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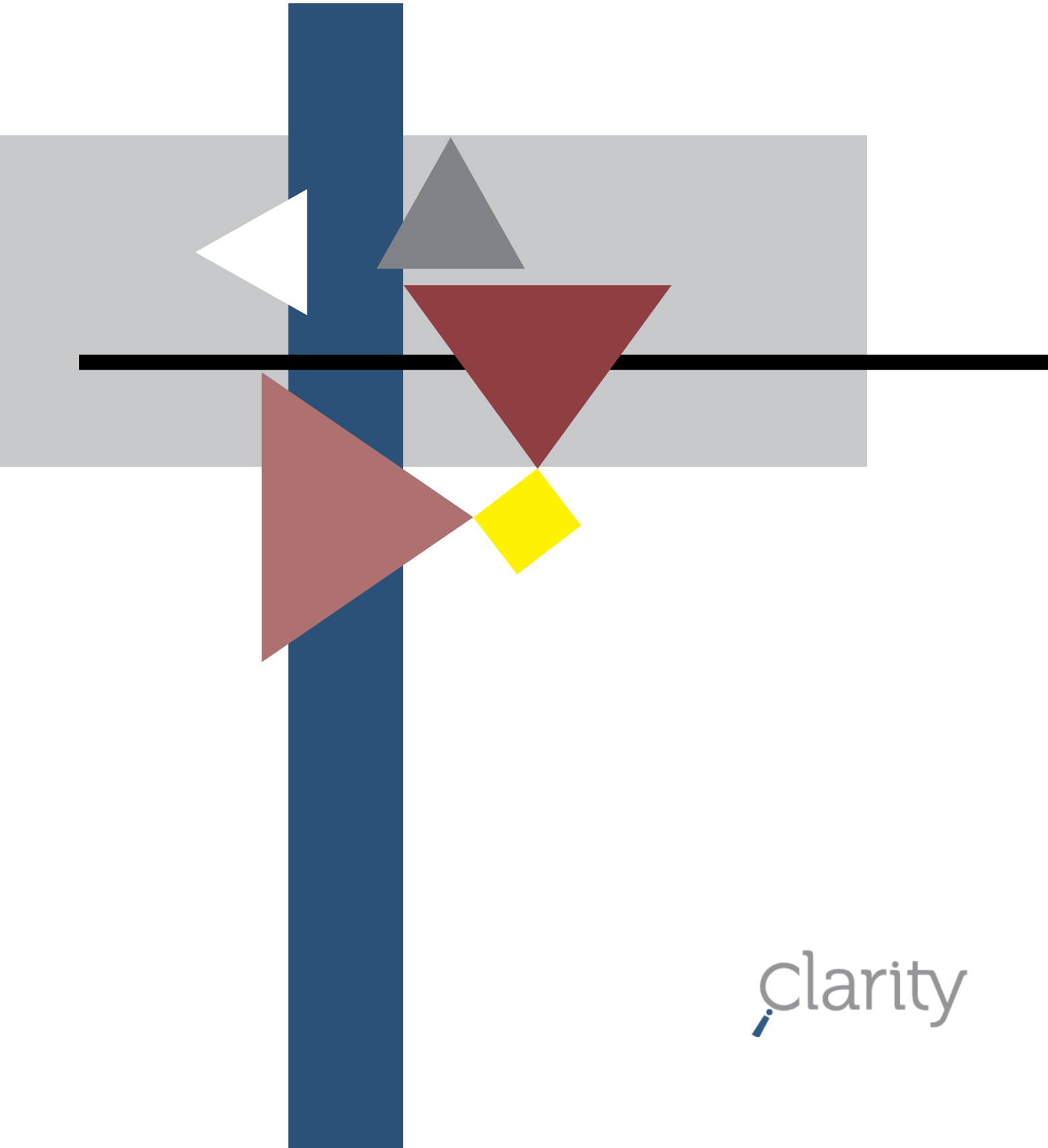

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The Clarity Journal is published about twice a year.

Submissions We encourage you to submit articles to be considered for publication in Clarity. Send submissions directly to the editor in chief at Editor@clarity-international.org. Please limit submissions to no more than about 3,000 words.

Guest editors

Guest editor **Barbra Kingsley** is the Chair at the Center for Plain Language and a board member for the International Plain Language Federation. She has previously led judging on the annual ClearMark awards, which celebrate the best in plain language in the U.S. She is a frequent speaker to trade groups, advocacy organizations, and regulatory agencies on the topics of clear communication, consumer protection, and increasing governmental efficiency through plain language.

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Julie Clement is the president of Clarity and a member of the International Plain Language Federation and the Center for Plain Language boards. She is the Deputy Clerk at the Michigan Supreme Court and an instructor in Simon Fraser University's Plain Language Certificate program. Julie is a Distinguished Professor Emerita of the Western Michigan University Cooley Law School and served as editor in chief of *The Clarity Journal* for 14 years.

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Contents

In these issues

Access for All: Plain language is a civil right, which took place in October 2020 and May 2021, was a new kind of conference.

- For the first time, Clarity, the Center for Plain Language, and PLAIN joined forces to cohost an international conference.
- For the first time, plain language advocates from around the world met completely virtually – watching thought-provoking talks, tuning in to live interviews, and meeting in World Cafes.
- For the first time, the focus was completely on increasing access – to justice, to health care, and to myriad other basic human rights – through plain language.

In the midst of a pandemic, we found ourselves inventing a new type of conference and pushing new boundaries in both our presentation and our topics.

So it should come as no surprise that these two issues of *The Clarity Journal*, which revisit key speakers from the *Access for All* conferences, also pushes boundaries. The articles are interesting, thoughtful, and—at times—provocative. And although the articles cover a range of topics, they all ask us to return to the theme of "access": Who has it? Who doesn't? How do we increase it? And, how can we—as plain language advocates—help ensure access for **all**?

From the President

Julie Clement
Clarity President

I hope you are staying safe. The world can be a very dangerous place, even more so during the past few years. Yet for many of the people we serve, danger is a constant element. In our effort to communicate, it's easy to focus on *what we want to say* and to forget that communication only works if we can truly understand *what our readers need*.

These conference issues of *The Clarity Journal* invite you – *our* readers – to immerse yourself in the "intended reader" element of the definition of plain language. These are not typical Clarity journal issues. Instead of papers that tend to focus on wording, structure, and design, these issues focus on *outcome*: Can the most vulnerable of our intended readers easily find what they need, understand what they find, and use that information?

A communication is in **plain language** if its **wording**, **structure**, and **design** are so clear that the intended readers can easily **find** what they need, **understand** what they find, and **use** that information.

A secondary thread that runs through nearly all of the articles in these two issues is the importance of testing and research. I hope you're as excited as I am about all of the research being done in our field.

Even if these articles fall outside the specific work you do, I know you'll find countless lessons that do apply to your own use of plain language principles. Let me know what you think.

Clarity 2022 – Tokyo

Take a look at the back cover of this issue if you haven't already done so. Doesn't it make you want to hop on a plane and get to Japan? We are thrilled to be holding the first international plain-language conference in Asia later this year. I hope to see many of you in Tokyo.

As I write this, we plan to hold an in-person conference – the first since our 2018 conference in Montreal. But Covid is still creating challenges. Conference organizers (Japan Plain English & Language Consortium) will make a final decision by June 20, based on whether Japan is open to visitors for an event like this. If not, the conference will be virtual.

(We will hold our biennial membership meeting during the conference. Please let me know if you would like to submit your name as a board member.)

ISO plain language standard

After 3 years of work, we hope to have a decision later this year. I'm so excited about the opportunities this will create for the plain-language world. Thank you for all your hard work in this field and for staying the course.

Meanwhile, the International Plain Language Federation (IPLF) continues to work on plain-language education and certification, topics we identified as priorities in Clarity 64.* Committee chairs include Lynda Harris (New Zealand), Lisa Vieno (U.S.), Katherine McManus (Canada), and Neil James (Australia). Let me know if you'd like to help.

* https://www.clarity-international.org/wp-content/uploads/2020/07/Clarity-no-64-bookmarked1.pdf

The IPLF also has an active committee, chaired by Gael Spivak (Canada), working on localization and implementation of the ISO standard. Much work needs to be done to ensure the standard is adopted by as many local standards organizations as possible. The committee has identified those country-specific organizations and is working with volunteers to ensure a well-planned and well-supported effort once the standard is approved. We can use your help, so contact me if you'd like to be part of this game-changing (almost) achievement in your own country.

The Clarity Journal

Editing the journal is a big job. (I did it for more than a decade, so I know!) Unfortunately, Thomas has stepped down, so we will be looking for a new editor. Ideally, the journal would be managed by a team of volunteers. So (again) if this is something that interests you, please let me know.

Meanwhile, I'd like to take the journal back to our roots for the next issue. One of the features our early journals included was before-and-after examples of plain legal documents. So I'm looking for Clarity members to submit short articles about legal drafting, including before-and-after examples of entire documents (short ones) or even excerpts from contracts, legislation, and similar legal documents. Contact Editor@clarity-international.org with your proposals.

What are some of the other regular features you would like to see in the journal? Just let me know!

That's a lot! Thank you for taking the time to read this lengthy letter. Please stay safe and well, friends. And I look forward to seeing you in Tokyo in September!

With warm regards,

ELIPS and what it can do for you

Aino Piehl

The ELIPS project group is delighted to inform you about the publication of its new website. The website presents a unique survey where you can find data about policies and actions by European public authorities, regarding for example the use of plain language, easy-to-read language, terminology or the training of civil servants.

ELIPS – Use of European Languages in the Public Sphere – is a project of EFNIL, the European Federation of National Institutions for Language. The project concerns the use of the national languages of Europe as instruments of communication for government, legislation, and public administration. It collects data, organises the exchange of opinion and experiences amongst EFNIL members and prepares actions and proposals relating to its fields of interest.

Our interactive web page enables users to navigate through the results of a survey which was conducted between 2017 and 2019 among 24 European countries. The survey gives users an overview of the situation in Europe and allows them to compare the actions and policies of public authorities in the following domains:

- plain language and easy-to-read language;
- official terminology for government, legislation and public administration;
- languages other than the official one(s) in the authorities' communication;
- cultural, sexual and gender diversity;
- training of civil servants and the aspects covered by training programmes;
- collaboration (structures) between EFNIL's member states and the EU.

For further information on the survey and how to use it, go to https://elips.efnil.nytud.hu/. The survey itself can be consulted at https://elips.efnil.nytud.hu/browse.

Overview of results in an article

You can find the most important results of the survey, including the group's recommendations for action, in an article on the project's webpage at http://efnil.org/projects/elips/articles.

ELIPS project in the future

The ELIPS group hopes that the survey may serve as a reference base for concrete activities, such as conferences and webinars, partner search, formulating policy proposals for national governments and the institutions of the European Union. An important aim of the project is stimulating dialogue and collaboration.

We also plan a new round of data collection, in order to update the information. We hope to expand the survey to include more countries and, if necessary, to more sub-domains and aspects of public service communication.

Language is not neutral:

Writing for healing, transformation, and liberation

Melanie Sampson

Trauma: *A deeply distressing or disturbing experience*
(Oxford English Dictionary)

In this paper, we examine the impact of trauma on communities that have experienced systematic oppression and what role plain language can play in contributing to a different legal system in the United States that transcends bias, inequality, and punishment. We acknowledge that the entire punitive system needs to be reimagined, and this paper is discussing just one avenue toward a more humanizing, compassionate approach.

A few premises we are starting with as we explore the theme of trauma-informed legal communication are below:

Trauma is prevalent.

The seminal CDC-Kaiser Permanente Adverse Childhood Experiences (ACES) study[1] in the 1990s illuminated how scarily common childhood trauma is and the impacts it can have on the rest of one's life. One international study[2] found 70% of people surveyed had had at least one traumatic experience. In the United States, the murder of George Floyd by police in Minnesota and numerous other events have also put the systemic racial trauma[3] experienced by so many at the forefront.

Trauma can be acute, collective, complex, historical, and intergenerational.

There is no one way that people experience trauma. What may be traumatic for one may not be traumatic for another. We do not get to define trauma for others.

Trauma can have long-term effects on the body and the brain.

In the powerful book on trauma, The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma,[4] author Bessel A. van der Kolk, writes:

> "The stress hormones of traumatized people . . . take much longer to return to baseline and spike quickly and disproportionately in response to mildly stressful stimuli. The insidious effects of constantly elevated stress hormones include memory and attention problems, irritability, and sleep disorders. They also contribute to many long-term health issues, depending on which body system is most vulnerable in a particular individual."

Trauma can literally change how we interact with the world. As communicators, legal writers, and plain language professionals, we must consider the reality of people's experiences when creating content.

Melanie Sampson is program director of Clear Language Lab, a program of Literacy Works, a Chicago-based nonprofit. She has more than 20 years of nonprofit experience and an MA in linguistics. In her current role, she advocates for and shares expertise around plain language and information design to support nonprofits, government agencies, and others in effectively serving communities and creating more equitable systems. She works to make clear, accessible, human-centered communication the norm by prioritizing community voices in content creation. She is also a board member of Chicago Books to Women in Prison.

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1 https://www.cdc.gov/violenceprevention/aces/about.html

2 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4869975/pdf/nihms783910.pdf

3 https://www.mhanational.org/racial-trauma

4 https://www.goodreads.com/work/quotes/26542319-the-body-keeps-the-score-brain-mind-and-body-in-the-healing-of-trauma

Trauma and Plain Language: What's the Connection?

Let's take a look at a familiar definition of plain language:

*A communication is in plain language if its wording, structure, and design are so clear that the **intended readers** can easily find what they need, understand what they find, and use that information.* ~International Plain Language Federation

A fundamental aspect of plain language is centering one's audience. If we know all of the above to be true, how can we not take trauma into account with how and what we communicate?

SAMHSA's (Substance Abuse and Mental Health Services Administration) Concept of Trauma and Guidance for a Trauma-Informed Approach[5] describes a trauma-informed approach as it applies to behavioral health with potential adaptation for a variety of sectors, including legal systems. The paper states:

> "A program, organization, or system that is trauma-informed **realizes** the widespread impact of trauma and understands potential paths for recovery; **recognizes** the signs and symptoms of trauma in clients, families, staff, and others involved with the system; and **responds** by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively **resist re-traumatization**."

Numerous books such as *The New Jim Crow*[6] by Michelle Alexander and *Unfair: The New Science of Criminal Injustice*[7] by Adam Benforado (both lawyers) and countless others have outlined the inequities baked into the inherently racist and biased United States criminal legal system,[8] which notably has the highest mass incarceration rate[9] in the world. As Alexander notes in the forward of her book, "We have not ended racial caste in America; we have merely redesigned it."

What does this have to do with plain language? In her work (divorcing) White Supremacy,[10] Tema Okun explores norms associated with white dominant culture and how they have become entrenched and often invisible in systems and provides antidotes to consider. Examples of some of these principles along with questions we've added that apply to language to consider:

- **Individualism** (How is language framed? Is language blaming or lacking in nuance around systemic issues?)
- **Worship of the written word** (How is content presented? Is information written with the intention to be understood, language- and design-wise? Are ways other than written communication explored?)
- **Urgency** (Is content created with community input? Do tasks need to be done quickly all the time, leaving out opportunities for varied voices? Is transparency absent because of (purposefully?) overwhelmed systems?)

These qualities are not intended to be a checklist but an opportunity to explore the way systems reflect values that maintain the status quo and open up conversations to pursue change. In this reflection[11] from Columbia Legal Aid in the state of Washington, their executive director explores the internal examination that their organization went through to identify the ways white supremacy norms were present in their work and their efforts to effect changes to transform their organization.

Let's also reflect on the homogeneity of the field. According to the American Bar Association's most recent profile[12] of the legal profession, 85% of lawyers identify

5 https://ncsacw.acf.hhs.gov/userfiles/files/SAMHSA_Trauma.pdf

6 https://newjimcrow.com/

7 https://www.penguinrandomhouse.com/books/221731/unfair-by-adam-benforado/

8 https://www.vera.org/news/why-we-say-criminal-legal-system-not-criminal-justice-system

9 https://www.prisonpolicy.org/profiles/US.html

10 https://www.whitesupremacyculture.info/

11 https://columbialegal.org/wp-content/uploads/2021/08/Transforming-Culture-MIE-Journal.pdf

12 https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf

as non-Hispanic white people, while non-Hispanic white people make up only about 58% of the U.S. population[13] per recent Census data. We simply cannot have these nuanced conversations without considering the intersectional aspects of community member experiences, experiences that may differ greatly from a field that is mostly white, mostly male, mostly heterosexual, and mostly made of people without disabilities.

13 https://www.census.gov/library/stories/2021/08/2020-united-states-population-more-racially-ethnically-diverse-than-2010.html

What does this all mean? In mission-centered work, we have an obligation to understand trauma and its impacts. We must continue to explore not only how to avoid perpetuating past harms or compounding trauma through unfair systems but also use this knowledge to reinvent systems based in justice and liberation. This reflection includes language.

Key Features of a Trauma-Informed Approach

There are 6 commonly cited features of a trauma-informed approach. Below we explore them and pose questions to consider as they relate to writing, specifically in the legal realm.

Safety	• Do documents and written interactions take care to explain what people can expect? • Does content avoid creating dynamics that make readers feel unsafe or unprepared? • What is the tone/voice of content? How does that reflect the values an organization says it has?
Trustworthiness and Transparency	• Is written content honest? Does it explain information in ways that people can understand without a legal background? • Does content avoid patronizing language? • Does content acknowledge people's humanity and build connections? • Does content match how processes work? In other words, do organizations do what they say they will?
Peer Support	• When applicable, are networks available for clients to connect with others who have had similar life experiences? • Is content created with input of those with lived experience? How are they centered in processes?
Collaboration and Mutuality	• Does content recognize and acknowledge power differentials where they exist and work to create a situation devoid of them whenever possible? • Is content respectful of people's time and energy?

