

Language, Migration and Human Rights

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Introduction

We begin this chapter with the story of Robert Dziekanski, who arrived in Canada as a new immigrant from Poland in October 2007. The 40-year-old, who had never before in his life flown, was to be met by his mother, who had migrated earlier and was his sponsor, at Vancouver International Airport. Exhausted from the intercontinental flight and without knowledge of English and knowledge of how to navigate the arrivals section of an international airport, Dziekanski spent almost 10 hours in the restricted arrivals area, presumably waiting to be met by his mother (a record of his movements during those ten hours is available in a report released by the Canada Border Services Agency after his death (Kooner, 2007). The immigration officer who conferred landed immigrant status on him described him as follows:

[V]isibly fatigued and somewhat disheveled showing signs of impatience consistent with behavior displayed after a long flight and frustrations due to lack of English language skills. At no time did he display any signs of behavior that would be cause for concern (Kooner, 2007, p. 2).

Eventually, Dziekanski became very agitated and the Royal Canadian Mounted Police (RCMP) was called in to deal with him. Not speaking any English, Dziekanski remained oblivious to the officers' approach – an obliviousness that was interpreted as resistance by the officers. The assumption of resistance led to their next action: he was shot from behind with a taser gun and pinned down to the floor by four officers. Within minutes, Robert Dziekanski died.

The death of Robert Dziekanski, which was videoed by another traveler and made the rounds on *YouTube*, triggered national and international outrage. Of the range of issues and debates that were pinned to Dziekanski's death (e.g., the excessive use of taser guns by the Canadian police or a supposed loss of confidence in the Canadian nation as a multicultural, democratic country), the issue that we want to focus on here is the degree to which Dziekanski's death is language-related. Dziekanski's most basic human right – the right to life – was violated because he found himself in a situation where he presumably became fundamentally disoriented due to his inability to communicate (we write “presumably” because the report of the inquest into Dziekanski's death (CBC News, 2008) had not been released at the time of writing this chapter in February 2009) and because his disorientation was interpreted as presenting a security threat by police officers. While the case clearly presents human rights issues that are not related to language and communication – most notably the use of excessive force – it is the inability to communicate in an unfamiliar context that exposed Dziekanski and made him a target of police violence in the first place. Dziekanski's case may be exceptional on two grounds: first, it resulted in his death rather than less grave consequences, and, second, it received international media attention and widespread condemnation. However, the circumstances of the case itself are common enough in today's world: millions of people are on the move across international borders – either voluntarily or involuntarily – and are often thrown into situations in which they cannot communicate effectively. International border

checkpoints, such as the international arrivals section of international airports, are mostly designed to restrict international freedom of movement and thus present specific communicative challenges to the traveler the conventions of which are familiar only to a small minority of “frequent flyers”. Even in contexts where the linguistic and communicative challenges of international people movements are recognized, lack of resources can still result in discrimination against transnational migrants. In Dziekanski’s case, for instance, immigration officers recognized his lack of English but could not help him out by bringing in a Polish interpreter because of staffing shortages on the evening shift.

It is the aim of the present chapter to examine the interrelationship between language, transnational migration and human rights. We use the term “transnational migration” as an umbrella term for all forms of human movements across international borders, both voluntary and involuntary and irrespective of the purpose of the travel and the length of the anticipated stay. We begin by reviewing the role of language in contemporary human rights issues. We note that a significant body of research exists on “linguistic human rights”, i.e., the postulated right to the use of a specific language, usually the so-called “mother tongue”, is sometimes framed in the discourse of human rights. However, while the use of a specific language is sometimes presented as a human right, investigations into the role of language – or communication more generally - as an overarching factor in human rights issues are relatively rare, particularly in transnational spaces. Existing debates, research and institutional practices often seem almost blind to the role of language and communication in the social inclusion – or rather exclusion - of migrants. There is thus a need for a language- and communication-focused approach to migrants’ human rights as they cross international borders and settle outside their countries of origin.

In the following we explore the lack of communication that results from the inability to use a particular language as a human rights issue in itself before we move on to examine the role of language and communication in migrants' human rights issues and their social inclusion in two key transnational spaces where language and differential migrant status powerfully mediate access to rights. These are employment and health. Our reasons for choosing these particular spaces are two-fold: firstly, these are spaces where basic human rights and social inclusion are produced or denied. Second, language crucially mediates migrants' access to these spaces: knowing the language of the host country enhances access to employment opportunities and health care. Conversely, lack of proficiency in the right language(s) usually invalidates other entry requirements, such as prior qualifications and experience. We recognize that our focus on employment and health in this chapter means that we are not covering some equally important spaces, particularly education and the legal system. We have done so because the central language and human rights issue is around access and in order to avoid repetition of the same issue in different contexts, we have used examples from these contexts in other sections of the chapter. In the final section we will present an example of a language learning program that aims at enhancing migrant access, the Australian Adult Migrant English Program (AMEP).

Throughout we endeavor to illustrate our argument with international examples. At the same time, readers will notice a predominance of Australian examples. Apart from the fact that we are most familiar with the Australian context, there are good reasons to focus on the Australian experience when it comes to issues of language and the social inclusion of migrants. In contrast to most other countries that have received significant numbers of transnational migrants in recent history, particularly in Europe, Australia has defined itself as an immigrant nation for almost a century (Castles & Vesta, 2004; Jupp, 2007). Furthermore, in comparison to the US, another country where immigration is part of the national imagery, Australia has

consciously adopted and experimented with state intervention to facilitate social inclusion, including language programs (Lo Bianco, 2008; Martin, 1998). Based on our overview of the AMEP and other relevant programs, we will also sketch out a broader framework for the provision of language services to migrants, in particular translating and interpreting, and multilingual resources.

We will begin with an overview of the existing literature and present a theoretical framework for research into the intersections of language, migration and human rights.

