly all day long, also the interpreter. The *criminel* trials take place only irregularly due to a number of strategic, functional, political reasons, not lastly because of financial underfunding, I am told. Paradoxically, it seems that one reason why *criminel* trials hardly take place is because a new department has been created within the Ministry of Justice in 2016, the *fonds d'assistance judiciaire*. Among other tasks, it is mandated to find and allocate funds to pay for lawyers in *criminel* trials.[64] Since the state has

[63] "Pour le cas de 2 moutons volés, c'est la loi qui prévoit que ce type d'affaire relève du correctionnel et par voie de conséquence est punie par le code pénal. Bref le vol est une infraction donc relevant exclusivement de la chambre correctionnelle du TGI."

[64] I am told that the state pays a lawyer the lump sum of 300'000 franc CFA (Ministry of Justice Ouagadougou, p.c. 18 January 2018), approximately 500 CHF, for one case, see www.umrechnung.org/waehrungen-umrechnen/waehrungs-kurs-umrechner.htm, 6 January 2020.

no money, it cannot afford to pay for lawyers to accompany defendants in *criminel* trials, which then do not take place.

In that same year, 2016, the appeals court in Bobo was dealing with *criminel* cases committed in the early 1990s. During assizes, which take place once or twice a year for a week, the goal is to eliminate as many pending *criminel* cases as possible. In 2018, for example, the assizes court was held in October and set itself the goal of trying 30 cases.[65] At the same time, the jury, mandatory in assizes courts, does now not consist of members of the public anymore, but of professional law personnel. Also this change in procedure is due to financial constraints, it seems.

As we can see, the state legal system in Burkina Faso is excruciatingly slow. On top of it being slow, it is expensive, tedious – even hazardous, to say it with K. von Benda-Beckmann (K. von Benda-Beckmann 1981: 142) – and incomprehensible to most citizens, not only in terms of impenetrable laws and procedures, but because it functions exclusively in French (see also Bierschenk 2008 and Alou 2006 for other French West African states). So, going to the state institution as plaintiff presupposes and requires you have time, money, and good nerves, and that you bring enough bargaining power along.

To avoid the hassle accompanying an involvement with the state institution – time, money, nerves – an accused person needs to know the presiding judge or, even better, the prosecutor dealing with his case (see Alou 2006 on prosecutors' power). Those with enough bargaining power, wealth, and social standing do not appear in court. Best-case scenario. But maybe your funds are just enough to pay for a lawyer, which is second best to not having to go to trial at all. Cases involving lawyers get treated preferentially by judges.

Before the trials start on any given day – be they *correctionel* or *criminel* trials – the presiding judge asks the lawyers present to step forward and to look through the pile of files on their desk. The lawyers then sift through the files and place the cases they are here to represent at the top of the pile. The presiding judge works through the pile from top to bottom – cases with lawyers get treated first and they (and the plaintiff) are free to leave. Defendants must remain in the courtroom during the entire duration of a day of trials, when all of them are brought back to prison together.

[65] See www.facebook.com/Justice.BurkinaFaso/posts/1714727741964980, last accessed 11 November 2019.

In the penal justice system in Burkina Faso, there is a very high incidence of *flagrante delicto* cases (and in West Africa in general, see Alou 2006; Bierschenk 2008), which means individuals are caught red-handed, in the act of committing a crime, they are supposedly *seen* while they commit the crime. In fact, the vast majority of cases tried in Bobo are cases of *flagrant délit*, easily distinguishable from cases of *citation direct* or direct summons by the red jacket color of their file folders. The heap of files on the judges' desk during trials is almost exclusively red.[66] According to Alou, the system of *flagrante delicto* gets abused for a number of reasons, he states, but foremost to short-circuit preliminary investigations with a judge, putting the case into the hands of the prosecutor directly (Alou 2006: 152-153). And the prosecutor is the accusing instance in any trial, we know.

Cases that are classed as direct summons, by contrast, demand a lot of time and particularly resources from court personnel, which are simply not available. This "material and technical under resourcing" (Bierschenk 2008: 111), i.e. the lack of tools or the material of modern criminal technology needed to perform investigations, is not unique to Burkina Faso. By classifying cases as *flagrante delicto*, the court makes these cases and the people standing trial for these cases manageable; they domesticate them to their possibilities. This way of going about criminal investigations also puts a lot of power into the hands of prosecutors, who are now the only accusing instance, not having to rely on any evidence, only on their oratory skills – in French, of course. Defendants are, together with their case, made to fit the procedural possibilities of the court.

So, the case and the defendant are made to fit the working order of the system by the experts within the constraints the Ministry of Justice defines and delimits for the expert-bureaucrats. They claim to strictly adhere to codified law and procedure. At the same time, they have a certain amount of professionally induced leeway in how, exactly, laws and procedures get read and ultimately implemented. Or, to put it differently, the experts running the system of justice *interpret* legal procedure to fit their possibilities and also their own interests within the imposed limits. We have seen this with procedure – mostly *flagrant délit* cases or how access to land titles for peasants is designed for them – and with rules they

[66] In order to get a better feeling for numbers, we can once again consult the *Annuaire statistique de la justice*, annual statistics, which Unicef gathers in the justice sector. As stated previously, this document does not specify Unicef's methodology for data collection. In 2017, for example, out of a total of 655 penal trials held at the TGI in Bobo, 602 cases were classed as *flagrant délit*; in 2016 there were 464 *flagrant délit* cases out of a total of 485 (Unicef 2018: 99).

implement, such as no switching of language during an ongoing trial. The outcome is the construction of guilty defendants. And this only works with the support of a compliant interpreter. We will look at how, exactly, this works in detail in the next chapter, where individual cases on trial are discussed.

It is in the nature of a trial that the prosecutor, as the one accusing the offender in the name of the people or society, treats defendants as if they were guilty. Judges, however, ideally have a neutral function, they are, as one judge said, the arbiters in a trial. And the interpreter should, again ideally, be the relayer of the person's message whom he is translating without taking sides either way (see Ouattara 2018 on the theoretical neutrality of interpreters).

Studies investigating intercultural interpreting in the health sector in the USA have found that it is not the number of years of experience that makes you a good interpreter – defined as number of translation errors with potential negative consequences – but the number of hours of training (Flores 2012; see also Flores et al. 2003 and Flores 2005). If these findings can be applied to court interpreting in Burkina Faso – and I am not sure that they can – this would mean all court interpreters in Bobo are bad interpreters because they have no training as interpreters and their interpreting contributes to negative outcomes for defendants. The 80% of all defendants in Bobo who are convicted and sent to prison, can be designated as a negative outcome from the perspective of defendants. Can findings from studies in the USA health sector be applied to the Burkinabe justice sector? Since no studies so far have examined the relationship between interpretation and defendants being condemned, we have no quantitative material against which we could compare and test our findings. We also need to be cautious when applying results from one context to another.

What we can say, however, is that all studies published so far on interpreting, be this in the justice or in the health sector, have looked at situations where those needing translation are migrants, asylum seekers, minority speakers or speakers of a language variety different from the standard variety in use in legal or health encounters. Here, judges (or doctors) need to have faith in the interpreters' competence and trust in their expertise because they, the judges and prosecutors, doctors and nurses, do not understand the defendants' or patients' language.

The exception is Fofana's publication on how the justice system is far removed from the everyday reality of citizens in Burkina Faso (Fofana 2018). To demonstrate this (legal)

distance, Fofana also mentions how incomplete or imprecise translating by the court interpreter can create confusion for defendants, who thus cannot fully participate in their own trial (Fofana 2018: 399). In Bobo, the judges presiding trials and carrying out the interrogation of defendants, speak and understand Jula, we have seen. Often, they need to intervene in the translation process, asking the court interpreter to translate again differently, to translate faithfully what he, the judge, had said because the rendering was not as the judge had put it. Judges control and correct interpreters.

This would mean that if, indeed, the way interpreters translate can influence a defendant's case negatively, this automatically also means that judges, too, contribute to this negative outcome. In other words, since judges *can* correct interpreters, and also do so, then all trials should by definition be fair and the outcome to the best of everybody's competence – this in the best of all worlds. But if judges can correct interpreters, but do *not* do so, what does this mean? We will see that indeed judges do not consistently correct interpreters. Were they not attentive for a minute because, after five or more hours of presiding trials and of translating-interpreting, it is very possible that both judges and interpreters get sloppy? Do they simply not care one way or the other because for them defendants are guilty by definition anyway?

Translation is, instead of a seamless transfer of information, an interdiscursive practice in which various actors are engaged. It is characterized by generating new practices, objects, and concepts, but in the context analyzed here, it is important to point out that translation contributes to the persistence of social hierarchies over time and space (Gal 2015). The construction of facts we see happening in the Burkinabe courtroom today is a continuation of the position the interpreters occupy in larger Burkinabe society, mirrored in their lowly position at the courthouse. We have established that even though interpreters might get a certain amount of respect outside the courthouse as *fonctionnaires*, they are relegated to the tail end of the courthouse hierarchy because of their lack of education, training, and the fact that they skipped the usual route to recognition, the concours exams. And the judges are hierarchically their immediate bosses during a trial. Outside the courtroom, interpreters need to answer to court personnel in general.

This construction of facts is also in line with the role interpreters have always played as intermediaries and allies in the colonial encounter. "Such collaboration was markedly asymmetrical in power, which had semiotic implications… [T]hrough translation the texts and

knowledge of the colonized were citationally repurposed as evidence for European theories of language, law, and religion. In this effort, much depended on colonizers' presumptions about linguistic purity, on their preference for written forms and for routinized performance genres, and on their assumptions about how language reflect the minds, bodies, and origins of speakers" (Gal 2015: 231; see also Bidima 1997: 28f on legalese and incomprehension of defendants during penal trials).

How do translated statements attain the status of fact in social reality? One example of this "fact making" is how the defendant is made to fit the courtroom space (through language) and legal procedure (through his/her case being classified as *flagrante delicto*). Judges and prosecutors adhere to what they define as codified rules and regulations, which include the use of standard French during trials, thus making cases manageable for them. Bidima as well states how procedure always takes precedence over the actual case, judges using a vocabulary, language, and rationalization incomprehensible to defendants (Bidima 1997: ibid).

Defendants are actively constructed as guilty, their "outsiderness" (Vigouroux 2005: 243) pointed at during the entire legal procedure, starting during the interrogation at the police station and culminating in their trial in court. Judges believe that defendants are playing games, by, for example, switching languages in the middle of their interrogation or changing their stories as they are moved through the legal process. Prosecutors also believe defendants are guilty, which corresponds to the nature of their role in a trial, which, in itself, should not further concern us. What does concern us, however, is the fact that in the lived reality of a trial, the defendant is the only person on the acting team, who is on the side of the defense, as the name of his character – defendant – already suggests.

All other actors in the courtroom construct the defendant as guilty, be this because it is part of the character's role, like for the prosecutor, who "knows that you are guilty", to say it in judge D.M.'s words. Judges, on the other hand, should not behave like prosecutors, which, to this same judge's regret, they sometimes do. Judges should ideally function neutrally, as arbiters in a trial. In reality, however, "judges behave like prosecutors" and this "out of strategy" another judge told me (judge N.N. 16 February 2017), meaning they are not the neutral arbiters between the accusation and the defense, but they too are on the accusing side. Which leaves defendants alone on the side of the defense, so to speak.

But what of interpreters? Interpreters are members of the court, civil servants hired by the Ministry of Justice who have been asked to interpret during trials without being granted recognition and status for this work, however. They are also at the tail end in the court hierarchy and inferiors to judges both during a trial and in the courthouse in general. And as such, they understand their role to be a supporting one to judges and prosecutors during trials.

4.5. Court interpreters – their work, their role, their self-definitions

Antoine together with Salomon, Paul, and Jean in Bobo and as well as with their court interpreter colleagues throughout Burkina Faso, are busy organizing themselves. They want to create what they call a *corps des interprètes judiciaires*, a court interpreter association, which, they hope, will be officially acknowledged and recognized by the state that hired them as civil servants and has introduced them into the job as court interpreter in the first place. We have seen that there were and are no fixed hiring criteria for court interpreters; all they need is a primary school diploma, which supposedly is proof of their French language skills (Ouattara 2018: 46). For the national languages they are hired to interpret from and into no language certificate is needed. They had been hired because they were at the right place at the right time. Actually, they did not even need to speak the right combination of languages. Two out of the four court interpreters in Bobo needed to take Jula lessons before being able to take up translating trials. And except for Salomon, none of them were specifically hired to translate, but are doing this job next to their other duties as secretary or liaison officer.

The interpreters' association they are all striving for will ideally bring them the official recognition of the category "court interpreter" by the Ministry of Justice, along with all this would entail. According to them and what they want most, they repeatedly tell me, is an increase in their salaries. We will look more closely at what they earn and what this means in daily life shortly. The four court interpreters are thus not entirely passive wheels in the justice system, turning only when given an impulse from their superiors, like they are constrained to do during the trials they translate. They can also turn of their own accord, to stay within the metaphor, as long as this initiative takes place outside the courtroom.

They thus have two action arenas that are together, but also separate: the courtroom during trials and the larger courthouse. Within the clearly delimited bureaucratic-hierarchical

and physical boundaries of the courthouse, they are in the process of carving out a space for themselves. Because, in reality, once hired, they were largely forgotten about, and are ignored by the bureaucrats who have employed them and the experts they work for. How a future official recognition of their job as court interpreter will play on, influence, or potentially alter their situation or translating practices remains to be seen.[67]

The situation was quite different for the colonial interpreters, also beyond the freedom they had in their translations. Not only was their job category recognized by the colonial state, it had created this job category and then trained interpreters in the colonial schools. In terms of translation, both colonial interpreters Wangrin and Omar Sy, when he defended Tierno Bokar, decided, admittedly for quite different reasons, to translate divergently from what was asked of them by the colonial administrators (as well as the local population, as far as Wangrin was concerned). Both knew that the French administrator-bureaucrats, for whom they were working, could not double check their oral renderings because of their lack of local language skills.

The monopoly colonial interpreters had on the translating process allowed them a status equal or similar to, sometimes even more powerful, than the European administrators', depending on the situation and the fearlessness of the actors involved. Both the French administrators and the colonial interpreters were feared and coveted, hated and highly admired, respected and ridiculed. Truly ambiguous attitudes and changing feelings. This accorded both interpreters Wangrin and Omar Sy a certain amount of agency. Let me describe, liberally translated from Hampâté Bâ, one of the many intriguing illustrations of Wangrin's agency as colonial interpreter. He is on his way to the house of the French colonial administrator's or district commander's concubine:

Wangrin had decided to pay a visit of respect to the mother of the French commander's African wife, to get into her good graces, knowing that no African child would ever disobey her mother. His ultimate goal is of course to be able to all the better spy on the commander, flattering the French man's concubine onto his side. Young Rammaye Bira is neither beautiful nor particularly intelligent, which keeps her closeted within her family, being

[67] As of 11 September 2019, this professional category does officially exist, as mentioned above. But until now, this has had no practical, concrete consequences for interpreters and their work; nothing has changed. Also the website http://infos-pratiques.justice.gov.bf/category/professions-judiciaires/, where individual legal professionals' work is described on the state-run website, does not have an entry under the section entitled "interpreter", last accessed 3 June 2020.

hung up about her looks and harboring disdain for all African men who had consistently ignored her and whom she consequently collectively despises. Wangrin knows how to make the chip on her shoulder work for him, so he gets ready to go to Rammaye's mother's house. Riding his beautiful horse nick-named *Cheval-savant*, Wise Horse, and clad in festive garb, Wangrin is quite a sight to behold. Just before he arrives at Rammaye's mother's house, he orders his *griot* to sing his praises. The *griot* goes about his job with these words: "How handsome he is, Wangrin, mouth of governor Gordane and ears of Mister Governor, governor of the whole territory and chosen from among three hundred and thirty three governors, all of them white whites, whites from Bordeaux and Marseille France…" (Hampâté Bâ 1973: 119-120).[68] The *griot's* elaborate lauding of Wangrin, of his horse, Rammaye Bira's mother, and finally Rammaye Bira herself, goes on for several pages.

In the end, the performance does the trick, the mother is impressed, flattered, and taken unawares, which translates into her welcoming Wangrin with open arms as her son (Hampâté Bâ 1973: 124). Rammaye Bira, in turn, is happy to take on the role as Wangrin's sister, being his confidante, generously gossiping about her time with the French commander. She is, for all we know, the perfect spy for Wangrin. What more could he have asked for? Wangrin is satisfied and proceeds to make use of the new intimacy he shares with his new sister. Wangrin shopped to his advantage, being an insider to local sentiments and imagination.

French administrators were in fact actively hindered from learning the language of the place they were working at by a system of rotation that kept them in one place for only a very short period of time, we have seen (Lawrance et al. 2006: 10; Spittler 1973: 211). A situation certainly advantageous to their African interpreters, who thus became the French commanders' "mouths": "Being somebody's mouth is being his most precious auxiliary, also the most indispensable. One could neither talk nor nourish oneself without one's mouth" (Hampâté Bâ 1973: 370).[69] Wangrin in the end, we know it, dies a pauper in spite of all his elegant, forceful, repeated, and strategic acting.

[68] "Qu'il est beau, Wangrin, bouche du commandant Gordane et oreilles de Moussé Goforner [Monsieur le gouverneur] de tout le territoire choisi entre trois cent trente-trois Goforners, tous blancs-blancs, blancs de la France de Bordeaux et de Marseille...."

[69] "Être la bouche de quelqu'un, c'est être son auxiliaire le plus précieux et le plus indispensable. On ne saurait ni parler ni se sustenter sans la bouche".

Today, court interpreters in Bobo must sing their own praises. Jean, who officiated as the court interpreter at Bobo's commercial court until 2017, had repeatedly insisted that he carries out his work with love, he knows that he is saving innocent defendants from incomprehensible legal procedures, and from their own panic at being at court. He occupies a special place in this thesis because it is these following words of his that have inspired me to look at the court interpreter's work: "In fact", Jean told me, "it is a question of will. When you interpret, you are saving an innocent who does not understand something. I have become a professional, you see, I can go to any court and immediately start interpreting" (Bobo 18 March 2015).

This indeed happened once. The appeals court needed an interpreter for a day of *criminel* trials on short notice, Salomon having called in sick. The court asked Jean to come translate. He agreed. But, unfortunately, Jean was not used to penal trials, Salomon told me (Bobo, 14 June 2016). The court had to suspend the day of trials due to the substitute interpreter Jean not being up for the challenge – he was clearly in over his head. Jean, however, is undeterred and feels that, after years of practice, you build up a vocabulary, "it's repetitive, there's nothing new that will come surprise you, with experience, you acquire a vocabulary" (Bobo 18 March 2015).[70] He can do any kind of case, be it fraud, or *flagrant délit*. These, of course, are not two different kinds of infractions committed, but fraud is a crime and *flagrant délit* is a legal term denoting that an offender has been caught in the act of committing a crime. Even though Jean seems to be somewhat confused about his terminology and knowledge of the law, he feels that interpreting is easy, you do not need to study it in order to carry out this profession.

This statement is not unique to Jean. I was told on different occasions and by different interpreters that indeed, interpreting was not something you needed to learn, you just do it because it is easy. We have seen above how Antoine remarks that taking notes while interpreting is unprofessional. You do not need to learn interpreting, you just do it, he as well told me. In general, all court interpreters insisted on portraying themselves as being in control of the translating process, be this by having good command of the vocabulary needed, endless stamina to cope with the long working hours translating, or by their attitude towards their work assisting innocent defendants. But we have also seen that in practice, on the ground, it

[70] "C'est répétitif, il n'y a pas de nouveau qui va venir, avec l'expérience, on acquiert le vocabulaire".

is judges who control trials – not only rules and procedure, but also what and how much is translated how.