Empowerment, Voice, and Choice	• Are real choices evident and clear? • Are reasons for decisions explained? • Are ways that people can voice their issues accessible and clear?
Cultural, Historical, and Gender Issues	• Is a cultural humility perspective evident when writing that values the culture and experiences of the intended readers? Is an understanding of intersectionality[14] evident? • Do content creators reflect on their own identities and how they may impact content, especially those that belong to one or more dominant culture groups (for example: white, cis-gender male, heterosexual)? How are elements of white supremacy culture embedded in communication norms? • Are supporting images used that promote diversity but avoid stereotypes and bias?

In the next section, we'll explore examples from the field that reflect the ubiquitous ways legal communication can better serve its intended audience through a trauma-informed lens.

Examining Norms in The Field

Although proponents of legalese often talk about the precision of it, this type of language can also be intimidating, damaging, and, at times, actually imprecise. Plain language allows us to rethink the accuracy of our messages and dually reframe important ideas to avoid causing harm.

The Center for Investigative Reporting's podcast, Reveal, highlighted the impacts of the COVID-19 pandemic eviction moratorium[15] on real people, telling the story of a family's confusing eviction process. In the episode, Ohio Magistrate Jennifer Towell shared that the moratorium language "was not written the best way possible as far as for the people who actually have to apply them. So first, we have to interpret what our court . . . interpretation is, and how we are going to move forward with that. And sometimes, there are attorneys or litigants who maybe don't agree with the court's interpretation of it, which is within their rights." In this case, the lack of precision in language compounded harm in a housing system that has already displayed a long history of discrimination and segregation[16] in the United States.

Another example of problematic language choice can be found around how substance use is described in criminal justice systems. *(Note: although there are many critical questions to be explored around the criminal justice system, we are looking at language specifically.)*

There are a plethora of examples of language that go against medical practices, loaded with stigmatizing and, frankly, inaccurate language. The National Institute on Drug Abuse paper, *Words Matter: Terms to Use and Avoid When Talking About Addiction*,[17] describes the archaic and non-scientific way that addiction is often described — as "a moral failing, instead of what we know it to be—a chronic, treatable disease from which patients can recover and continue to lead healthy lives."

14 https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1052&context=uclf

15 https://revealnews.org/podcast/the-teen-reporter-the-evictions-and-the-church/

16 https://www.npr.rg/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america

17 https://nida.nih.gov/sites/default/files/nidamed_words_matter_terms.pdf

Yet you can easily find legal writing that reflects these "moral failings" in publications such as drug court handbooks. These handbooks are often peppered with harmful terms like 'drug addict' instead of 'person with a substance use disorder' or a 'dirty' drug test rather than a 'positive' drug test. Not only are the former terms judgmental, they are not even scientifically precise. We must consider how the use of language frames perceptions and influences bias against people trapped in these systems.

The Marshall Project has long explored centering the voices of people in the U.S. carceral system. As a nonprofit criminal justice journalism organization, it recently published a series of articles called *The Language Project*,[18] exploring the words they use in their own writing around incarceration and incarcerated people to create a new style guide. They conducted a survey of 200 people in prison and found that the most popular choice, at 38%, was "incarcerated person" and 30% chose "other" which included terms like "person in prison," "man or woman," or an individual name.

They note: "Journalism is a discipline of clarity. If a segment of our audience reads a particular word as a slur or suggestion of guilt, that word becomes an unnecessary distraction from our actual work. Given the systemic racism and classism embedded in the U.S. criminal justice system, language about incarceration places an undue burden on people of color and poor people." Oftentimes, language that gets used is not only dehumanizing but does not even exhibit the clarity that is often upheld in such high regard.

Potential for Other Aspects of Lawyering

This paper's focus is on language and written communication. There are other explorations about the interpersonal and process aspects of a trauma-informed legal practice as well:

- *Essential Components of Trauma-Informed Judicial Practice*,[19] Substance Abuse and Mental Health Services Administration, SAMHSA's National Center on Trauma-Informed Care and SAMHSA's National GAINS Center for Behavioral Health and Justice
- *The Pedagogy of Trauma-Informed Lawyering*,[20] Temple University Beasley School of Law Legal Studies Research Paper Series
- *Trauma-Informed Lawyering*,[21] from the National Center on Law and Elder Rights

Summary

Plain language is about centering our audiences. Can we be precise and center our audiences? We can — and we must. The systemic issues in the U.S. criminal justice and legal systems are complex and entrenched. Plain language and trauma-informed communication are not a panacea to fix the totality of such an unjust system, but they are tools that support the development of new practices that challenge the status quo and transform a legal system that was designed in part to perpetuate inequity and harm of oppressed people.

U.S. law and its systems have a long, arduous journey to go in becoming anti-racist. Using and advocating for understandable, humanizing language is something we can do right now in service of that journey.

18 https://www.themarshallproject.org/2021/04/12/the-language-project

19 https://www.nasmhpd.org/sites/default/files/JudgesEssential_5%201%202013finaldraft.pdf

20 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2768218

21 https://ncler.acl.gov/Files/Trauma-Informed-Lawyering.aspx

Writing reasons for decision like a human

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Paul Aterman

A citizen applies for employment insurance benefits. The bureaucrats say "No". But the citizen has a right of appeal. It is up to the Social Security Tribunal of Canada (SST) to decide.

There is a hearing. Then they get a decision that tells them if a cheque will be put in the mail . . . or not.

The decision cannot just be "Yes" or "No". The law requires reasons for the decision. And the citizen has a right to understand the reasons when the government acts in a way that affects their life and wellbeing.

1. Context: what is the SST, and whom does it serve?

In Canada, the federal social safety net consists of:

- Employment Insurance benefits if you lose your job;
- Canada Pension Plan benefits to replace part of your income if you are retired or disabled; and
- Old Age Security benefits for seniors.

The laws that set the conditions for entitlement to these benefits date from the middle of the last century. They are extremely complex, and full of technical details. Even lawyers have difficulty mastering them. Here is an example from the Employment Insurance Regulations:

> Where the remuneration of an insured person consists solely of commissions or of salary and irregularly paid commissions, the person's insurable earnings paid in the period of employment or in the last 52 weeks, whichever is shorter, shall be allocated proportionately over the shorter of the period of employment and the last 52 weeks, as applicable, excluding weeks for which the insured person is on unpaid leave of absence from employment for one of the reasons referred to in subsection 12(3) of the Act.

Not only is the language confusing and archaic, so are the criteria for entitlement to benefits. They reflect the realities of the mid-twentieth century, when a worker usually stayed in the same salaried job for most of their career. And when most of the workers were men.

These complexities and archaisms are a source of frustration for the people who apply for benefits today. The frustration is compounded by having to deal with a large, and mostly anonymous, bureaucracy that decides whether they are entitled to benefits.

If the answer is "No", then they have a right to appeal to the SST. The SST is an administrative tribunal. It employs neutral adjudicators, holds hearings and decides if the government was right or wrong to withhold benefits.

Over **70%** of the people who appeal to the SST don't have a legal representative. They represent themselves, or they get help from a family member or friend. Ordinary Canadians are the people that the SST serves.

Although it looks much like a specialist court, and is at arms' length from government, the SST is not part of the judiciary. This gives us the flexibility to design our process in a way that is much less formal than a court. That includes how we write our reasons for decision.

Over the past 3 years, the SST has been engaged in a project to write its reasons in plain language. I turn now to an overview of some of the techniques we use.

2. Tips for writing plain language reasons

Centuries of legal tradition weigh against the use of plain language in the law. There are powerful, long-established conventions in the writing of judgements. They establish standard approaches to the structure of reasons, and the use of words and phrases. Judges and adjudicators employ them as a matter of reflex. But they are alien to most citizens who use legal systems.

So how to unlearn them?

It all starts with structure

Explaining the reasons for a decision to a non-lawyer is inherently difficult because the reasons themselves are inherently complex. In every case, an adjudicator has to:

- identify the issues in dispute;
- set out what facts are relevant to those issues;
- explain why they prefer one version of the facts over another;
- apply the law to those facts; and then
- explain the result and the remedy.

Because of their complexity, reasons often have to be long. There is no way around it. This makes the structure of reasons the most important determinant of clear communication.

The traditional structure of reasons for decision is slowly dying out. This is a good thing. It follows a generic and formulaic approach:

- The writer briefly describes what is in dispute, but does not tell you the outcome;
- They then set out all of the evidence that was presented;
- This is followed by an account of all of the arguments the parties made;

- Only mid-way through the reasons do you learn what are the determinative issues in the case;
- Then the analysis begins, and here the relevant evidence and arguments are discussed;
- Finally, the outcome is revealed.

This structure lends itself to needless repetition. When the writer recounts of all of the evidence and arguments, they are providing an abbreviated transcription of what happened at the hearing. The people most likely to read the reasons are the parties to the appeal. They were there at the hearing, so they already know what happened there. So what's the point of that?

Then some of the evidence, arguments and law are repeated in the analysis section, when the writer finally gets down to sifting out what is relevant from what is not.

The formulaic and generic structure of the old-school approach is easy to write. The writer doesn't think twice about what structure to use. But the reasons are hard to understand because the reader is not told what to look for.

Contrast the old-school approach with what we call *point-first* writing:[1]

- The writer starts with the story of the case – a short narrative that tells the reader what the case is about, how it will be decided and what the outcome is;
- The writer then sets out the relevant issues that drive towards the outcome of the decision;
- This is done using a point-first approach. For each issue, the writer sets out their conclusion (or point) up front. Then they explain each conclusion, but by referring only to the evidence, arguments and law that are relevant to that particular point. Each point is a building block.
- The building blocks are assembled in an overall conclusion. It briefly recaps for the reader how the writer got to the outcome of the decision.

A point-first structure shows the reader what to look for as they navigate a complex document. The writer cuts out all of the evidence, arguments and legal analysis that is not relevant to the determinative issues in the case. The writer guides the reader from one building block in the structure to the next. Repetition is avoided or minimised.

The tone of reasons shows that the human story matters

The notion of context is not quite the same for lawyer and non-lawyer readers. Lawyers are often more interested in the legal context: what does this case say about the law? But at the SST, we are not writing for lawyers.

1 In English-speaking Canada, probably no one has had a greater influence on writing clear reasons than Mr. Justice John I. Laskin (formerly of the Ontario Court of Appeal). His teaching has spread the understanding of point first writing among judges and adjudicators. This has been instrumental in speeding the decline of the old school approach. This link takes you to an excellent overview of how to structure reasons logically.
See https://soar.on.ca/system/files/documents/session-8-laskin.pdf

We try to start with the human story, because this is something everyone can understand:

> On January 12, 20xx, CF was driving her car on Highway 400, outside of Toronto. She was driving at a normal speed. Another car that was travelling much faster hit her from behind. She was wearing her seatbelt. The airbags in her car did not deploy. She did not have any external injuries. She did not go to the hospital after the accident. At first it did not seem that serious. But after the accident things started to get worse. She felt different physical pains. Then she developed severe depression and anxiety. She has never gone back to work.

This paragraph describes a simple car accident, which did not seem serious at first. But then it explains how this appellant has suffered, and now lives with life-changing injuries. The narrative sets out a series of signposts, and alerts the reader to look for them in the rest of the decision. That aids in comprehension.

It also tells a human story in a way that sets out this appellant's experience with some empathy, but without sacrificing the kind of impartiality expected of a decision-maker. A traditional approach to writing reasons would have described these events in a colder, more clinical tone.

But providing the context is not just about setting out the human story. It also consists of setting out the legal issues. An informal tone can also help in introducing legal concepts to a non-lawyer reader. Here is an example which uses the personal pronoun 'you' to explain how the law works:

> If you are injured in a car accident in Ontario, you are entitled to benefits to care for your injuries. Injuries are classified in three levels. The most serious ones are "catastrophic". If you have a catastrophic impairment, then you can get additional medical and rehabilitation benefits."

Intimidating technical details are left out. The reader is just given the essential information in simple terms, using a conversational tone.

Paraphrasing legal tests eases comprehension

Legal accuracy cannot be sacrificed in writing reasons for decision. At the SST, our decisions may be judicially reviewed by Canada's Federal Court of Appeal, so adjudicators cannot misstate a legal test in the interests of readability. For this reason, we rely heavily on paraphrasing to state a legal test accurately and then explain it in simpler terms:

Before	After
I have to consider **whether her efforts were sustained and whether they were directed toward finding a suitable job**.	I have to look at whether her efforts were sustained and whether they were directed toward finding a suitable job. **In other words, the Claimant has to have kept trying to find a suitable job.**

On the left hand side, the text in bold is the legal test. In this case it happens to be written in relatively accessible language, but it still contains a term of art – "sustained efforts" – and the structure of the sentence is not so easy.

On the right hand side, we repeat the legal test in the first sentence. But then we paraphrase it in simpler terms: "[T]he Claimant has to have kept trying to find a suitable job." We use a transitional marker at the start of the second sentence, the phrase "In other words". The transitional marker signals to the reader that we are now going to translate from legalese into normal language.

Legal accuracy is maintained, and the lay reader has a better chance of understanding the legal test that determines whether they are eligible for benefits.

Layering the information lets you write for both lawyers and non-lawyers

An alternative to explaining legal concepts in the body of the decision is to put them in footnotes:

> Even though the psychiatrist's report from the catastrophic impairment assessment was made after the Claimant's qualifying period, I can use it to look back at what her condition was in December of 2017. (1)
>
> (1) The legal term for this way of thinking is called "drawing an inference". When there is no direct information about what happened, you can draw an inference about what happened. You do this by looking at all of the surrounding circumstances and making a logical conclusion about what most likely happened. The conclusion cannot be a guess. It has to be supported by evidence. An example of this way of thinking can be found in a case called *Minister of Human Resources and Skills Development v. J.R.* (February 6 2009) CP 25889 (PAB).

In this case we are using a medical report that was made at a particular point in time. We use it to look back and decide whether the claimant was disabled in a period some months before the report was made.

The footnote explains that we are drawing an inference to come to a factual conclusion. It first explains what an inference is. Then it sets out the legal standard of proof: "what most likely happened". This is just another way of saying proof on a balance of probabilities. And it provides a citation from another case to support the use of an inference in these circumstances.

The primary audience for the footnote is not the claimant. She most likely doesn't care about how a legal inference works. But she certainly cares about whether we will look at her psychiatrist's report. So the audience for the footnote consists of lawyers and judges, and anyone else who may wish to rely on the decision or challenge its legal accuracy.

By using layers, we can effectively create two sets of reasons that work in parallel. The body of the text is for the claimant. The body of the text plus the footnotes are for lawyers and judges.

At the SST, we strongly encourage adjudicators to use layers, and to avoid putting legal citations in the body of the text. Most ordinary Canadians are not trained to decode a reference to a court decision or a statute. Including citations in the text increases cognitive load and decreases comprehension.

This is why we encourage adjudicators to set out legal principles in the body of the text, but to confine the sources of those principles to the footnotes, like this:

> There is a consistent theme in the caselaw that the factual basis for a Charter challenge should be developed at the first level of adjudication. There are exceptions, but they are rare. This is true, whether the first level of adjudication is a court or a tribunal. (1)
>
> (1) The Federal Court of Appeal explains this concept in relation to tribunals. It is found in a decision called Forest Ethics Advocacy Association v Canada (National Energy Board), 2014 FCA 245 (CanLII), at paras 42-43.

There are times when a more detailed discussion of the law is necessary. In those circumstances, an adjudicator may have to deal with conflicting cases in the body of the reasons. Those are instances where layering the technical details into footnotes doesn't work. However, the great majority of cases only require the application of settled legal principles to the facts of individual appeals. For those cases, layering works. It helps the writer to confine the technical details of the law to the footnotes.

This gives a quick overview of some of the writing techniques we are using at the SST. For a more comprehensive account, please consult the SST Style guide: Social Security Tribunal of Canada decisions (sst-tss.gc.ca).[2] We have developed the Style guide to promote the use of plain and inclusive language in reasons. It was written for our adjudicators, but any judge, adjudicator or lawyer is welcome to adopt or adapt it for their own purposes. In support of the broader goal of spreading plain language, our approach is open source by default.

3. Has any of this made a difference?

The SST has been working towards a plain language approach to writing reasons since 2018. Our approach to this initiative, like any other that aims to improve access to justice, is to ground our analysis in data.

Does the data show whether we are making a difference? I think it does.

We have adopted the international plain language community's definition of plain language as our reference point for our training initiatives:

2 https://www.sst-tss.gc.ca/en/our-work-our-people/evaluation-easy-it-read-decisions-social-security-tribunal#toc-id-5

3 https://www.sst-tss.gc.ca/en/our-work-our-people/style-guide-social-security-tribunal-canada-decisions

> A communication is in plain language if its wording, structure, and design are so clear that the intended readers can easily find what they need, understand what they find, and use that information.

As a result, we have focused our efforts on improving three components of our reasons for decision: wording, structure and design.

Our first step was to focus on structure. We did this by training adjudicators on point first writing. Some time after the initial training, we compared the length of reasons before and after the training. A word count on representative samples of reasons for decision showed that the length of reasons dropped by about **25%** when we moved off the old-school approach.

However, while the move to point first writing improved the structure of reasons and shortened them, there is more to plain writing than clear structure. To improve our approach to the second component of the definition, wording, we engaged plain language experts and retired judges. They delivered further training to our adjudicators, including the use of the techniques I describe above. We also benefited from advice on design. We revamped our reasons writing templates, to reduce the cognitive load that comes from poor visual design.