Language and human rights: a theoretical framework

The Universal Declaration of Human Rights (The United Nations, 1948) mentions “language” only once, in Article 2, proscribing, inter alia, discrimination on the basis of language:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, **language**, religion, political or other opinion, national or social origin, property, birth or other status. [our emphasis]

The authors of the *Declaration* thus saw language and human rights as indirectly related, that is, the linguistic profile of an individual or a community may lead to their human rights being denied. Language can powerfully mediate access to human rights, but the authors of the *Universal Declaration of Human Rights* did not conceive of language as mediating access to human rights, nor did they see a particular language or a particular proficiency level as a human right in itself.

Examples of the violation of human rights on the basis of language are numerous from around the world, of course, even if one does not consider migration as an additional complicating factor. There is the obvious human rights violation of the prohibition against speaking or using a particular minority language in public that can be found in many contexts across the world, e.g., the prohibition against the public use of any language other than Amharic during the regimes of Emperor Haile Sellassie and Mengistu in Ethiopia (Hussein, 2008) or the prohibition against the public use of any language other than Persian during the Shah regime in pre-revolutionary Iran (Dei & Asgharzadeh, 2003). Such obvious violations of the human rights of speakers of a particular language by regimes that have become notorious for their high levels of human rights abuses are probably unsurprising. What may be surprising is that discrimination against speakers of minority languages occurs even in liberal democracies that are committed to upholding the principles espoused in the *Universal Declaration of Human Rights* and that are generally considered good world citizens. Consider equality before the law (Article 7) as a basic human right. For instance, Pousada (2008) describes how the mandatory use of English in the federal courts of Puerto Rico means that jury service is restricted to upper-class Puerto Ricans, who have the required levels of proficiency in English. Many defendants thus have their right to a fair trial where they are tried by a jury of their own peers violated. While there is not anything in the law that directly says eligibility for jury service requires upper-class status, the fact that high levels of proficiency in standard English only occurs amongst this group – as a direct result of educational privilege – means that language mediates against access to jury service for the vast majority of Spanish-speaking Puerto Ricans (see also Delanty, Wodak, & Jones, 2008, for related European case studies).

Even where only one language is involved, not speaking the “right” variety may result in the denial of a fair trial, as Eades (2000, 2006) shows in her meticulous analyses of Aboriginal

defendants before Australian courts. While the ways in which Aboriginal defendants and non-Aboriginal legal counsel, magistrates and judges speak English seems superficially very similar, different discourse and pragmatic conventions often mean that Aboriginal defendants are effectively prohibited from giving evidence, from presenting their character in a clear and detailed way and generally from engaging in the trial as a meaningful interaction. Their voices are being silenced because both parties are ignorant of each other's varieties and the linguistic and cultural expectations that prevail in court.

These examples show that the relationship between language and human rights is a complex one – it is not only about speakers of a particular language being discriminated against but about which particular variety is valued in which particular context and which particular linguistic practices are associated with access to a particular human right. We thus see language as a practice or a resource that may enhance or restrict access to human rights – or social inclusion more generally. With Heller (2007, p. 2) we see language as “a set of resources which circulate in unequal ways in social networks and discursive spaces, and whose meaning and value are socially constructed within the constraints of social organizational processes, under specific historical conditions.” Similarly, abstract human rights as enshrined in the *Universal Declaration of Human Rights* are instantiated in specific practices that are socially constructed in institutions. The valorization of a particular linguistic practice in a particular social space or a particular institution pertinent to human rights – such as the police and the courts, the health care system or the education system – automatically enhances or restricts access to human rights on the basis of having the right sort of linguistic proficiency. As Bourdieu (1991, p. 55) puts it: “[S]peakers lacking the legitimate competence are *de facto* excluded from the social domains in which this competence is required, or are condemned to silence.”

The best – and probably most universally pertinent - example of a linguistic practice that mediates access to human rights is literacy. In most contemporary societies, literacy mediates access to health care, consumer rights, further education or employment, to name but a few. However, we live in a world where basic literacy is a “right still denied to nearly a fifth of the world’s adult population” (UNESCO, 2005, p. 17). That means that some 771 million people aged 15 or above are excluded from the access to education, health services, career opportunities and full citizenship that literacy affords.

While we thus see the relationship between language and human rights as mediated, a movement for specifically linguistic human rights has been gaining ground in recent years that sees a much more direct relationship between language and human rights. In fact, it sees the right to use a particular language as a human right. The concept of “linguistic human rights” originates in the work of Tove Skutnabb-Kangas (e.g., Skutnabb-Kangas, 2000, 2001, 2003; Skutnabb-Kangas & Phillipson, 1998, 1994) and finds its most comprehensive expression in the *Universal Declaration of Linguistic Rights* (Follow-up Committee, 1998). The concept of linguistic human rights is characterized by an understanding that sees language itself at the core of human rights issues and the imposition of a language other than the mother tongue, particularly through schooling, as a human rights violation. Linguistic human rights are thus conceptualized as both a collective and an individual right: minority groups are seen as having a right to their ancestral tongue and individuals are seen as having a right to their mother tongue. While the concept of linguistic human rights has been enthusiastically embraced by some non-governmental organizations and international organizations such as UNESCO, it has been controversial within sociolinguistics. One key criticism of the concept of linguistic human rights has been that the understanding of “language” it is based upon – a bounded entity that is associated with a particular ethnic or national group – is in itself the product of a particular

language ideology that brought the modern nation state and its colonial relationship with internal (and sometimes external) minorities into being (Blommaert, 2001a; Duchêne & Heller, 2007). As Blommaert (2001a, p. 136) explains:

[W]hat counts is not the existence and distribution of languages, but the availability, accessibility and distribution of specific linguistic-communicative skills such as competence in standard and literate varieties of the language. Granting a member of a minority group the right to speak his or her mother tongue in the public arena does not in itself empower him or her. People can be 'majority' members (e.g. they can speak the language of the ruling groups in society) yet they can be thoroughly disenfranchised because of a lack of access to status varieties of the so-called 'power language'.