Working in this environment, the state-run justice or legal sector in general and the individual courthouse in particular, which is the territory of the educational elite, the experts, professionals are expected to carry themselves in a way corresponding to their position in society as civil servants, representatives of the state. Above, we have discussed how Bourdieu shows up the tacit nature of embodied modes of how people carry themselves, adding to Goffman's personal front an aura of naturalness, of going about one's business as a well-formed and conforming member of society. Judges and prosecutors carry themselves in ways fulfilling expectations that are not formalized as written rules, but have been inscribed in their very bodies (Bourdieu 2013: 15). The front that court personnel show is characterized by a certain solemnity, a dignified, measured way of behavior, put on to make visible that they are in control of themselves and of court procedure (see also Alou 2006: 168 on the notion of solemnity and its impact on the atmosphere at court).

The men working as interpreters might not be part of the educational elite, they are nevertheless part of the environment of the educational elite by simple virtue of working in the courthouse. So, they too adapt their behavior and the way they present themselves to this environment by emulating their superiors' way of carrying themselves. Along with judges and prosecutors, they perceive themselves as being bearers of highly delicate information. *Je travaille dans la discrétion*, as Antoine had expressed it, meaning, first, that he works in a highly delicate environment, and, secondly, that he works discreetly, not revealing anything.

Goffman can again assist us in understanding this situation. Particularly outsiders are vulnerable to believe in appearances and that the appearances put on show by actors correspond to actual (social) reality. Outsiders are also expected to interact accordingly with actors. Goffman describes this impression management actors engage in like this:

> Society is organized on the principle that any individual who possesses certain social characteristics has a moral right to expect that others will value and treat him in a correspondingly appropriate way. Connected with this principle is a second, namely that an individual who implicitly or explicitly signifies that he has certain social characteristics ought to have this claim honoured by others and ought in fact to be what he claims he is. In consequence, when an individual projects a definition of the situation and thereby makes an implicit or explicit claim to be a person of a particular kind, he automatically exerts a moral demand upon the others, obliging them to value

> and treat him in the manner that persons of his kind have a right to expect. He also implicitly forgoes all claims to be things he does not appear to be and hence forgoes the treatment that would be appropriate for such individuals. The others find, then, that the individual has informed them as to what is and as to what they *ought* to see as the 'is' (Goffman 1956: 6; italics in original).

Hence Goffman finds that this kind of impression management goes both ways. While interpreters present themselves as part of the educational elite by acting as bearers of highly delicate information they cannot reveal in an interview, recorded or not, the outsiders receiving this performance need to act as if they have understood and respect this projection of the interpreter's definition of the self. Indeed, it can get difficult to tell who is who (Förster 2002). And it can get difficult to get any information of importance.

Goffman's explanation, Antoine's discreet working attitude, and Jean's feeling of saving innocents, ties back into our earlier discussion on the educational elite putting on a show of its status in society. Interpreters act in the environment of the educational elite in ways they deem conducive to their role as court interpreters as they see it and particularly in how they wish to be perceived and consequently interacted with by outsiders. They cannot put on the same show as the "real" individuals of the educational elite, the judges and prosecutors, because they lack the material means to do so. But they can try and they can put on a show of attitude, comportment, of how they carry themselves. They can bluff (Newell 2012).

Let me illustrate this through a meeting and an informal talk I had with Jean at the commercial court. We had an early morning appointment at the courthouse, where our talk took place:

> *We had agreed to meet at the commercial court early, before Jean had to start interpreting at today's trials. I arrive at the courthouse before him and stand around outside, chatting with the guards, being offered a glass of hot, strong, sweet tea. Very nice. Eventually Jean arrives in his large, white four-wheel drive. Fake fur lines the dashboard. A clerk emerges from the courthouse and rushes to go meet Jean at the car, opening his car door for him and grabbing his briefcase. The court president's state-issued car is smaller. I am left with no words at this ostentatious show of Jean's. Then he walks towards me, smiling and full of exclamations of "cela fait deux jours,* it's

been a while*". Dressed sharply, white shoes and all, and definitely ready for business. We go to his office, a smaller one than last time, but still his own office. Air conditioning. Later, I get a ride into town with him, which is great because the commercial court is far off the beaten track and I would have had to walk for quite a while until I found a taxi (Bobo 22 February 2017).*

What is the deeper meaning of Jean's feeling of saving innocents and of his portrayal of himself in this showy kind of way? The "underling" (Newell 2012: 17) who rushed to carry his briefcase conformed to the way Jean aspired to be treated as, namely as an important insider person. This is Goffman's moral obligation demanded by Newell's bluffer and, in this case, given to him.

On the one hand this show is surely an expression of Jean seeing himself – and wanting to be seen – as important to the court, as indispensable, both of him being personally indispensable as Jean, and also of the fact that as an interpreter he is indispensable to the court as it is run by the state *fonctionnaires* today. And it is an expression of how he wishes his standing as court interpreter be perceived, namely as an important insider, who helps innocent defendants in their trials. Unfortunately, Jean was not in Bobo anymore when I came back for my final wrap-up research in early 2018, having to hide out from the law for some reason or other, his colleagues told me. Nobody knew where he was.

Jean's bluffing, the performance of their selves all court interpreters put on, corresponds to or at least emulates in its aesthetics how the educational elite present themselves. The interpreters model their behavior and appearance on the educational elite they work with daily, believing their representation of themselves to be successful. They model their own performance on how they see judges, prosecutors, or court clerks carrying themselves.

Appearance is more important than success, Newell says in his study of young *bluffeurs* in Abidjan, showing how they put on a show of wealth that often leaves them despondent (Newell 2012). At the same time, the educational elite in Newell's study puts on a show as well. Even if they cannot afford to do so anymore, they continue, because appearance is much more important than success, material attributes are displayed as a *façade* to keep up an appearance of wealth, status, well-being also if this should not be the case (any more) (Newell 2012: 158). And all those *bluffeurs* who would like to be seen as being

part of the (educational) elite, conform to these aesthetic material prerequisites.

All four men whose interpreting work I could follow at the courts in Bobo have strikingly different backgrounds and itineraries. Yet they all share how they act out their role as indispensable court interpreters, how they present themselves visibly – dress, composure, how they act in the courthouse and during trials – and in how they talk about their jobs. In 2013, the state of Burkina Faso decided to put into action the law ratified in 1999 and Antoine was asked to interpret during the *correctionel* type of penal trails. He continues to be employed as *agent de liaison*. Salomon had gotten a job as secretary at the penal court during a government campaign offering struggling young people opportunities in state-run (administrative) offices. He, too, was asked to interpret penal trials in 2013 and has subsequently been hired as interpreter for the *criminel* type trials at the appeals court. Both Antoine and Salomon have been interpreting ever since.

Towards the end of my long stay in Bobo, it was early 2017, Antoine and I have agreed to meet at the *maquis* Choco, a bar hang-out, situated right off of Place du Cinquantenaire, half-way between where we both live. I set out for our 11am meeting with mixed feelings, expecting Antoine to not be very communicative, having consistently and eloquently detoured any information of substance as well as a recorded interview with me earlier. The *maquis* was quiet and empty of customers at this time of day, the owner busying himself in our vicinity, we, his only clients, being left to talk over a beer and a soft drink, a *sucrerie*.

Antoine's story:

Antoine is the oldest of the four court interpreters working in Bobo, born in 1973. He has been translating *correctionnel* trials since 2010 – or 2013, he is not sure about the exact date. He tells me that he left school after taking the BEPC exam, the third-year middle school diploma.[71] He was looking for something to do work-wise, not quite knowing what to do or where to start looking, *je me cherchais*. He eventually set up his own business, selling animal feed and music cassettes, a job he actually liked doing. But his sister-in-law did not agree, she wanted to "get him off the streets", he says. She is employed at the Ministry of Justice in Ouagadougou and had arranged for him to get the job as chauffeur for the president of the

[71] In the French school system, secondary school takes seven years; after four years you can sit for the BEPC, *brevet d'études du premier cycle*, and then go on for another three years and take the *baccalauréat*, the BAC, the final high school diploma that allows entry to tertiary education.

appeals court in Bobo that the court was hiring for. He started there in 2000. The then president of the appeals court, judge M.D., liked Antoine so much that he not only employed him as his personal chauffeur, but as a live-in personal chauffeur, Antoine tells me.

So far, Antoine continues his narration, he never took a vacation, he was only sick for four days in all the years he has been working at the TGI. I am a bit taken aback with this information, not knowing if he is showing off his robust health or his willingness to commit unreservedly to his job or both. The two trial days, Tuesday and Friday, are very long and tough working days. He has become indispensable to the court, he says, always being available is thus a must, in his view. Antoine does not know what the court would do if he were not here. In any case, you get used to the long working days, he adds.

Then he tells me that his former boss, judge M.D. president of the appeals court, treated him like a son. He read and explained the penal code to him so that today, Antoine has to sometimes explain legal vocabulary to judges in Jula. Antoine had been working as the court president's chauffeur for a number of years, being called to drive the president or his family also on weekends, when president M.D. unexpectedly died. Antoine as his chauffeur needed a new occupation. So, the court hired him as an *agent de liaison*. At some point the court asked him to interpret during trials, first at the appeals court and later at its twin institution, the TGI. He was the first individual in Bobo to work as court interpreter, Antoine insists I know. He goes on to tell me how he could, now, take a *concours* exam to enter ENAM and study to become a court scribe. If he wanted to. But he does not want to, he concludes his story, being quite satisfied with his job as court interpreter (Bobo 15 February 2017).

HENCE, as mentioned earlier, being indispensable seems to be a feeling, court interpreters in Bobo share; even though they have very different backgrounds and itineraries, all four interpreters show certain similar characteristics in the presentation of themselves. Just like Jean expresses his being indispensable by portraying himself as saving innocents, Antoine employs a similar strategy of indispensability, namely by never absenting himself from work.

Antoine had told me of his career possibilities and the *concours* exam he could take if he wanted to. But since he could not abandon the court and not translate, he was, for now, not going to take that *concours*. Antoine, too, likes to present himself as an "aspiring elite", it seems. And since he also works within this space occupied by the educational elite without himself belonging to that social-educational category, he can emphasize other points, like for

example that he might, indeed, be part of the educational elite one day by taking the *concours* exam to train as court scribe.

When I introduced myself and my research to judges and prosecutors, explaining that I was interested in the court interpreter's work, they all launched, unasked, into a speech of how unreliable interpreters were, how often they needed to be corrected, how difficult it all was, and how important it was that they were there nevertheless. But you could not trust them. Concretely, Antoine was the object of quite some frustration on the side of presiding judge D.M, whose trials Antoine translates. The judge was upset about how Antoine constantly got up and left the room as soon as a trial was not conducted in Jula.

> *Judge D.M. tells me that he does not appreciate it at all when the interpreter gets sent around all the time – when he presides trials, he does not do that. The interpreter is there to interpret and needs to stay put. In reality, every time somebody needs to leave the room to use the toilet for example, the trial has to be suspended for 5 minutes. He also does not like it when the interpreter, when a case is in French, just gets up and leaves. He should stay in his place all the time. In fact, we had had such a case today (TGI 5 December 2016).*

Why does he do that? *Il m'énerve*, judge D.M. said. Another judge in the trio led by presiding judge D.M. – and the only female judge to work at the TGI during my work there – lamented the fact that she constantly needed to correct his Jula translations and quite often also his French. And really, he never needed to explain Jula legal vocabulary to her, she tells me (judge N.N. 16 February 2017).

Roth had researched young people's lives, hopes, and possibilities in Bobo and the changing generational relationships that have developed over the past 30-odd years. A different topic, but she has insights that connect to the way court interpreters present themselves in their daily working lives. Roth had written about peoples' ideas concerning their future that lacked a connection to reality: "Even those who have visited primary school only for a few years think in categories of public service jobs and a reliably paid monthly

salary" (Roth 2011: 12).[72] Antoine, just like all court interpreters, might have succeeded in attaining these goals to a certain point – they are all public or civil servants earning a reliably paid monthly salary – but without the accompanying recognition, respect, and higher salary they would like. We have assessed the discrepancy in the way interpreters present themselves and the way their superiors treat and see them with Goffman's ideas on impression management, combined with Newell's explanations on bluffing. Let us look some more on how interpreters see themselves.

The Ministry of Justice and by extension the Burkinabe state do not seem to realize just how important their work is, Paul tells me as well. We are sitting outside the *cour d'appel* courthouse in a small, somewhat dilapidated kiosk, discussing interpreters' jobs and working conditions. I try to keep up writing while Paul and Salomon tell me about their working days. Paul and I have ordered *sucreries*, Salomon a bottle of water, which is much healthier, he comments. Just this last year, 2016, all court interpreters working in Burkina Faso – one woman among them – had organized and met for a first time. Once again, Salomon and Paul were telling me that indeed, they might all be asked or hired to interpret during trials, but they still did not have either an official status as court interpreters, nor an adequate salary corresponding to the work they do, they feel. Paul then tells me about himself.

Paul's story:

Paul was born in 1985 and raised in Côte d'Ivoire. His family decided to move back to Burkina Faso, where they are originally from, in 2005 or 2006, he is not sure about the exact year. And he was not thrilled about having to leave Côte d'Ivoire for Burkina Faso, the country of his parents which he had nothing to do with – a real backward place, too, he laments. He was a high school student at the time they migrated back here and once installed in Bobo, he continued his education at a local high school, one of two large, formal or government *lycées*, situated directly next to each other in a popular neighborhood in Bobo. He used to write a lot, poetry and also fiction, Paul tells me.

Once, the *lycée* held a writing competition for the visit of President Blaise Compaoré to Bobo. Students studying in the last two years were asked to produce a poem. He won this competition, as he had expected, he continues telling me. He was very happy because the

[72] "Selbst wer die Primarschule nur ein paar Jahre besucht hat, denkt in Kategorien von Funktionärsarbeit und Monatslohn als Wunschziel".

winner was supposed to get a motorcycle as prize. But when he went to the ceremony on foot, a girl was asked to read the winning text, his text, as her own! She got the moto as prize for best poem. Paul protested to the school and his teachers, who knew the poem was his, also complained. But all he got was to be kicked out of school.

He subsequently went to another *lycée*, a private school, but flunked his high school diploma, the BAC – again under strange circumstances. His grades, he says, were all between 15 and 20 – 20 being the highest grade in the Burkinabe grading scale – which would have easily allowed him to pass the BAC exams. Yet for reasons incomprehensible to him, the school denied him this final diploma, entry ticket to university, and produced a report card, where all grades were solid sevens. So, not giving up, he went to a private university in Bobo to study project management.

Now, in retrospect, he tells me all this with slight irony or even a bit of sarcasm. He laughs, saying that he still likes to write and has many ideas and projects in mind. He is an autodidact, having always been interested in learning new things. Actually, he had wanted to go to Boston to study petrochemistry. He knows a lot, he tells me, surprising people with his detailed knowledge. Concluding, he tells me that he assists people in writing their MA thesis. (Bobo 6 February 2017)

PAUL had come to work for the justice system because his older sister was the head scribe, the *greffier en chef* at the Juvenile Court in Bobo, the *tribunal pour enfants*. In 2011, she asked him to come help her out with her job, working as her volunteer secretary. He accepted. In 2013, the Burkinabe state started recruiting interpreters for the courts, giving priority to those people who were already working within the justice system. So Paul applied and got the job as interpreter at the TI.

What all four of them have in common – Paul, Antoine, Salomon, and Jean – is that they are civil servants and that they work in a job environment for which a *concours* exam is mandatory and in a job they have not trained for. In any other working environment this might not make a huge difference, but being in a hierarchically organized government institution in which bureaucrats mutually treat one another according to the rung they occupy in the hierarchy, interpreters' position is, at best, undefinable.

Not having an officially recognized status, they have no lobby, no *corps des interprètes* to represent them and no law or rule states how much they should earn. The interpreting job

they do is not remunerated. They are paid for what they are hired for, as secretaries or liaison clerks/officers. And even Salomon, who is designated as court interpreter of the prosecuting agency (*interprète judiciaire au parquet*) on his state-issued professional card (*carte professionnelle*) earns the same amount as they all do. This means that in practical terms, his designation as court interpreter has no impact on his salary or standing within the court hierarchy. In fact, it seems rather strange that he is officially designated as court interpreter by his employer, who, at the same time, does not recognize this job category. He earns the same salary and is asked to perform the same tasks as his colleague Antoine employed as *agent de liaison*, a clerk whose work is precisely this – to run errands in the courthouse and between different institutions across town.

Paul then tells me, seconded by Salomon, that they get 88'000 F CFA a month. A ridiculous amount, Paul drily adds. Who can feed a family of four on that? Paul is married and has twins, who are now (end 2016) just one year old. Luckily, his wife has a job as civil servant and thus earns a regular stipend as well. Salomon nods, saying that they certainly do not earn the salary the recognition of their status would bring them. The court scribes working at the court, for example, earned more than double their salary, they tell me, 200'000 F CFA per month. Chief clerks, the *greffiers en chef* who have studied law at university and with their *maîtrise* passed the concours to go to ENAM, even get 300'000 F CFA.

What are 88'000 F CFA a month?

Antoine, Salomon, and also Paul live in communal compounds. The rent they pay for their one or two *chambre salon* costs an average of 4000 F CFA per month. Of course, they participate in the bills the compound as a whole gets every month (water, electricity, and garbage – which amounts to maybe another 3000 F CFA all together).

Here are some examples in a non-exhaustive list of what basic acquisitions cost on average:

→ One 25kg sack of rice costs 15'000 F CFA, the lowest quality, and the same amount of corn costs the same.

→ Feeding a family of four and all the other family members and live-in help necessitates going to the market for the daily food shopping, which amounts to about 2000 F CFA per day, so about 60'000 F CFA per month.

→ A pair of jeans with the *yugu yugu* sellers, the second-hand clothes imported from Europe, cost 3000 F CFA, a shirt 1500 F CFA.

→ A nicely made suit at a tailor's comes to 40'000 F CFA, costs for the material not included; an outfit made for a woman costs, always depending on how elaborate it is, an average of 5000 F CFA.
→ Having your clothes ironed comes to about 500 F CFA per month.
→ Of course, school fees need to be paid – another 10'000 to 30'000 F CFA per child and year depending on the school.
→ And then there are the costs for gasoline for the moto, public transport being as good as nonexistent in Bobo. At least 2000 F CFA per month on gasoline is needed to get around town, to work and back every day and on errands.

Getting by on 88'000 F CFA is, mildly put, a challenge.

Salomon, born in Côte d'Ivoire in 1979, always appears at court dressed to the finest, often in a suit, and with a body-hugging turtleneck shirt under his suit. I start sweating by just looking at him. Sometimes he wears *prêt à porter*, store-bought shirts with cufflinks. Often entirely in black. He translates from and into Jula, Moore, and French at the appeals court, there where the really tough *criminel* cases are tried: gang rape, murder, or armed highway holdups with deaths. The courtroom at the appeals court has no air conditioning, the fans just barely move. Salomon has just recently bought himself a car. This does not only assure his independent mobility around town, but also conveys upon him a certain status. His court interpreter colleagues are envious, they even begrudge him his car, he tells me, not having saved up enough to be able to afford a car of their own. Maybe they do not have a driver's license, he speculates. But he does not care about their petty bickering, Salomon continues to tell me, he worked and saved diligently in order to afford the small four-wheel drive.

Salomon, just like Jean and Antoine, earns some extra money by working outside the courthouse. He takes on interpreting jobs at different notary and lawyers' offices in town, has built quite a good, stable list of clients who regularly ask for his services. This is why he needs a car, he explains, so he can easily and quickly get around town when he is not at the appeals court. Without this extra work, he says, his salary from his work at the court would not get him and his growing family very far. In fact, he, too, is happy that his wife earns a decent salary in a government office, doing the finances there.