The SST conducted an internal evaluation that provides a comprehensive assessment of our progress. It is available here: An evaluation of how easy it is to read decisions of the Social Security Tribunal (sst-tss.gc.ca).[3]

The evaluation drew on three sources of data:

- A scorecard we developed to score a sample of 189 sets of reasons for readability. The scorecard used 16 questions which focus on the overview, structure and style of reasons;
- A survey of adjudicators to collect their perspectives on writing reasons in plain language; and
- The Flesch-Kincaid readability test.

The scorecard compared reasons written before and after the training. Before the training, **34%** of reasons scored at the high end of the scorecard. After the training, **51%** scored in the upper range. This indicates that we have made a gradual but clear improvement in the accessibility of our reasons for decision. It also indicates that progress takes time. A commitment to changing the culture of an organisation to adopt plain language is an effort measured in years, not months.

If you have any questions about how the SST approaches plain language or other questions of access to justice, don't hesitate to reach out to me wherever you are.

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Rédiger les motifs d'une décision avec humanité

Paul Aterman

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Une citoyenne ou un citoyen demande des prestations d'assurance-emploi. Les bureaucrates refusent de lui en verser. Cette personne a toutefois un droit d'appel : c'est au Tribunal de la sécurité sociale du Canada (TSS) de décider.

Une audience a lieu, puis cette personne reçoit une décision dans laquelle on lui annonce si un chèque lui sera envoyé par la poste… ou non.

La décision ne peut pas simplement se résumer à un « oui » ou à un « non ». La loi exige que la décision contienne des motifs. De plus, la citoyenne ou le citoyen a le droit de comprendre les motifs du gouvernement quand sa façon d'agir a une incidence sur sa vie et son bien-être.

1. Contexte : Qu'est-ce que le TSS, et qui sert-il?

Au Canada, le filet de sécurité sociale fédéral est composé de :

- prestations d'assurance-emploi pour une personne qui a perdu son emploi;
- prestations du Régime de pensions du Canada pour remplacer une partie du revenu d'une personne retraitée ou invalide;
- prestations de la Sécurité de la vieillesse pour les personnes âgées.

Les lois qui fixent les critères d'admissibilité à ces prestations datent du milieu du siècle dernier. Elles sont extrêmement complexes et pleines de détails techniques. Même les avocates et avocats ont du mal à les maîtriser. Voici un exemple tiré du *Règlement sur l'assurance-emploi* :

> Lorsque la rétribution de l'assuré se compose uniquement de commissions ou d'un salaire assorti de commissions versées à intervalles irréguliers, la rémunération assurable versée au cours de la période d'emploi ou les 52 dernières semaines, selon la période la plus courte, est répartie proportionnellement sur cette période, compte non tenu des semaines pour lesquelles l'assuré est en congé sans solde pour l'une des raisons mentionnées au paragraphe 12 (3) de la Loi.

Non seulement le langage est archaïque et porte à confusion, mais les critères d'admissibilité aux prestations le sont tout autant. Ils reflètent les réalités du milieu du 20e siècle, lorsqu'une personne conservait généralement le même emploi salarié pendant la majeure partie de sa carrière et que la plupart des travailleurs étaient des hommes.

Ces complexités et archaïsmes sont une source de frustration pour les personnes qui demandent des prestations aujourd'hui. Cette frustration est aggravée par le fait qu'elles doivent faire face à une bureaucratie lourde, souvent anonyme, qui décide si elles sont admissibles ou non à des prestations.

Si la réponse est « non », la personne a le droit de faire appel auprès du TSS. Le TSS est un tribunal administratif. Il emploie des arbitres neutres, tient des audiences et décide si le gouvernement a eu raison ou tort de refuser les prestations.

Plus de **70 %** des personnes qui font appel au TSS n'ont pas de représentation légale. Ces Canadiennes et Canadiens constituent la clientèle du TSS. Ces personnes se défendent elles-mêmes ou se font aider par une ou un de leurs proches.

Même si le TSS ressemble beaucoup à un tribunal spécialisé et qu'il est indépendant du gouvernement, il ne fait pas partie du système judiciaire. Nous pouvons donc concevoir un processus beaucoup moins formel que celui d'une cour. Cela comprend la manière dont nous rédigeons les motifs de nos décisions.

Au cours des trois dernières années, le TSS s'est engagé dans un projet visant à rédiger ses motifs en langage clair et simple. Je vais maintenant vous donner un aperçu de certaines des techniques que nous utilisons.

2. Conseils pour rédiger des motifs en langage clair et simple

Des siècles de tradition juridique pèsent contre l'emploi d'un langage clair et simple dans la loi. Il existe de solides conventions, établies depuis longtemps, en matière de rédaction des jugements. Elles établissent des approches standard pour la structure des motifs et l'utilisation des mots et des phrases. Pour les juges et les arbitres, c'est devenu un réflexe de les utiliser. Pourtant, la plupart des citoyennes et des citoyens qui utilisent les systèmes juridiques ne connaissent pas ces conventions.

Alors, comment faire pour les désapprendre?

Tout commence par la structure

Expliquer les motifs d'une décision à une personne qui n'est pas une spécialiste du droit est difficile en soi, car les motifs sont complexes en soi. Dans chaque cas, l'arbitre doit :

- définir les questions en litige;
- exposer les faits pertinents à ces questions;
- expliquer pourquoi une version des faits est préférée à une autre;
- appliquer la loi à ces faits;
- expliquer le résultat et la réparation.

En raison de leur complexité, les motifs doivent souvent être longs. C'est inévitable. La structure des motifs est donc le facteur le plus déterminant pour assurer une communication claire.

La structure traditionnelle des motifs d'une décision est de moins en moins utilisée. C'est une bonne nouvelle. Cette structure suivait une approche générique et conventionnelle :

- La personne qui rédige la décision décrit brièvement le litige, mais sans donner le résultat de l'affaire.

- Elle expose ensuite tous les éléments de preuve qui ont été présentés.
- Puis, elle expose tous les arguments des parties.
- Ce n'est qu'au milieu des motifs que l'on apprend quelles sont les questions déterminantes dans l'affaire.
- L'analyse commence alors, et l'on discute des éléments de preuve et des arguments pertinents.
- Finalement, le résultat de l'affaire est révélé.

Cette structure se prête aux répétitions inutiles. Lorsque la personne qui rédige les motifs relate l'ensemble des éléments de preuve et des arguments, elle fournit une transcription abrégée de ce qui s'est passé à l'audience. Les personnes les plus susceptibles de lire les motifs sont les parties à l'appel. Elles étaient présentes à l'audience, donc elles savent déjà ce qui s'est passé. Quel est donc l'intérêt de revenir là-dessus?

Ensuite, certains des éléments de preuve, des arguments et des lois sont répétés dans la section d'analyse, lorsque la personne qui rédige la décision s'efforce enfin de faire le tri entre ce qui est pertinent et ce qui ne l'est pas.

La structure formelle et générique de l'approche traditionnelle est facile à écrire. La personne qui rédige n'a pas à réfléchir à la structure. Cependant, les motifs sont difficiles à comprendre, car on ne donne pas de points de repère au lectorat.

Comparez maintenant l'approche traditionnelle à l'approche que nous recommandons, soit celle de présenter les renseignements les plus pertinents en premier (en anglais, cette approche de rédaction est appelée *point-first*)[1] :

- La personne qui rédige la décision commence par fournir un court résumé de l'affaire afin d'expliquer au lectorat : sur quoi porte l'affaire, comment elle sera tranchée et quel est le résultat.
- La personne qui rédige présente ensuite les questions en litige pertinentes qui mènent au résultat de la décision.
- Pour ce faire, elle présente les renseignements pertinents en premier. Pour chaque question, elle expose d'emblée sa conclusion. Chaque conclusion constitue un point distinct. Ensuite, elle fournit des explications pour chaque conclusion (ou point), mais en se référant uniquement aux éléments de preuve, aux arguments et aux lois qui sont pertinents pour ce point en particulier. Chaque point est un élément fondamental.
- Les éléments fondamentaux sont réunis pour former une conclusion globale. Elle récapitule brièvement, pour le lectorat, comment la personne qui rédige la décision est arrivée au résultat de la décision.

Une structure où l'on présente les renseignements les plus pertinents en premier montre au lectorat quoi chercher en naviguant dans un document complexe. La personne qui rédige exclut les éléments de preuve, les arguments et les analyses juridiques qui ne sont pas pertinents pour les questions en litige qui sont déterminantes pour l'affaire. La personne qui rédige guide le lectorat d'un élément de la structure à un autre. Les répétitions sont évitées ou réduites au minimum.

1 Au Canada anglophone, personne n'a probablement eu une plus grande influence sur la rédaction de motifs clairs que le juge John I. Laskin (anciennement de la Cour d'appel de l'Ontario). Son enseignement a permis de faire connaître aux juges et aux arbitres l'approche point-first, où l'on présente les renseignements les plus pertinents en premier. Cela a contribué à accélérer le déclin de l'approche traditionnelle. Voici un lien (en anglais seulement) vers un excellent aperçu de la manière de structurer les motifs de manière logique. See https://soar.on.ca/system/files/documents/session-8-laskin.pdf.

Le ton des motifs témoigne de l'importance de l'expérience personnelle

La notion de contexte n'est pas tout à fait la même pour les juristes que pour le lectorat qui n'est pas spécialiste du droit. Les avocates et les avocats sont souvent plus intéressés par le contexte juridique : que révèle cette affaire à propos du droit? Cependant, au TSS, ce n'est pas pour eux que nous écrivons.

Nous essayons de commencer par l'expérience personnelle, car c'est quelque chose que tout le monde peut comprendre :

> Le 12 janvier 20xx, C. F. conduisait sa voiture sur l'autoroute 400, à l'extérieur de Toronto. Elle conduisait à une vitesse normale. Une autre voiture qui circulait à une vitesse beaucoup plus élevée l'a frappée par-derrière. Elle portait sa ceinture de sécurité. Les coussins gonflables ne se sont pas déployés. Elle n'a pas subi de blessures externes. Elle n'est pas allée à l'hôpital après l'accident. Au départ, cela n'a pas semblé si grave. Mais après l'accident, les choses ont commencé à se détériorer. Elle a ressenti différentes douleurs physiques. Puis elle a souffert de dépression et d'anxiété graves. Elle n'est jamais retournée au travail.

Ce paragraphe décrit un simple accident de voiture qui, à première vue, ne semblait pas grave. Cependant, il décrit ensuite comment l'appelante a souffert et comment elle vit maintenant avec des blessures qui ont changé sa vie. Le récit établit une série de points de repère et invite le lectorat à les repérer dans le reste de la décision. Cela facilite la compréhension.

Le récit décrit également l'expérience personnelle de cette appelante avec une certaine empathie, mais sans sacrifier le type d'impartialité attendu d'un décideur. Une personne qui rédige les motifs selon une approche traditionnelle aurait décrit ces événements sur un ton plus froid et plus clinique.

Toutefois, fournir le contexte ne consiste pas seulement à exposer l'expérience personnelle. Il s'agit aussi d'exposer les questions juridiques. Un ton informel peut également aider à présenter des concepts juridiques à des personnes qui ne maîtrisent pas le droit. En anglais, l'une des façons d'avoir un ton informel est d'utiliser le pronom personnel « you » (« vous ») pour expliquer le fonctionnement de la loi :

> Si vous êtes blessé dans un accident de voiture en Ontario, vous êtes admissible à des prestations pour soigner vos blessures. Les blessures sont classées dans trois catégories. Les plus graves sont les blessures « invalidantes ». Si vous avez une déficience invalidante, vous pouvez obtenir des prestations médicales et de réadaptation.

Les détails techniques intimidants sont laissés de côté. Le lectorat reçoit simplement les renseignements essentiels dans des termes simples et sur un ton convivial.

La paraphrase des critères juridiques facilite la compréhension

L'exactitude juridique ne peut pas être sacrifiée lors de la rédaction des motifs de décision. Au TSS, nos décisions peuvent faire l'objet d'un contrôle judiciaire par la Cour d'appel fédérale du Canada. Les arbitres ne peuvent donc pas dénaturer un critère juridique dans l'intérêt de la lisibilité. C'est pourquoi nous avons largement recours à la paraphrase pour énoncer un critère juridique avec précision et l'expliquer ensuite en termes plus simples :

Avant	Après
Je dois examiner **si ses démarches étaient soutenues et si elles visaient à trouver un emploi convenable.**	Je dois examiner si ses démarches ont été soutenues et si elles visaient à trouver un emploi convenable. **Autrement dit, la prestataire doit avoir continué à essayer de trouver un emploi convenable.**

À gauche, le texte en gras correspond au critère juridique. Ici, il est rédigé dans un langage relativement accessible, mais il contient tout de même un terme technique – « démarches soutenues » – et la structure de la phrase n'est pas si simple.

À droite, nous répétons le critère juridique de la première phrase. Puis, nous le paraphrasons en termes plus simples : « [L]a prestataire doit avoir continué à essayer de trouver un emploi convenable. » Nous utilisons une charnière au début de la deuxième phrase, soit l'expression « autrement dit ». La charnière signale au lectorat que nous allons maintenant passer du jargon juridique à un langage courant.

L'exactitude juridique est maintenue et la personne non initiée a de meilleures chances de comprendre le critère juridique qui établit si elle a droit à des prestations.

La superposition des renseignements permet d'écrire à la fois pour les spécialistes du droit et les non-spécialistes

Une autre solution pour expliquer les concepts juridiques est de les présenter dans des notes de bas de page plutôt que dans le corps de la décision :

> Même si le rapport du psychiatre découlant de l'évaluation de la déficience invalidante a été établi après la période d'admissibilité de la prestataire, je peux l'utiliser pour examiner son état de santé en décembre 2017. (1)
>
> (1) Le terme juridique pour désigner cette façon de penser s'appelle « raisonnement déductif ». Lorsqu'il n'y a pas d'information directe sur ce qui s'est passé, on peut en tirer une déduction. Pour ce faire, il faut examiner toutes les circonstances de l'affaire et tirer une conclusion logique sur ce qui s'est fort probablement passé. La conclusion ne peut pas être une supposition. Elle doit être étayée par la preuve. Un exemple de cette façon de penser se trouve dans une décision intitulée Ministre des Ressources humaines et du Développement des compétences c JR (6 février 2009), CP 25889 (CAP).

2 https://www.sst-tss.gc.ca/fr/notre-travail-notre-equipe/guide-redaction-decisions-tribunal-securite-sociale-du-canada

Dans cette affaire, on utilise un rapport médical qui a été établi à un moment précis. On s'en sert pour se faire une idée du passé et décider si la prestataire était invalide pendant une période de quelques mois avant la rédaction du rapport.

La note de bas de page explique qu'on tient un raisonnement déductif pour arriver à une conclusion de fait. Elle explique d'abord ce qu'est une déduction. Ensuite, elle énonce la norme juridique de la preuve : « ce qui s'est fort probablement passé ». Il s'agit simplement d'une autre façon de dire « preuve selon la prépondérance des probabilités ». De plus, l'on cite une autre décision pour justifier l'utilisation d'une déduction dans ces circonstances.

Le principal destinataire de la note de bas de page n'est pas la prestataire. Il est fort probable qu'elle ne se soucie pas de savoir ce qu'est une déduction dans le contexte du droit. Cependant, elle se soucie certainement de savoir si nous allons examiner le rapport de son psychiatre. Les personnes visées par la note de bas de page sont donc les suivantes : les juristes, les juges, ainsi que toute autre personne susceptible de s'appuyer sur la décision ou de contester son exactitude juridique.

La superposition est un moyen efficace de créer deux ensembles de motifs qui fonctionnent en parallèle. Le corps du texte est destiné à la partie prestataire; le corps du texte et les notes de bas de page sont destinés aux avocates et avocats, et aux juges.

Au TSS, nous encourageons vivement les arbitres à utiliser la superposition et à éviter de mettre des citations juridiques dans le corps du texte. La plupart des Canadiennes et Canadiens ne savent pas décoder une référence à une décision judiciaire ou à une loi. Les citations dans le texte augmentent la charge cognitive et diminuent la compréhension.

C'est pourquoi nous encourageons les arbitres à énoncer les principes juridiques dans le corps du texte, mais à confiner les sources de ces principes dans les notes de bas de page, comme dans l'exemple suivant :

> Il existe un thème récurrent dans la jurisprudence selon lequel le fondement factuel d'une question constitutionnelle doit être établi au premier niveau décisionnel. Il existe des exceptions, mais elles sont rares. Cela est vrai, que le premier niveau décisionnel soit une cour ou un tribunal. (1)
>
> (1) La Cour d'appel fédérale explique ce concept en lien avec les tribunaux. Cette explication se trouve dans une décision intitulée Forest Ethics Advocacy Association c Canada (Office national de l'énergie), 2014 CAF 245 (CanLII), aux paragraphes 42 à 43.

Il arrive parfois qu'une analyse plus détaillée du droit soit nécessaire. Dans ces circonstances, les arbitres peuvent avoir à traiter de causes contradictoires dans le corps des motifs. Dans ces cas-là, la superposition des détails techniques dans des notes de bas de page ne fonctionne pas. Toutefois, dans la grande majorité des cas, il suffit d'appliquer des principes juridiques bien établis aux faits de chaque appel. Dans de tels cas, la superposition fonctionne. Elle aide la personne qui rédige la décision à confiner les détails techniques de la loi dans les notes de bas de page.