Another central criticism of the concept of linguistic human rights is tied to the way in which languages are tied to territory in an essentialist fashion. The *Universal Declaration of Linguistic Rights* (Follow-up Committee, 1998), for instance, defines a "language community" (to which community rights accrue in this framework) as follows:

This Declaration considers as a *language community* any human society established historically in a particular territorial space, whether this space be recognized or not, which identifies itself as a people and has developed a common language as a natural means of communication and cultural cohesion among its members. The term *language proper to a territory* refers to the language of the community historically established in such a space (italics in the original; pages not numbered).

Even if one were to cast the theoretical criticisms of the concept of linguistic human rights mentioned above aside, it is easy to see that the close nexus between language rights and territory make linguistic human rights a rather blunt instrument once migration out of the traditional territory of the language community is added to the picture (Wee, 2007). In the next section, we will discuss how transnational migration complicates the relationship between language and human rights.

Language, human rights and transnational migration

In the examples we quoted above of language-mediated access to equality before the law, it was the rights of citizens – Puerto Ricans are US citizens and Aboriginal Australians are Australian citizens – that were at stake, and there is agreement in principle that a violation occurs if working-class Puerto Ricans cannot be tried by a jury of their peers or if Aboriginal Australians cannot give adequate evidence before a court. There is also a consensus that the state – i.e. the US and Australian state respectively – have a duty to right those wrongs even if there is disagreement as to how equality before the law can best be achieved for these people in the most efficient and equitable manner. However, now consider the following case: In 1992, Chika Honda arrived in Australia as a Japanese tourist on what was supposed to be a 5-day trip. When heroin was discovered in her suitcase and that of four other members of her tour, she was first charged with and then convicted of drug smuggling and sentenced to up to 15 years in prison. She served 10.5 of these in a Melbourne jail and was repatriated to Japan in 2003. Chika Honda has always maintained her innocence and has, after her release, attracted substantial support, both in Australia and Japan, for a retrial to have her exonerated (Hyland, 2008). The argument that a miscarriage of justice may have occurred rests mostly on language issues and cultural misunderstandings. One of her support websites writes:

They [the suspects/defendants] could not speak enough English to communicate with their Legal Aid lawyers, let alone give proper evidence in their own defence. Worse, police had found it hard to find interpreters to conduct interviews and the result was a mess: meanings of questions and answers were so mangled in translation that, like a house built on quicksand, any trial relying on those interviews would be hopelessly compromised by its shaky foundations (<http://www.usp.com.au/fpss/news-japan13b.html>; last accessed on 2009-02-08).

In a detailed investigation of one aspect of the judiciary process – the cautions (i.e. the Australian equivalent of the Miranda warnings in the US) being read to and interpreted for the five suspects when they were first detained at Melbourne Airport, Nakane (2007) identified six problems that disadvantaged the suspects before the law. To begin with, the provision of interpreters for non-English-speaking suspects is a legal requirement in Australia. However, the necessity to question five Japanese-speaking suspects at once meant that five interpreters were needed at the same time. Even in a city the size of Melbourne and for a language such as Japanese, which is the most widely learnt foreign language in Australia, the language of a significant immigrant community and the language of one of Australia's major trading partners, this proved to be difficult. Only one accredited interpreter was available, two interviews were interpreted by paraprofessionals (accredited to translator level) and the accreditation status of two interpreters was unknown (and no longer retrievable when the issue of interpreter qualification became a topic of concern during the trial). In addition to the lack of qualifications of the interpreters, Nakane (2007) found that even professional accreditation did not guarantee that the interpreters could handle the challenges presented by interpreting the cautions in a police interview. These challenges included the following: first, the police officers delivered the

cautions in segments that were too long for the interpreters to interpret them accurately. Second, the police officers made arbitrary decision about turn boundaries, which resulted in omissions in the interpretations. Third, the importance of comprehension checks was underestimated both by the police officers and the interpreters. Fourth, the police officers showed no awareness that the transformation of a written text into interpreted dialogic speech might be difficult. Finally, the police officers treated the cautions as “rituals” rather than “real” communication. As a result of these shortcomings, some of the suspects failed to understand that they were under arrest and considered their situation less serious than it was, including failing to seek immediate assistance from their embassy. Case studies of similar language and communication issues faced by transnational migrants in judiciary processes in Europe and North America can, for instance, be found in the work of Kamali (2008), Trinch (2006) and Trinch & Berk-Seligson (2002).

There can be little doubt that language – i.e. the suspects’, and later defendants’, lack of proficiency in English as well as the interpreters’ lack of competence in the genre of the cautions and police interview – meant that these tourists’ human right to equality before the law was violated (see also Blommaert (2001b) for an extensive analysis of limited linguistic proficiency resulting in narrative inequalities in the asylum procedure in Belgium). The example shows how transnational migration complicates considerations of the relationship between language and human rights in four ways: first, a larger number of languages become involved and the language and communication needs of transnational migrants can be very diverse. Second, meeting the needs of an increasingly linguistically diverse population has resource implications. Third, the very act of migrating is likely to throw migrants into a wider range of contexts where their human rights may be compromised or – to put it differently, migration generates more situations where access to human rights is mediated by language proficiency and

communicative competence. Fourth, the international human rights framework is set up in such a way that states are charged with protecting human rights. However, state protection is mediated by citizenship and non-citizens – i.e. the vast majority of transnational migrants – tend to fall between the cracks of human rights provisions. In sum, transnational migration increases the complexity of access relationships exponentially by bringing a wider range of linguistic proficiencies in contact with a wider range of institutional practices, some of which are specifically designed to restrict the movement of international migration. Indeed, the human right to “freedom of movement and residence” (Article 13) is restricted by the phrase “within the borders of each State”. This restriction points to a significant limitation of “universal” human rights: i.e., access to human rights is usually mediated by citizenship. Maher (2002, p. 19) points out that:

[...] while the human rights regime is international, its greatest influence has been to establish standards for states’ obligations vis-à-vis their own citizenries. Hence, even in Western states that are vocal champions of human rights, policymakers debate the extent to which they are responsible for protecting the full range of human rights for noncitizen migrants, particularly migrants lacking state authorisation.