While waiting for the official recognition of their status by the state that hired them, interpreters share the wish to present themselves as part of the social culture predominant in the courthouse they work in. They present and perform themselves in quite similar, yet different type of ways, and they share the conviction that they are indispensable to the courts

they work for. This feeling of indispensability is accompanied, variously, by Jean, the former church interpreter, using a religious rhetoric when describing his work at court, going about his work with love, helping innocent defendants to get a fair trial. The way he appears at court, he could be the court's president himself – flashy, big car, shiny shoes, briefcase. Now Jean had to save himself from the authorities, it is speculated, having disappeared without a trace.

Antoine elaborates on his potential future as a court scribe by presenting himself as a future *diplomé*. He thus insists on coming across in a way that does not correspond to reality, adding some glamour or importance to his everyday work as liaison officer at the courthouse. Antoine also likes to stress the fact that he never needed to take a day off because of sickness. Or a vacation, for that matter. Without him, the court could not hold trials, he is convinced. He is indispensable.

Paul, again, is the undiscovered genius, continuously fighting for recognition of his many talents as writer, creator of projects, poet. He likes to present himself as a leader, putting the blame for his multiple failures in the Burkinabe school system on the unfair treatment he was repeatedly submitted to by school authorities. And Salomon, always impeccably dressed, punctual, efficient, likes to repeat that he consults all kinds of dictionaries to prepare himself for trials and that he is interested in continued education. He presents himself as the intellectual, taking notes while translating, informing himself on interpreting techniques on the internet, as he tells me. He is the only interpreter to consistently translate in the first person, which might attest to his self-organized continued education in interpreting techniques.

These performances clash with the position all court interpreters occupy in the court hierarchy and the way they are treated and talked about by the civil servants working at the two courts. The official court hierarchy is difficult to penetrate, we have seen. The disdain the interpreters get from the other civil servants at court comes across in how judges and prosecutors speak about them. Antoine has no office space at the TGI, where the court scribes refused to let him have a desk in their (large) office.

Bintou, who has not studied law at university, but instead went to ENAM for her schooling for many years, building one diploma on another, until she is now head court scribe, nevertheless gets looked down upon by her colleagues in the same position, but who went to university, as she had told me. To conclude this discussion of internal court standing, the four

court interpreters in Bobo have all attained the status of public servant by a short cut, they are, in a certain sense, impostors, having neither studied law nor climbed the career ladder from the inside through *concours* exams like Bintou did. The civil servants they work with let them know this every day.

4.6. Conclusion on the *Amtssprache* and on language use at court

How can the arguments of the state, more specifically of judges and prosecutors, and of court interpreters – in short, of the actors in the courtroom, be assessed in regard to French? Arguments that support and maintain historically grown language practices, which are anchored in a bureaucratic-administrative system of injustice? What arguments support the idea that the justice system and thus the state maintains and perpetuates these language practices? And how do bureaucratic processes, which sanction the hiring of an untrained interpreter as a public servant, influence interpretation during trials?

What we seek to understand is how legitimation of inequity occurs. After independence, standard French was promoted as a tool for "uniting the nation" (Newell 2012: 157; see also Bidima 1997: 59 on how the many African languages present on the territory of nation states constituted an obstacle for national unity). At the same time and from the beginning of colonization, French was imposed to make hierarchical relations clear. French also always signified relations of superiority and inferiority. On the one hand, then, Antoine and his interpreter colleagues make explicit that the system as it is run today – with and in standard French – is kept up and running precisely *because of* or *thanks to* their work as interpreters. On the other hand, their attitude towards their work and the presentation of themselves – being indispensable, on the in-side of delicate information – also makes explicit that none of the court interpreters nor the state itself question how the system is run nor the fact that only because it is run in this way do they all have this job interpreting in the first place.

Hence, the explanatory framework used by both judges and interpreters for translational processes perpetuates the status quo – it supports the continued use of standard French at court which, in turn, assures that the power (im)balance and how the justice system is made to work remain as they are. And even though, during a very short time since Burkina Faso's independence from France in 1960, Burkinabe French was the standard

for trials, these revolutionary ideas were quickly erased and rectified in the successor regime. The political reality and situation was quite a different one in Sankara's TPR trials.

There, the main defendants were high ranking officials having worked within or for the government the Sankarists had just overthrown. The revolutionaries wanted to bring these officials to justice whom they accused for having embezzled funds belonging to the people. These high-ranking officials, members of the (educational) elite of Haute Volta, should use Burkinabe French in their trial so that everybody could follow. But after Sankara's assassination in 1987, the successor regime eliminated all ideas, the format, and procedure, pertaining to the TPR trials. The period between 1987 and 1991 was even baptized "Rectification Period"; it revoked and annulled all texts describing the TPR trials and brought the administration of all state affairs back to the way they had been handled before the revolution. Standard French became, again, the language of trials as we find it today.

So how can we assess actors' arguments in support of the system as it is? We have established – and will elaborate on in the next chapter – that to keep things as they are, defendants are constructed as guilty by judges. Interpreters participate in this construction. It is a construction that follows an appropriation of legal procedure to the technical-material possibilities available, but also to the personal preferences of powerful actors. These personal preferences might be there, but the educational elite or the experts can only go as far as the boundaries the Ministry of Justice imposes on them. The strategic level, so to speak. Defendants' cases are classified as *flagrante delicto* cases to stay manageable within the system as it is.

Not that interpreters have much choice, we have seen, their translational work is controlled by judges who, first, decide when, what, and how they must translate, and, secondly, speak Jula. For reasons of hierarchy, we cannot designate the relationship between judges and interpreters as collaborative; interpreters participate, they do not collaborate. The concept of collaboration implies that there is an equality in the relationship, a presupposed symmetry of relations between actors, which is not the case here. Thus, interpreters participate in the construction of guilty defendants.

Yet there is more to it than that. Beyond this well-established association between authoritarianism and the law, we have seen that the professional ideology the bureaucrats at court subscribe to includes a strict adherence to codified rules and procedure, an unquestioning exaltation or what Le Roy calls the fetishization of the codified text (Le Roy

1997: 313) – or, in Eades' words, we have seen it, an obsessive adherence to a specific format of trials (Eades 2000: 181 and 2003: 125). The vocabulary both Eades and Le Roy use to describe how judges work – obsessive, fetishization – brings to light the importance accorded the written text in the justice system. Bidima as well highlights how in an "occidental penal trial" as we find it in Bobo, procedure takes precedence over the actual case at hand (Bidima 1997 28). A technocratic way of going about work. And because judges feel they need to strictly adhere to codified rules, defendants' cases are classified as *flagrant délit*, standard questions are asked in a standardized form and only allow for answers to be given in a specific, prescribed form. The bureaucrat-experts can go on with their job taking defendants to trial.

Classifying a case as *flagrant délit* is, on the one hand, indeed an effect of bureaucrats' adherence to codified rules, but is also due to the constraints of the logistical and material-technical realities at court. In order to bring these accused offenders to court, they have to be classified as *flagrant délit* cases – or let go. Letting them go would show up the weaknesses of the justice system and thus question judges' and prosecutors' authority as members of the legal order, so that is not an option. Bringing offenders to court as *flagrant délit* cases, however, proves the system as they run it works. Once at court, judges and prosecutors are again in control of the situation. The defendants get constructed as guilty and condemned.

So, the justice system is not just the justice system, but it is that what those working within it make it to be, appropriating it to their possibilities and to their own ends. Using these strict rules, laws, regulations, procedures, so that they can continue working the justice system, is within the interpretative prerogative (*Deutungshoheit*) of judges during trials and beyond. During trials, it is not a big thing for judges since they already are, by definition, the directors of the play. In addition, the overwhelming majority of people being judged in a penal court are illiterate, poor, uneducated young men who cannot and do not dare challenge them (the people or the rules) either. They have no idea as to their rights, they possess neither the social nor the financial capital – the bargaining power – needed to move through the justice system successfully, we have seen. And they have been socialized to submit to those older than themselves or to those who have authority.

Indeed, the justice system is kept upright and running, codified rules/laws and all, because the powerful actors within the system, the experts, can domesticate it such that it remains manageable within their very real (material-technical and personal) possibilities and wishes. Now beyond a description of how powerful actors in the judicial system go about

keeping the system upright and running, securing their own power as they go along, an understanding of the larger picture is warranted, of how it got to be the way it is now. We have seen how the historical circumstances have put power in the hands of the elite.

In fact, before Burkina Faso – Haute Volta – became independent in 1960, political power was transferred to an elite created, formed, and selected by the colonial powers. The representatives of the "doubly foreign" (Le Roy 1997: 312) justice system – in content and form – were and are not interested in improving the system in terms of making it more accessible to citizens. The various government campaigns meant to bring justice closer to the people concentrate on physical proximity, i.e. the creation of more courthouses in all geographical regions. They do not include considerations as to normative and conceptual changes of and in the system. Through the example of rural land ownership we have discussed how the state tries to facilitate legal procedure, to bring it closer to the people, while keeping the system itself – required documents, payments, prerequisites – as it is. The *concepts* of law and procedure are not modified to better fit (include, accommodate) traditional or local ideas of legality and land ownership.

A domestication of the rules and of laws of the actual system – Korbeogo's *domestication cadastrale* – did not take place, a phenomenon we can observe very well in court. The only part that was and continues to be domesticated is procedure within the system as it is run by the experts, while codified rules, laws, and regulations are not. In fact, a domestication of procedure at court allows the experts to continue applying rules, regulations, and laws without modifying them or having to think about them. This way of making the system work also gives birth to the court interpreter, making his job necessary and indispensable. Without him, this way of running the justice system could not work. The interpreters themselves have gotten a unique chance to become *fonctionnaires*, a coveted position in society not easily accessible and not open to all. At court, interpreters are asked to translate during trials, thus making defendants fit the territory of the courtroom according to how the experts run the system of justice. The administration of the state-run bureaucratic system can be kept up and running.

Let us now look at some concrete examples of communication in the courtroom, at courtroom speak, and of interpreted penal trials at the TGI. Judge D.M. and his team will work for the entire day, deciding on pending cases at the TGI. Antoine will translate. That side of the courtroom reserved for the audience is usually full to bursting, people spilling

out into the hallway, trying to squeeze into the doorframe to get a glimpse of the trial they have come to follow. The defendants are already seated, having been brought to court before the arrival of the audience and court members. They are dressed in their own clothes, which reflect their social standing or profession. There is no prison garb at the prison in Bobo, the MACO. Since most defendants are poor, young men, working as menial laborers or animal tenders, often unemployed, their clothes are simple – T-shirt, seldomly a button-down shirt, jeans or cloth pants and flip-flops. Musa as well is wearing his own clothes and is now ready to climb into the truck which will bring him to his trial.

CHAPTER 5: DURING TRIALS – is this Jula?

Prologue – A day in court cont., Part 5

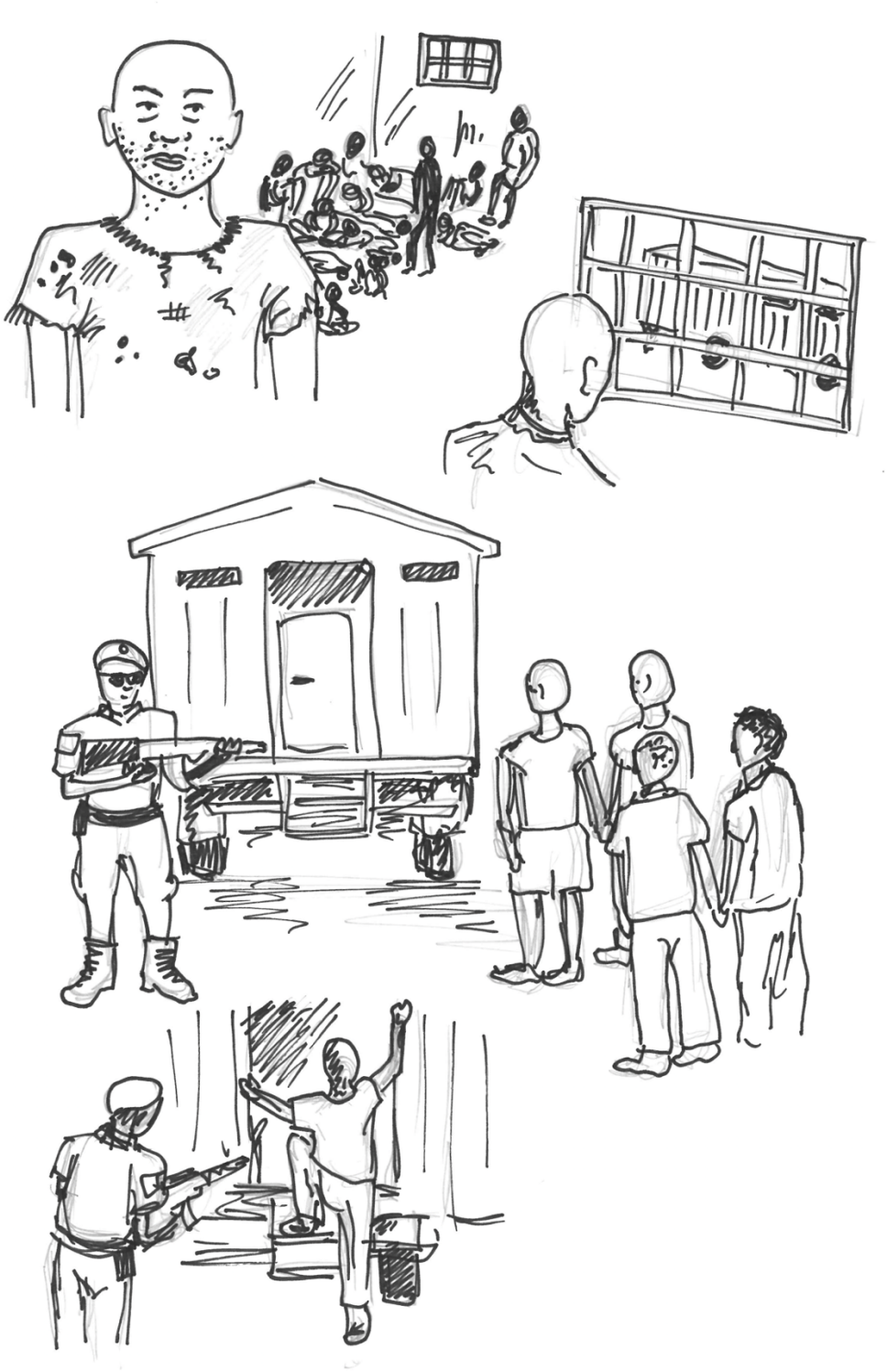
Today, finally, Musa will be brought to court for his trial. He has been waiting for this day for months. Being in jail is no fun, it is cramped, it is difficult to find enough space to stretch out at night. Some prisoners even sleep on the wall surrounding the toilets, considering themselves lucky to have gotten there first. Being in jail is also humiliating, Musa cannot imagine going home to his father's compound, the shame of having to look at his family members, being in their midst, a man accused of stealing, awaiting his trial in prison. He will be treated distantly once he'll go back home, whenever that will be, with the bare minimum of care and attention paid him. And he will also feel ashamed of going outside into the neighborhood, having to greet people he's known all his life, forcing them to acknowledge him, trying to make conversation. These are his thoughts, but for now, he needs to concentrate on his trial.

The penal court begins work a bit after eight, he knows, the prison truck is ready, parked in the large courtyard of the prison. It is a huge, dark blue affair, with only three small interspersed barred openings along the sides. It has a platform in back, closed towards the inside with a heavy iron door, half open towards the outside. MAISON D'ARRET ET DE CORRECTION DE BOBO DIOULASSO is written in large, white letters along the side of the truck. The prisoners have to climb in one by one, he saw that the other day when some of his fellow interned were hauled off to the courthouse.

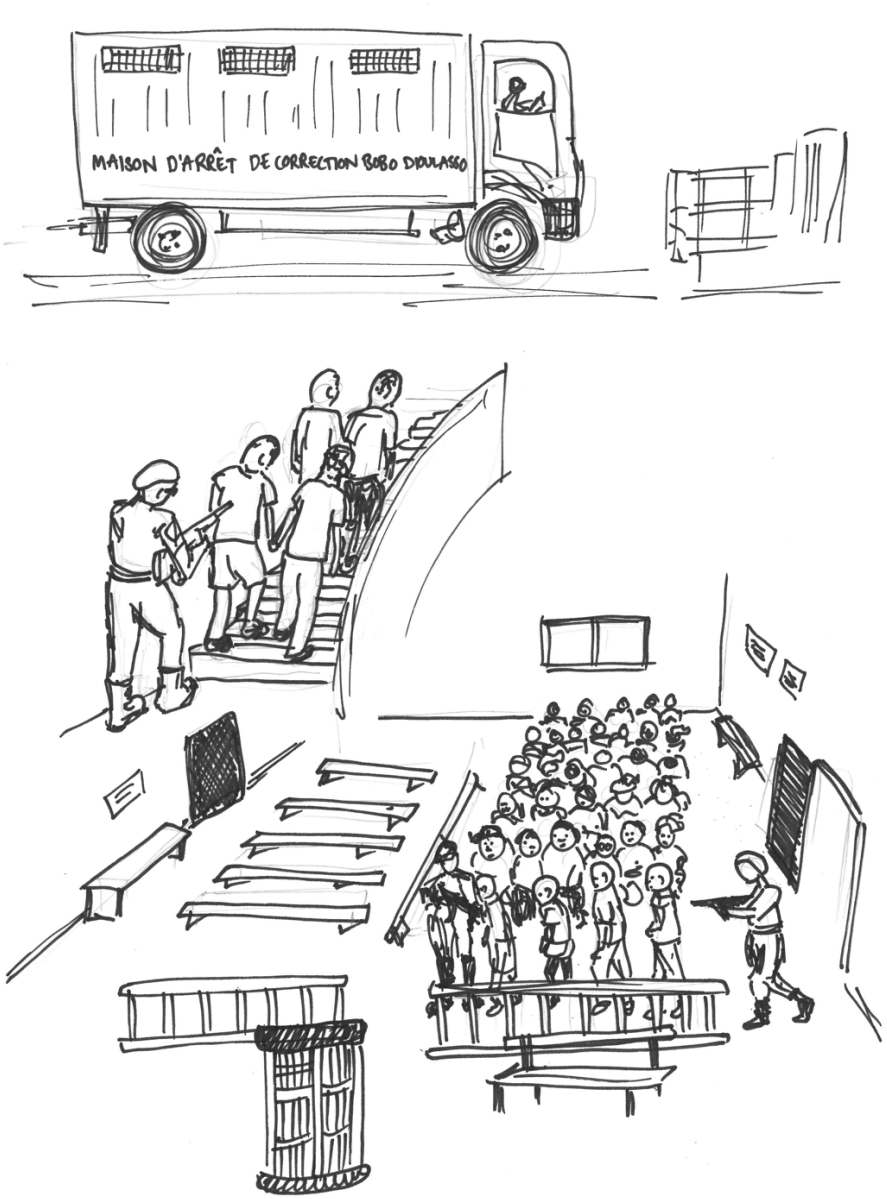
Musa is called together with about twenty other young men by the prison guard. They have to stand in front of the truck, two by two, holding hands. Roll call. Today Honoré is on duty, a nice guy, young like himself. They sometimes talk a bit, but since Honoré does not speak Jula, their conversations are limited to basic French exchanges, greetings, or inquiries as to the other's health. Honoré has only just been transferred to Bobo from Ouagadougou, where he went to police school, finishing his education by specializing as penitentiary guard, as they are called officially.

So now it is Musa's turn to climb into the back of the truck, where another prison guard is standing, machine gun at the ready, hurrying them along. The platform opens into the inside of the truck, secured by double doors with barred windows along the upper edge. The guard will continue standing there after the doors have been locked, riding along on the

platform for the short trip to the courthouse. Two more guards ride in front with the driver. They all carry machine guns.