C'est ce qui conclut l'aperçu de certaines des techniques d'écriture que nous utilisons au TSS. Pour un compte rendu plus complet, veuillez consulter le Guide de rédaction des décisions : Tribunal de la sécurité sociale du Canada (sst-tss.gc.ca).[2] Nous avons élaboré ce guide de rédaction afin de promouvoir l'utilisation d'un langage clair, simple et inclusif dans les motifs. Il a été rédigé pour nos arbitres, mais tout juge, arbitre ou juriste est invité à l'adopter ou à l'adapter pour ses propres besoins. Afin de soutenir notre objectif plus large de promouvoir le langage clair et simple, nous avons adopté l'approche du libre accès par défaut.

3 https://www.sst-tss.gc.ca/fr/notre-travail-notre-equipe/evaluer-lisibilite-decisions-du-tribunal-securite-sociale

3. Est-ce que tous ces efforts ont servi à quelque chose?

Le TSS travaille depuis 2018 à élaborer une approche pour rédiger des motifs en langage clair et simple. Notre approche pour cette initiative, ou toute autre initiative qui vise à améliorer l'accès à la justice, consiste à fonder notre analyse sur des données.

Les données montrent-elles que nous avons fait changer les choses? Je crois bien que oui.

Nous avons adopté la définition du langage clair et simple de la communauté internationale comme point de référence pour nos initiatives de formation :

> Une communication est en langage clair si les mots et les phrases, la structure et la conception permettent au destinataire visé de facilement trouver, comprendre et utiliser l'information dont il a besoin.

Par conséquent, nous avons concentré nos efforts sur l'amélioration de trois éléments de nos motifs de décision : la formulation (les mots et les phrases), la structure et la conception.

En premier, nous nous sommes concentrés sur la structure. Pour ce faire, nous avons formé les arbitres afin qu'ils présentent les renseignements les plus pertinents en premier. Quelque temps après la formation initiale, nous avons comparé la longueur des motifs avant et après la formation. Un comptage des mots à partir d'échantillons représentatifs des motifs de décision a révélé que la longueur des motifs a diminué d'environ **25 %** lorsque nous avons abandonné l'approche traditionnelle.

Néanmoins, si l'adoption de cette méthode de rédaction a permis d'améliorer la structure des motifs et de les raccourcir, la rédaction en langage clair et simple ne se limite pas à une structure claire. Pour améliorer notre approche concernant le deuxième élément de la définition, à savoir les mots et les phrases, nous avons fait appel à des spécialistes du langage clair et simple et à des juges à la retraite. Ils ont dispensé une formation complémentaire à nos arbitres, notamment sur l'utilisation des techniques que je décris ci-dessus. Nous avons également bénéficié de conseils en matière de conception. Nous avons révisé les gabarits servant à rédiger nos motifs afin de réduire la charge cognitive liée à une mauvaise conception visuelle.

Le TSS a réalisé une évaluation interne qui fournit une étude complète de nos progrès. Cette évaluation est accessible au lien suivant : Évaluer la lisibilité des décisions du Tribunal de la sécurité sociale (sst-tss.gc.ca).[3]

L'évaluation s'est appuyée sur trois sources de données :

- une fiche d'évaluation que nous avons conçue pour noter le niveau de lisibilité d'un échantillon de 189 ensembles de motifs (la fiche d'évaluation comportait 16 questions axées sur l'aperçu, la structure et le style des motifs);
- un sondage auprès des arbitres afin de recueillir leur point de vue sur la rédaction des motifs en langage clair et simple;
- le test de lisibilité de Flesch-Kincaid.

La fiche d'évaluation permettait de comparer les motifs écrits avant et après la formation. Avant la formation, **34 %** des motifs se situaient dans la tranche supérieure de la fiche d'évaluation. Après la formation, **51 %** des motifs ont obtenu un score se situant dans la tranche supérieure. Cela indique que l'accessibilité de nos motifs de décision s'est améliorée de façon progressive mais nette. Cela indique également que les progrès prennent du temps à se réaliser. S'engager à changer la culture d'un organisme pour adopter un langage clair et simple demande des efforts qui se mesurent en années, et non en mois.

Si vous avez des questions sur la manière dont le TSS a recours au langage clair et simple ou d'autres questions relatives à l'accès à la justice, n'hésitez pas à communiquer avec moi, peu importe où vous vous trouvez.

A healthy language in a healthy country?

Torunn Reksten, Helge Magnus Opsahl, and Tove Ragna Reksten

Language is power. Abusing that power deprives citizens of their right to contribute to society and violates their trust in public decisions. As Norway introduces a brand new Language Act with its own section on plain language, the Norwegian Medicines Agency (NoMA) aims to improve trust in health care decisions and bring greater understanding for the principles and priorities that guide health care decisions. How? A key measure is implementing lay summaries in health technology assessment reports.

An ambitious language policy

On 1 January 2022, Norway's new Language Act[1] (Lov om språk (språklova) - Lovdata) came into force. The Act is user-centered and makes it clear that language policy is all about democracy, participation, and a good society for all.

Recognising that languages can be displaced by other languages, the purpose of the Act is to strengthen the Norwegian language. In addition, it ensures protection and status for all the other languages the Norwegian state takes responsibility for. According to the Act, all public sectors are responsible for complying with the Act, thus ensuring that Norwegian is continually developed so that it can be used in all sectors and parts of society.

Plain language is an important aspect of language development and is granted a separate section in the Language Act. This section states that public agencies as well as regional and local authorities shall use a language that is clear, correct, and understandable for the intended reader. This plain language legislation ensures the citizens of Norway receive good information about their rights and duties. Plain language will make the dialogue between the public sector and the citizens easier, and this is fundamental for building trust and confidence in the public sector.

The vital health sector is awake

The health sector is crucial for public services to the citizens, and therefore has a significant responsibility for following up on the language policy. For this reason, the health sector is explicitly mentioned in legislative history, stating that the health service must communicate with patients in a language they understand, both in personal meetings and in digital services. If it doesn't, people's health could be at stake. At the core of the many language considerations to be taken in this sector, we find the patients' and other users' rights to understandable information on their own health conditions.

The Norwegian health sector, led by the Ministry of Health and Care Services, is committed to this work. For years, plain language has been a tool to achieve the goal of creating patient-centered health service. A 2016 patient survey conducted

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Torunn has served on the Drafting Committee for the upcoming ISO standard for Plain Language, and she orchestrated the PLAIN 2019 conference in Oslo. She is in charge of the Norwegian Language Council's plain language strategies, and is passionate about innovation and constant renewal in plain language and in general.

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1 https://lovdata.no/dokument/NL/lov/2021-05-

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Helge Magnus Opsahl is a political scientist, working as a communication adviser at the Norwegian Medicines Agency since 2011. He has the overall responsibility of the maintanance and development of the agency's internet and intranet portals, focusing on content management. One of his heart matters is clear language when writing for the web. Opsahl previoulsy had a similar position as a web editor in the municipal administration in Drammen.

by the Norwegian Consumer Council concluded that there was a need for simpler, more understandable communication between patients and health care providers. This survey identified a need to address several types of information that the patient received, such as appointment instructions, examination and test results, discharge interviews, and follow-up routines. Furthermore, the language in the health sector encompasses anything from a caring conversation between a family doctor and patient to the government presenting new and complex COVID-19 measures at a press conference. But one thing is common to all good and effective language: It does not come by itself.

Low health literacy is a threat

As a result of the efforts, patients in Norway have never had better access to information about themselves, and patients are to a greater extent than before able to make choices about their own health. Health misinformation is, however, still a great threat to public health in Norway. Despite the government's efforts to strengthen the population's health literacy, a survey presented by the national Directorate of Health in January 2021 found that Norway has not yet reached plain language nirvana.

The survey shows that a large proportion of the citizens have problems finding the information they need, understanding the information well enough, and using the information to make important choices about their own health.[2] One in three people in Norway lacks central knowledge about health. Almost half the population have problems assessing various treatment options, and more than half know too little about navigating the health care system. Many find it challenging to interpret health information and, therefore, use social media "health experts" as their sole source of such information. The author of the report, professor of health communication Kjell Sverre Petterson at Oslo Metropolitan University, has observed that the less scientifically founded or more incorrect the health information is, the easier the message is to understand. Therefore, it becomes the preferred information as well as the most shared on social media, which inevitably results in misinformation.

Plain language and openness are tools to maintain trust

The Nordic region has, according to the Nordic Council of Ministers,[3] the highest level of social trust in the world. This benefits the economy, individuals, and society as a whole. Poor understanding between the government and the citizens demeans our society, and poor understanding devalues the citizens' trust in the government and its decisions.

It is an official requirement that the public administration in Norway shall be efficient, open, coordinated, and enjoying a high level of trust among the population. Integrity and openness in public administration is one of three main pillars in the Norwegian Action Plan[4] to ensure a public administration which enjoys a high level of trust among the population.

The Norwegian central government communication policy also states that all federal agencies shall be open, clear, and accessible in their communication with the citizens. They shall use a well-written and clear language that is understandable to all. Furthermore, the government shall ensure that relevant information reaches everyone concerned.

NoMA's communication challenge and strategy

Openness is also one of the strategic goals of the Norwegian Medicines Agency. We promote openness and trust and communicate in a clear and coordinated way.

2 Le, C., Finbråten, H. S., Pettersen, K. S., Joranger, P., & Guttersrud, Ø. (2021). Health Literacy in the Norwegian Population. English Summary. In Befolkningens helsekompetanse, del I. The International Health Literacy Population Survey 2019 – 2021 (HLS19) – et samarbeidsprosjekt med nettverket M-POHL tilknyttet WHO-EHII. The Norwegian Directorate of Health.

3 Ulf Andreasson (2017) Trust – the Nordic Gold. Nordic Council of Ministers. DOI: 10.6027/ANP2017-737.

4 Fourth Norwegian Action Plan, Open Government Partnership (OGP) 2019-2021. Published by: Norwegian Ministry of Local Government and Modernisation. Publication number: H-2441 E

Keeping the needs of patients, health care professionals, and the society as a whole as a basis for everything we do is one of our premises.

NoMA's responsibilities include marketing authorisations, classification, vigilance, pricing, reimbursement, and providing information on medicines to prescribers and the public. We manage, directly or indirectly, substantial resources as we evaluate and decide whether a medicine should be publicly funded. Our health economic assessments (HTA) constitute a basis for deciding how these resources should be distributed according to priority criteria set out by the Parliament. Quite often NoMA must communicate controversial conclusions or conclusions based on uncertain or limited knowledge. The controversy and the uncertainty often appear to be amplified when we present the harsh and naked facts. Communicating this can be uncomfortable, especially when conclusions affect individuals in a dire situation. We must meet the reader with respect, without under-communicating the fact that we administer and enforce a set of rules and execute our social purpose/societal function. It demands considerable experience and reflection to communicate clearly in a considerate way: the message must be easily understood, and the reasons for a decision clearly stated. This consideration ensures the reader understands why a decision has been reached and the consequences it may have.

When communicating scientific assessments, we tell the public in an open and clear way

- what we know and what we don't know;
- what we consider the scientific basis of our recommendations, including uncertainties and ethical considerations; and
- what scientific disagreements exist between experts concerning the topic.

NoMA's steps towards clarity

Through the three key principles of transparency, user involvement, and plain language, NoMA strives to maintain trust in health decisions and prevent misinterpretation of our HTA reports.

Interdisciplinary team

Seeking expert advice from the plain language expert at the Norwegian Language Council, an interdisciplinary team consisting of a health economist, a pharmacist, and a communication adviser set out to create lay summaries to explain our HTA reports. The first issue we encountered as we fumbled to determine who our readers are and what these readers need, was balancing the needs of highly specialised and detail-oriented HTA assessors to convey correct information while removing the incomprehensible complexities. Secondly – in a classical war of professions – we had very different ideas of what is the most essential information to disseminate from our HTA reports.

User involvement to identify main concerns

The HTA department has always welcomed questions from patients and their organisations, and frequently gives talks at their meetings. One such organisation reached out for information as we were working on a particularly difficult assessment

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Tove Ragna is a pharmacist and researcher performing health technology assessments (HTA), a systematic evaluation of effects, safety and associated costs of new medicinal products. It is a multidisciplinary process to evaluate the social, economic, organisational and ethical issues of a health intervention. Within the universal health care model in the Norway, the HTAs play a crucial role in determining which treatments and procedures shall be made available.

Through her work and personal experiences Tove Ragna has learnt the importance of making critical health information easily understandable and readily accessible. She works passionately to bridge the information gap between clinical research and the public by improving terminology and implementing plain language in public health decisions.

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of a break-through treatment for their disease. This gave us the ultimate chance to test our concept of lay summaries and a perfect opportunity to ask the intended reader directly what information they needed. Our users helped us identify four areas of particular concern to the public:

- WHAT is the drug
- for WHOM is the drug
- WHY is the drug being considered
- HOW MUCH does the drug cost

Confident in our own communication skills, we presented our first lay summary to these patients and their next-of-kin. We bellyflopped! They all said they understood. Their interpretation was, however, the opposite of what we had meant to convey.

The product: One template to hold them all and in clearness show them

The pilot phase had months of trial and errors. We tested the template on various medical products spanning from biologics for atopic dermatitis to tumour-agnostic therapies and cannabidiol treatments, and we got plenty of criticism from almost every assessor team writing these summaries. However, the team finally agreed on a uniform presentation. We itemised and standardised the four concerns into 9 domains:

1. Description of drug and disease
2. Explanation of disease severity
3. Number of patients
4. Effect (utility) of the drug
5. Description of clinical studies
6. NoMA's assessment of points 4 and 5
7. Critiques
8. Explanation of changes NoMA has made to assumptions in analyses
9. Summary of the relationship between costs and utilities

The first point is a description of drug and disease, which often can be sourced directly from the patient information leaflet.

Disease severity is described both in terms of prognosis, kinds of symptoms, or disease stage, and as "absolute shortfall" (the Norwegian way of calculating severity). Along with a presentation of number of relevant patients, it gives an idea of how common or rare this disease is but also clearly defines relevant patients, such as those with a specific genetic mutation, or those who meet specific clinical criteria.

As we estimate and assess the relative effects of the medicine, that is, doing a comparison with what is considered the gold standard in today's Norwegian clinical practice, it's not as straight forward to illustrate the effects as one might think. We are still working on perfecting this point.

Despite breaching the logical sequential presentation of a study – methods followed by results – the HTA experts listened to the communication experts: we'll lose our reader if we dive into technical matters before giving them what they come for:

how may this drug improve their life expectancy or quality of life? We thus only briefly describe the clinical studies, highlighting any issues that complicate or even invalidate our assessment.

After presenting a plain language summary in points 1 through 5, NoMA presents our understanding and interpretations of these data, in the context of Norwegian clinical practice. Furthermore, we explain and criticise any issues we've discovered in our assessment, and describe any conflicting assumptions, to provide an understanding of why this particular medicine is or is not cost-effective. Finally, the relationship between costs and utilities/effects is presented: how much better health will this new medicine give us and how much do we have to pay for it.

Consistent terminology

We know that lack of clear language training is a common obstacle to communicating clearly. Furthermore, old habits and lack of time may be obstacles. To help the writer fight the urge to use complicated language, we have provided simple training programmes (publicly available from the Norwegian Language Council) along with text templates and domain specific language rules with lists of approved phrases. Our final product is a 2-page template with meticulously crafted and validated terminology and standard sentences in plain language that cannot be altered. Moreover, we have put together a list of approved phrases to choose from when describing results, studies, and our critiques, covering most of the common issues and data we encounter. Good, consistent use of terminology and phrases helps readers recognise, understand, and use content as well as easily identify the information they seek across various HTA reports. We believe standardising the text and not allowing much deviation from the template prevents confusion and contributes to improving health literacy.

Measurable outcomes for NoMA

The COVID-19 pandemic meant a sudden halt to all interactions with patient organisations. Therefore, we have not had many chances to evaluate how our lay summaries are being perceived by our intended readers. The main feedback so far has been in the form of gratitude that we have taken the trouble to write an accessible summary and gratitude for finally being able to understand the complex HTA and decision-making processes. We consider our first attempt "fail" to be a very important teaching moment/lesson, and we decided to focus on strengthening the internal support in and interest for our lay summaries. To achieve this, we worked on terminology and on convincing everyone that sacrificing precision for communication is a necessary means to success.

Words such as "progression free survival" or "overall survival" are not self-explanatory in Norwegian. In figuring out whether "time without worsening of disease" or "for how long a patient may live with the disease" is the better term, we even consulted our colleagues' children age 10 to 12. Further internal battles involved writing "person with disease" or "patient", and deciding which level of detail was necessary in defining patient population: could we keep all the details on minute differences in gene mutation status, function levels, and group-level assumptions?

Early on we decided that our reader is the patient or their next-of-kin, and we must consider their subject-matter knowledge. We learnt that patients know their own disease very well and, while appreciative of simple explanations of health economic aspects, they don't appreciate patronising or over-simplifying descriptions of their own disease. This unfortunately means a trade-off between writing lay summaries in the true sense of the word, making our work truly accessible or understandable to all, and meeting the needs of our patient reader. Recognising the reader's subject-

matter knowledge means leaving disease descriptions at a more advanced level than the plain language used to describe the health economic models.

There were also lengthy, heated debates on the most appropriate term to use when recounting the results: "the patient", "the average patient", "some patients", or "most patients". Do we give patients false hope if we simply write "the patient(s)" while describing the median study outcomes, insinuating that all patients will experience the same – average or median – effect of the drug? These questions turned in to ethical problems, adding to our challenges of communicating controversial decisions or premises based on uncertain or limited knowledge

Conclusion

Never did Einstein's words "if you can't explain it simply, you don't understand it well enough" ring as true as when health bureaucrats bridging the fields of health economics, statistics, and clinical research try and create a common plain language document. The internal wars, we learnt, arose from an unexpected source: lack of mutual understanding for the parties' specialty contributions. Thus far in our work, our greatest benefit is a better understanding for the whole HTA process, as opposed to - at times – a more fragmented awareness. With our lay summaries, we provide good, clear information that is accessible to all. We deliver phrases that media as well as patient organisations can use, with sound and validated information. We aim to provide material that can be used directly everywhere and by anyone. NoMA is ready for Norway's upcoming plain language legislation!