The extent to which the state is under an obligation to ensure equal access for non-citizens and the extent to which resources of the state should be diverted away from citizens is often a matter of fierce contestation and mediated by other state interests. Rottman, Fariss & Poe (2009), for instance, demonstrate in a detailed analysis of the outcomes of applications for asylum before US asylum officers and immigration judges that decision makers were - in addition to obvious and legislated humanitarian considerations – also guided by national

economic, military and security interests. Of particular relevance for the concerns of this chapter is the finding that since the terrorist attacks of September 11, Arabic speakers were less likely to have their asylum applications accepted than speakers of any other language:

Most importantly, physical integrity rights, which are supposed to be a central concern in the decision to grant asylum, seem less important after 2001 in asylum officers' decisions and asylum applicants from Arabic-speaking countries were more likely to have had their claims denied after the terrorists – who had similar heritage – struck on September 11 of that year (Rottman et al., 2009, p. 29).

The question of the obligations of states towards non-citizens also ties in with the question of “critical mass”. In the example of the Japanese drug-smugglers detained in Australia above, we pointed out that even speakers of Japanese, a major international language, the language of a powerful nation state and one of the world’s largest economies, and a language that is relatively widely known in Australia, were disadvantaged linguistically in their encounter with the Australian legal system. It does not take much to imagine how speakers of smaller or lesser known languages fare. May (2005, p. 326) has asked “when there is a *sufficient* number of these speakers to warrant language protection” (italics in original). This question is not purely theoretical as the following case shows: since May 2007, 12 refugee families from the small West-African nation of Togo have been resettled in the regional town of Ballarat (ca. 88,000 inhabitants) in Victoria as part of Australia’s Humanitarian Settlement Program (Piper, 2009). When the first 10 families were due to arrive, the local planning committee was not advised of the languages these new entrants would speak until shortly before their arrival. Finding out what language a person from Togo speaks is not simply a matter of googling: with three official

languages (Ewe, Kabiya, French), 39 other recognized languages and a literacy rate of less than 40%, the linguistic repertoire of an individual Togolese is impossible to predict on the basis of country information. Mindful of the fact that speakers of any West African language would be few and far between in Ballarat, a selection criterion for the initial 10 families included proficiency in French. However, “[a]s it was often only the head of household who spoke French, [...], this led to problems communicating with other family members, in particular the women.” (Piper, 2009, p. 27). Another positive twist to the story is that it emerged that two Ewe speakers from Ghana happened to live in Ballarat and “they were encouraged to train and register with language service provider(s)” (Piper, 2009, p. 27). Australia’s humanitarian settlement program is exemplary and – by international standards as far as refugee resettlement goes – comparatively well-resourced. However, despite this fact and considerable linguistic planning (the choice of French-speaking refugees for resettlement) and linguistic good luck (two Ewe-speaking residents in Ballarat), the challenges to the social inclusion – access to education, employment, health care, including torture and trauma counseling – of these ten families are formidable on linguistic grounds alone.

Before we move on to explore the linguistic challenges faced by transnational migrants in two specific arenas of human rights areas, namely employment and health, we want to highlight one further aspect of communication in transnational contexts, that is, the inability to communicate as a human rights issue per se.

Communication as a human right

As we explained above we see language as mediating access to human rights and we do not see that the idea of having a right to a particular language (as in the linguistic human rights concept) is tenable. However, while there cannot be a right to a particular language,

communication itself is a human right and being placed in a situation where one cannot communicate is a human rights concern, particularly as it is closely linked to the gross human rights violations involved in slavery and human trafficking. Human trafficking itself has emerged as an increasing human rights concern linked to transnational migration, and so in this section we focus on coerced transnational migration. We start by looking back at the transatlantic slave trade. bell hooks (1994, p. 169) imagines the terror on the slave ships that brought Africans to the Americas as closely linked to language:

When I imagine the terror of Africans on board slave ships, on auction blocks, inhabiting the unfamiliar architecture of plantations, I consider that this terror extended beyond fear of punishment, that it resided also in the anguish of hearing a language they could not comprehend. The very sound of English had to terrify. [...] How to remember, to invoke this terror? How to describe what it must have been like for Africans whose deepest bonds were historically forged in the place of shared speech to be transported abruptly to a world where the very sound of one's mother tongue had no meaning?

Terrors such as those imagined by bell hooks for the victims of the transatlantic slave trade are as real in the 21st century as they were 200 years ago. In early 2009, the plight of the Rohingya of Burma briefly made the news in some international media. The Rohingya are an indigenous Muslim minority in Burma, who are not recognized as Burmese citizens by the Burmese regime and who are subjected to grave human rights abuses (<http://www.rohingya.org/>; last accessed 2009-03-01). When a couple of boat loads of Rohingya refugees arrived in Thailand in December 2008, they were detained, beaten, and then put back on boats, and towed out to sea, where they were finally cast adrift. Interviews with some of the

survivors who were later rescued off Aceh more dead than alive (broadcast on Al Jazeera; http://www.youtube.com/watch?v=9p-WyHJb_T4; last accessed 2009-03-01) show that their utter incomprehension of what was being done to them was aggravating their situation. One of the survivors interviewed on Al Jazeera TV stated that it was only his belief that God “comprehends” that had kept him alive. For the Rohingya - and many other victims of systematic human rights’ abuses around the world – the inability to communicate - to understand the threats of the soldiers - is not only a human rights concern in an immediate situation – i.e. being subject to military brutality – but also one in the broader context of finding a voice – and therefore raising concern and potential support – in the wider media world. The human rights situation of the Rohingya – both inside and outside Burma – is catastrophic (<http://www.amnesty.org/en/news-and-updates/news/myanmar-minority-group-peril-20090202>; last accessed 2009-03-01). Yet, in a world where the plight of so many is competing for attention, they are hardly noticed on the international stage and are even ignored on the regional level (<http://news.bbc.co.uk/2/hi/asia-pacific/7916254.stm>; last accessed 2009-03-01). In January 2009, when the Rohingya refugee crisis hit a new high after the discovery of the boat off Aceh mentioned above, the only international media outlet who gained access to the survivors and considered their story newsworthy enough for broadcast was Al Jazeera. Even on Al Jazeera the interviewees remained nameless and were identified only by their age (“20-year old”; “23-year old”). While a significant communicative aspect of any human rights discussion, we consider inequalities in media access outside the scope of this chapter and will not pursue them further here (see, for instance, Baker et al., 2008; Pavarala & Malik, 2007; Wodak & Van Dijk, 2000 for useful overviews).