The ride through town is uneventful and does not take long, in 15 minutes they have arrived at the TGI. There, the procedure is reversed. The prison guards stand outside guarding the back of the truck, Musa and his companions jump down from the platform one by one. Get in line, two by two, hold hands. Flanked by the three prison guards, they are marched up the two floors to the courtroom. Along the way there are a lot of people bustling along the hallways of the courthouse; visitors wait patiently outside the different offices, sitting on long benches along the walls. People squeeze themselves flat to the walls to let the procession of prisoners-cum-defendants pass.



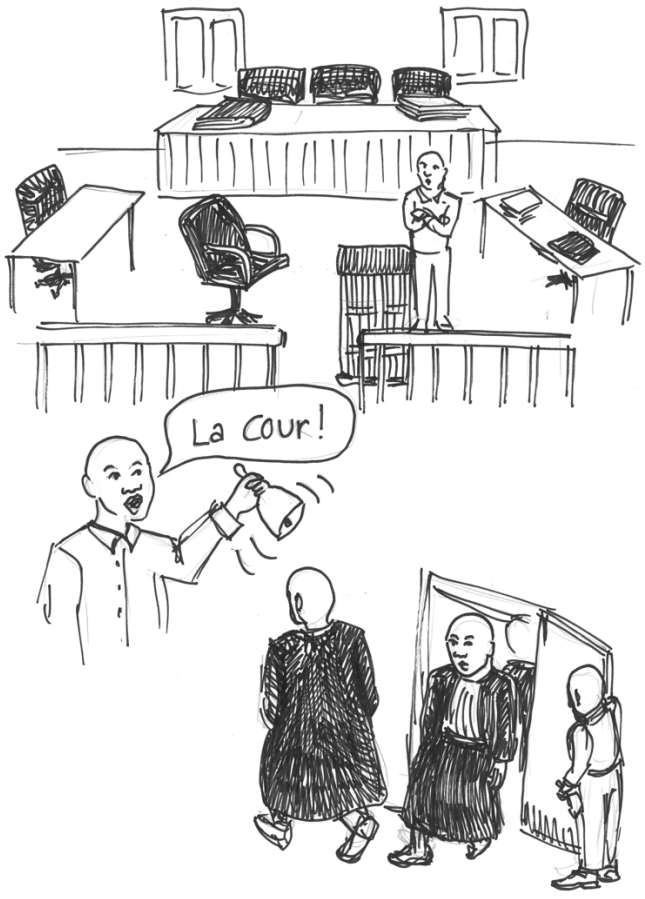
In the courtroom, the prison guards bark orders, gesticulating for them to proceed. Antoine, now still the clerk, shoos them along as well, greets the prison guards, shaking hands, laughing.

2020

Soon they are seated on their designated seats, long benches arranged right next to where the audience sits, but separated by a long, broken bench laid down on its side, marking a one and a half meter corridor from the rows of benches occupied by the audience. Musa sits down, glad to be among his fellow defendants. There are a lot of people in the courtroom, it is crowded. There are written signs stuck to the courtroom walls. Musa cannot read so he does not know that they inform people that cell phones are prohibited in this space. Outside the room, in the hallway, a lot more people stand around, peeping into the courtroom. The prisoners all face an empty space with a huge desk, separated from the rest of the room by a

wooden fence. There another two desks are placed on the right and left side in this separated-off space, with one chair each. Another shorter, free-standing railing or fence is opposite the huge desk dominating the scene. And a free-standing chair is sitting in the middle of this arrangement of furniture. Musa has no clue what to expect. The prison guards are seated along the wall next to the two doors, machine guns on their knees. He sees Honoré sitting on the other side of the room.

Suddenly, a bell is rung. Musa strains his neck to see what is going on. “La cour!”, a male voice calls out loudly, and Musa sees that the man who has shooed them into the room is now holding open the door on Musa’s right. Five men walk in solemnly. They are all wearing a black boubou-type uniform, with wide arms and a white collar down the front in the middle of their chest. Everybody gets up. Noisy shuffling. Three of the five men go sit behind the huge desk, the other two settle themselves behind the smaller desks.



Among the three behind the huge desk, the middle one starts talking. In French. Everybody sits back down. He continues talking, Musa hears names being read off of the folders the black clad man has sitting in front of him. His name, too. Surprisingly, he is the first one to be called to come stand at the free-standing railing facing the huge desk.

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The man sitting on the free-standing chair who had just a minute ago held open the door for the black clad men barks orders at him in Jula to come forward, to hurry, to stand HERE, no hands on the railing. Everybody speaks French and the man who has held open the door is now translating. But he does not always repeat in Jula what the man sitting in the middle said. It is somewhat sporadic, the translation, or so it appears to Musa. In any case all he understands is the Jula part of what is being discussed in front of him.

4.1. Description and discussion of select court cases

When I started this research in June 2016, the penitentiary guards were on strike demanding better working conditions and better pay. Without penitentiary guards, no trials. Magistrates of all orders went on strike as well at the same time, demanding more pay. They eventually got what they wanted, while the prison guards are still waiting for their demands to be satisfied. And all are back at work.

This anecdote illustrates how having enough or no bargaining power can influence decision making processes. Judges and prosecutors have a more visible, powerful, and maybe also a better organized lobby to voice their demands. Like the prison guards, also court interpreters have no lobby in Burkina Faso. In fact, they have even less bargaining power, the government not acknowledging their job category. They are on their own, needing to negotiate their place and position in the courthouse pecking order daily. More importantly, Antoine and Salomon, Jean and Paul are on their own in designing and carrying out the job of translating and interpreting during trials. No training guides them, no manual instructs them on how to go about their job. In addition, they are not aware of any of the glossaries and dictionaries produced for the Jula language and for legal vocabulary. So how do they decide what role to play at court and as employees of the Ministry of Justice? What criteria, both translational and in terms of loyalty, do they follow when translating during trials?

I make sure to get up early so I can eat a copious breakfast because I know I will not be able to eat or drink during trials. Once, the court scribe collapsed in the middle of a trial, probably due to dehydration, court personnel speculated. *Il est souffrant*, I was told, he might suffer from diabetes or a similar ailment that haunts many over forty-year-olds here in Burkina Faso. The trials were adjourned, defendants sent back to prison, and court personnel went back to their offices. The court scribe took some few days off.

The wooden benches for the audience's and defendants' convenience are excruciatingly uncomfortable, consisting of three long, parallel bars of wood with wide gaps in between. It is an anatomic challenge to sit comfortably, however you sit – lower back bent into a slump or overstretching like a seal begging for fish – your ischial bones get stuck in the gap between the wooden bars. So, I was very happy when I was accorded a cloth covered chair. Luckily not one covered in plastic like court personnel occupy. They must sweat copiously, sitting on and leaning into those huge, high backed, fake leather chairs.

That the hierarchical order be visibly established in the courtroom is important to the smooth running of a day of trials. Since court personnel all wear the black robes and can thus not be told apart it becomes even more important to establish a visible who-is-who, according each individual member of the court his or her place. An illustrative anecdote I was told is that some few years ago, a judge refused to accept to sit in a smaller, less impressive chair than his colleagues during trials. His usual chair was broken, an adequate replacement not immediately available. But he made it clear that he would not work under this condition of

degradation, so a chair needed to be found quickly. The presiding judge of the time solved the problem by replacing all three judges' chairs, giving them all the same inferior ones. Cases could resume normally, harmonically, and in hierarchical entente.

The first case opens at a bit after 8am and the day can go on as long as until 6pm. Up to 15 cases can be heard in one working day. Many are adjourned for different reasons, like when not all persons needed for the trial to be held are present or specific documents are missing. With no or only very short breaks and court personnel working a full shift, days can get quite tough. The interpreter works, speaking uninterruptedly, getting a break only when a case is heard in French, which, in Bobo, is about one in four or five cases.

Antoine, the interpreter-cum-clerk, alerts the public to the imminent entrance of the members of the court by submitting the audience to a variety of reprimands before he is satisfied. With a snapping of fingers and an impatient gesture, he signals individual people sitting in the audience to not cross their legs, to sit up straight, take off that hat, and turn off your phone. Bizarrely, I had mentioned it, this last order is stuck to the wall all over the courtroom in writing.

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The court members' entrance is quite a performance. Antoine rings a small hand-held bell and shouts "*La cour!* – The court!", gesturing for everybody in the audience to stand up. Enter the three judges, the prosecutor, the court scribe, who all proceed to settle themselves at their designated places. Bourdieu had remarked that ways of carrying oneself are embedded in one's very body, not only in one's physical postures, but also in the form of mental dispositions (Bourdieu 2013: 10ff). The slow, dignified walk of judges and prosecutors when entering the courtroom is not simply a way of carrying themselves based upon a set of rules or a code of conduct but is the visible result of a complex set of strategies. An important person or a person "of a certain social standing" in Burkinabe society is expected to walk, to carry himself – I was talking to a man – with restraint, not running along, hurrying to an appointment, into the courtroom, or into the building from the parking space.

The interpreter already being there, he, too, goes and sits in his chair, facing the judges' desk and the defendants' railing, his back to the prosecutor. The judges and prosecutor enter the courtroom with measured gait, in a dignified manner of walking, serious look, giving the solemnity of the event about to take place a face. They enter, settle themselves in their seats, and the presiding judge opens the proceedings.

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As usual, the prosecutor makes a speech at the end of the trial, in which he summarizes the case and makes his proposition as to the sentence to be given the defendant. This particular trial had taken almost an hour. The prosecutor's speech is hardly ever translated by the interpreter; sometimes he summarizes it. The only part he must translate, he will later tell

me, is the proposed sentence. And then the final verdict spoken by the presiding judge. It is not clear according to what criteria this has become an unwritten rule, a habit, or a convention for interpreters. Salomon had once explained to me that the reason why the prosecutor's speech does not get translated is that it already is a summary, i.e. what he says in his wrap-up speech has already been said during the case at hand. Salomon himself summarizes only if defendants did not understand, he tells me. How he evaluates this is unclear as well.

This time Antoine translates neither. After the prosecutor's speech, the presiding judge addresses the defendant: "Vous avez donc écouté le procureur – So you have heard the prosecutor" (7 February 2017), which cannot mean anything to this particular defendant because his entire trial had just been translated into Jula. He neither understood the prosecutor's speech nor what the judge had just said to him. Yet this moment is decisive in a trial because now the defendant gets the word. Or, to say it in the judge's words, "He is accorded the last word to defend himself; you're defending yourself in a case you have been saddled with"[73] (judge D.M., 9 February 2017). It is the moment a lawyer would give his plaidoyer.

In the trials I attended, hardly any defendant had the support of a lawyer; defendants practically always defended themselves. Fofana had noted this as well in his empirical study of trials in a small town not far from Bobo. The only defendants who were represented by a lawyer were employees of certain companies such as bus drivers (Fofana 2018: 403) or employees of an editing house. Moreover, procedure is not explained to defendants, they cannot grasp the importance of this moment. The presiding judge simply asks defendants if they have anything to say. This question is crucial, opening up a space for defendants to elaborate, to state their view of the case, to rectify, to justify, to explain. To defend themselves. All they answer, however, is that they have nothing to say or that they are sorry, like now.

In this chapter, I will explore instances of interpretation during trials which are both due to and an outcome of a bureaucratization of court procedure. Or, to express it differently, the justice system and how it is applied on the ground, shows that bureaucratization has taken place. One effect upholding this system has is the presence of the court interpreter.

[73] "Il a la parole en dernier pour se défendre; tu te défends d'un cas qu'on a collé sur toi".

With bureaucratization or a bureaucratic way of going about carrying out work I want to point to the strict adherence to written rules, to an organizational order that is an inherent part of the justice system as the experts present in the courtroom deem it to be. These experts – the three judges and the prosecutor – appropriate or translate these imported rules and procedure according to different criteria, we will see. The space the interpreter has to navigate this system is narrow. His undefined position at court allows no deviance from established rules and procedure. At the same time, interpreters assure that these rules and procedures are implemented and followed.

They are thus both an integral part of the system, making sure it functions as it must, while themselves being constrained to strictly follow prescribed rules, to act within the boundaries they are accorded, like the delimited space of the courtroom during trials. The repetitive feature of all penal trials is visible to the onlooker: the always same vocabulary, the specific legal formulas used, the procedure, the prescribed roles all actors perform, and that all of this is done exclusively in French. We have gotten a first look at that above when we discussed the Goffmanian nature of trials. The script. The immutable nature of these rules – they cannot be changed, skipped, replaced, or ignored – is one reliably repeated feature of all penal trials that the legal professionals present in the courtroom say they must follow.

Yet is it really that straight forward? In the following I will describe select moments of two specific trials. In these we can see how trials are directed by the presiding judge in form and in content. These moments during the two trials illustrate on the one hand the strict adherence to codified procedure by judges and prosecutors and, on the other, how this strict adherence is used as an instrument of power by the director of the trial. As a consequence, it also defines the work of the court interpreter, how he acts or is made to act, and the limits of his action.

What we will look at are two specific instances during the interpreting process. The first one is what I will refer to as aberrant translation and the second one is the way the presiding judge and the interpreter interact. Aberrant translation includes adding or omitting information as well as moralizing or stating a personal opinion by the interpreter. It also refers to the decision taken by the presiding judge to not interfere and demand a correction of a wrongly translated utterance. We remember that the judge speaks Jula and also that the interpreter occupies a nebulous position at the courthouse. During trials, he is part of the acting team by the simple virtue of him being there to interpret.

At any other time, i.e. outside the courtroom and during trials, the interpreter's status at the courthouse and his integration as a member of the team is highly contested among the legal professionals working there, we have seen as well. He is the only person at court who had not gone through either the education or the protracted employment process, particularly the *concours* exam. This, I have mentioned it, is reflected in the position interpreters are accorded or that they occupy in the court hierarchy. And this position at court, again, impacts how they can go about their job translating during trials.

Here, we will look at how the interpreter participates in a trail, how he works and how he interacts with, mostly, the presiding judge. I have chosen two *correctionel* cases for closer analysis. Both have been transcribed from the aforementioned audio recordings by a Jula native speaker, by a Jula expert, and by myself.[74] Both trials took place at the TGI in Bobo, in both cases the interpreter was Antoine, the liaison officer working at the TGI who habitually translates the *correctionel* trials. Both cases are thus representative of all *correctionel* trials held at this TGI; the presiding judge is a Jula native speaker. The reason why I have chosen two *correctionel* trials and none of the *criminel* variety is quite banal.

First of all, *criminel* trials take place only rarely. During the accumulated six months of research in Bobo, I was witness to *criminel* trials (including all penal appeals trials) only on a total of six days and for roughly twenty cases. But more immediately, the only trials I was allowed to record were *correctionel* trials. This in itself might suffice as an explanation, but I believe a second look at the limiting circumstances can be enlightening. Only one out of three judges presiding penal trials – that is, *correctionnel* and *criminel* trials – allowed me to record "his" trials. Judge D.M. had decided for himself that I was to be trusted since my research was purely academic and thus pedagogical and found no objection to audio record trials he presided.

At the same time, however, he did not inform his two colleagues, who conduct the *correctionnel* trials with him. Penal procedure demands that there always be three judges present at penal trials, or simply an uneven number. Judge D.M. did not inform his two colleagues because he did not want to risk them being against the recording, leaving me empty handed, he explained. This in itself shows some leeway is possible in the way he goes

[74] Jula transcriptions and backtranslations into French were done by myself and a nameless Jula speaker with no Jula writing skills in case study 1. Case study 2 was transcribed and back-translated by my colleague, sociolinguist and Jula expert Mamadou Lamine Sanogo from the INSS/CNRST in Ouagadougou.

about interpreting legal laws and procedure. The other judge presiding *correctionnel* trials, judge A.P., did not consent to any kind of recording, neither of trials he presided nor of an interview with him. He was not the only person declining a recorded interview. We have seen that the president of the appeals court had refused me any kind of research, including interviewing the court personnel working at "his" court – and he did not change his mind during the entire two years my research lasted.

So*, criminel* trials, which involve the heavier infractions such as murder, rape, or armed robbery, take place only rarely. They might be, by their very nature, more exciting to follow since there is considerably more at stake. Burkina Faso still knows (but in practice never carries out) the death penalty. And condemned *criminel* offenders can get sentenced to anything running from more than five years to twenty years of imprisonment. During my wrap-up field work of two months at the beginning of 2018, only one day of *criminel* trials took place.

We have seen that the explanation Salomon, the interpreter translating *criminel* trials, suggests is that the Burkinabe state has no money to pay for the lawyers it has recently institutionalized for *criminel* cases. The accused offenders wait for their trial in prison. And since *criminel* cases hardly ever come to trial, these offenders can wait up to 30 years for their trial to take place. Indeed, one of the rare *criminel* cases I attended dated from the early 1990s. The fact of not having any money to pay for the mandatory state lawyer of course does not explain why criminal offence perpetrators have to wait for their trial for such a long period of time since the free lawyer system has been in place only as of 2016 – what happened before that?

Now let us look at specific moments of one *correctionnel* case, which took place at the TGI in Bobo on 24 January 2017. The members of the court enter the courtroom after Antoine rang the bell. The audience is standing. Being a judge, prosecutor, scribe, or other court clerk instills in this civil servant a certain status. This status, in turn, requires these civil servants to carry themselves in a certain way – dignified, solemn, in charge. This is how they enter the courtroom, emerging from the backstage.

Case Study 1 – Le procureur du Faso contre Gaousso Amadou et Sanogo Issa – *The prosecutor of Burkina Faso versus Gausso Amadu and Sanogo Issa* (TGI Bobo Dioulasso, 24 January 2017)

Cast:

Interpreter:	Antoine
Defendants:	Mister Amadu Gausso and Mister Issa Sanogo
Presiding judge/director:	D.M.

Two supporting judges

Prosecutor (*le procureur du Faso*)

Court scribe

On this particular Tuesday, two defendants are standing trial at the TGI, it is the first case of the day. The prosecutor has just finished his speech, proposing to release one defendant on probation and to condemn the other one to five years in prison plus a fine of one million francs CFA (approximately 1660 CHF).[75] The case had taken a long time, it was murky, full of

[75] See www.umrechnung.org/waehrungen-umrechnen/waehrungs-kurs-umrechner.htm, 5 January 2020. See preceding chapter for what an amount in F CFA is worth in daily life. That the condemned will not be able to pay his fine is a given. The question is, rather, why the court continues to impose fines that everybody knows can never be paid; why it continues to adhere to rules that make no sense on the ground.

unclear passages. Now is the defendants' turn to give their point of view, to defend themselves. As codified penal procedure demands, each defendant is addressed singly by the presiding judge, who tells them what sentence the prosecutor has demanded. Antoine translates. Then judge D.M. asks the first defendant – again following penal procedure strictly – what he has to say in his defense.[76] This the interpreter translates simply as "What do you have to say?".[77] Leaving out part of the judge's question by omitting "in your defense", the interpreter actively alters the question – and omits a clue word the defendant could respond to or act upon. Being asked to say something *in his defense* is motivating and gives an idea as to the direction this question is aimed at. Being asked to say something without specification is unclear or confusing at best, it does not invite an answer by giving a hint as to where this answer should or could go. The defendant thus misses his last opportunity to speak up.

Defendants are not informed about procedure and they do not know their rights, as I was repeatedly told by different law personnel such as the presiding judge himself or a lawyer. Both defendants in this case and at this point had nothing to add. Later, however, after the definite sentences had been announced by the presiding judge, after the interpreter had translated these into Jula, one of the two defendants asked to speak.

At this point and according to the codified rules, trial procedure does not provide the opportunity for defendants to speak anymore. He was consequently silenced by a "Non, c'est fini – no, it is finished/done" by the presiding judge, who continued by saying that the defendant had had the opportunity to speak, but now and at this stage, he cannot speak anymore if it is not by appealing the sentence within 15 days. This the interpreter translates as "if you have something to say, go do an appeal in 15 days if you want to".[78] This ends the case.