Eit sunt språk i eit friskt land?

Torunn Reksten, Helge Magnus Opsahl, and Tove Ragna Reksten

Språk er makt. Misbruker vi denne makta, tek vi frå folk retten og høvet til å delta og bidra i samfunnet, og vi kan svekkje tilliten til offentlege avgjerder. No forsøkjer Statens legemiddelverk å auke tilliten til avgjerdene dei tek, og gjere det lettare å forstå prinsippa og prioriteringane som ligg til grunn for dei. Korleis? Mellom anna ved å innføre folkelege samandrag i metodevurderingsrapportar.

Ein ambisiøs språkpolitikk

1. januar 2022 tok den norske språklova[1] til å gjelde. Denne lova set språkbrukarane i sentrum og gjer det klart at språkpolitikk handlar om demokrati, deltaking og eit godt samfunn for alle.

Sidan norsk språk er under press, har lova som føremål å styrkje norsk språk og fremje likestilling mellom bokmål og nynorsk. Lova skal òg sikre vern og status for dei andre språka som staten har ansvar for: kvensk, romani, romanes, samiske språk og norsk teiknspråk. Lova er sektorovergripande. Det inneber at alle departementa har ansvar for å etterleve lova og sikre at norsk også i framtida kan brukast på alle område i samfunnet.

Arbeid med klart språk inngår i det arbeidet som skal sikre at norsk held fram med å vere eit samfunnsberande språk. Klart språk har fått ein eigen paragraf i språklova. Klarspråksparagrafen slår fast at alle offentlege organ skal bruke eit språk som er klart, korrekt og tilpassa målgruppa. Paragrafen skal sikre at alle i Noreg får god informasjon om rettane og pliktene sine. Klart språk gjer dialogen mellom det offentlege og innbyggjarane lettare, og det er grunnleggjande for å byggje tillit til offentleg sektor.

Den viktige helsesektoren

Helsesektoren er ein særs viktig del av velferdsstaten og har eit spesielt stort ansvar for å følgje opp språkpolitikken. Difor er helsevesenet nemnt spesielt i proposisjonen til språklova: «Helsevesenet må snakke med pasienten på eit språk pasienten forstår, både i personlege møte og når innbyggjarane sjølve kan «administrere» eiga helse på nett. Viss ikkje kan helsa stå på spel.» Altså har pasientar og andre brukarar rett til å forstå informasjon som kan vere viktig for helsa deira.

Og den norske helsesektoren, med Helse- og omsorgsdepartementet i spissen, satsar på klart språk på alvor! Klart språk har lenge vore brukt som eit verktøy for å nå målet: ei helseteneste som set pasienten i sentrum. I 2016 utførte Forbrukarrådet ei stor pasientundersøking som viste at pasientane etterlyste enklare og meir forståeleg kommunikasjon mellom pasient og helsevesen. Forbrukarrådet peikar på at noko må gjerast med innkallingar, svar på undersøkingar og prøver, time for vidare behandling, utskrivingssamtalar, oppfølgingsrutinar og konklusjonar i epikriser. «Helsespråk» inngår i alt frå samtalar mellom legen og pasienten til presentasjon av omfattande koronatiltak på pressekonferansane til regjeringa. Ein ting er felles uansett sjanger: Godt språk kjem ikkje av seg sjølv.

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1 Lov om språk (språklova) - Lovdata. See https://lovdata.no/dokument/NL/lov/2021-05-21-42

For låg helsekompetanse

Innsatsen i helsesektoren har lønt seg. Norske pasientar har aldri hatt betre tilgang til eigne helseopplysningar, og pasientane får i større grad enn tidlegare høve til å ta informerte val om eiga helse. Men i januar 2021 la Helsedirektoratet fram ei kartlegging av helsekompetansen i befolkninga, og resultata av kartlegginga viser at Noreg har ein lang veg att å gå.

Folk har problem med å finne informasjonen dei treng, forstå informasjonen godt nok og kunne bruke informasjonen til å ta viktige avgjerder om helsa si. Kvar tredje nordmann manglar grunnleggjande kunnskap om helse. Nesten halvparten har problem med å vurdere ulike behandlingsalternativ, og over halvparten kan for lite om korleis dei skal finne fram i helsevesenet. Mange synest det er vanskeleg å tolke helseinformasjonen og bruker «helseekspertane» i sosiale medium som si einaste kjelde. Ifølgje professor i helsekommunikasjon ved Oslomet og ansvarleg for kartlegginga, Kjell Sverre Petterson, er det gjerne slik at jo mindre vitskapleg eller korrekt helseinformasjonen er, desto meir tilgjengeleg og lettare å forstå er han. Dermed blir sosiale medium fort den føretrekte informasjonskjelda, og informasjonen blir mykje delt. Den uunngåelege konsekvensen er feilinformasjon, og feilinformasjon kan vere fatalt.

Klart språk og openheit for tillit

Ifølgje Nordisk ministerråd er Norden den regionen i verda der folk har høgast sosial tillit i befolkninga. Tillit er nøkkelen til effektive samarbeid og eit velfungerande samfunn og er positivt både for innbyggjarane og samfunnsøkonomien.

Dårleg kommunikasjon mellom det offentlege og innbyggjarane vil svekkje tilliten folk har til styresmaktene og avgjerdene som blir tekne. Difor er det også eit uttalt mål at den norske forvaltninga skal vere effektiv, open og samordna og ha høg tillit i befolkninga. Integritet og openheit i forvaltninga er ei av tre søyler i den norske handlingsplanen[2] som skal sikre ei opnare og meir velfungerande og brukarvennleg forvaltning.

Statens kommunikasjonspolitikk[3] slår også fast at staten skal vere open, tydeleg og tilgjengeleg for innbyggjarane. Statlege verksemder skal føre eit korrekt, godt og klart språk som alle kan forstå. Vidare skal staten sørgje for at relevant informasjon når fram til alle han gjeld.

Legemiddelverkets kommunikasjonsutfordringar og -strategi

Openheit er eit av dei strategiske måla vi i Legemiddelverket jobbar mot. Klar og koordinert kommunikasjon er viktig i arbeidet vårt for tillit og openheit, og vi skal leggje vekt på kva pasientane, helsevesenet og samfunnet treng.

Legemiddelverket har ansvar for å gje løyve til marknadsføring av nye legemiddel, for registrering av biverknader, for fastsetjing av prisar og for refusjon. Ikkje minst har vi ansvar for formidling av legemiddelinformasjon. Vi forvaltar, direkte eller indirekte, store summar ettersom vi har ansvar for å vurdere om nye legemiddel eller nye bruksområde for eksisterande legemiddel skal få offentleg finansiering. Vedtak om offentleg finansiering av legemiddel blir gjort på bakgrunn av metodevurderingane våre i tråd med prioriteringskriteria Stortinget har fastsett. I desse metodevurderingane må vi ofte formidle kontroversielle bodskapar eller resultat frå svært usikre analysar og dårleg datagrunnlag. Den tiltenkte lesaren av rapportane våre er oppdragsgjevaren, altså helseføretaka eller Stortinget. Men rapportane er offentleg tilgjengelege, og veit at dei blir lesne av pasientar, pårørande og media.

2 Norges handlingsplan 4 Open Government Partnership (OGP). See https://files.nettsteder.regjeringen.no/wpuploads01/blogs.dir/239/files/2019/03/H-2441-B_Norges-handlingsplan-4.pdf

3 Statens kommunikasjonspolitikk. See https://www.regjeringen.no/no/dokumenter/statens-kommunikasjonspolitikk/id582088/

Det blir fort ubehageleg å formidle slike kontroversielle bodskapar, spesielt når dei råkar pasientar og pårørande som er i ein svært vanskeleg situasjon. Vi må møte alle lesarane med respekt, men vi må ikkje underkommunisere at vi faktisk forvaltar eit lovverk og utøver eit samfunnsoppdrag. Dei som skriv, må vere erfarne, kunne setje seg inn i situasjonen til mottakaren og kommunisere klart og omtenksamt.

Legemiddelverkets klarspråkssteg

Med dei tre prinsippa transparens, brukarinvolvering og klarspråk jobbar Legemiddelverket for å oppretthalde tilliten til helsevedtak og hindre feiltolkingar av metodevurderingane våre. Uansett kven lesaren er, må bodskapen i vurderingane vere lett å forstå, og grunngjevingane i vedtaka må vere så tydeleg presenterte at lesaren forstår kvifor vedtaket er gjort, og kva konsekvensar det får.

Når vi formidlar faglege vurderingar, skal vi kommunisere

- kva vi veit, og kva vi ikkje veit
- det faglege grunnlaget for vurderingane, også etiske vurderingar og det vi er usikre på
- om det er fagleg semje blant fagekspertar og kliniske ekspertar

Tverrfagleg lag

Ei gruppe eldsjeler med fagbakgrunn i helseøkonomi, farmasi og kommunikasjon ved Legemiddelverket, med god hjelp, råd og rettleiing frå klarspråksekspertar i Språkrådet, gjekk saman for å utarbeide det vi har kalla folkelege samandrag. Desse skal forklare metodevurderingane våre til lesarar utan helseøkonomisk eller legemiddelfagleg kompetanse. Vi drodla om kven lesarane våre er, og om kva dei treng, og landa på at pasientar og deira pårørande skulle vere målgruppa vår. Det var ei utfordring for oss som spisskompetente og detaljorienterte fagfolk å formidle korrekt og presis informasjon utan å ta med detaljar som gjer bodskapen vanskeleg å forstå for mottakarane. Og som i ein klassisk profesjonskrig hadde vi svært ulike oppfatningar av kva som var aller viktigast å ta med i samandraga.

Brukarinvolvering for å finne hovudutfordringane

Avdelinga som jobbar med metodevurderingar, har alltid ønskt spørsmål frå pasientar og pasientorganisasjonar velkommen, og vi er ofte ute og held føredrag hos desse organisasjonane. Ein pasientorganisasjon tok kontakt og bad om informasjon då vi jobba med ei særskilt vanskeleg vurdering av ein gjennombrotsmedisin for deira sjukdom. Dette gav oss eit godt høve til å prøve ut konseptet vårt med samandrag i klarspråk, og høve til å spørje lesaren direkte om kva informasjon dei ønskjer og treng. Dei hjelpte oss med å identifisere fire spørsmål dei ønskjer svar på:

- Kva gjer legemiddelet?
- Kven er legemiddelet for?
- Kvifor blir legemiddelet metodevurdert?
- Kva kostar legemiddelet?

Med sterk tru på eigne kommunikasjonsevner presenterte vi vårt første klarspråkssamandrag for denne pasientgruppa og deira pårørande. Det gjekk skeis! Alle sa at dei hadde forstått alt, men deira tolking av bodskapen vår viste seg å vere stikk motsett av det vi forsøkte å formidle.

Produktet: mal for alle, alle for mal

Vi testa samandragsmalen på ei rekkje ulike saker, frå biologisk behandling ved atopisk dermatitt til tumoragnostiske terapiar og cannabidiolbehandlingar. Etter mykje prøving og feiling og kritiske tilbakemeldingar frå så godt som alle saksbehandlarane som skreiv desse samandraga, landa vi på ein felles mal. Vi spesifiserte og standardiserte ni emne som skal hjelpe lesaren med å finne fram til informasjonen han treng, og så sette vi dei i ei mest mogleg logisk rekkjefølgje:

1. Skildring av legemiddelet og sjukdommen
2. Alvorsgrad
3. Spesifisering av pasientpopulasjon
4. Skildring av nytte
5. Skildring av kliniske studiar
6. Vår vurdering av 4) og 5)
7. Vår kritikk av 4) og 5)
8. Forklaring av dei endringane vi har gjort i analysen
9. Forholdet mellom nytte og kostnader

Det første punktet er ei kortfatta skildring av legemiddelet og sjukdommen og kan ofte kan hentast rett frå pakningsvedlegget.

Alvorsgrad skildrar vi i form av prognose, vanlege symptom eller sjukdomsstadium, og som absolutt prognosetap (APT). Saman med talet på pasientar gjev dette eit inntrykk av kor vanleg eller sjeldan sjukdommen er, og det kan avgrense den aktuelle pasientgruppa til dei med til dømes ein spesiell genetisk mutasjon, eller dei som møter spesifikke kliniske kriterium.

I vurderingane våre av nytte samanliknar vi effekten av legemiddelet vi vurderer, med det eller dei legemidla som utgjer gullstandarden i den kliniske praksisen i Noreg i dag. Å vise denne nytten og effektskilnader er ikkje lett, og vi har enno ikkje funne den perfekte måten å gjere det på.

I ein logisk oppbygd presentasjon skal metode skildrast før resultata blir presenterte, men i denne samanhengen lytta faktisk saksbehandlarane til kommunikasjonsrådgjevarane, som hevda at lesarane fort kunne ramle av om vi kasta oss ut i tekniske spesifikasjonar før vi gav dei det dei var ute etter å finne, nemleg informasjon om korleis denne medisinen kan betre livskvaliteten eller forlengje forventa levetid. Difor blir dei kliniske studiane berre skildra kort, og utfordringar som gjer vurderingane våre vanskelege eller til og med umoglege, blir framheva.

Gjennom punkta 1–5 blir fakta om sjukdommen, legemiddelet og studiedata presenterte. I dei neste punkta presenterer vi i Legemiddelverket vår forståing, tolking og vurdering av desse dataa, sett inn i ein norsk, klinisk kontekst. Vidare forklarer og kritiserer vi dei problema vi har oppdaga, og dei punkta vi ikkje er einige med legemiddelfirmaet om, før vi skildrar dei føresetnadene og endringane vi har gjort i analysen vår. Til slutt presenterer vi kostnadseffektivitetsratioen, altså kor mykje meir helse det nye legemiddelet vil gje, og kor mykje vi må betale for helsegevinsten.

Konsekvent terminologi

Manglande kompetanse i klarspråk er ofte ei hindring for klar kommunikasjon. Gamle vanar er dessutan vonde å vende, og tidspress hindrar nytenking og klartenking. For å hjelpe saksbehandlarane hos oss til å unngå komplisert fagspråk har vi oppfordra dei til å ta e-læringskurset Den gylne pennen (gratis tilgjengeleg hos Språkrådet) og laga ein tekstmal med godkjente frasar. Det endelege produktet er ein tosiders mal med nøye gjennomtenkt og grundig utarbeidd terminologi og standardtekstar som ikkje skal endrast. Vi har dessutan sett saman ei liste over godkjente setningar som skribentane kan velje mellom for å skildre resultat, studiar og kritikkane våre. Desse setningane dekkjer dei mest vanlege problemstillingane vi møter i metodevurderingane våre. God, konsekvent bruk av terminologi og frasar hjelper lesarane å kjenne igjen, forstå og bruke innhaldet, og lett og raskt finne fram til informasjonen dei søkjer, på tvers av metodevurderingsrapportar. Vi trur at det å standardisere tekst og å ikkje tillate særleg fråvik frå malen hindrar forvirring og bidrar til betre helsekompetanse.

Målbare resultat for Legemiddelverket

Koronapandemien førte til bråstopp i all samhandling med pasientorganisasjonar. Vi har difor ikkje hatt mange høve til å evaluere korleis samandraga våre i klarspråk har blitt tekne imot og forstått av målgruppene våre. Hovudtilbakemeldinga vi har fått så langt, er takksemd: takksemd for at vi har teke oss bryet med å skrive samandrag som er tilgjengelege for dei som blir direkte råka av vedtaka som er gjorde på grunnlag av metodevurderingane, og takksemd for at dei endeleg forstår dei komplekse prosessane som inngår i slike vurderingar. Det første forsøket vårt var ikkje særleg vellukka, og vi valde i etterkant å fokusere på å styrkje intern forankring og interesse for samandrag på klarspråk. For å oppnå dette jobba vi mykje med terminologi og med å overtyde alle om at det er naudsynt å ofre noko presisjon for vellukka kommunikasjon.

Ord som «progresjonsfri overleving» eller «totaloverleving» er ikkje sjølvforklarande. I arbeidet med å finne ut om «tid utan forverring av sjukdommen» eller «kor lenge ein pasient kan leve med sjukdommen» er betre termar, spurde vi også femteklassingane til kollegaer. Fleire gonger diskuterte vi om det er rett å skrive «person med sjukdom» eller «pasient», og kva detaljnivå som trengst for å definere relevant pasientpopulasjon: Kunne vi ta med alle detaljane om små skilnader i mutasjonsstatus, funksjonsnivå og føresetnader på gruppenivå?

Hovudmålgruppene for sjølve rapportane er oppdragsgjevarane, men vi bestemte tidleg at målgruppene for klarspråkssamandraga er pasientane sjølve og deira pårørande. Difor må vi ta omsyn til kva kunnskap dei har om eigen sjukdom. Vi lærte fort at pasientar oftast har svært god kunnskap om eigen sjukdom, og sjølv om dei set stor pris på enkle forklaringar av helseøkonomiske prinsipp, set dei ikkje pris på overforenkla skildringar av sjukdommen. For å tilpasse tekstane til målgruppene har vi difor valt å skrive samandrag som ikkje er tilgjengelege og lett forståelege for alle. Å ta omsyn til forkunnskapane til målgruppa betyr at vi bruker eit meir komplisert språk i sjukdomsskildringane enn i skildringane av helseøkonomiske modellar.