The fact that lack of proficiency in the majority language can be a constituting factor in contemporary slavery was recently recognized in an Australian court trial in which the

defendant was found guilty of holding slaves because “while the women were not kept under lock and key, they could not run away as they had no money, no passport, *limited English* and were told to avoid immigration authorities” (AAP, 2006, our emphasis).

Humans are social creatures and being able to communicate with one’s fellow humans is clearly a basic human right – even if one that has largely gone unnoticed by scholars and activists alike, maybe because it usually goes hand in hand with more obvious human rights violations. In the examples of slaves and boat people quoted above, their inability to comprehend what was done to them and to communicate is an aspect of a much larger atrocity. In such cases, it is probably strategically ineffective to point to communication as a human right because it is likely to be perceived as a minor infringement compared to the fear for one’s life, the brutality and the starvation. However, communication needs to be recognized as a human right to effectively campaign against cases such as the following, which occurred in Australia and the UK – countries committed to upholding human rights – in their endeavor to deal with asylum seekers who have made it into the country, “unauthorized arrivals” in the bureaucratic terminology of Australia. For instance, Aladdin Sisalem, a Kuwait-born Palestinian who tried to reach Australia via Indonesia in order to seek asylum there, got stuck in an “off-shore processing center” in Papua New Guinea. In July 2003, when Sisalem had been in the detention center for about year, the Australian authorities were moving to close down the center and all other inmates were resettled either in Australia or New Zealand. However, Sisalem’s case was not yet resolved at the time and he was left behind as the only inmate for another 10 months before he was finally granted an Australian visa (<http://www.safecom.org.au/sisalem.htm>; last accessed 2009-03-01). When he was finally released, he had this to say about the company he had kept for 10 months: "Honey, a stray cat [...] was the only company I had since I was left alone in detention 10 months ago" (Jackson, 2004). Even in cases where other detainees were present in

detention centers, detainees from different language and national backgrounds may not necessarily have been able to communicate. The violation entailed in detention without communication is most powerfully symbolized by detainees sewing up their own lips in a desperate bid to draw attention to their plight (Cox & Minahan, 2004).

It is not only detention that may make it impossible to communicate with others around you as can be seen in the UK's policy of regionalization, which is an attempt to disperse asylum seekers away from London. For instance, Suleiman Dialo, an asylum seeker from Guinea, was sent to Newcastle in 2000, while his claim for asylum was being assessed. One-and-a-half years later his application was refused and he was awaiting deportation back to Guinea when he committed suicide. In the book *Human Cargo*, the journalist Caroline Moorhead (Moorehead, 2006, p. 129) describes Dialo's case as follows:

This is not a plaintive tale about a cruel bureaucracy condemning a vulnerable young man to death; rather, it is a story about the loneliness and fear which are common to asylum-seekers everywhere, made worse perhaps in Dialo's case by the fact that his native language was Fula, which is spoken across parts of West Africa, and that there were no other known Fula speakers in the whole of north-east England; that his French was very poor and that he spoke scarcely a sentence of English; and that, in all his childhood in Guinea, he had never learnt to read or write. Signposts, letters, instructions, telephone calls, the television and radio, ordinary, daily conversation – none of this meant much to him in England; and his sense of aloneness was both overwhelming and shocking to him. [...] “He didn't ever

really understand what was happening to him. [...] The world about him had shrunk to almost nothing.”

In sum, finding oneself in a situation where one cannot communicate is maybe not particularly uncommon for transnational migrants and particularly refugees. Even so, it has yet to be recognized as a human rights issue. The only way to address some of the loneliness of refugees – as involuntary migrants - is to recognize the grave consequences of the inability to communicate in a situation that has many other characteristics of instability and exclusion and to consider family and community resettlement. Of the few countries in the world that have an official refugee resettlement program – Australia, Canada, Finland, New Zealand, Norway, Sweden and the USA – the programs of some of these countries (Australia, Canada, the USA) are large and flexible enough that those accepted for resettlement can in most cases find a community of their own language background if they so wish. However, others have had to be more deliberate in their attempt to avoid isolating newly resettled refugees (Moorehead, 2006, pp. 266-280). We will describe one such resettlement program – of Dinka from the Sudan in the Finnish city of Oulu – in the next section, where it also serves to launch our discussion of the role of language in transnational migrants’ access to employment.

Employment

In her discussion of community resettlement mentioned above, Moorehead (2006, pp. 266-280) describes a community of 71 Dinka from Southern Sudan resettled in Oulu, a city of 123,000 inhabitants in Finland. The Finnish resettlement program is generous and the Dinka felt blessed to be safe and to be assisted generously. At the same time, their dependence on welfare and their inability to find employment was a constant topic.

As they know well, as they tell each other every day, of the 250 refugees who were resettled in Oulu before them – Iraqis and Iranians, Bosnians and Somalis, Afghans and Burmese – only two have found work, and both as interpreters for social workers. Among the seventy-one Sudanese are teachers, electricians, nurses, farmers and university students. Talking about their lives, they say that they had simply assumed that resettlement would bring education, and with education would come work and a future. Now, it seemed, they would learn Finnish but not much else. They had never imagined, never conceived it possible, that there might be a life without an occupation. “We watch television, we eat, we sleep,” said Malish. “We visit people. And we sit. This is really useless for me. I had a dream. It was about how I would work, and learn things, and become someone. If I don’t succeed in my dream, I don’t know how my life will be. My dream is dead. [...]” (Moorehead, 2006, p. 274).