[76] "Qu'est-ce que vous avez à dire pour votre défense?" (transcript lines 1522-1523, p. 56)
[77] "mu lo b'i fɛ ka fɔ?" (transcript line 1524-1525, p. 56)
[78] "ko ni kuma b'i fɛ, n'a ka d'i ye, o loon ni tile tan ni duuru cɛ, i bi se ka appel kɛ" (transcript line 1572, p. 57)

Let us now look at some more translational instances in this trial, going back a bit in time to the beginning of the trial involving the two men above. They had been accused of different infractions. Mister Gausso is 47 years old, "employed in the commerce sector"[79], and stands accused of having driven a vehicle without a driver's license. The second defendant, Mister Sanogo, apparently committed three infractions, namely of having procured and distributed false currency. Secondly, he wanted to exchange these fake US dollar bills with Mr. Gausso, getting francs CFA from him in exchange by telling him he could easily go to any bank with the US dollars and change them into franc CFA. Mister Sanogo is 28 years of age and has already been in prison once before. The third infraction is that he was using a fake ID.

During their trial, we can observe different moments of imprecise or wrong translation. The presiding judge corrects these false translations only once during the entire trial, which took one hour and 41 minutes. We will see how the judge interrupted the interpreter, repeating himself clearly and loudly and telling Antoine to translate again, faithfully.

[79] "…Vous êtes employé de commerce,…" (transcript line 15, p. 1)

Abbreviations as used in transcripts:

(1)	Number of example
445	line number in transcription
(2:110-111)	example 2, lines 110-111
J	Judge
INT	Interpreter
DEF	Defendant
PR	Prosecutor
P-VIC	Plaintiff-victim
…	Speaker pauses
s'en est débarassé	Loud utterance

(1) 445 J Oui, mais, est-ce qu'il s'en est débarrassé ?
Yes, but did he get rid of it?

446 INT K'i y'i depense kɛ n'a ye wa?
Did you spend these bills?

448 J Non, est-ce qu'il **s'en est débarrassé** ? Dès lors qu'il s'est rendu compte que le cadeau qui lui a été fait était composé de faux billets. Est-ce qu'il s'en est débarrassé ?
*No, did he **get rid** of it? As soon as he realized that the present he had gotten was made up of fake bills, did he get rid of it?*

450 INT ko wakati min o i kun ma bɔ wari nin kalama, i y'a ye ka to yen wa?
As soon as you knew that you had fake bills, did you get rid of them?

452 DEF ɔnhɔn ale la i y'i wari nin ye ka to yen.
Yes, I put them away right then.

454 J Immédiatement?
Immediately?

Why does the judge correct the interpreter specifically here and only here during this trial and not in other instances of wrong translation? Note, too, that the judge intervenes directly, interrupting and correcting Antoine's Jula translation thus making it clear that he understands

and speaks Jula. Let us first look at some other instances of translation during this trial before analyzing these.

The trial had started off unfavorably for the two defendants because presiding judge D.M. had asked the standard initial question as to what language they wanted to use as "Vous parlez français – do you speak French?". The more neutral wording of this question, we have read above, is "Which language do you express yourself in?". By putting French in the position of default language, the judge creates a situation for the defendants, in which they need to justify their non-command of French. Here, both opted for Jula.

There are moments in the trial I have termed aberrant translation. They are an endeavor undertaken by the presiding judge and the interpreter together. The interpreter's choice of words when translating and the judge's choice not to correct and rectify moments of aberrant translation construct specific facts. The interpreter and the judge work to construct a guilty defendant. Let us look at excerpts illustrating the construction of a guilty defendant.

We are at the beginning of the trial, judge D.M. has just completed reading the accusation and his colleague has started the interrogation of the first of the two defendants:

(2)

J	103-104	Est-ce qu'il savait que … qu'il n'avait pas le droit de conduire ce type de véhicule sans permis de conduire ? *Did he know that … that he does not have the right to drive this type of vehicle without a driver's license?*
INT	105-106	Ne ko est-ce qui b'a kalama ko mobili façon nin ti ka boli sans permis ti fɛ wa? *Are you informed that this type of vehicle cannot be driven without a driver's license?*
DEF	108	Bon, n t'a kalama *Well, I don't know that*
INT	109	Ça dépend *It depends*
J	110-111	Il veut nous faire savoir qu'il ne savait pas qu'on doit posséder un permis de conduire … avant de circuler avec un tel engin ?

He wants to make us believe that he did not know that one has to have a driver's license … before circulating with such a vehicle?

INT 112-113 K'i b'a fɛ ka fɔ ko hali ni ma kalan kɛ ko mɔgɔ tɛ lɛ mobili façon nin boli n'a ma permis sɔrɔ wa? E t'a kalama wa?

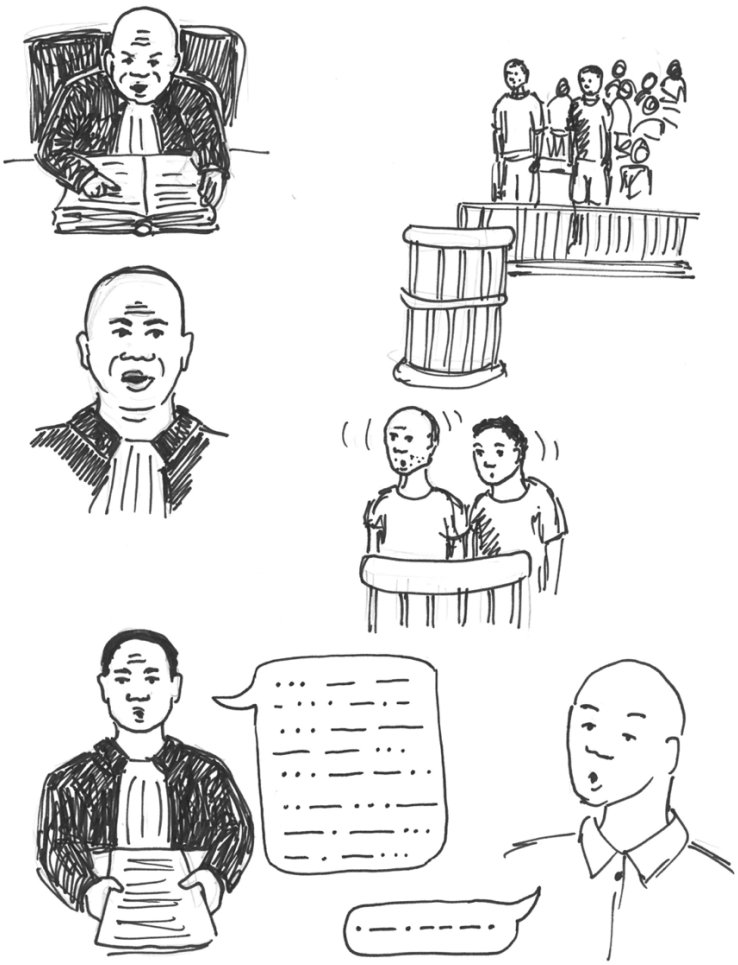
Do you want to say that even if you are illiterate, you do not know that this type of vehicle cannot be driven without a driver's license? You do not know that?

DEF 116 ɔnhɔn, n b'a kalama

Yes, I know it

INT 117 Il dit qu'il ne savait pas

He says that he did not know



The interpreter translates the words of the defendant into French differently (2:109), altering the meaning of the defendant's utterance from the clear statement *I don't know that* to a non-committing *it depends*. The judge (2:110-111) wants to reconfirm this vague answer by asking if the defendant was not aware that he needed a driver's license before driving this type of car. In his translation of the judge's question into Jula for the defendant, Antoine suggests (2:112-113) that the defendant is illiterate instead of unaware of rules as the judge had worded it (2:110-111). And again, the defendant's answer (2:116) gets turned around by Antoine (2:117) translating the contrary of what the defendant had just said. In neither of these three instances of aberrant translation does the judge intervene.

This is one instance of what I see as a construction of facts by both the presiding judge and the interpreter. The fact they construct is a guilty defendant that can be condemned. The strategies employed by judges and the interpreter are, on the one hand, intervening actively in the translation process. At court, the defendant is at a disadvantage by definition: he comes from the outside, he is the only actor on stage with no script, he does not know how to navigate the justice system or his trial, and he speaks no or only minimal French. He is not informed as to procedure. He has no defense lawyer. The interpreter constructs defendants as guilty by translating minimally, wrongly, or not at all. The judge constructs defendants as guilty by not intervening in the translation process, by not asking the interpreter to translate faithfully, and also by how he addresses defendants, we will see shortly.

How do we assess this non-intervention of the judge? We know that he understands Jula, so is he reluctant to repeatedly correct the interpreter because this would make individual trials take even longer and, in addition, would make Antoine lose face if he were constantly corrected? A mere speculation. Following the line of reasoning that a guilty defendant is being actively constructed by the judge and the interpreter, the non-intervention in the translation process by the judge feeds into this argumentation. The defendant's answers are portrayed as inconsistent (2:109) when responding to the repetition of the same question (2:117) and the defendant himself as confused (2:109) and illiterate (2:112-113).

On the one hand, from a legal point of view, it is irrelevant if the judge responds directly to the defendant or waits for the translated version because the written court record is in French, which means the interpreter's words are recorded, not defendants'. The trial logbook constitutes the memory of a trial and together with the defendant's file – equally preserved for posterity in French alone – these are the documents which record a case from

beginning to end and form the basis for a potential future appeal. In this regard it is not interesting what the judge believes or thinks, only that what is written has any legal weight. And that what is kept in writing is the interpreter's translated French version of defendants' utterances. Those he translates, that is, because since the judge speaks and understands Jula, the interpreter translates defendants' utterances into French only rarely; the judge usually answers defendants directly in French. On the other hand, however, it *is* relevant what the judge believes or thinks or wants because his decisions guide how he responds to the defendant and thus influences the direction the trial will take. And it determines what the scribe will put into writing.

We might also ask ourselves how the court scribe carries out his job. It is physically impossible to write as fast as one talks, unless done in stenography, which is not the case at the TGI in Bobo. So how does the court scribe decide what to write, how does he prioritize and sieve out information for the record? What does he deem neglectable and consequently leaves out, and what does he write down and why? Court scribe F.S. explains that he and his colleagues write directly in the *plumitif* during trials. In a neat handwriting and in blue and red ink, court scribes make visible those utterances they highlight as important. How they decide what needs to be written down and what is important in any trial, F.S. tells me, they learn during their training at ENAM. You learn pretty quickly what is important to keep on file and what is negligeable, he says (TGI Bobo 15 December 2016).

That written documents are manipulated along their way from the police station to the courthouse, we have seen with Göpfert. He discusses the position written French is accorded in the gendarmerie in Niger. During a trial, the judge, the interpreter, and the court scribe – and the gendarme who had written the initial report – are working to put defendants behind bars, not to let them go, Göpfert found (2013: 331). They are interested to produce a guilty defendant.

But let us return to the case at hand, because later, again, the interpreter alters the judge's utterance completely:

Judge:	We do not impose any kind of procedure on people, we ask you questions, answer the questions calmly
Interpreter translating:	When you have the word, answer quickly
(lines 842-845)	

Here we could of course say that the judge's statement as to not imposing any kind of procedure on people is ludicrous since the entire trial is choreographed down to the last details. A choreography based on codified law, eternalized in the penal code, and well known to the experts and the interpreter present in the courtroom, but not to defendants. In this instance, the judge wanted to reassure the defendant, who had just said that everything needed to be taken into account (line 839). But the interpreter decided for himself what the judge meant, interpreting the judge's utterance as meaning the defendant should hurry up with his answers.

In another moment of translation, the interpreter adds information, voicing his own, personal opinion:

Judge:	And why have you given it to him?
Interpreter translating:	This is not good, you gave it to him?
(lines 571-572)	

Here, he changed an open "why" question into a closed question, which demands a yes or no answer. He also puts his personal view of the situation into his translation by moralizing – "it is not good" – about what the defendant did.

How do we assess these situations, where the interpreter translates by omitting/adding information, by stating an opinion, or by translating differently or not faithfully? Aberrant translations constituted my working hypothesis before coming to Bobo for an extended period of time to watch penal trials, but in quite a different form, influenced by Jean's statement as to saving innocent defendants. But here we can see that even though Antoine does indeed translate differently, it is hardly to defendants' advantage. How can we assess the intervention or, rather, non-intervention by the judge in aberrant translating instances? As a native Jula speaker, he can control the interpretation process. He does this only once in this particular trial, we have seen.

Before analyzing more closely, let us now see how Musa fared in his trial, which took place at the TGI a week before Mister Gaussu's and Mister Sanogo's case.

Case Study 2 – Le procureur du Faso contre Ganou Moussa – *The prosecutor of Burkina Faso versus Ganu Musa* (TGI Bobo Dioulasso, 17 January 2017)

Cast:

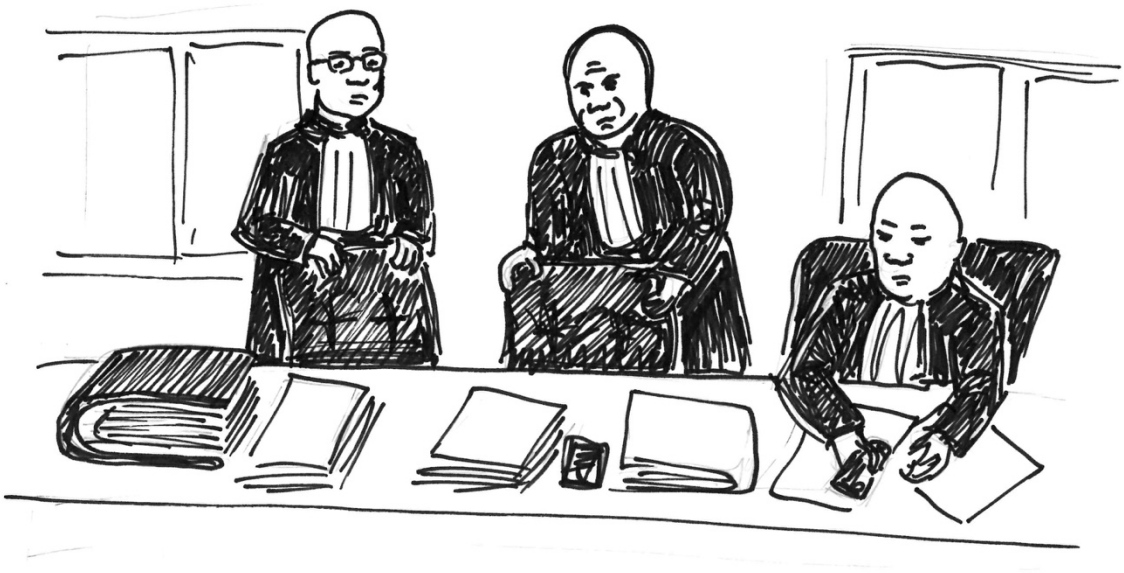
Interpreter:	Antoine
Defendant:	Mister Musa Ganu
Presiding judge/director:	D.M.

Two supporting judges

Prosecutor (*le procureur du Faso*)

Plaintiff/victim

(Court scribe)



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Musa's trial was also the first one of the day, which means he did not have to wait for an unpredictable time for his own case to be decided on, but then had to sit in the courtroom for the remainder of the day, waiting for all other cases to come to an end. Musa is 22 years old, a shepherd, and he stands accused of having stolen two metal bars out of a garage. He says that he had only sat on the bench in front of the garage to take a rest walking home from his mother's. Until this day, Musa had never been accused of any kind of misdemeanor.

He is asked by the presiding judge in what language he expresses himself. Musa opts for Jula. This information, together with his current living address, date of birth, his marital

status, his parents' names, and the question as to having done military service or been decorated, is asked and verified at the beginning of each trial and for every defendant.[80]

Musa's trial has begun. The presiding judge now proceeds to read the accusation from Musa's file. As usual this is a long, arduous speech containing a lot of legalese expressions. Antoine summarizes. To conclude, the judge asks Musa the standard, legally required question if he has understood what he is being accused of and if he accepts the accusation as stated. This is where our description sets in:

(3)	J	29	Est-ce qu'il a compris ? *Did he understand?*
	INT	33-34	O b'a fɛ ka sonɲani la i kan walima – i ma sonɲani kɛ? *One wants to accuse you of theft – did you steal?*
	J		[interrupts interpreter, addressing defendant]
		39-40	Monsieur Ganou, avancez s'il vous plaît. Est-ce qu'il a compris la prévention ? *Mister Ganou, please come forward. Did he understand the accusation?*
	INT	41	U y'i jalaki cogoya min na i y'a faamu? *That what you have been accused of, did you understand it?*
	DEF	43	ɔnhɔn, n y'a faamu *Yes, I have understood*
	J	45	Mais est-ce qu'il reconnait les faits? *But does he accept the accusation?*
	INT	46	Kɛwali minu fɔra tan o b'a yira ko ele lo tun b'a fɛ ka sonɲani kɛ walima ele tɛ ? *The facts as described here show that you wanted to steal or not?*
	DEF	48	cɛn cɛn na, ne nana sigi baan kan le…

[80] These same questions are asked of all defendants, men and women, including the ones pertaining to military service and decoration. Compulsory military conscription for either men or women has been abandoned in Burkina Faso in 1990 (see https://www.globalsecurity.org/military/world/africa/bf-personnel.htm, accessed 20 January 2021). The code of penal procedure, however, dates from 1961, so these questions continue to be asked.

In reality, I just came to sit on the bench

INT 50 Il dit lui il ne reconnait pas les faits

He says that he does not accept the facts

The interpreter translates the questions quite differently from how the judge had worded them. The judge does not intervene and correct. He asks the defendant if he understood (3:29); the interpreter translates by asking a different question (3:33-34), namely if the defendant wanted to steal. Both questions are yes/no questions. If Musa answers "no", responding to the interpreter's Jula question if he wanted to steal, he is theoretically answering the judge's question as to if he understood what he is being accused of. The way Antoine had translated – worded – this question, it becomes a suggestive question, implying that the defendant had the intention of stealing. The interpreter again entirely alters the question asked by the judge. The judge does not correct the interpreter, nor does he ask him to go again, translating more faithfully.

We can see the same translation pattern when the interpreter translates the judge's next question, asking if the defendant accepts the accusation as stated (3:45). The judge is required to ask this question exactly in this way, it is a mandatory part of legal procedure at the beginning of a trial to solicit an answer as to the defendant pleading guilty or not (see also Fofana 2018: 399; Ouattara 2018: 28f). Let us look at this one question.

The interpreter does not translate "does he accept the accusation" into Jula, he again alters the judge's words into something more suggestive, asking Musa if he had wanted to steal or not (3:46). A yes answer means, legally, the defendant accepts the facts as stated and thus pleads guilty. But Musa's answer is that all he was doing was sitting on the bench (3:48). He does not oblige the court by saying either yes or no. Antoine translates this utterance by Musa again incorrectly as "he says that he does not accept the facts", which is not what Musa had stated, and legally means that Musa pleads not guilty – a fact/situation Musa is unaware of.

In theory, pleading not guilty complicates matters because it means you do not go along with what the prosecutor has suggested, which would make for a more lenient sentence. Pleading not guilty means you have to have access to a good defense, usually a legal professional such as a lawyer, hoping to reduce the sentence the court will give you. Like the majority of defendants at the TGI in Bobo, Musa has no lawyer. Let us get back to Musa's

trial because Antoine had also introduced Musa's statement with a "he says that", using the third person.

It is not a matter of not adhering to generally agreed upon interpretation standards, like not translating in the third person, of interpreting standards developed in the global North. Antoine has never been trained as an interpreter and is thus not necessarily aware of these interpreting conventions in use elsewhere (see Lebese 2015 or Kiguru 2007, 2014 on South African and Kenyan court interpreters, respectively, having to rely on training developed for interpreters in the global North). And even if he were aware of interpreting conventions here or there, the fact I wish to draw attention to is Antoine's translational style. It differs when he translates the court from when translating those coming from the outside.