Lange, heftige debattar dreidde seg om kva som er den beste termen når vi presenterer resultat: «pasienten», «gjennomsnittspasienten», «nokre pasientar» eller «dei fleste pasientane». Risikerer vi å gje pasientar falskt håp om vi skriv «pasienten/pasientar» når vi skildrar medianresultatet i ein studie, fordi vi då gjev inntrykk av at alle pasientar vil oppleve denne effekten av medisinen? Desse spørsmåla blir til etiske problemstillingar, og endå ei utfordring i formidling av kontroversielle resultat eller resultat frå svært usikre analysar og dårleg datagrunnlag.

Sluttmerknader

Det er mykje sanning i Einsteins ord «kan du ikkje forklare det enkelt, har du ikkje forstått det». Det merka vi då helsebyråkratar i skjeringspunktet mellom helseøkonomi, statistikk og klinisk forsking forsøkte å einast om eit felles dokument i klarspråk. Mange av dei interne språkkampane sprang ut frå ei uventa kjelde: manglande gjensidig forståing for kva kvart fagfelt faktisk bidreg med. Så langt i arbeidet vårt har betre, felles forståing for heile metodevurderingsprosessen vore eit av dei mest nyttige resultata. Med samandraga våre leverer vi god, klar informasjon som er lett tilgjengeleg og forståeleg. Vi har formulert frasar med trygt og validert innhald som både pasientorganisasjonar og medium kan ta i bruk direkte. Metodevurderingslaget ved Legemiddelverket er klart for klarspråkslovgjevinga!

Nurturing the dignity of vulnerable and marginalized people, one contract at a time

Robert de Rooy

Plain language practitioners probably constitute one of the most literate and eloquent cohorts in the English-speaking world today. Yet, it's fair to assume that even these elite readers regularly encounter important documents, such as contracts, consents, indemnities, and policies, that are both hard to read and difficult to understand. It is this ubiquitous and unhappy truth that we can all relate to that makes the plain language movement both relevant and important.

So, what about people that struggle to read, even plain language? Worldwide, one out of ten people cannot read this sentence.[1] Among farmworkers in South Africa, the illiteracy rate is 40%[2] and among women in Afghanistan, it is 83%.[3] And it's not just the developing world problem. In the Netherlands, 11.7% of Dutch adults and 13.1% of U.S. adults attain only Level 1[4] or below in literacy proficiency. And this is a big problem because illiteracy is an important driver within the vicious circle of vulnerability, poverty, unemployment, homelessness, and bad health.

We are, in fact, all functionally illiterate in all but a couple of languages in which we are proficient. While this is primarily an inconvenience to us when we travel, it's a massive barrier and risk to the many millions of economic migrants in the world today.

We do not notice illiteracy because vulnerable and illiterate people often hide it, afraid to admit it, as it may expose them to exploitation or feeling shame. So, people with low literacy skills have developed all sorts of coping mechanisms, like not telling anyone they cannot read the document, and just by doing what everyone does, i.e., signing the documents without even pretending to read them.

Sadly, their fear and shame compound their vulnerability, as they remain unaware of their rights or have become legally bound by exploitative contracts or consents. And it's because we, as the dominant members of societies are not sufficiently sensitized to this, that we perpetuate the injustice by organising society on the convenient but false assumption that everyone should be able to read. For example, most legal systems assume that any adult that signed a contract had read and understood everything and will therefore hold that person bound by the terms of that contract. The burden is then transferred onto the illiterate person to become informed about their legal remedies and navigate the legal processes to try and undo the injustice of that false assumption. Many common law legal systems even disallow evidence of anything that was said in contradiction of the terms of the written contract before they made their signature (the "parol evidence" rule).

There is a term for this phenomenon. It's called institutional oppression. By institutions, we mean *"those taken for granted social arrangements which reflect the dominant beliefs and practices and provide templates for action for individual*

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1 Literacy rate, adult total (% of people ages 15 and above) | Data. (n.d.). Retrieved 11 December 2021, from https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?end=2020&start=1970

2 Visser, M., & Ferrer, S. (n.d.). Farm Workers' Living and Working Conditions in South Africa: Key trends, emergent issues, and underlying and structural problems. 27

and collective actors".[5] Institutional oppression occurs when these practices systematically produce inequities or invisible barriers, limiting vulnerable population groups. It's important to remember that the institution is oppressive, whether or not the individuals maintaining those practices have oppressive intentions.[6]

It is our ignorance of the barriers faced by the vulnerable people in our society, the poor, the illiterate, and the displaced, the majority of whom are women, that we are thereby contributing to keeping an entire structure of our population locked in the vicious cycle of vulnerability. When we do recognize the problem, the solutions are often to expect the vulnerable person to help themselves by learning to read or get someone to help them. For example, in the South African Basic Conditions of Employment Act,[7] if an employee is not able to understand the written particulars of their contract, the employer must ensure that they are explained to the employee in a language and in a manner that the employee understands. It sounds good, but what are in fact saying to the vulnerable person is: *"You must expose your illiteracy to your employer when this in itself may put your job opportunity at risk, and then trust your employer to take the time to correctly and fully explain the contract before you must sign a contract that may or may not contain that which was just explained to you. And good luck trying to remember what was said in the moment if you need to refer to the terms of that contract."*

It was this sub-optimal solution to a very real barrier for millions of vulnerable people in South Africa that got me to ask myself whether it's possible to create contracts that everyone can understand. And for us, the key to the answer lies in comics. That combination of pictures and stories. First, complex ideas can be easily conveyed with visual images[8] and it's easy for people to absorb and remember large amounts of information that way. Moreover, pictures are a universal language, a way of understanding that limits the risks of translation into language or between languages. Second, stories create connections between people and ideas, illustrate relationships better than factual statements, and are also easy to remember. Finally, a touch of humor in the content reduces the anxiety of the contracting process and also helps with memory.

Quite simply, processing pictures and stories is what our brains do the best and has been doing so for thousands of years before text developed. The human brain processes images 60,000 times faster than text and we follow directions with illustrations 300% better than in text. It is why all airline safety cards rely on it to show its diverse collectives of passengers what to do in an emergency.

So, with the benefit of the work of colleagues like Helena Haapio,[9] and Colette Brunschwig,[10] we explored the ideas of using comics for contracts based on the principles of proactive contracting and visual law. And after some more years of research and experimenting, we developed and implemented the world's first fully visual contract in May 2016, with 250 seasonal farmworkers, on a ClemenGold citrus farm in Letsitele in South Africa. We called this new form of contract a "Comic Contract", which we define as legally binding contracts written in pictures, with the parties are represented as characters, where the terms are captured in pictures and the parties sign the comic as the contract.

3 Literacy rate, adult female (% of females ages 15 and above) | Data. (n.d.). Retrieved 11 December 2021, from https://data.worldbank.org/indicator/SE.ADT.LITR.

4 At Level 1 in literacy, adults can read brief texts on familiar topics and locate a single piece of specific information identical in form to information in the question or directive(PIAAC - What does the cognitive assessment of PIAAC measure?, n.d.).

5 "Institutional Oppression," Tools for Diversity, © TACS. Tri-County Domestic & Sexual Violence Intervention Network Anti-Oppression Training for Trainers Created by Carol Cheney, Jeannie LaFrance and Terrie Quinteros, 2006

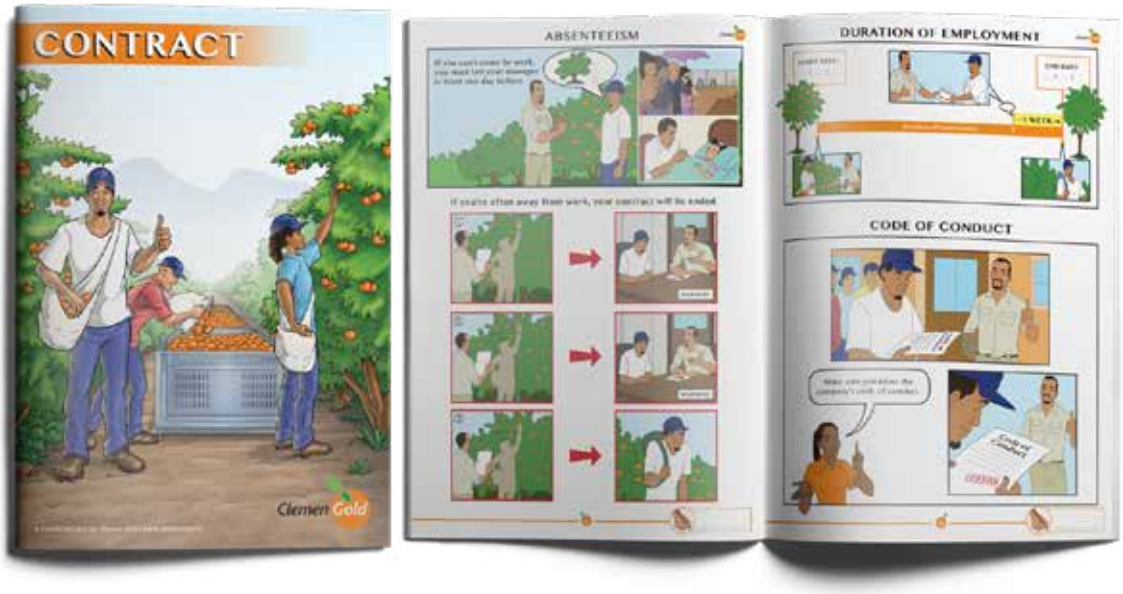
6 Diann Cameron Kelly & Rani Varghese (2018) Four contexts of institutional oppression: Examining the experiences of Blacks in education, criminal justice and child welfare, Journal of Human Behavior in the Social Environment, 28:7, 874-888, DOI:10.1080/10911359.2018.146

7 Basic Conditions of Employment Act, 1997, South

8 Barton, T. D., Berger-Walliser, G., & Haapio, H. (2013). VISUALIZATION: SEEING CONTRACTS FOR WHAT THEY ARE, AND WHAT THEY COULD BECOME. 19, 17.

9 Berger-Walliser, G., Bird, R. C., & Haapio, H. (n.d.). PROMOTING BUSINESS SUCCESS THROUGH CONTRACT VISUALIZATION. 20.

10 Brunschwig, Colette Reine, On Visual Law: Visual Legal Communication Practices and Their Scholarly Exploration (2014). In: Zeichen und Zauber des Rechts: Festschrift für Friedrich Lachmayer, Erich Schweihofer et al. (eds.), Bern: Editions Weblaw, 899-933, Available at SSRN: https://ssrn.com/abstract=2405378



At the time, our biggest fear was that the workers would feel patronized by the pictures in a contract and the possibility of labour issues for the farmer. However, the workers were delighted, engaged with the contract, and felt empowered to ask questions. Interviewed whether they prefer their contracts in text or pictures, the workers universally preferred the pictures, reminding us that it is how they like their magazines and social media, full of pictures. Most of the workers were women, and they felt that we should also have offered them a contract with female characters, and for the headings and other text elements to be in their local language. The employer, our client, kindly obliged and we then promptly developed these further versions of the contract. These improvements all positively contributed to relatability between the workers and the contract and the ability of the contract to convey its information to the workers. It made us realise that apart from the power of pictures and stories, there was much more that could be done to make contracts more relevant and easier to understand, and the employers reported that comic contracts reduced their typical induction time from 3 hours to 45 minutes.

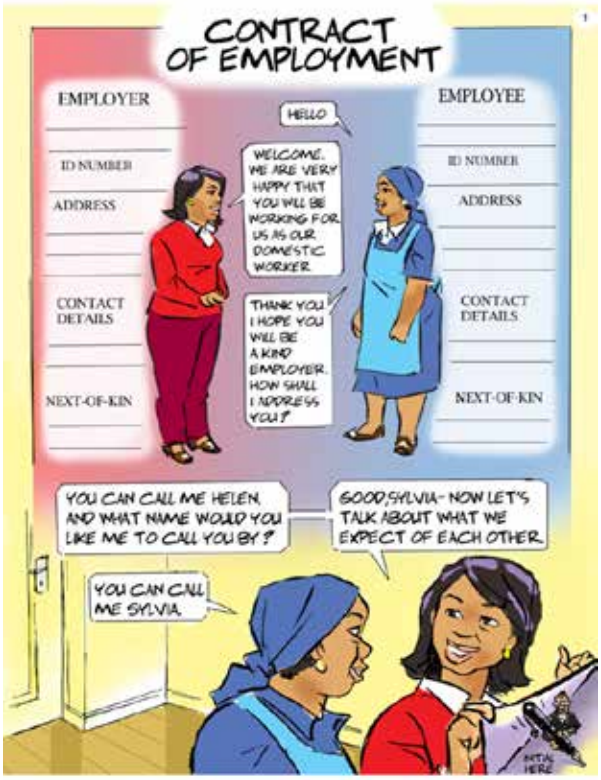
In a subsequent project we created a contract between a preschool in an economically depressed area and the parents of the little children. We learned that not only did the parents have a better understanding of what was expected from them, and how to be involved in the education of the young children, but we also learned that it made it much easier for the teachers to have something in their hands that both parties could understand, and how it helped them engage with the parents around all the issues.

It has been our experience that making important information available to vulnerable and illiterate people in an engaging, clear, relevant, and non-threatening way, makes them feel empowered and respected. This is illustrated by the following feedback sourced by an independent third-party organisation:

- *"I have more faith in the picture contract. People who cannot read are able to see and also understand it better."* (English translation of Agatha Le Fleur)
- *"They showed us that we are valued as human beings. In other jobs they just give you orders to work and they don't care about you. So I like the fact that my manager shows us that he cares about us. That is what makes me happy."* (English translation of Nonzwakazi Nowata)

- *"I am also illiterate. There are words that I don't understand well but if I look at this, I can understand. And it gives me power to do my work."* (English translation of Dineo Cuphe)

We realized that what we are doing is not just about making information easier to understand, but it's about respecting the dignity of vulnerable people and treating them with dignity. It's about showing vulnerable people that it matters that they understand their contracts. It matters that they don't feel embarrassed or shame, and it matters that they're empowered to know what they agree to so that they can decide what to do and act with confidence.



Dignity is affirmed in the first line of the Universal Declaration of Human Rights of 1948, which states, "*recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world…*" and is held up as the fundamental value of most modern constitutions, such as Germany, Ireland, Israel, South Africa. Dignity, as it is understood today, is attributable to Immanuel Kant's Categorical Imperative, which principle of reason and morality tells us to treat humanity in each person never merely as a means, but always as an end in itself. It can also be defined in its negation, such as the definition provided by Louis Ackerman as: *"dignity is that which triggers our conscience, when we look into the eyes of a person whose dignity is being abused."*[11] (Ackerman, 2012). While it is a difficult concept to comprehensively define, dignity includes our right as individuals to the autonomy (to live self-directed lives) to pursue the fulfilment of our individual personal needs.

It therefore means that each time we bind a vulnerable person to terms in a contract where that person cannot reasonably understand it, and whether we do so intentionally or through ignorance or indifference, we are violating their capacity to live self-directed and responsible lives and thereby denigrating the dignity of vulnerable people. This indifference is compounded through the standard use of terminology that expressly objectifies the vulnerable person as "labour", "the worker" or "the tenant" or "the consumer". This terminology, apart from making it harder to read the contract, literally identifies the vulnerable contracting party as simply a means to the corporation's ends, *"to reduce a contracting party to an object of economic gratification of the other"*.[12] This is not someone else's problem or a remote issue, as this abuse is too often at the heart of the global value chains of so many of the products and services that we consume every day.

But it does not have to be this way. If companies would be willing to spend but a small percentage of their marketing budgets or their legal retainers on making

11 Ackerman, L. (2012). Human Dignity: Lodestar for Equality in South Africa (1st ed.)

12 Naudé, T., & Lubbe, G. (2005). Exemption clauses—A rethink occasioned, Afrox Healthcare Bpk v Strydom. South African Law Journal, 122(2), 441–463.

important information like contracts more engaging and easier to understand, it will contribute to the alleviation of the institutional oppression suffered by vulnerable and marginalized people while contributing to their empowerment to live self-directed and responsible lives.

Gandhi is reported to have said that "a nation's greatness is measured by how it treats its weakest members." It has become self-evident that the dignity of a person with a disability demands our investment into making facilities, goods, and services autonomously accessible, for example, ramp access in a building for people who need to use wheelchairs. It should be similarly self-evident that human dignity demands that important instruments such as contracts become autonomously accessible to vulnerable and marginalized people to also live self-directed and responsible lives.

In any population literacy exists on a spectrum. For most people, most of the time, plain language has the biggest role to play in user focused clear communication. The north star of human dignity remains relevant across the spectrum of literacy as an organising principle. It's about treating your contracting partner as an end, and not merely as a means to an end; it's simply a matter of respect.

In South Africa, the right to information in plain language rights was introduced into some legislation, the most prominent of which is the Consumer Protection Act, 68 of 2008 and the National Credit Act, 34 of 2005. Apart from the fact that it was done in a somewhat clumsy way, for example, it assumes a population of people with "average literacy skills", whatever that might be, this right was justified on the flimsy assertions of international trends and economic efficiencies.

I think we can do better than that. Contracts hold our modern economies (and ultimately our human society) together.[13] The way in which contracts enhance or denigrate the dignity of people, whether directly or indirectly, should become the independent standard against which we measure both the quality and validity or enforceability of our contracts.

Plain language and legal design are important and necessary disciplines to enhance human dignity. Governments and to judiciaries are normally enjoined by their constitutions or laws to give effect to the rights enshrined therein. Therefore, every country that recognizes people's dignity can and should give effect to that by legislating or adjudicating for more plain language and legal design in important documents like contracts.