The experience of the Dinka in Oulu – the death of dreams and the waste of human potential - is not uncommon for transnational migrants across the world: many transnational migrants have a hard time finding employment, and particularly employment at their level. The experience of unemployment and underemployment tends to be more common for transnational migrants than for the native-born. In Australia, for instance, even during the period of low unemployment and labor and skills shortages that characterized much of the first decade of the 21st century, the unemployment rate of recent migrants (5.5%) was considerably higher than that of the Australian-born population (4.1%) (Australian Bureau of Statistics, 2008). Furthermore, these statistics only reflect unemployment but not underemployment. The experience of un- and underemployment affects different groups of migrants differently. Within

the group of recent migrants to Australia, there are stark differences according to visa class: while the unemployment for skilled migrants is 4.7%, the one for family reunion migrants is 7.5% and the one for humanitarian entrants (i.e. refugees accepted for resettlement from UNHCR camps) is not published (Australian Bureau of Statistics, 2008).

The *Report on the Labour Force Status of Recent Migrants* (Australian Bureau of Statistics, 2008) also provides evidence for the role of proficiency in English in finding employment. Table 1 lists the unemployment rate for four levels of self-reported English proficiency. As can be seen, as proficiency in English goes down, the unemployment rate goes up.

Table 1: Self-reported English proficiency and unemployment rate (adapted from Australian Bureau of Statistics, 2008)

| Self-reported level of proficiency in English | Unemployment rate |
|--|--------------------------|
| English spoken very well | 7.0 |
| English spoken well | 8.7 |
| English not spoken well | 4.9 |
| English not spoken | 23.1 |

Another indicator of the role of proficiency in English can be gleaned from the fact that of recent migrants those born in an English-speaking country were more likely to be employed (88%) than those from non-English-speaking countries (76%) (Australian Bureau of Statistics, 2008). Finally, 35% of recent migrants reported that language difficulties were the main obstacle to finding work they experienced. In sum, numerous reports from around the world suggest that transnational migrants face significant social exclusion through their difficulties in finding

employment or employment at their level – the human right to work (Article 23). In this section we ask how language mediates access to employment for transnational migrants and focus on two aspects, namely lack of proficiency in the majority language and “accent-ceiling”.

Limited proficiency in the majority language is one of the main barriers to employment faced by transnational migrants (see, for instance, Adib & Guerrier, 2003; Alcorso, 2003; Colic-Peisker, 2002, 2005; Dávila, 2008; Masterman-Smith & Pocock, 2008). A migrant fitter and turner in Australia interviewed by Masterman-Smith and Pocock (2008) describes his experience:

I have tried to apply for many jobs in that field of fitter and turner but the requirements are with the English. They have to be like high standard of English ... and this is the difficulty I have had in the past. I've been to (over 20) interviews with different companies regarding a job but I haven't been successful and I think the main problem would have been the English.

However, even if migrants acquire a functional or even advanced level of proficiency in the local language, they are often still discriminated against on the basis of their accent. For example, Dávila (2008) reports how the accent of Latino immigrant workers is constantly problematised by native speakers of English in US workplaces, sometimes causing enormous emotional stress. Although the migrants in her study were highly educated and spoke English well, they experienced downward occupational mobility. Furthermore, they felt they were constantly harassed for their accent, as described by a university graduate from the Dominican Republic:

My boss, she's the wife of the owner. She's always complaining around me because she can't understand me. She says "I don't know what you are talking about!" Or, "Say it again" (3 times). It's so rude. Because she doesn't try to understand me either (Dávila, 2008, p. 365).

In spite of gaining fluency in English, migrants' accents seem to perpetually hinder their ability to attain the professional positions they seek. As we have pointed out elsewhere (Piller & Takahashi, in press), in a context where racism has largely become invisible and a majority of White people consider themselves and their societies to be non-racist or post-racist (Hill, 2008), linguistic discrimination can sometimes substitute for racial or ethnic discrimination (see Krzyzanowski & Wodak (2008) for an insightful study of institutional and everyday racism in the Austrian context). Racial and/or ethnic discrimination are often illegal and individual employers may genuinely feel themselves to be non-racists. Linguistic discrimination, however, is often a common-sense proposition, and it "just so happens" that non-standard speakers – people "whose English isn't good enough" – usually happen to be minority members, and, even more importantly for our discussion, transnational migrants (see Lippi-Green (1997) for an excellent overview of linguistic discrimination in the USA). "English has a colour" as Creese and Kambere (2003) put it in their exploration of the settlement experiences of female migrants from Africa in Canada.

A good example of how language discrimination can work on the micro-level of everyday workplace interactions comes from Barrett's (2006) workplace ethnography in a Mexican restaurant in Texas. To begin with, the researcher found that in that restaurant, jobs that require interactions with customers (who are predominantly Anglo-Americans), such as wait staff and managers, were overwhelmingly taken up by Anglo-American staff. By contrast,

backstage roles in the kitchen were predominantly filled with Spanish-speaking migrants from Mexico or Guatemala. In addition to the obvious segregation of roles on the basis of status as migrant or native-born, Anglo managers frequently gave directives to Spanish speakers in what they thought was Spanish but was really “Mock Spanish” (Hill, 1999) – an invented language that sounds Spanish to English speakers. Unsurprisingly, Mock Spanish was mostly incomprehensible to the real Spanish speakers and directives delivered in Mock Spanish tended to be misinterpreted. However, when a directive failed, Anglo managers never considered their limited use of Spanish as the cause of miscommunication but “almost always interpreted [the miscommunication] on the basis of racist stereotypes of Spanish speakers as lazy, indignant, uncooperative, illiterate, or unintelligent” (Barrett, 2006, pp. 163-164). The researcher argues that because Mock Spanish does not serve as an effective communication mode, it mainly functions to achieve the racial subordination of Latino workers. Nevertheless, managers do not consider the restaurant as a racist place, and Anglo employees often regard their use of any Spanish as “an index of egalitarian attitudes towards Latinos and by extension, general sympathy with minority groups (p. 165)”.