Antoine has the habit of translating plaintiffs' or victims' and defendants' utterances from Jula back into French in the third person, as seen here (3:50). Instead of translating Musa's statement as he had uttered it, namely "… I just came to sit on the bench", Antoine says "he says that he does not accept the facts". Not only did he translate the entire utterance wrongly, he does so in the third person and by introducing his translation with a "he says

that". This might not be the best instance to show up this aspect of Antoine's translation style, but since it has now come up, we can look at it.

This translational pattern is observable only in Antoine's translations of those actors in a trial that come from the outside – plaintiffs and more commonly defendants. Many of their utterances involving their first-person accounts are translated with the introductory "he says that". To quantify: there were 76 instances where Antoine translated Musa's or the plaintiff's utterances into French for the court. Of these 76 translational instances, 35 were translations into French of Musa during interrogation by the judge. And of these 35 translations, 20 were in this "othering" style, so more than half.

Judges' and prosecutors' utterances, by contrast, Antoine renders as if they themselves had spoken Jula. This translational style Antoine employs – first person for the civil servants working for/at the court, third person for those coming to the court from the outside – I will refer to as "othering", making somebody into an outsider. Defendants are outsiders to the court(room), they do not belong. On the one hand, they need to be made to fit the courtroom by being translated into French. But at the same time and by one aspect in this translation into French that makes them fit, defendants are also being "othered" – marked as not belonging and as being outsiders. It can also be read as Antoine associating himself with the judge, siding with the court or feeling compelled to do so as an employee of this court. His feelings of loyalty towards his employer can be expressed by him siding with the institution that has commissioned his services as interpreter.

But yet, the defendant himself is not aware of being othered since he does not understand French. The translation into French is for the court's benefit, who, we know, does not really need this translation since the presiding judge is fluent in Jula (see also Ouattara 2018: 40 on the interpreter not translating for the judge, who understands the language of

the defendant). We have also seen that defendants' Jula utterances are not consistently translated into French. But when Antoine does translate, for whom is the French translation meant? One answer that seems plausible is that it is for the court record, the logbook.

Some last examples from Musa's trial illustrate how Antoine aberrantly translates Musa's statements into French and how he "others" Musa:

(4) DEF 97-98 bon, muru tun ti ne bolo… dɔ lo yi muru bila ne kɔrɔ, k'olu bi ne sɔgɔ. Ko ne tun b'a fɛ ka bare nin sonɲa.
I did not have a knife in my hand. Somebody put it by my side saying that they will beat me. That I wanted to steal the metal bar there.

INT 101 Il a déclaré qu'on a pris un couteau contre lui dans l'intention de le poignarder…
He says that they used a knife against him with the intention of hitting him…

…

DEF 138 Koo min tɛmɛna ne ti olu lɔn, o kama lo ne ma sigi.
Since I did not know them, this is the reason why I did not sit down with them.

INT 140 Il dit qu'il ne les connait pas
He says he does not know them.

…

DEF 205 Parce que a yi n gɛn le. N lɔra ka to kuma na.
He chased me and I stopped to be able to talk to him.

INT 207 Il m'a pourchassé. Il dit que lui s'est arrêté pour échanger un peu avec lui.
He chased me. He says that he stopped to talk a bit with him.

…

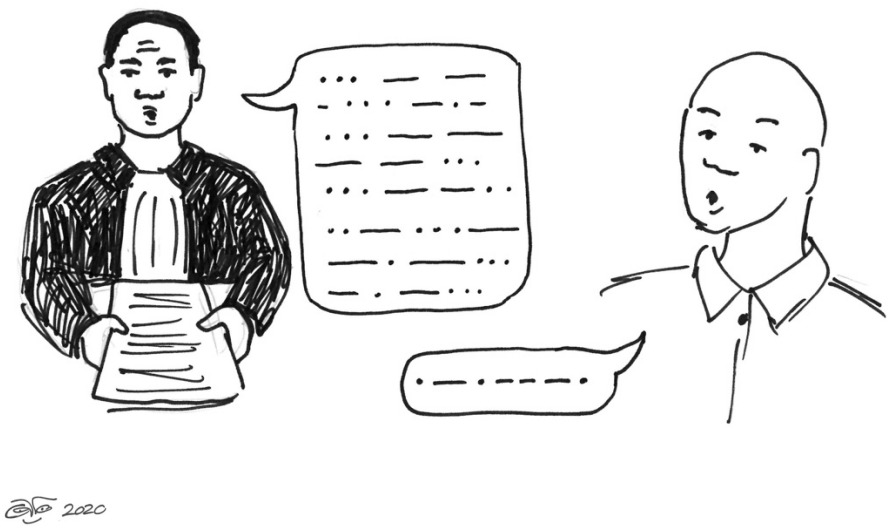
DEF 352 Non! ko n sigɛnna le. Dusukundimi bi n na, n sigɛnna le. N lɔra ka lafiɲɛ dɔɔni pour que n bi taga soo quoi.

No! I was tired. I suffer from heart burn, I was really tired. I stopped to relax a bit so that I could go home.

INT 356 Lui, il est souffrant, il s'est reposé et s'est levé après rentré à la maison.

He, he is a bit sickish, he relaxed and got up to then go home.

Antoine decides to shorten or even summarize Musa's explanation (4:97-98), but by translating in this way (4:101) he paints a picture for the written court record that distorts the actual story as Musa told it. This also leaves out half of what Musa said. It goes on along these same lines of aberrant translation all through Musa's interrogation (4:138). The "othering" instances, too, can be clearly heard and constitute the majority of Antoine's renderings of Musa's statements (4: 101; 4:140; 4:356).



Musa will get released on the benefit of the doubt, so we can let him go. But now, the plaintiff-victim – the proprietor of the garage Musa supposedly wanted to steal the metal bars from – can give his version of what had happened. He was woken up at one or two in the morning by a phone call, he cannot recall the exact hour. The guardian hired to keep an eye on his garage called him, asking him to come and check, saying that there was a man here who wanted to steal some stuff out of the garage. The plaintiff tells his side of the story in Jula, Antoine translates.

(5) P-VIC 373 la, n tagara sisan…

I went there at that moment…

INT 375 Je me suis rendu sur les lieux…

I got there

P-VIC 376 ka taga a sɔrɔ, demisɛnw b'a bugɔra. A lanin lo duguma.

I found that some kids [adolescents] were hitting him. He was lying on the ground

INT 378 Il était couché à terre.

He was lying on the ground.

…

P-VIC 592-593 bon, komi mɔgɔ minu tun b'a bugɔra nin, olu tora k'a fɔ ko muru lo tun b'a bolo, ko a tagara k'a bi taga nigɛ ta…

When I got there, they were hitting him and saying that he had a knife in his hand, that he had come to steal metal…

INT 596 Qu'il avait un couteau sur lui quoi.

That he had a knife on him.

PR 598 Il avait un couteau sur lui ?

He had a knife on him?

P-VIC 599 Bon, o kɔ i yi muru yira ne na ko muru…

Well, they showed me a knife and that knife…

INT 600 On m'a montré le couteau…

I was shown the knife…

The interpreter leaves out half of the plaintiff-victim's utterance (P-VIC, 5:376) in his translation (5:378). The plaintiff-victim had given a lot more information as to what was happening when he arrived at his garage. Musa was not simply lying on the ground, as the interpreter suggested (5:378), he had been beaten up by some kids and as a consequence was lying there. It is the shortened translated version, however, that will be written down and preserved. Antoine does not translate the victim's utterance in its entirety, he only renders the second half of his sentence, leaving a listener with no Jula skills perplexed as to why the defendant was lying on the ground. Of course, the judge has heard and understood the entire sentence; the written protocol, however, will only retain the interpreter's utterances.

Antoine again leaves out half the wording (5:596) of the plaintiff's utterance (5:592-593), translating suggestively by focusing on only one part of the narration, namely when the kids' told the plaintiff that the defendant had carried a knife – no mention is made in the translation that the defendant was being beaten up. This same pattern of translation continues when the prosecutor (PR) interrogates the plaintiff:

(6) cont.	PR	621	He… C'est quel genre de barre de fer que vous avez dans votre garage? *Hmm… What type of metal bar do you have in your garage?*
	INT	622	Ko nɛgɛ façon juman lo a tun b'a fɛ k'a sonɲa? *What type of metal bar did he want to steal?*

Again, this is a suggestive translation (6:622), making the defendant into a thief when all the prosecutor wanted to know (6:621) was what kind of metal bars the plaintiff had in his garage.

But Musa was released on the benefit of the doubt. This decision both the presiding judge and the prosecutor alike seem not to appreciate much, however. Their job is to put people behind bars, not to let them walk. After the case is closed, they send Musa off with some last remarks:

(7)	J1	725-727	Alors le tribunal […] publiquement, contradictoirement en matière correctionnelle et en premier ressort, relaxe Ganou Moussa au bénéfice du doute, condamne le ministère public aux dépenses… *So the court ?? publicly and contradictorily in this correctionnel trial and in first resort, acquits Musa because of the benefit of the doubt and condemns the Ministry of Justice to cover all expenses…*
	J2		[interrupts] whispering
	J1	727-728	… oh, condamne le trésor public au dépenses. *… oh, the public treasury to cover expenses.*
	J2		*addressing Musa*
		729	Merci c'est votre travail, vous allez revenir ici. *Thank you this is your job, you will be back here.*

INT	730-731	Tribunal y'a yira k'a fɔ wo. K'i jalakira cogoya min na nin. Sigasiga be yen. Sigasiga nin kɔsɔn, o y'i labila. I bina taga soo. I y'a faamu wa? *The court has shown that there are doubts as to your fault and because of that you are released. You can go home. Did you understand?*
DEF	734	N y'a faamu. *I have understood*
PR		*addressing Musa*
	736-737	Aujourd'hui on vous a laissé, mais c'est sûr que vous allez revenir, c'est votre travail, vous allez revenir ici *Today we released you, but it's sure that you will come back, this is your job, you will come back here.*
J2	738	Ok bonne journée à vous. *Ok have a good day.*

Releasing a defendant is not the goal of a trial; condemning them to a prison sentence is proof of a functioning justice apparatus. Having to let Musa go was commented on by both the presiding judge and the prosecutor. Judges and prosecutors regularly engage in this type of talking down to defendants, not only when defendants are released.

Here are some select excerpts from my diary, from the early days sitting in on trials at the TGI (all from trials on 18 November 2016):

- the defendant is a *lycéen*, a high school student, so the judge tells him, that as an intelligent person, he should know that you do not steal stuff
- this defendant gets called *terroriste* by the prosecutor because he is a repeating offender
- the prosecutor tells the defendant that he is indeed a smart guy because he waited for the 5 years of his probation to be up in order to start his business of stealing again

and from later on during my research in Bobo:

- When you'll get out [in 5 years] and will continue on this road, you will experience real sentences raining down on you here (judge to defendant, 6 December 2016)

- Just come back here after the 5 years, we will triple your prison sentence [81]

Judges and prosecutors talk in this way to those coming into the courtroom from the outside, mainly to defendants. This way of addressing outsiders is part of a more encompassing type of talk I have designated as courtroom speak.

The excerpts we have looked at here include different aberrant translations – wrong renderings, omitting – and what I have called the othering of defendants. As an interpreter, Antoine's action arena (his *Spielraum*) is limited to the space of the courtroom and the two days a week penal trials are held. During trials, his translations are controlled by the presiding judge, a Jula speaker and the director of the play. It is the director of any play who establishes the limits of the artistic freedom of the acting team; the director decides who says what how, when, and to whom (see also Fofana 2018: 406 on how judges determine who can speak when and on coordinating communication between the four people involved).

So, Antoine's translations, his entire job as an interpreter, are a reflection of the justice system and of how the experts make it function. These experts, we have seen, are themselves a product of the system having trained at the state-run institution ENAM. They come both with the system and at the same time, they are an integral part of it. It is a closed circuit, a system that reproduces itself. The job of the experts, as legal professionals, includes an insistence on strictly keeping to codified rules and procedures. In this, their interpretative freedom is limited as well; a choice of language seems not to be an option. Rules and procedure might prescribe how trials are to be held, which, in turn, includes they be held in French. This fact makes the interpreter necessary. But within the boundaries of these rules, the experts do have some freedom of choice.

Decisions as to how and which rules to follow when is a decision up to the director, the presiding judge. The form a trial takes is up to the judge-director. One symptom of the French legal system – civil law as imported and practiced in Burkina Faso – is based on written, codified paragraphs/laws, which means cases are decided upon according to codified rules alone; precedent is not taken into account. The court does not keep an archive (neither digitally nor as hard copy), each similar case is theoretically the same and as such decided on

[81] "Quand vous sortez et vous continuez dans cette voie, vous allez voir les vraies peines tomber ici" and "Vous avez qu'à revenir ici après les 5 ans, on va tripler la peine" (TGI, 6 December 2016). The earlier excerpts are not given in their original French version here because they are not part of the audio recorded trials.

with the same verdict. This means presiding judges have the freedom of decision as to how to conduct a trial and thus can influence its outcome.

Courtroom speak itself is a bureaucratic construction. It leaves very little maneuvering space for legal professionals, but it does leave some. Where judges and prosecutors can become creative is in the interpretation and subsequent application of the codified, i.e. the written rules and regulations. Also the work of the court interpreter during penal trials, how he can translate, the fact that he is present in the first place, and how he interacts with judges, is symptomatic of an ongoing bureaucratization of the justice system and of judges' decisions. More immediately, the interpreter's work shows us how powerful actors construct courtroom speak, be these powerful actors themselves or those emulating or modeling their behavior on them. The court interpreter thus is essential to the way the experts make the justice system work. He and his work translating language secures the experts' position of power at court. And because they are in this position of power, the experts can bend – adapt, domesticate – the organizational order of the justice system so that it can function locally, while at the same time securing their powerful position. All this bending they do within the bounds of existing bureaucratic legal rules and within the closed circuit of the justice system.

4.2. Conclusion: The art of administering and administrating justice

Historically, Europeans, the *tubabu*, needed interpreter-translators to communicate with the populations they colonized. Administration of the justice system, the bureaucracy that comes with it, legal procedure, codified rules, and definition of jobs and careers are all modelled on the French system of justice. We have seen that civil servants working in state administered jobs are colloquially referred to as *tubabubaarakelaw*, as whites, Europeans, or French – in short, as people carrying out a European person's job, while the job in a state institution itself is a *tubabubaara*.

According to Bidima, African political and intellectual elites, to the latter of which we count the experts of the justice system, despise traditional ways of meting out justice, instead preferring a rigid, western idea of the law, codifying everything (Bidima 1997: 9; see also Le Roy 1997: 317). So, in this sense, they indeed are *tubabubaarakelaw*. All civil servants are an integral part of the state's justice system which they run. Certain civil servants function as experts, in charge of the form a legal service takes, but also bound to follow a strict regime.

Adhering to or ignoring rules is thus the prerogative of the experts and at the same time a manifestation of how they make the legal system work. We remember the refusal of one court's president to allow me access to the court he presides because I am a spy, according to his rationalization. Another manifestation of how the justice system is made to function while showing that it works, is putting defendants behind bars. This goal is attained through the communicative construction of a guilty defendant by the presiding judge and the interpreter.

Thus the French justice system in its local appropriation is upheld the way it is by the experts because, on the one hand, it provides the source to legitimize their position at court and all the freedom of decision-making that comes with this position as experts. Being part of the educational elite, they are fluent in French, an attribute their clients – everyday citizens, defendants, and all those coming to the court from the outside – do not share for the most part. Of course, judges and prosecutors will shop for that institution which supports and consolidates their position of power – and what serves them better than the French language? Only they can use it with ease; particularly legal language is their prerogative.

On the other hand, however, the French language in its standard form (Halaoui calls it "academic" form, Halaoui 2002: 348) is an integral part of the Burkinabe justice system as it is today. The official language has been imposed also on its experts by the system, not by any codified legal regulation (Halaoui 2002: 350). So the experts as well are, to a certain degree, victims of a machinery bigger than them. But differently than all other civil servants and particularly all outsiders, experts have a certain interpretive freedom on how to direct trials.

This encounter between the highly formalized institution of the court and everyday citizens is, in itself, not particularly different in Burkina Faso from situations found throughout the world. In Burkina Faso the French language adds another complicating layer, however, giving it a special touch. The normative assumptions the system lays down for the experts, such as a strict adherence to prescribed procedure and the use of French in the courtroom, are expressed and translated into local or individual norms – when to correct a translation, how to address outsiders – by them, i.e. by those court members who run the justice system at a local level.

In this environment court interpreters act and are made to act. We have established that they are hired for bureaucratic reasons. To keep the system running as it is, it needs the

French language, which, in turn, creates the basis upon which court interpreters are hired and consequently made to act. The interpreters themselves know of their fragile position at court – they are replaceable, their room to act limited, their work controlled by julaphone judges. In their work as court interpreters during trials they do not have much space to maneuver, but nevertheless they can tame their fragile employment conditions through action, for example by translating aberrantly, siding with judges. Aberrant translations – omitting, adding, wrong translation, and moralizing – are not only an expression of a lack of training, but also of the radius of action given them by presiding judges. Outside of actual trials, their taming tactics include the way they present themselves as bearers of important, even secret information, as being irreplaceable, and by using courtroom speak when addressing outsiders, their hierarchical inferiors.

How, then, can the work of the court interpreter contribute to our understanding of the justice system as it is? It is not so much a matter of *how* interpreters translate, of the aberrant translations, but the fact that they do so and are not corrected that is relevant to how the system is made to function and interpreters' role therein. The translational style of the interpreter is relevant to the running of the justice system in so far as he complies with what the presiding judge asks him to do. What keeps the system up and running in its present form are the decisions made by the experts as to how and what Antoine is to translate. That judges do not intervene in the aberrant translations, by correcting them, asking the interpreter to translate again or more faithfully and so on attests to the smooth running of the trial in compliance with the director's way of seeing it.

So, interpreters are made to act. Their options to alter, change, or improve their position at court, their employment conditions such as salary, or their position within the court hierarchy, are restricted to actions outside the courtroom. Here, how interpreters present themselves, how they recount their lives, becomes relevant to how they want to be perceived by their interlocutors. During trials, the expert-bureaucrats in charge of running the justice system do not give interpreters the space to act on their own. Here, the interpreter is a kind of regulator of the bureaucratization process. Through the interpreter's work translating during trials, the judge can continuously adjust and re-calibrate the running of the justice system, making it work according to how he, the expert, can interpret rules. All is on track.

The translational strategies Antoine employs are, on the one hand, a reflection of him not being trained in interpreting. Yet more importantly, they are a reflection of his limited room to maneuver in a space defined by the experts of the justice system who are his immediate superiors. Or, as Fofana puts it, the distortions in the translation are due to the interpreter seeing an exact rendering as insignificant to the outcome of the case, which is, according to him, already decided on (Fofana 2018: 399). By accepting to translate penal trials, Antoine and his colleagues have accepted to ally themselves with presiding judges. At the same time, they give the justice system legitimacy through their regulating presence. And they participate actively in constructing a guilty defendant.

Constructing a guilty defendant who gets sent to prison keeps up the illusion of a fair and functioning constitutional state (*Rechtsstaat*) and a justice system at work and working. The way judges and particularly prosecutors see it, the efficiency of the justice system and the *Rechtsstaat* can be measured in the number of guilty verdicts, by how many defendants get sent to prison. In Bobo's *correctionnel* trials, 80% of all defendants brought to trial were convicted in 2016 and 2017; in 2015 it was 88%.[82] Ratified international Human Rights conventions are fulfilled through the hiring of a court interpreter.