I would even go further and argue that where someone is bound by a document that they could not have reasonably been expected to understand, the onus should be on the person or company that offered the contract to show why that agreement should not be set aside as being a violation of that person's constitutional right to dignity.

But in the meantime, the purpose, and practices of pain language, such as user testing and the plain language movement have an important practical and normative role to sensitize institutions to the information barriers of people along the spectrum of literacy and vulnerability. At the same time, there are exciting opportunities as there is growing awareness of the rich transdisciplinary potential of plain language, visual communication, legal design, and technology to improve access to information. These practices should not only be about sales, clicks, convenience, or economic efficiency. More importantly, these practices should be a driver of people's autonomy, their dignity, a better life, and a better society.

13 Hart, O., & Holmström, B. (n.d.). The Prize in Economic Sciences 2016.

Cultiver la dignité des populations vulnérables et marginalisées, un contrat à la fois

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Les praticiens du langage clair constituent probablement l'un des groupes les plus alphabétisés et éloquents du monde anglophone d'aujourd'hui. Pourtant, il est justifié de supposer que même ces lecteurs, membres d'un groupe élite rencontrent régulièrement des documents importants, (tels que des contrats, des consentements, des indemnités et des politiques) qui sont difficiles à lire et à comprendre. C'est cette vérité omniprésente et malheureuse à laquelle nous pouvons tous nous identifier qui rend le mouvement du langage clair à la fois pertinent et important.

Alors, qu'en est-il des personnes qui ont du mal à lire, même en langage clair ? Dans le monde, une personne sur dix ne peut pas lire cette phrase.[1] Parmi les ouvriers agricoles en Afrique du Sud, le taux d'analphabétisme est de 40%[2] et chez les femmes en Afghanistan, il est de 83%.[3] Et ce n'est pas seulement un problème pour les pays en voie de développement. Par exemple, 11,7 % des adultes néerlandais et 13,1 % des adultes américains n'atteignent que le niveau 1[4] ou moins en compétence littéraire. Ceci est un gros problème parce que l'analphabétisme est un facteur important dans le cercle vicieux de la vulnérabilité, la pauvreté, le chômage, l'itinérance et de la mauvaise santé.

Nous sommes, en fait, tous illetre dans toutes les langues sauf celles que nous maîtrisons parfaitement. Bien que ce soit surtout un inconvénient pour nous lorsque nous voyageons, c'est un énorme obstacle et un risque pour les millions de migrants économiques dans le monde d'aujourd'hui.

On ne remarque pas l'illetrisme parce que les personnes vulnérables et analphabètes le cachent souvent, craignant de l'admettre car cela peut les exposer à l'exploitation ou à la honte. Ainsi, les personnes peu alphabétisées ont développé toutes sortes de mécanismes d'adaptation, par exemple, ne pas admettre qu'ils ne peuvenet pas lire le document, et simplement faire ce que tout le monde fait, c'est-à-dire signer le document sans même faire semblant de le lire et imiter les actions des gens autour d'eux.

Malheureusement, la peur et la honte peuvent empirer la vulnérabilité des analphabètes car ils ne connaissent pas leurs droits ou sont juridiquement liés à des contrats ou des consentements qui les exploitent. Nous perpétuons l'injustice en nous organisant sur l'hypothèse commode mais fausse que tout le monde devrait savoir lire. Parce que nous, en tant que membres dominants de société, ne sommes pas suffisamment sensibilisés à cette situation. Par exemple, la plupart des systèmes juridiques supposent que tout adulte qui a signé un contrat a lu et compris le contrat. Le système juridique tient donc cette personne liée aux termes du contrat. La charge est ensuite transférée sur la personne analphabète de devoir s'informer de ses recours juridiques et naviguer dans les procédures judiciaires pour essayer de réparer l'injustice de cette fausse hypothèse. De nombreux systèmes

1 Literacy rate, adult total (% of people ages 15 and above) | Data. (n.d.). Retrieved 11 December 2021, from https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?end=2020&start=1970

2 Visser, M., & Ferrer, S. (n.d.). Farm Workers' Living and Working Conditions in South Africa: Key trends, emergent issues, and underlying and structural problems. 27

3 Literacy rate, adult female (% of females ages 15 and above) | Data. (n.d.). Retrieved 11 December 2021, from https://data.worldbank.org/indicator/SE.ADT.LITR.

juridiques de droit commun n'autorisent même pas la preuve de contradiction orale avec les termes du contrat avant qu'il soit signé (la loi de « preuve orale »).

On appelle ce phénomène l'oppression institutionnelle. Par institutions, nous entendons « *les normes et pratiques sociales dominantes qui fournissent des modèles à suivre pour les acteurs individuels et collectifs* ».[5] L'oppression institutionnelle se produit lorsque ces pratiques produisent systématiquement des inégalités ou des obstacles invisibles, limitant les personnes vulnérables. Il est important de se rappeler que c'est l'institution qui demeurre oppressive, même si les personnes qui maintiennent ces pratiques aient ou non des intentions oppressives .

C'est notre ignorance de ces obstacles vecus par les personnes vulnerables de la société, les pauvres, les analphabètes et les personnes déplacées (dont la majorité sont des femmes) que nous contribuons ainsi à maintenir un groupe de la population enfermée dans le cercle vicieu de vulnérabilité. Lorsque nous reconnaissons le problème, les solutions consistent souvent à s'attendre à ce que la personne vulnérable s'aide elle-même en apprenant à lire ou en demandant à quelqu'un de l'aider. Par exemple, dans la loi sud-africaine sur les conditions d'emploi de base, si un employé n'est pas en mesure de comprendre les détails écrits de son contrat, l'employeur doit s'assurer qu'ils sont expliqués à l'employé dans une langue et d'une manière que l'employé comprend. . Cela sonne bien, mais ce que l'on dit en fait à la personne vulnérable est : « Vous devez exposer votre analphabétisme à votre employeur lorsque cela en soi peut risquer votre chance d'être employé. Ensuite, vous devez faire confiance à votre employeur pour qu'il prenne le temps d'expliquer ces informations correctement et pleinement. L'employeur doit expliquer le contrat avant que l'employé puisse le signer. Le contrat peut contenir ou non ce qui vient de lui être expliqué. Et bonne chance pour essayer de vous souvenir de ce qui a été dit sur le moment si vous avez besoin de vous référer aux termes de ce contrat.

C'est cette solution sous-optimale à un obstacle très réel pour des millions de personnes vulnérables en Afrique du Sud qui m'a amené à me demander s'il est possible de créer des contrats que tout le monde peut comprendre. Et pour nous, la clé de la réponse réside dans les bandes dessinées. La combinaison d'images et d'histoires. Premièrement, des idées complexes peuvent être facilement transmises avec des images et il est facile pour les gens d'absorber et de mémoriser de grandes quantités d'informations de cette façon. De plus, l'image est un langage universel, un mode de communication qui limite les risques de traduction entre les langues. Deuxièmement, les histoires créent des liens entre les personnes et les idées, elles illustrent mieux les relations que les déclarations factuelles et sont également faciles à retenir. Enfin, une touche d'humour dans le contenu réduit l'inquietude de la signature du contrat et aide également à la mémoire.

Tout simplement, notre cerveau traite les images et les histoires plus efficacement que le texte, et çela depuis des milliers d'années, bien avant que le langage écrit n'a été developé. Le cerveau humain traite les images 60 000 fois plus vite que le texte et nous suivons les modes d'emplois avec des illustrations 300 % mieux qu'avec du texte. C'est pourquoi toutes les cartes de sécurité des compagnies aériennes en dépendent pour montrer à ses divers passagers ce qu'il faut faire en cas d'urgence.

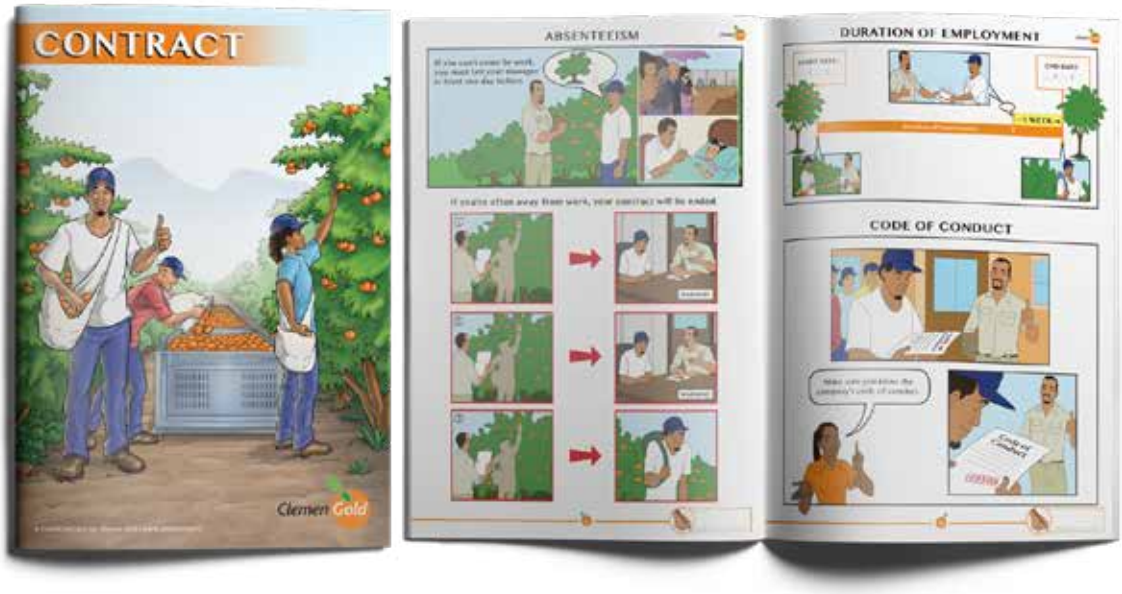
Ainsi, avec le bénéfice du travail de collègues comme Helena Haapio[6] et Colette Brunschwig,[7] nous avons exploré l'idée d'employer les bandes dessinées pour les contrats dans le but de créer des contrats proactifs et developper la loi visuelle. Après quelques années supplémentaires de recherche et d'expérimentation, en mai 2016, nous avons créé et mis en œuvre le premier contrat entièrement visuel au monde avec 250 travailleurs agricoles saisonniers, dans une ferme d'agrumes ClemenGold à Letsitele en Afrique du Sud. Nous avons appelé ce nouveau format de

5 "Institutional Oppression," Tools for Diversity, © TACS. Tri-County Domestic & Sexual Violence Intervention Network Anti-Oppression Training for Trainers Created by Carol Cheney, Jeannie LaFrance and Terrie Quinteros, 2006

6 Berger-Walliser, G., Bird, R. C., & Haapio, H. (n.d.). PROMOTING BUSINESS SUCCESS THROUGH CONTRACT VISUALIZATION. 20.

7 Brunschwig, Colette Reine, On Visual Law: Visual Legal Communication Practices and Their Scholarly Exploration (2014). In: Zeichen und Zauber des Rechts: Festschrift für Friedrich Lachmayer, Erich Schweihofer et al. (eds.), Bern: Editions Weblaw, 899-933, Available at SSRN: https://ssrn.com/abstract=2405378

contrat un “comic contract” ou un “contrat en bande déssinée”, que nous définissons comme un contrat juridiquement contraignant écrit en images, où les parties sont représentées par les personnages, où les termes sont capturés dans les illustrations et les parties signent la bande dessinée en tant que contrat.



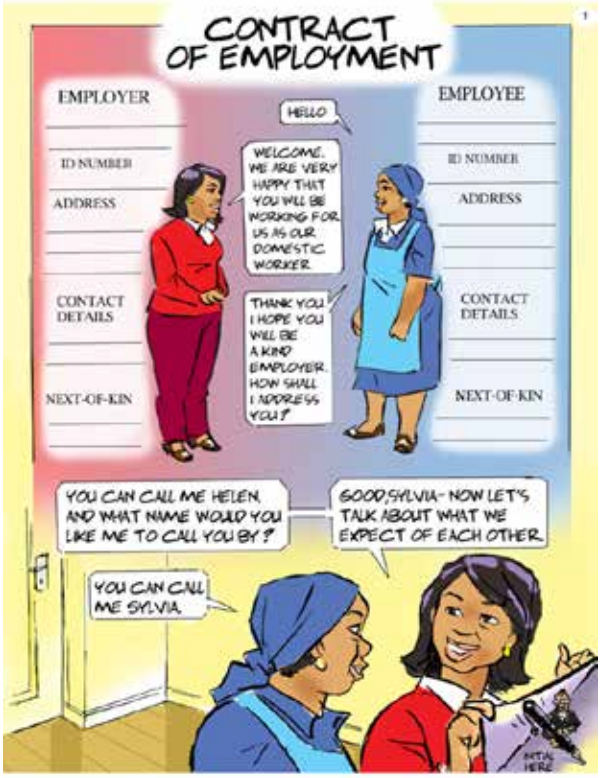
À l’époque, notre plus grande crainte était que les employés se sentent traités de haut par les images dans le contrat et la possibilité de problèmes pour l’employeur. Cependant, les travailleurs étaient ravis, engagés avec le contrat et se sentaient habilités à poser des questions. Interrogés s’ils préfèrent leurs contrats en texte ou en images, les travailleurs ont tous préféré la bande déssinnée, nous rappelant que c’est ainsi qu’ils aiment les magazines et les réseaux sociaux, remplis d’images. La plupart des travailleurs étaient des femmes, et elles ont remarqué que nous aurions également dû leur proposer un contrat avec des personnages féminins, ainsi que les titres et autres éléments de texte soient dans leur langue locale. L’employeur, notre client, a gentiment accepté et nous avons rapidement développé ces nouvelles versions du contrat. Ces améliorations ont toutes permis aux ouvriers de s’identifier avec les personnages, les termes du contract et à la capacité du contrat à transmettre ses informations aux travailleurs. Nous avons constaté qu’en dehors du pouvoir des images et des histoires, il y avait beaucoup plus à faire pour rendre les contrats typiques plus pertinents et faciles à comprendre ,L’employeur nous ont aussi signalé que les contrats en bandes déssinees réduisaient leur temps d’induction typique de 3 heures à 45 minutes.

Dans un projet ultérieur, nous avons créé un contrat entre une école maternelle et ses parents dans une zone économiquement défavorisée. Nous avons non seulement appris que les parents comprenaient mieux ce qu’on attendait d’eux et comment s’impliquer dans l’éducation de leurs enfants, mais nous avons également appris que cela permettait aux enseignants d’avoir quelque chose de concret dans les mains avec lequel les deux parties comprenaient et que le nouveau contrat les a aidés à engager avec les parents sur toutes leurs questions.

D’après notre expérience, mettre des informations importantes à la disposition des personnes vulnérables et analphabètes d’une manière engageante, claire, pertinente et non menaçante leur donne la capacité de se sentir autonomes et respectés. Ceci est illustré par les commentaires suivants provenant d’une organisation tierce indépendante :

- *"J'ai plus de confiance dans le contrat illustré. Les personnes qui ne savent pas lire peuvent mieux voir et aussi le comprendre."* (Tradution Francaise d'Agatha Le Fleur)
- *"Ils nous ont montré que nous sommes valorisés en tant qu'êtres humains. Dans d'autres emplois, ils nous donnent simplement l'ordre de travailler et ils ne se soucient pas de nous. J'aime donc le fait que mon manager nous montre qu'il se soucie de nous. C'est ce qui me rend heureuse."* (Traduction Francaise de Nonzwakazi Nowata)
- *"Je suis aussi analphabète. Il y a des mots que je ne comprends pas, mais si je regarde ça, je peux comprendre. Et ça me donne le pouvoir de faire mon travail."* (Traduction Francaise de Dineo Cuphe)

Nous nous sommes appercus que ce que nous sommes en train de faire ne consiste non seulement à rendre les informations plus faciles à comprendre, mais aussi à respecter la dignité des personnes vulnérables et à les traiter avec dignité. Il s'agit de montrer aux personnes vulnérables qu'il est important qu'elles comprennent leurs contrats. Il est important qu'elles ne se sentent pas gênées ou honteuses, et il est aussi important qu'elles se sentent habilitées à connaitre les termes de leurs contrats afin qu'elles puissent décider quoi faire et agir en toute confiance.



La dignité est affirmée dans la première ligne de la Déclaration Universelle des Droits de l'Homme de 1948, qui stipule que « la reconnaissance de la dignité inhérente à tous les membres de la famille humaine et de leurs droits égaux et inaliénables constitue le fondement de la liberté, de la justice et de la paix dans le monde» et est maintenue comme valeur fondamentale par la plupart des constitutions modernes, comme celles de l'Allemagne, l'Irlande, l'Israël,et de l'Afrique du Sud. La dignité, telle qu'elle est comprise aujourd'hui, est attribuable à l'impératif catégorique d'Emmanuel Kant, dont le principe de raison et de moralité nous dit de traiter l'humanité en chaque personne jamais simplement comme un moyen, mais toujours comme une fin en soi même. Elle peut aussi être définie dans sa négation, telle la définition donnée par Louis Ackerman : « la dignité est ce qui déclenche notre conscience, lorsque nous regardons dans les yeux d'une personne dont la dignité a été abusé ».[8] (Ackermann, 2012). Bien qu'il s'agisse d'un concept difficile à définir de manière exhaustive, la dignité comprend notre droit de vivre une vie autonome afin de poursuivre la satisfaction de nos besoins personnels individuels.