The issue of accent as a discriminatory tool in the workplace is not only relevant to migrants who are racially marked, but also among those who may be ‘invisible’ migrants (Farrell, 2008). For instance, Colic-Peisker (2005) found that in Australia migrants from former Yugoslavia were not subjected to ‘prejudicial gazes’ in public spaces because of their European backgrounds. Being White in Anglophone but multi-ethnic Australia meant being invisible as a migrant and could be an advantage in social interactions, as this Yugoslavia-born cab driver explains:

One day a mature lady entered my cab in South Perth and said: ‘I always only call “Black and White Taxies” [a smaller taxi company in Perth] because

“Swan Taxis” they’re all strangers, Arabs, whoever. ...You cannot talk to them, they speak poor English’. I said, ‘Well, my English is not the best either.’ She gave me a look sideways and said: ‘At least you’re the right colour’ (Colic-Peisker, 2005, p. 620).

The search for employment and economic opportunity has always held first place among the many reasons why humans choose to migrate and many migrants measure the success of their migration in economic terms (see, for example Ong, 1998). Likewise, receiving societies tend to measure successful settlement largely in economic terms. Indeed, employment can be considered key to social inclusion as economic well-being powerfully impacts all other dimensions of human life including health, as we will discuss in the next section. As we have seen in this section, while limited proficiency dramatically limits access to employment, increased fluency of non-native speakers in the local language does not automatically lead to access to careers consistent with qualifications and experience as such access tends to be mediated by a range of factors including accent and race.

Health

Being discriminated against in the workplace as in the cases discussed in the previous section makes migrants sick, as, for instance, Vahedi (1996) demonstrates in his study of Turkish blue-collar workers in Germany. As a general background remark, it is important to note that – despite popular images of healthy, happy “guest workers” - the health of migrants has been found to be worse than that of the native-born population in a wide range of international contexts (Solé-Auró & Crimmins, 2008). This is true despite the fact that good health tends to be an access criterion for most forms of legal transnational migration and health screenings tend to

be used to control migration at the entry level (e.g. Hilsdon, 2006; Wolffers, Verghis, & Marin, 2003).

The relatively poorer health of migrants than of the native born is the result of a range of issues that may or may not be related to language and communication. Among the reasons that are not language- and communication-related are the fact that relatively more migrants are employed in workplaces where occupational health and safety violations are of concern. A prime example would be the abattoirs of the Western world, the harsh working conditions of which have been the focus of labor and immigrant rights activists from Sinclair's (1906) novel about the plight of Lithuanian workers in the stockyards of Chicago to Schlosser's (2002) documentation of the harsh conditions and frequent workplace injuries in contemporary meat processing plants in rural America. Even under less grueling conditions, workplace discrimination can make migrant workers sick, as demonstrated by Vahedi (1996). Furthermore, refugees are one group of transnational migrants who may suffer from a larger number of preexisting conditions, often resulting from torture and trauma. In sum, there are some significant aspects that make it more likely that migrants have higher health needs than the native-born population and there may be non-linguistic reasons, related to visa status or economic status, that may mediate their access to appropriate health care. However, there are also a range of linguistic reasons that mediate migrants' access to health care. These include lower health literacy and language difficulties in interactions in medical contexts. We provide examples for each in turn.

"Health literacy" refers to "[t]he ability to access, understand, evaluate and communicate information as a way to promote, maintain and improve health in a variety of settings across the life-course" (Rootman & Gordon-El-Bihbety, 2008, p. 11). The authors of a 2008 report into health literacy in Canada found that being a recent immigrant and having a mother tongue other

than English or French had a strong negative impact on health literacy (Rootman & Gordon-El-Bihbety, 2008). Enhancing the health literacy of migrant populations needs significant effort as Griffiths, Quan and Procter (2005) describe. They report on a project to improve the access to mental health services for asylum seekers from Afghanistan living in rural Australia. This is a group with a high prevalence of depression and other mental health issues and, at the same time, a group unlikely to have much access to mental health services. The “no more *mualagh*” project – *mualagh* is a Dari word for ‘deep sad feeling like being suspended in the air’ aimed to enhance mental health outcomes for this population, and, at the same time

to pilot, evaluate and report on a model of developing multilingual information on depression and the safe use of antidepressant medication with isolated and vulnerable communities (Griffiths et al., 2005, p. 7).

The intervention model adopted by the research team from *Multicultural Mental Health Australia* was based on the assumption that health care workers needed to learn from Afghan consumers about their perspectives on mental health; that Afghan consumers needed to learn from each other about practical issues in coping with mental health issues; and that Afghan consumers also needed to learn from health care workers about the role of health providers in Australia, general and specific aspects of the health care system and the availability and use of interpreters. On the basis of these reciprocal engagements the research team eventually produced three resources: a factsheet in Dari about mental health aimed at Afghan consumers, a factsheet about the specific needs and expectations of Afghan patients aimed at health care providers, and an audiotape in Dari about mental health issues (the latter to address the relatively low literacy rate, even in the first language, among this population). Griffiths, Quan and Procter (2005) provide a useful checklist on how to develop health literacy materials for and

with linguistically and culturally diverse populations. It is particularly the reciprocal nature of this project that made it effective in contrast to some other multilingual resources used internationally (see, for instance, Collins & Slembrouck, 2006, for a detailed analysis of the limited effectiveness of multilingual consultation manuals in a Belgium clinic).

Even where second language speakers have access to appropriate health care services, the quality of the interaction may be such that they are not receiving adequate care. Roberts et al (2005) analyzed interactions between linguistically diverse patients and GPs in 19 surgeries in the London area and found that 20% of all the recorded interactions contained misunderstandings. These misunderstandings resulted from four different linguistic areas, namely (1) pronunciation and word stress; (2) intonation and speech delivery; (3) grammar, vocabulary and lack of contextual information; and (4) style of presentation. Style of presentation problems included patients who said very little about what their problem was or patients who overloaded the interaction with numerous topics, which seemed unconnected to the GP. The authors recommend awareness-raising for GPs and training in identifying miscommunication resulting from different ways of using language.