Trials, convictions, and the application of an "intellectual justice", which is elitist and occidental in form (Le Roy 1997: 312), is reminiscent of colonial law, geared towards the state's control of citizens. And today? The distance the state justice system has to its citizens, can at least partly explain the general avoidance of the state-run system of justice by citizens (Le Roy 1997: 311). Also Bidima discusses how the justice system creates a legal and linguistic distance from users, which become psychologically difficult hurdles to overcome (Bidima 1997: 27ff; for a discussion of *distance judiciaire*, see Fofana 2018). Following and watching trials over a long period of time also makes evident that wealthy, well-connected, "important" citizens, i.e. those people with a lot of bargaining power, do not go to trial. They have the means to keep outside of this system (see e.g. Hagberg 2002 and his analysis of the struggle against impunity after the assassination of the investigative journalist Norbert Zongo in 1998;

[82] See chapter 4.3. on the language used in court, *Amtssprache,* and the *Annuaire Statistique 2017 de la Justice*, V4 www.justice.gov.bf/wp-content/uploads/2018/06/ANNUAIRE-STATISTIQUE-2017-DE-LA-JUSTICE-V4.pdf, which gives the total number of defendants appearing in court, organized by their accusation (Unicef March 2018). See also table 1.

Mazzocchetti 2009: 87ff. on the same topic; Bierschenk 2008: 129f on the means needed and tactics employed by "big" people to avoid an accusation or having to go to trial).

The experts of the justice system, the judges and prosecutors, Le Roy calls them "les hauts magistrats", keep the system running (Le Roy 1997: 325). They are the legal actors who appropriate the system, choosing how to implement procedure and form to serve their interests best. Together with their disregard for fundamental aspects of everyday cultural values and practices of defendants brought to trial – cultural values and practices they share – combine to construct guilty defendants, silencing them (Eades 2003: 125).

We have seen instances of downtalking of judges and prosecutors when addressing defendants. Also young judges downtalk to older defendants, a behavior highly inappropriate to the cultural sensitivities of all Burkinabe. We remember the anecdote of the old man who refused to take off his hat in front of the considerably younger judge at his trial. We have also seen moments of aberrant translation, during which the interpreter translates wrongly, omits entire passages, and "others" the defendant, thus doing his part in the construction of a guilty defendant. By downtalking to defendants and by not correcting the interpreter's aberrant translations consistently, judges construct condemnable defendants.

Tacit rules thus exist between the interpreter and the judge pertaining to the role of translation during trials. A discourse of "guilty without a cause" operates among the civil servants at court, who see defendants as being out to cheat them. Particularly judges and prosecutors see defendants as wanting to complicate trial procedure by switching languages in the middle of their trial, by remaining vague, or by saying something different than what they had said before to the prosecutor or to the police (interview judge D.M. 9 February 2017; interview prosecutor H.O. 9 February 2017). For the court, then, seeing defendants as being guilty is taken-for-granted. They are offered a choice of language, but in practice, the presiding judge decides which language will be used during the trial. If the defendant speaks French sufficiently well to the judge's ears, the trial will be held in French.

But the judge is neither a linguist nor a language researcher or teacher. In fact, his evaluation of defendants' language skills has nothing to do with the level of language competence of defendants. Judges deem it propitious that a trial be held in French. It is a strategic decision. We have seen that in the majority of cases, judges ask defendants if they speak French at the beginning of their trial, replacing the more open question of asking them in what language they express themselves in. Like this, defendants who choose Jula are made

to feel wanting or that they need to explain themselves. And any other language but Jula could not be offered anyway. Neither Antoine nor any of the other employees translating trials in Bobo can master all 60-odd languages spoken in Burkina Faso. This is beside the point, however, since Jula is the language of the public space in Bobo that everybody speaks.

What is not beside the point, thought, is being marked as guilty from the outset, the opportunity of defending themselves at the end of their trial is, again, a fake opportunity for defendants. It exists in the void created by the absence of (affordable) lawyers and knowledge of procedure. The opportunity goes by unrecognized because it is not communicated clearly as such by the presiding judge, as we also saw in Fofana's article. Since court interpreters do not translate trial communication consistently, allowing defendants to follow their case in its entirety, being translated by an interpreter is thus a fake opportunity as well. It simulates equality and justice when in fact, defendants are seen as guilty by the court even before their trial, during which they then actively get constructed as guilty. Interpreters thus participate in the process of constructing a guilty defendant. Like this, the organizational order of the justice system is reproduced and perpetuated. The imposed or unfree choice of language is a productive part therein.

Where does this leave court interpreters? Antoine describes himself as an irreplaceable asset to the court, teaching judges legal vocabulary in Jula, while Jean sees himself as the savior of innocent defendants. This attitude towards the interpreting process or towards defendants is not reflected in the way they translate, however. Interpreters do not have much room to maneuver during trials. In presenting themselves in this way, they construct a life world for themselves, however, and with it a context for action. And it allows insights into the way they wish to be seen by outsiders.

In practice, interpreters cannot save innocent defendants, since they act under the control of Jula speaking judges. In addition, they were not hired upon merit or training, but because they were at the right place at the right time. Anybody willing can theoretically be hired as court interpreter, replacing them. The only precondition the state demands of a future court interpreter is a primary school certificate (Ouattara 2018: 46). By presenting themselves as saviors of innocents or as irreplaceable, we can see how actors narrate their practices. The way court interpreters present themselves sheds light on two aspects.

First of all, it illuminates the ways in which they construct contexts for action. In other words, we are looking at how interpreters tame their fragile employment conditions through

action, how they enable themselves to act upon their circumstances. And, secondly, their narration and the way they present their stories, including how they perform themselves, sheds light on how they want to be perceived by their interlocutors. Listening to their stories and watching them act thus provides access to grasp what they aspire for and also the limits imposed on their aspirations.

In some rare cases, defendants get acquitted. Releasing defendants like Musa does not really fit the argument that the system needs to legitimize itself by convicting defendants. But in order to remain believable, the justice system has to show that is works fairly. Some few defendants need to get released. That judges and prosecutors do not like doing this we see in their remarks aimed at the retreating backs of acquitted defendants. Our calculations have shown that in 2017, 80% of defendants got put behind bars in Bobo's *correctionnel* trials. The remaining 20% include not only those that were acquitted like Musa, but also cases that were never brought to trial, cases dropped for different reasons. The art of administering justice thus bears characteristics of an anti-politics machine.

The French language is important to the functioning of the justice system. A complex history underlies this condition and an equally complex machinery keeps it up and running. Certain practical outcomes of a seemingly strict adherence to legal procedure in the highly formalized state institution of the court, are for example when judge D.M. says to the defendant, in French "you have heard what the prosecutor said" at the end of a trial which was just translated into Jula. French is the language of everyday business not only at court, however. In all state-run institutions in Burkina Faso civil servants select French as their daily working language – in schools, all government offices, in politics.

CHAPTER 6: DISCUSSION, OUTLOOK, AND END

Prologue – A day in court, The End

It is 5pm, not all cases have been treated yet, but an end is in sight. Antoine is thirsty, he has been talking all day translating, sitting on his "interpreter's chair". Once again, I am happy that I can leave the courtroom and go drink something. After a judge had once sternly looked at me, slightly shaking his head and making a discreet drinking motion during a trial, I did not dare show my plastic bottle anymore. I adhere to the unwritten rule scrupulously. But Antoine cannot get up right now and leave the room to get a drink. Also the defendant-prisoners are getting a bit fretful, having sat in the hot, stuffy courtroom all day long. And on these damnable benches, hard, uncomfortable, unanatomical. They are shuffling their feet, changing sitting positions, muttering quietly. It has been a long day. When judge D.M. finally hurries the last defendant back to the bench, Antoine is relieved.

2020

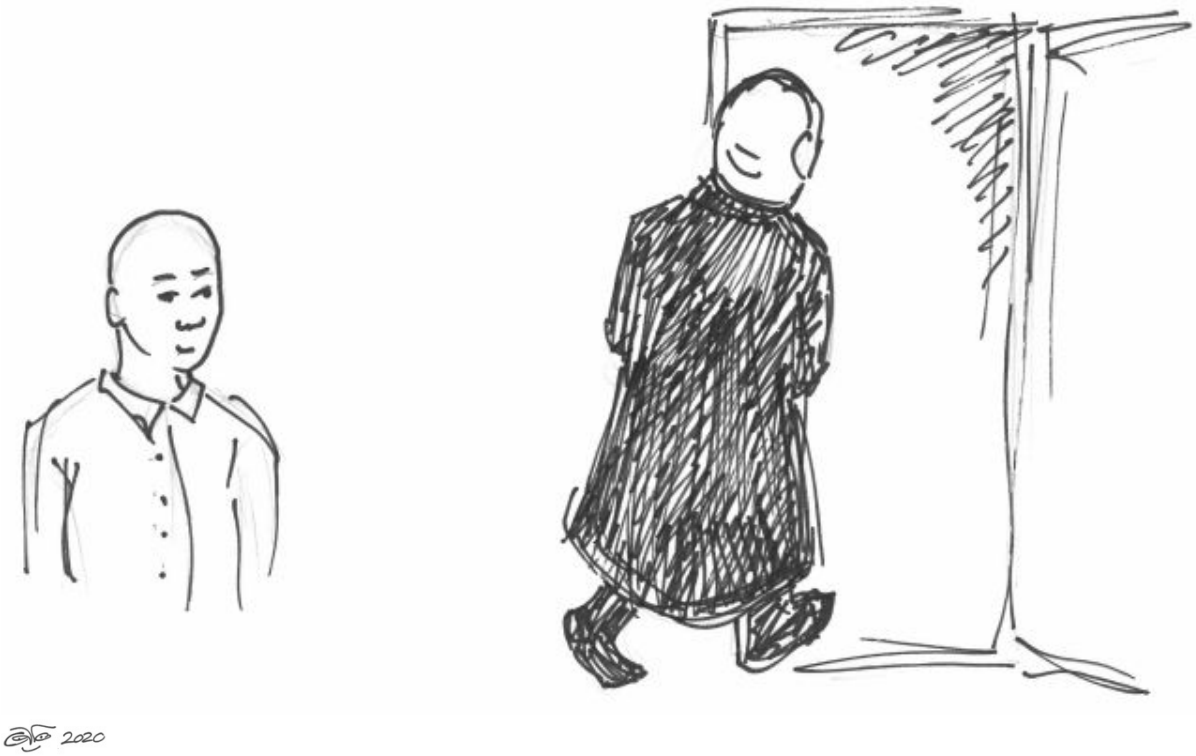
The judges, prosecutor, and court scribe rise from their desks, inspiring Antoine to an upward wave of his hand in the direction of the audience, making them understand that they need to get up for the court's exit. We all get up. When the black clad members of the court have all disappeared through the door reserved for them, leaving files, ledgers, and other documents behind, it is time for Antoine to make sure the audience leaves the room through the door on the other side of the room. He herds them out, again waving his hand at them a bit

impatiently, greeting one person or the other. I, too, leave the courtroom by the pedestrians' door.

Once the courtroom is empty, the penitentiary guards get to work, ordering the defendant-prisoners to stand in rows, two by two, holding hands. Then they are marched back down the two flights to the blue prison truck.

2020

Antoine has some last tasks to do and then he too can leave. All the files, ledgers, and documents need to be brought back to where they belong. Down to the presiding judge's office with the pile of files, back up, grab court scribe's ledger, go down to the ground floor – almost done. I take off in the direction of the main street, happy to be able to stretch and move about. Swap heels for flip flops as soon as the courthouse is behind me. Now I have to find a taxi to take me home, which means a long walk first. Before Antoine will leave the courthouse, he goes by the presiding judge's office to see if anything urgent needs to be taken care of today. But he, too, has already called it a day and gone home. No wonder, it is already past 5pm and the new working day ends at 3pm. *Journée continue* with an early end is a joke during trial days. Finally, he is done. Truly a long day.



His gets his moto which is parked outside the courthouse and joins his interpreter colleagues Paul and Salomon at the little kiosk in front of the appeals court for a drink and a chat before they all head home. A good idea. Settling down, once again sitting, Antoine, Paul, and Salomon tell each other some anecdotes of their working day. It is not easy, *c'est pas facile*, Paul contends. He has been issuing ID cards all day long, getting into discussions with citizens who did not bring along the right kind of documents and had to be sent back home. For this, he sat behind the barred window of the secretaries' office on the ground floor, facing the long line of people patiently waiting their turn outside. Salomon grins – he was in town all day long, translating at a notary's office and then had to go supervise the mechanic fixing his car, or rather making sure the guy finished the job today. The gear shift, a complicated story. And expensive.

The streetlights had just come on, their yellow glow immediately attacked by millions of flying creatures. The dust floating in the air becomes visible in the pale shine. Salomon asks himself if he should go running tonight, with all this dust in the air. The dry season was the worst, but how else stay in shape? He takes a long drink of water, as usual only drinking the store bought, local bottled water. No soft drinks or beer for him. Looking at his colleagues Paul and Antoine, who seem to be engrossed in a discussion of where it was worth buying a

piece of land for cultivation, Salomon sits back and consults his cell phone. It has indeed been a long day.

Discussion

The study you are reading is an account of my search for answers to various questions I had in regard to the work of Jean, Salomon, Antoine, Paul, and their court interpreter colleagues. Throughout Burkina Faso, court interpreters work in a place that largely dictates the conditions of their job, of how they are supposed to go about carrying it out. And why are they there in the first place, anyway? This is, in essence, what this study is about.

By investigating the role of the court interpreter – both an outcome of bureaucratization and a manifestation of this being an ongoing process of the justice system in Burkina Faso – I have explored many and widely different aspects of interpreting work: we went to the colonial past, looking towards Wangrin and Moussa Soumaré for answers to questions pertaining to their role as allies to the colonial endeavor and their part in it. And

together with Omar Sy and the interpreter in old Meka's quest to obtain the promised medal, we have come to realize just how ambiguous their role as colonial interpreters was. They had a lot of room to maneuver as colonial interpreters and a freedom to act court interpreters today do not enjoy.

In order to grasp today's court interpreter in the upholding of the organizational order within the state institution of justice, we also looked at many newer, contemporary ideas on court interpreting. These, mostly linguistic and sociolinguistic publications, cannot fully grasp the very unique nature of court interpreting in Burkina Faso. They have, however, illuminated situations of an uneven distribution of power and knowledge and how these get utilized by those with the most bargaining power to strengthen and perpetuate these existing relations of power. The rationalization that underlies civil servants' upholding the working order within the justice system in Burkina Faso includes employing the services of a court interpreter. He himself, however – we have seen it – has not much space to act on his own. He is nevertheless an indispensable part within the larger rationalization mechanism that allows the experts to work the machine of the justice system in their own best interests. He is one drop of the oil that keeps the machine running without too much squeaking. It still squeaks, and for these places the experts need to continuously find the right kind of oil, i.e. the rationalizations to buttress how they go about running the system. Hence, I have referred to the court interpreter in Burkina Faso as a regulator of the bureaucratization process. All is kept on track.

The justice system as we find it today in Burkina Faso has been modelled on the imported French system of justice. In the definition of hierarchies and posts, of the rules regulating career paths, the codified laws, and legal professionals' education, it is a copy of the French system of justice. The term copy is, of course, an ambiguous and loaded designation, implying a lack of imagination or effort. The determination and resolution that civil servants put into upholding the idea of the original form is considerable and defies the unflattering associations copying implies. Because, while they copy, the bureaucrats who are in charge of running the justice system – at least those who have the administrative power to do so, those whom I have called the expert-bureaucrats – make the system into something new.

This new thing we can see in other domains beyond form. Here, the experts-bureaucrats are not always successful in copying the system. Upholding prescribed procedures becomes challenging. Procedure can include collecting evidence with specialized

technical tools, hiring professionals to carry out lab tests and other forensic investigations, or educating court interpreters to become professional translators into the many Burkinabe languages. The financial and technical means the experts running the Burkinabe justice system can dispose of today do not suffice to carry out these technical investigations. To run the justice system as a French justice system becomes impossible, an ideal strived for. The model needs to be rethought, so they have to become creative.

Indeed, the term model and the verb modelling become visible. The way the Burkinabe justice system is run today in form and procedure, is necessarily a product of its original and also a product of its evolution through time. Now it is that what the experts running it have made it to be (and continue doing so). The one central thing the justice system in any of its forms has always been used for is that it was and is the government or the state's way to secure its administrative power, which it does through how it makes the justice system function.

The justice system that was imported with French conquest and occupation into the territory of western Africa, knew different phases and different forms over the course of its history. Based on decrees and in the absence of settlers, the colonial project was, first, a way to assert the administrative power of the colonizing forces over the territory and peoples they wanted to control. To an increasingly expansive system of courts, the colonial administrators went about securing the support of local dignitaries (or those they believed were dignitaries), allies in the project of the civilizing colonial mission. To this, they added the *indigénat* system in the late 1880s to better secure their power.

The court system and particularly the *indigénat* served as legitimation, as legal basis, for administrators to rule. Once the bureaucrats of the colonial administration realized that it could be opportune to include customary law in the administration of justice, a hectic frenzy broke out in the colonies to collect these "customary laws". In quotes, because, we have seen it, for both Africans and Europeans it was difficult and near impossible to do. This collecting became in turn its own opportunistic mission, allowing the colonial *fonctionnaires* and their African allies alike to choose, interpret, and selectively codify those strands of local custom they could and wanted to identify as law. So, local ways and ideas of conflict solving were taken into account as long as they did not run counter to the project of the French civilizing mission or certain individuals' interests.

Today, the administration and running of the state institution of justice in Burkina Faso is a product both of this history and of the way the experts who run the system have appropriated the copy to their own local needs and ends. Their "civilizing mission" today is to keep this appropriated system up and running, keeping it functionable by adhering to prescribed or codified form and procedure. Also the expert-bureaucrats like the president of the TGI or the judges and prosecutors working there, can only act within the constraints imposed by the larger system. They do, however, have enough leeway to interpret these constraints. They bent, adapt, and domesticate the system both in order to keep it functionable and to fit their own ends and interests. These ends and interests might correspond to the way expert-bureaucrats believe a successful justice system should look like, like by condemning as many defendants as possible. Like this the system itself is shown to work according to its function.

Domestication is discussed, variously, as a process of adaptation or appropriation to local conditions of something that is already there; nothing new is invented or made from scratch. In this case, the appropriation of objects or institutions is done by people who are not familiar or have not been trained to use these objects or institutions. They thus have no preconceived ideas on how to handle and use the things. We remember Beck's often cited diesel motor in the Sudan. The justice system, however, comes as a package deal, replete with rules, regulations, and with its own educative facility, which breeds the expert-bureaucrats, who are also those who appropriate it. It is a system appropriated from the inside. It is a closed circuit.

In fact, first, this state-run school was called ENA and was responsible for the education of all civil servants aspiring to a government job. This is the name those French schools in France have until today that the Burkinabe school is modelled on. The M for *magistrature*, for legal professions, was added later. The legal professional became a bureaucrat educated and trained in-house to administer the state-run system of justice. Bureaucratization at its best. But also a closed circuit allows for creative freedom in the interpretation of rules and regulations, even if this creative freedom be small.

Hence, the French system of justice as it has come to West Africa is today organized in a formal, bureaucratic kind of way based on a specific form of rationalization. One such rationalization is its organization. The organization into professional hierarchies, the running of the institution by its own bureaucrats organized into these hierarchies, and the

classification of work into organizational categories and cases determines the working order. The organizational order provides the template for how the system and all things within have to be handled. An example of this working order would be the disregard for local social sensibilities in the administration of cases, which becomes possible precisely because of the bureaucratic organization of the system: the keeping of files and the organization of cases into classifiable types make the system as a whole manageable. Taking local social sensibilities into account, like for example gerontocratic or age hierarchies, is not part of this rationalization. This is the conflict zone the expert-bureaucrats move in.

This conflict zone the experts encounter in their daily work is the outcome of a long process conceptualized by the colonizing forces and later perpetuated by the leaders of the new independent state. Through formal education a system that has come to western Africa with French colonization and has equally remained French in form, structure, procedure to this day, African allies to the colonial project were bred. At the same time, a protracted process was set in motion, ultimately resulting in what Bidima designates as "mimétisme des 'évolués'", a kind of reproduction or copying of French governmental practices by the African elites (Bidima 1997: 61). Bidima uses the expression in his discussion of the single party system installed in postcolonial African states. The legitimation for a single party made use of the same rhetoric as those lobbying for a single official language to be used in all government run affairs, namely to unite the numerous ethnic groups and languages under the banner of one nation state (see Bidima 1997: 57ff).

Education was at the basis of the colonizers' *mission civilisatrice*, supporting and advancing this civilizing mission. Education was imparted in French, which was positioned as the only language adequate and capable to impart knowledge and content. With short and few exceptions, other languages such as Wolof or Arabic did not last long as languages of instruction in western Africa. African peoples were taught, continue to be taught, and have come to internalize and believe that French alone is capable of transporting knowledge. Today, the expert-bureaucrats working the justice system – and all "évolués" alike – believe that French alone can express the complexities of legal language, form, and procedure. So, the civil servants working the justice system today are educated to run the system within a well-established tradition of rationalization. The figure (Banégas & Varnier 2001) or type (Macamo & Neubert 2008) of the bureaucrat and of the institutional administrator is modelled upon a well-established template.

Through the example of how penal trials are enacted, we can see what the administration of the justice system concretely looks like. The expert-bureaucrats running the system are bred by the internal educative facility ENAM, which makes them into expert-bureaucrats in the first place. Moreover, they are modelled on a system the institution perceives as successful. The society the system operates in is not static, however, creating a dilemma for the bureaucrat-expert. Impulses creating unstable situations are not taken into account in the expert-bureaucrats' education at ENAM. Also the codified rules and regulations upon which the justice system is built and according to which they make it function, has not foreseen any instability in the system. In addition, a script for types not coming out of ENAM has not been conceived of either.

At first, situations of instability as well as undefinable types are difficult to read, to place or classify, a hitherto unheard of situation for the experts-bureaucrats. In order to keep the system running over time, adaptations to unforeseen, new situations becomes necessary on multiple levels. First, impulses coming from outside the system, such as international Human Rights laws, make adjustments necessary. How to deal with this new occurrence not taken into account in expert-bureaucrats' script? They solved the dilemma creatively by making room for new types. Experts classify certain external types as indispensable and as insiders so that they, the experts, can keep the system upright and running. Such a regulating type is today needed to keep penal trials functionable and functioning within the foreseen working order, the script, according to the rationalization of the justice system.

The court interpreter is the solution to keep this impulse reaching the closed circuit of the justice system from the outside at bay and to make the system manageable again. He saves the system from coming to a grinding halt. Citizens who, through a chain of unfortunate incidences, have been brought to trial, are forced to deal with the bureaucratic organization of the court which speaks to them in French, in writing and orally. The court interpreter assures that penal trials can continue functioning in the way they have been managed all along. The type or figure of the court interpreter is born.

The experts running the system have thus repaired a situation threatening instability. In a certain sense, they have also contributed to its creation because the tacit rule keeping French as the only language the court can communicate in is not questioned. The rationalizations the experts bring forth to support the continued use of French at court stipulates that only French can express the complexities of legal concepts. This neatly fits into

earlier rationalizations for the use of French (or the single party). By using French, they believe ethnic-linguistic favoritism is being circumvented. This same rhetoric has been used, unchanged, from colonial times through the fight for independence, during the installation of the first independent state, through the revolutionary Sankara years all the way into the present day. A closed circuit as well. Or a cat biting its own tail.

The experts had to find a solution, they had to fix the instable situation that had installed itself with the ratification of international Human Rights laws in order to keep the system running in its prescribed way. For how can you hold a trial today if the defendant cannot speak the language of the court? They fixed it by getting an outsider to join the organizational structure and the court hierarchy, the interpreter. The ratified international Human Rights laws offered the expert-bureaucrats the opportunity to act so they could keep the system running as it was. All they had to do was to hire interpreters.

The type or figure of the interpreter is, in fact, the perfect solution to the dilemma the experts face, but his presence created a new dilemma. Soon, the expert-bureaucrats realized that since the interpreters they hired had no script, they needed to be made to fit the institutional working order. They needed to be made to act within the limits the expert-bureaucrats prescribed for them. This was achieved by, first, whom the expert-bureaucrats chose as interpreters. They decided to offer civil servants already working at the courthouse the position of interpreter, a most prestigious position particularly for those working in hierarchically low positions. A position to strive for.

The job of court interpreter bestows upon the *agent de liaison* or the secretary or the volunteer a respected status in the eyes of citizens. Now they have become employees at the courthouse, who have something to say, even if only during the trials they are asked to translate. But as interpreters, they also have to insert themselves into the organizational-bureaucratic working order of penal trials, not only of the justice system as a whole. Being hired as a civil servant continues to be one of the most coveted types of jobs imaginable to citizens in Burkina Faso. Being hired for a respected, admired job within the category of civil servant is even better. By being offered the job as court interpreter, the four men in Bobo got promoted. More than that, they were offered a chance to become a part of the system without any effort invested on their part. A job within the hierarchy of the juridical court personnel is normally only attained through years of schooling and tedious *concours* exams. The court interpreters could skip all of this. The experts who hired them were content as well.

In these men they had found not only employees already working within the justice system, but also people willing to take on extra work at court with no extra remuneration. Or rather, the prestige they gained needed to suffice. And, most importantly, thanks to court interpreters' work, the experts can keep the system running as before. A classic win-win situation.

Hence, as the experts who run the system see it, interpretation is the perfect solution the Human Rights problem and French present during penal trials. It is their way of taming the situation created by the presence of too many languages and intruding Human Rights laws in the contact zone of the courtroom, a situation they consequently do not need to question. The state, again, can work. Now, interpreters need to be made to act according to the way experts run the system. In fact, with the interpreters, the expert-bureaucrats have found the perfect allies. By making them into insiders in a system that actually has not foreseen their type, and by hiring men not educated in any legal domain, the expert-bureaucrats have created a regulator through whom they can keep the system as it is.

The court interpreter thus straddles multiple classifications. He is both insider and outsider. He is an insider to trials by virtue of being hired by the court as a civil servant and interpreter. And this, in turn, assures he is working for the court. Along with judges, the court interpreter participates in the construction of guilty defendants. Like this an outsider, who has not come with the system nor been educated by and in it, has been made into an insider, an ally to the system as run by the expert-bureaucrats.

Hence, the organizational order of the justice system demands the creation of different types of people in the courtroom so that a penal trial can work according to the rules and regulations of the justice system.

Type 1: insiders – the experts (judges, prosecutors, court scribes)
Type 2: outsiders – the cases (defendants, plaintiffs, victims, audience)
Type 3: outsider-insiders – unclassifiables (interpreters, lawyers)

What these types show is that people continue to be classified and thus made up which, in turn, determines how they can act; it also has repercussions on their ability or space to act. This process of classification, of making up people, is operable and it is ongoing and tacit. The justice system creates, in this way, those types of people it needs to run the system. The

creation of a special outsider-insider category for the court interpreter opens up the possibility for the justice system to produce or give birth to its own regulator. The perturbation of the working order that followed the ratification of Human Rights laws can be relieved, even overcome, thanks to his intervention. The system is re-calibrated and again functionable.

In what concerns the court interpreters, they see themselves confronted with another level along the insider-outsider continuum. Being classified as insiders, they might be hierarchically topping outsiders, but are also confronted with an internal court hierarchy. This internal court hierarchy is set in stone in the code of penal procedure, which makes it rigid in structure. The bureaucrats running the system are educated to see it as unalterable – it is the rationalization for the way the system is run. It is also a prerequisite to keep organizational order intact. This, in turn, creates if not a dilemma, then at least a situation of unease for the court interpreters.

The interpreter, as an outsider, has no place in the set-in-stone internal court hierarchy, but he is there anyway. The expert-bureaucrats have called him, giving him the accessory coveted in larger society – position of interpreter and of civil servant – and can thus secure his loyalty. Which does not mean he is classifiable within the set-in-stone court hierarchy, which he is not, we have seen. An own category needed to be created for him. Antoine roams the corridors of the courthouse when he has no immediate errands to run because he has no office space as *agent de liasion*. A liaison officer needs no desk, he is meant to run errands. Also Salomon prefers to leave the appeals court when his interpreting duties are done. Outside of trials, he has no place to sit he can call his own, either. Paul has a desk because he is hired as secretary. Secretaries need to write, so they need desks. All three of them interpret trials as extra or additional work on top of their usual duties as secretaries, liaison officers, and secretaries, we have seen.

There are also subtle nuances in the everyday lived hierarchies, as we have seen with Bintou. Even though in a hierarchically legitimate and well-situated position as head of court scribes and according to the internal, organizational order, even though she has all the attributes and accessories the educational elite puts on show to claim status, she is denied acceptance as an equal by her colleagues. And this simply because she did not go to university for a law degree.

What unites all individuals working for and at the court is their status as civil servants. But even though united under this umbrella status, not all public servants are the same, it seems. Bintou is not the same as her colleagues by virtue of having climbed the career ladder from within, instead of having studied law at university. The men working as court interpreters in Bobo today are not the same because of their lack of both education and *concours*-induced career climbing from within. They defy a neat classification into either the insider-outsider categorization or into any clear hierarchical position. Theoretically they have not attained *any* hierarchical status. At best, they are considered employees placed at the lowest end of the hierarchy at court; at worst, they are seen as imposters.

To outsiders, the court interpreters in Bobo describe themselves as being indispensable members of trial procedure. They are, of course, right. The experts have indirectly created this space for interpreters, bringing them into trials. In this sense, then, court interpreters indeed are indispensable – their job category, not the specific individual who carries out the job. When Antoine claims that a day of trials would have to be cancelled if he were sick, he is presenting himself in a way coming closer to wishful thinking than describing actual procedure. The presiding judge would simply ask another civil servant present at the courthouse or a member of the audience to come translate. Like we have seen he did when there was a defendant asking for his trial to be translated into Moore. A hassle, but manageable.

The classification of courtroom participants concretely manifests itself and becomes visible also to outsiders in a certain courtroom discourse, what I have termed courtroom speak. Judges, prosecutors, and interpreters alike talk to and about defendants in a specific way, constructing an outsider. Embedded in this courtroom speak is also the strategic translation court interpreters (are made to) engage in. Salomon, Antoine, and Paul want to not only keep their jobs, they want official recognition by the state that hired them, official recognition as court interpreters and all this entails in terms of job security, salary, and career opportunities. Particularly salary. To attain this goal, they all act. In order to improve their bargaining power within the organizational state court structure, they have organized nationwide, fighting for legal status and official recognition by the Ministry of Justice as a group. It is a tight rope walk. Since they do not officially exist as court interpreters in any organizational chart, they could at any time be replaced by somebody else. Or asked to go about their work in compliance with their contract and without stirring up any dust.

Interpreters' room to maneuver is indeed limited. In their two action arenas – the courtroom during trials and the courthouse for work in general – they are granted a clearly defined radius of action. For now and while waiting for official recognition, interpreters play along with the tacit demands placed on them. In exchange for a respected status in society as a *fonctionnaire* and a court interpreter – their insiderness – they are expected to translate in the court's favor, following the lead of judges and participating in the construction of a guilty defendant. This is also possible because they have not had any legal training and are thus unencumbered in their handling of penal trials – again like Beck's Sudanese farmers were in their handling of the diesel motor. This freedom from knowledge of the law and their low hierarchical position assure they can act along with judges, creating guilty defendants.

For now, court interpreters in Burkina Faso are regulators, they are necessary to the functioning of penal trials, at the same time upholding the idea of a constitutional state at work, fulfilling ratified Human Rights laws. And more than that, the interpreters work so that the system can continue to function in the way the experts make it run. They assure, by their very presence, that prescribed rules and regulations need not be questioned. French can continue being the mandatory language used in the justice system. At the same time, they can take advantage of a system that allows them access to the coveted status of *fonctionnaire* and to a respected insider position to court business without the usual entry exams and years of education. Out of convenience and because of a chronic overloading of the system of justice, people get asked to carry out tasks they are not qualified to do. Salomon and Antoine, as well as Paul and Jean, have accepted the challenge to carry out this task.

So, in Burkina Faso, the hiring of an untrained interpreter continues to be a pragmatic, bureaucratic decision. The context of courts in Burkina Faso thus imposes certain rationalities that subordinate local conditions to its rules. It also serves to legitimize the justice system as an institution of the Burkinabe state. Court interpreters and the system they work in can thus also be designated as an anti-politics machine. Interpreters are indispensable to this anti-politics machine.

Outlook and End

In West Africa, there is one noteworthy exception to how trials are handled. In Senegal, court interpreters are recruited according to set criteria and have been receiving specialized

training since 2014. All six African languages mentioned in the Senegalese constitution as national languages are covered in the court interpreter training program and six interpreters are on stand-by at the courthouse in Dakar during *criminel* penal trials. What is noteworthy as well is the fact that in Dakar, all *correctionel* trials are conducted in Wolof.

Why can this work in Senegal but is so difficult to achieve in Burkina Faso? This is of course a question making room for more empirical research. What it shows, however, is that even a system as regulated as the justice system can be adapted, domesticated, and changed more radically than has been the case so far in Burkina Faso. Other outside impulses disturbing the system can occur at any time, making it an ongoing business for the expert-bureaucrats to be creative so as to keep the system functionable.

The fact that legal professionals are taught to follow rules, procedure, and codified law is, in itself, nothing new and can be found the world over. Also the intimidating nature of a courthouse and a trial, the fact that as an outsider you feel at a loss, is not unique to Burkina Faso. But if citizens are being judged in a language they do not understand or speak in their hometown, we find ourselves in a truly unusual, even bizarre situation. Or at least this is what it seemed like to me when I watched this first trial at the commercial court in Bobo in 2015 this account started out with. The interpreter only seemed to confuse matters more. My friend Mohamed the judge insisted the defendant speak Jula facing him, the judge, and not the interpreter because even though it was the interpreter who was going to answer the defendant it was him, the judge, who was the one deciding on this case.

Now, four years later, not much has changed at the courts in Bobo. Jean has disappeared, Paul is in Ouagadougou at ENAM, studying to become a court scribe. The language used during trials is still French, so Salomon and Antoine continue their work at the two courts interpreting penal trials. They allow the system of justice to function the way it has been made to work so far – they are the regulators needed to bring it back on track if and when necessary.

This is why this chapter cannot be designated as Conclusion because there is nothing conclusive; expert-bureaucrats will continue to translate the system; new and unforeseen perturbations will disturb the working order of the justice system. Both the perturbations from outside as well as experts' handling them are ongoing, dynamic processes. Creating the space for a new type within the working order of the justice system is just one way the expert-bureaucrats have solved this one dilemma they were faced with. My quest for understanding

the language regime at court in Bobo during trials has focused on the court interpreter's role, triggering research on and insights into the bureaucratization of a state institution. Through court interpreters' translational work during penal trials, we can see how the state-run institution of justice goes about reproducing itself on multiple levels, but particularly in how it functions. Experts' rationalizations reveal how civil servants perpetuate a system they deem to be successful through the translation of organizational-bureaucratic rules into their daily work.

The concrete translational practices of court interpreters also show how the shape of the justice system is kept as it is through ongoing processes of bureaucratization. With shape I refer to the codified rules and regulations, the strict "set in stone" procedures that need to remain intact. It is a bureaucratization because by creating a working slot for the interpreter within the system – by handling him and his work administratively –, the existing bureaucratic working order is affirmed and perpetuated at the same time. We can see that a lot of effort is poured into keeping the justice system running as it is.

How the justice system is made to function is, at the same time, an outcome of and the reason for tension expert-bureaucrats experience in their work. They have to maneuver or navigate between the exigencies of their own social-cultural sensibilities as Burkinabe men and women, exigencies that often run counter to rules and regulations they need to follow as civil servants. They have found solutions in how to explain and rationalize situations such as the old man refusing to take off his hat for the much younger judge that fit into the legal framework they need to move in. But new situations will present themselves again and again, so recalibrating the system needs to continuously be negotiated. For now and for this problem, the expert-bureaucrats who run the justice system have found solutions.

Epilogue – Antoine, Salomon, Paul, and Jean in 2020

"What should I have done?", Paul writes to me in a WhatsApp message in May 2020. "I was getting tired of waiting and hoping". He had been very active, organizing the court interpreters across Burkina Faso, writing to the Ministry of Justice, insisting. They had actually managed quite a lot. In 2017, Paul together with an interpreter colleague working in another town in Burkina Faso, were finally invited to present their ideas with the Minister of Justice himself. They had gone to Ouagadougou for a short three days and talked about their working lives, how they needed the official recognition as court interpreters from the Ministry of Justice their employer. This had now come through towards the end of 2019, it seems.

But so far, nothing has changed. They still earn 88'000 F CFA a month, they are still working both their jobs as secretaries and liaison officers and as court interpreters, they still do not get much respect or recognition from the other civil servants working at the courthouse. "The association of court interpreters in Burkina has no future for now… because there is still a lot left to do. And this is too bad. We did what we could for the official recognition of the association and this is already a lot… " (p.c. 3 June 2020). So, Paul decided it was time for a change.

He is now in Ouagadougou, studying to become a court scribe at ENAM. With his middle school diploma BEPC he can make something of his status as civil servant and access a job with corresponding diploma from the inside, just as Bintou had done. Not a bad thing, he feels, being quite content with his new life. Him and his wife had, for the last couple of years, worked in different towns. The twins lived with him in Bobo, while the new baby was with his wife in Dano. Moving to Ouagadougou thus did not really affect his private life, his wife still works in Dano, they thus continue to live in different towns.

Salomon has now taken over Paul's duties as president of the court interpreter association and good luck to him. Paul is happy that it is not him anymore who has to deal with all this waiting, hoping, getting frustrated, "il fallait vraiment que je me sauve – I really had to get out of there", he concludes our WhatsApp conversation.

Salomon is not as verbal as Paul but seems to be content in his new role. He – the intellectual, well organized, always professional – does his best to bring the newly and officially recognized court interpreter association to bloom, but he too has to be patient because "the status has been recognized by the cabinet of ministers, now certain details have

to be wrapped up… the public service department has to organize exams to put all interpreters into a higher category and after that an increase in salary will follow" (p.c. 14 June 2020).

We are currently working on developing court interpreter training for them and their successors in Burkina Faso. Wish us luck. Of course, Salomon will continue to offer his interpreting services to his clients around downtown Bobo. They built up a good working relationship over the past couple of years. The only thing he is not too happy about is that his wife has decided to move to Ouagadougou where she was offered a better paying, more interesting job. What could he do? Now they, too, live in two different towns. Salomon had only sighed when he told me two years ago that his wife was thinking about moving away. It seems that now it has indeed come true. *C'est pas facile*.

For Antoine, things run on smoothly, as they had always done in his opinion. He continues to tend to his guinea fowl and chickens at his compound and the cashew trees he had planted some years back are starting to produce nice nuts. Actually, he is a farmer by heart, he had once told me, and spends as much time in his *champ*, his small plantation outside Bobo, as he can. The soil around Bobo is very fertile, highly coveted as a consequence, and many people are interested in buying pieces of land there. Some of his mango trees are also producing nicely – in fact, mango trees are easy to tend to. You plant, they produce in some short years. Nothing much can go wrong, you just do it. Like interpreting.

It would be nice if I could conclude by telling Jean's story to its end, that court interpreter who got this entire study rolling. But Jean has never reappeared, nobody knows where he is or what, exactly, has happened. Or nobody tells me. So, here, we can only speculate what has befallen him. Maybe one of the countless businesses he ran on the side has fallen on hard times, or maybe he has overestimated himself and borrowed money from the wrong person. Or maybe he has gotten too successful and showing this success was not to everybody's taste. We simply do not know. At the commercial court, somebody else has taken over his job interpreting. He is indispensable. But also replaceable.

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