Enhancing access

In this chapter we have sketched out how language mediates access to human rights in some key transnational arenas. In this final section, we provide applied perspectives on the ways in which the language and communication needs of transnational migrants can be addressed. We start with a discussion of language teaching options for migrants and then move on to a more holistic provision of multilingual services.

“Migrants need to learn the local language” is a common-sense proposition in many international contexts. States differ, though, in the degree to which they place the burden for language learning on the shoulders of migrants or take on some of that burden. Over recent decades most states have assumed that it is the migrants’ own responsibility to learn the new language and very few countries have adopted a national strategy for migrant language learning. Australia is probably the only country in the world that has had a national language learning program for migrants for 60 years now (Lo Bianco, 2008; Martin, 1998). English tuition for non-English-speaking migrants to Australia has been provided through the Adult Migrant English Program (AMEP) since 1948. In contrast to most other countries around the world that have seen significant immigration, Australia has for a long time chosen to take a pragmatic approach to the language needs of non-English-speaking migrants. Instead of ignoring the language needs of migrants or making language learning an individual responsibility, Australia recognized with the introduction of the AMEP, as a federally funded language learning program, that a society must assist newcomers in learning a new language if it wants to avoid the development of groups permanently excluded from the mainstream. Free English tuition to new arrivals as a way to facilitate their social inclusion as well as their economic productivity was for a long time an internationally unique feature of Australian immigration policy.

The AMEP started out in the immediate aftermath of World War II as a relatively small English tuition program on board of ships during the long voyage from Europe to Australia and, on-shore, as a language program in a large migrant reception center of the time, Bonegilla in Victoria. From these humble beginnings, the AMEP has developed into a nationwide program that, at the beginning of the 21st century, provides English tuition to over 30,000 new migrants per year. The language learning needs of adults and their workplaces resulted in a number of early innovations in language teaching that have since been adopted around the world. The

AMEP developed the “Australian Situational Method”, which consisted of three focal points for instruction, namely social phrases, grammatical structures and Australian culture. Delivery options were quickly expanded beyond the classroom and have come to include workplace language training, home-tutor schemes and distance education provisions. Flexible delivery options and responsiveness to the changing language needs of changing migrant groups have become a hallmark of the AMEP.

The AMEP is nowadays delivered in around 250 locations around the country and in order to ensure consistency across the country, the AMEP adopted a national curriculum, the Certificates in Written and Spoken English (CSWE), in the early 1990s. The CSWE was specifically developed for the AMEP and is based on a functional description of English. The CSWE recognizes four proficiency level and a learner is deemed to have reached functional English once they have successfully passed CSWE III. Only a limited number of learners exit the AMEP after completing CSWE III as the language learning entitlement of new migrants has been limited to 510 hours since the early 1990s. Humanitarian entrants who have experienced torture or trauma may be granted an additional 400 hours. While the purpose of the AMEP is to provide learners with access to English instruction, it is not the purpose of the AMEP to ensure that each learner achieves functional proficiency. Indeed, 510 and even 910 hours have been found to be insufficient for learners with no existing proficiency in English to reach the CSWE III level. Since the late 1990s, learner groups who not only had hardly any proficiency in English but also no or very limited education and literacy in their first language or languages have presented a particular challenge for the AMEP.

There can be no doubt that the AMEP is an excellent language teaching program and similar national programs, which are starting to develop in other countries, are an important step to

the social inclusion of migrants. At the same time, it needs to be recognized that even under excellent language learning conditions not all adults will learn a new language to the high standards of proficiency needed to negotiate some of the complex contexts sketched out above nor will they do so fast (Collier, 1989; Watts & Lake, 2004) and there are many who are likely to fall through the cracks – from temporary sojourners via rural residents to women with family obligations – and a national language teaching strategy on its own is therefore insufficient to meet the language needs of non-speakers of the majority language.

A comprehensive language and communication strategy for linguistically and culturally diverse societies will therefore also need to comprise substantial multilingual provision in home languages. To begin with, comprehensive language strategies need to be based on the recognition of language communities and the provision of services in community languages. Programs that aim at hiring community liaison officers in education, health care or the judicial system are a good start but it is also important to “mainstream” bilingualism through considering proficiency in community languages as a selection criterion for employment in all these sectors. Second, the availability of materials and resources in community languages is important (Aspinall, 2007) and there are many exciting projects that have developed best practice strategies on how to create and disseminate such materials (e.g., Griffiths et al., 2005 described above) and applied sociolinguists have an important role to play in disseminating such practices and strategies and making them more widely recognized. At present, most analyses of the provision of services in community languages note a dire lack of such materials, even in contexts where the importance of such provision has been recognized or even mandated, as the following report by the UK Office of the Deputy Prime Minister (2005, p. 46) reports:

One in seven people from ethnic minorities face language barriers when accessing and using public services, yet translated materials are often unavailable. A recent report on local authority compliance with the Race Relations Act, for example, found that only one in ten benefit departments had produced leaflets in ethnic minority languages. Translating leaflets does not always solve the problem, however, as they may be poor quality or inappropriate for people who cannot read their mother tongue or have a culture of oral communication.

As the quote points out, the provision of materials in home languages is not always feasible and the provision of materials in plain English – or a plain version of whatever the national language is – also needs to be an important part of the language strategy for linguistically and culturally diverse societies.

In this chapter, we have shown that transnational migration poses significant challenges for societies committed to upholding human rights and to achieving social inclusion of all groups in societies. Many of these challenges are related to language, which crucially mediates access to key sites where human rights and social inclusion are produced. For such societies a coherent language strategy – which aims at both language learning and multilingual, multimodal and plain language provision is crucial to achieving equal opportunities for all. Unfortunately, most such initiatives are fragmented leading to frequent breaks and inconsistencies in provisions. Most transnational migrants around the world have experienced “language issues” of one kind or another and, in the absence of the recognition of the importance of language and communication and coherent language strategies, they often blame themselves for their social exclusion and internalize their communication difficulties (Garrett, Dickson, Young, & Whelan,

2008; Shemirani & O'Connor, 2006). We will need to learn to recognize that in language and communication at least “it takes two to tango” and adopt strategies that serve to share the communicative burden.

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