8 Ackerman, L. (2012). Human Dignity: Lodestar for Equality in South Africa (1st ed.)Nurturing the Dignity of Vulnerable and Marginalized People, One Contract at a Time

Cela signifie donc que chaque fois que nous lions une personne vulnérable aux termes d'un contrat qu'elle ne peut pas raisonnablement comprendre, et que nous le faisons exprès ou par ignorance ou indifférence, nous violons sa capacité à mener une vie autonome et responsible, devenant dénigrant ainsi la dignité des personnes vulnérables. Cette indifférence est aggravée par l'utilisation de mots qui objective expressément la personne vulnérable comme « travail », « le travailleur » ou « le locataire » ou « le consommateur ». Ce vocabulaire, en plus de rendre la lecture du contract plus difficile, identifie littéralement la partie vulnérable comme un simple moyen d'atteindre les objectifs de la société, «réduire une partie à un objet de gratification économique pour l'autre». Ce n'est pas le problème de quelqu'un d'autre ou un problème lointain, car cet abus est trop souvent au cœur des chaînes de valeur mondiales d'un si grand nombre de produits et services que nous consommons quotidiennement.

Mais il n'est pas nécessaire qu'il en soit ainsi. Si les entreprises étaient disposées à ne dépenser qu'un petit pourcentage de leurs budgets marketing ou de leurs mandats légaux pour rendre les informations importantes telles que les contrats plus attrayantes et plus faciles à comprendre, cela contribuerait à atténuer l'oppression institutionnelle subie par les personnes vulnérables et marginalisées tout en contribuant à leur autonomisation pour mener une vie autonome et responsable.

Gandhi aurait déclaré que «la grandeur d'une nation se mesure à la façon dont elle traite ses membres les plus faibles». Il est devenu évident que la dignité d'une personne handicapée exige notre investissement pour rendre les installations, les biens et les services accessibles de manière autonome, par exemple, une rampe d'accès dans un immeuble pour les personnes en fauteuil roulant. Il devrait être tout aussi évident que la dignité humaine exige que des instruments importants tels que les contrats deviennent accessibles de manière autonome aux personnes vulnérables et marginalisées pour qu'elles mènent également une vie autonome et responsable.

Dans toutes les populations, l'alphabétisation existe sur un spectre. Pour la plupart des gens, la plupart du temps, le langage simple a le plus grand rôle à jouer dans une communication claire et centrée sur l'utilisateur. L'étoile du Nord pour la dignité humaine est pertinente tout le long du spectre de l'alphabétisation en tant que principe organisateur. Il s'agit de traiter votre partenaire contractuel comme une fin, et pas seulement comme un moyen d'atteindre une fin ; c'est simplement une question de respect.

En Afrique du Sud, le droit à l'information en langage clair a été introduit dans certaines lois, dont la plus importante est la Consumer Protection Act, 68 de 2008 et la National Credit Act, 34 de 2005. Outre le fait que cela a été fait de manière quelque peu maladroite, par exemple, il suppose une population de personnes ayant des « capacités de lecture moyennes », quoi qu'il en soit, ce droit était justifié sur les affirmations peu solides des tendances internationales et des éfficacités économiques.

Je pense que nous pouvons faire mieux que ça. Les contrats maintiennent les liens entre nos économies modernes (et finalement notre société humaine). La manière dont les contrats renforcent ou dénigrent la dignité des personnes, que ce soit directement ou indirectement, devrait devenir la norme indépendante par rapport à laquelle nous mesurons à la fois la qualité et la validité ou la convenance de nos contrats.

Le langage clair et le legal design sont des disciplines importantes et nécessaires à l'amélioration de la dignité humaine. Les gouvernements et systèmes juridiques sont liées par leurs constitutions ou les lois qui donnent effets aux droits y inscrits.

J'irais même plus loin pour soutenir le fait qu'où une personne est légalement liée par un document qu'elle ne peut pas raisonnablement comprendre, la responsabilité demeurre avec la personne ou l'entreprise qui lui a offert le contrat pour montrer pourquoi cet accord ne devrait pas être mis de côté en raison d'être une infraction du droit constitutionel de cette personne à sa propre dignité.

Mais pour le moment, le but, et les pratiques du langage clair, comme les tests utilisateurs et le mouvement du langage clair ont joué un rôle utile et normatif important pour sensitiser les insitutions aux barrières d'information pour les personnes sur le spectre d'alphabétisation et dignité. En même temps, il existe de très bonnes opportunitiés car il y a une grosse prise de conscience du potentiel de la transdisciplinarité du langage clair, les communications visuelles, le legal design et la technologie pour améliorer l'access à l'information. Ces pratiques ne devraient pas seulement se concentrer sur les ventes, les cliques, la commodité ou l'éfficacité économique. Le plus important, c'est que ces pratiques devraient devenir un stratège à avancer l'autonomie des personnes, à leur dignité, à une meilleure vie et une meilleure société.

Sarjakuvasopimukset: Ihmisarvoa vaalimassa

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Selkeän kielen asiantuntijat ovat lukutaidoltaan ja viestinnällisiltä kyvyiltään kenties tehokkaimpia kielenkäyttäjäryhmiä koko maailmassa. Kuitenkin myös tällaiset eliittilukijat kohtaavat tärkeitä asiakirjoja kuten sopimuksia, suostumuksia, hyvityssitoumuksia ja tietosuojaselosteita, jotka ovat sekä vaikeita lukea että ymmärtää. Näiden kokemusten ansiosta ymmärrämme, miksi selkeän kielen edistäminen on merkityksellistä ja tärkeää.

Millaista viestintä sitten on heille, joilla on vaikeuksia lukea edes selkeällä kielellä tuotettuja asiakirjoja? Maailmanlaajuisesti yksi kymmenestä henkilöstä ei kykenisi lukemaan vaikeusasteeltaan tämän virkkeen kaltaista informaatiota.[1] Eteläafrikkalaisista maataloustyöntekijöistä lukutaidottomia on 40 %,[2] ja afganistanilaisista naisista 83 %.[3] Kyseessä ei kuitenkaan ole vain kehitysmaiden ongelma. Esimerkiksi 11,7 % hollantilaisista aikuisista ja 13,1 % yhdysvaltalaisista aikuisista saavuttaa vain alkeellisen lukutaidon.[4] Lukutaidottomuus linkittyy edelleen muihin haavoittuvuutta lisääviin tekijöihin, kuten köyhyyteen, työttömyyteen, kodittomuuteen ja terveysongelmiin.

Vaikka osaisimme useampaa kieltä, olemme funktionaalisesti lukutaidottomia tuhansissa maailman kielissä. Useimmille meistä tämä on ongelma vain matkustustilanteissa, mutta maailman miljoonille siirtotyöläisille kielitaidottomuus on huomattava este ja uhka.

Emme usein huomaa toisten lukutaidottomuutta, sillä lukutaidottomilla on taipumus peitellä sitä häpeän tai hyväksikäytetyksi tulemisen pelossa. Lukutaidottomilla henkilöillä saattaa olla hankaliin tilanteisiin kehitettyjä toimintamalleja: He ehkä jättävät kertomatta, etteivät kykene lukemaan tiettyä asiakirjaa ja toimivat muiden mallia seuraten, esimerkiksi allekirjoittamalla sopimuksia, joita he eivät edes teeskentele lukevansa.

Pahimmillaan nämä pelon ja häpeän suitsuttamat toimintatavat haavoittavat lukutaidottomien asemaa entisestään, jos he eivät pääse selville oikeuksistaan tai jos he sitoutuvat epäedullisiin sopimuksiin. Ongelma on siinä, että me, joilla on yhteiskunnassa enemmän valtaa, emme ole herkistyneet asialle riittävästi. Me viljelemme epäoikeudenmukaisuutta järjestämällä yhteiskunnan toiminnot sen näppärän mutta virheellisen oletuksen varaan, että meistä jokainen osaisi lukea. Esimerkiksi useimmat oikeusjärjestelmät olettavat, että aikuinen, joka allekirjoittaa sopimuksen, on lukenut ja ymmärtänyt sopimuksen ehdot, ja näin ollen hänet voidaan katsoa sopimuksen ehtoihin sidotuksi. Jos tällaista virheellisestä oletuksesta seurannutta epäoikeudenmukaisuutta yrittää korjata, on näyttötaakka lukutaidottomalla henkilöllä itsellään: hänen tulisi osata selvittää, millaisia oikeuskeinoja hänellä on tilanteessa käytössään ja sitten selvitä oikeusprosessin vaiheista. Useissa Common law -maissa on lisäksi suullista näyttöä koskevia rajoituksia, jotka eivät salli todistelua kirjallisesta sopimuksesta poikkeavista keskusteluista tai aineistoista (ns. “parol evidence” -sääntö).

1 Aikuisten (yli 15-vuotiaiden) lukutaito | Data. (n.d.). Luettu 11.12.2021. Saatavilla: https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?end=2020&start=1970

2 Visser, M., & Ferrer, S. (n.d.). Farm Workers’ Living and Working Conditions in South Africa: Key trends, emergent issues, and underlying and structural problems. 27

3 Aikuisten naisten (yli-vuotiaiden) lukutaito | Data. (n.d.). Luettu 11.12.2021. Saatavilla: https://data.worldbank.org/indicator/SE.ADT.LITR.

Tälle ilmiölle on nimikin: institutionaalinen sorto. Instituutioilla viitataan tässä *"niihin itsestään selvinä pidettyihin sosiaalisiin järjestelyihin, jotka heijastavat vallalla olevia uskomuksia ja käytäntöjä ja tarjoavat valmiita toimintamalleja sekä yksilöille että ryhmille".*[5] Institutionaalista sortoa tapahtuu silloin, kun nämä käytännöt systemaattisesti tuottavat epäoikeudenmukaisuutta ja näkymättömiä esteitä, jotka rajoittavat haavoittuvaisia ihmisiä. On tärkeää tiedostaa, että instituutio voi olla sortava, vaikka sen toimintaa ylläpitävillä jäsenillä ei olisikaan sorron tarkoitusperiä.[6]

Meillä on tapana sulkea silmämme esteiltä, joita kohtaavat kaikkein haavoittuvimmissa asemissa olevat: köyhät, lukutaidottomat, kodeistaan ajetut. Suurin osa heistä on naisia. Silmämme sulkemalla ajamme kokonaisia yhteiskunnan osia loputtomaan haavoittuvuuden noidankehään. Niinä harvoina kertoina, kun näihin ongelmiin havahdutaan, ratkaisuksi tarjotaan useimmiten oma-aloitteisuutta: haavoittuvassa asemassa olevan tulisi itsenäisesti opetella lukemaan tai etsiä itse apua. Esimerkiksi Etelä-Afrikan työsopimuslaki (*Basic Conditions of Employment Act*)[7] toteaa, että jos työntekijä ei ymmärrä kirjallisesti esitetyn sopimuksen sisältöä, työnantajan tulee varmistaa, että sisältö selitetään työntekijälle tavalla, jonka hän ymmärtää. Periaatteessa tämä kuulostaa hyvältä, mutta se, mitä laki haavoittuvassa asemassa olevalle itseasiassa sanoo, on seuraava: *"Sinun tulee kertoa työnantajalle lukutaidottomuudestasi, mikä saattaa vaarantaa työpaikkasi. Sinun tulee luottaa, että työnantajasi käyttää aikaansa siihen, että selvittää sinulle sopimuksen sisällön oikein ja täysin, ennen kun allekirjoitat sopimuksen luottaen siihen, että siinä sanotaan kuten sinulle on selitetty. Ja sinun täytyy muistaa sopimuksesta kuulemasi ulkoa, jos myöhemmin tarvitset sitä koskevaa tietoa."*

Miljoonia haavoittuvassa asemassa olevia eteläafrikkalaisia koskettavaan ongelmaan tarjottiin näin epäonnistunut ratkaisu. Tämä sai minut miettimään, olisiko mahdollista tuottaa sopimuksia, joita kaikkien olisi mahdollista ymmärtää. Ratkaisun avaimet tarjosivat meille sarjakuvat. Kuvien ja tarinoiden yhdistelmät. Ensinnäkin kuvat voivat helposti ilmaista monimutkaisiakin ajatuksia[8] ja ihmisten on helppo sisäistää ja muistaa suuria määriä tietoa, kun se välitetään kuvien avulla. Kuvien kieli on myös universaali; se on viestintäväline, joka välttää kieleksi kääntämisen ja kielten välillä kääntämisen riskit. Toiseksi, tarinoilla on kyky yhdistää ihmisiä ja ideoita, ne kuvaavat asioiden suhteita paremmin kuin puisevat faktaväittämät, ja ne on helppo muistaa. Jos sisältöihin vielä lisätään hiukka huumoria, vähentää se sopimuksen laatimiseen liittyvää ahdistusta ja edesauttaa sisältöjen muistamista.

Ihmisaivot yksinkertaisesti prosessoivat kuvia ja tarinoita parhaiten; ovathan aivot käsitelleet kuvia ja tarinoita jo tuhansia vuosia ennen tekstien syntyä. Aivomme prosessoivat kuvia 60 000 kertaa tekstiä nopeammin ja kykenemme seuraamaan kuvien avulla annettuja ohjeita 300 % paremmin kuin tekstimuotoisia. Tästä syystä lentoyhtiötkin esittävät hätätilanteiden toimintaohjeet kirjavalle asiakaskunnalleen aina kuvakortteina.

Kollegamme Helena Haapio[9] ja Colette Brunschwig[10] olivat jo työskennelleet ennakoivan sopimisen ja visuaalisen juridiikan periaatteiden parissa, ja tämän tiedon avulla aloimme tarkastella mahdollisuutta tehdä sopimuksia sarjakuvamuodossa. Toukokuussa 2016, muutaman vuoden kehitys- ja kokeilutyön jälkeen, saimme maailman ensimmäisen kuvallisen sopimuksen käyttöön ClemenGoldin sitrusfarmin 250 kausityöntekijälle Letsitelen kaupungissa Etelä-Afrikassa. Kutsuimme tätä uutta sopimusmuotoa nimellä "sarjakuvasopimus" (comic contract), jonka määrittelemme oikeudellisesti päteväksi, kuvien avulla esitetyksi sopimukseksi, jossa sopimusosapuolet on kuvattu sarjakuvahahmoina, ehdot esitetty kuvina ja jonka osapuolet allekirjoittavat sopimuksena.

5 "Institutional Oppression," Tools for Diversity, © TACS. Tri-County Domestic & Sexual Violence Intervention Network Anti-Oppression Training for Trainers Created by Carol Cheney, Jeannie LaFrance and Terrie Quinteros, 2006

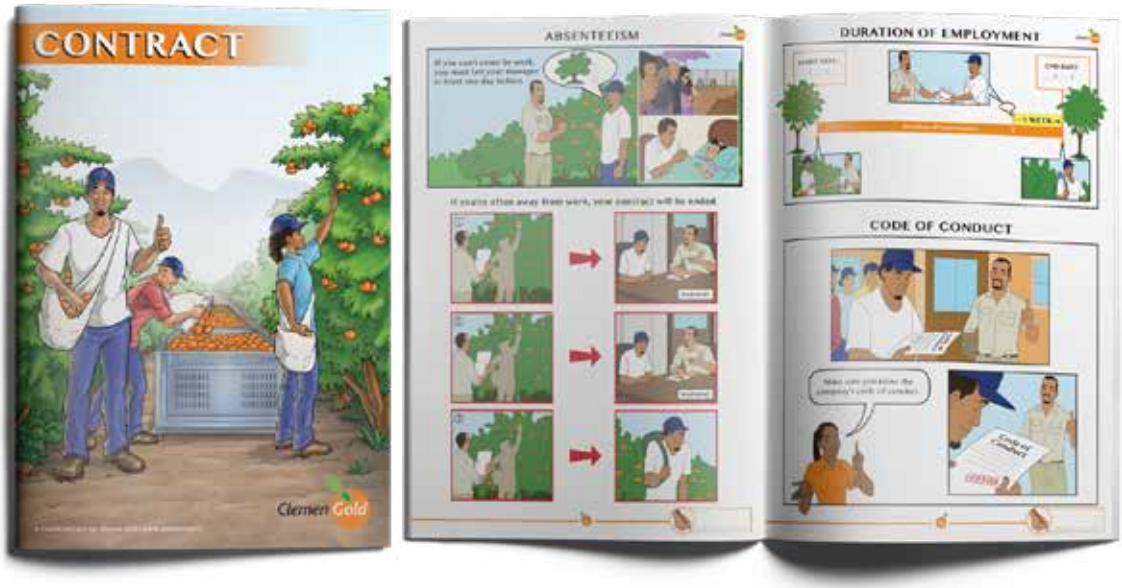
6 Diann Cameron Kelly & Rani Varghese (2018). Four contexts of institutional oppression: Examining the experiences of Blacks in education, criminal justice and child welfare, Journal of Human Behavior in the Social Environment, 28:7, 874-888, DOI: I Aikuisten (yli 15-vuotiaiden) lukutaito | Data. (n.d.). Luettu 11.12.2021. Saatavilla: https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?end=2020&start=1970

7 Basic Conditions of Employment Act, 1997, South Africa.

8 Barton, T. D., Berger-Walliser, G., & Haapio, H. (2013). Visualization: Seeing contracts for what they are, and what they could become. 19, 17. Journal of Law, Business and Ethics, 19, 47–63

9 Berger-Walliser, G., Bird, R. C., & Haapio, H. (2011). Promoting business success through contract visualization. 20. Journal of Law, Business & Ethics, 17, 55–75.

10 Brunschwig, Colette Reine, On Visual Law: Visual Legal Communication Practices and Their Scholarly Exploration (2014). Teoksessa: Zeichen und Zauber des Rechts: Festschrift für Friedrich Lachmayer, Erich Schweihofer ym. (toim.), Bern: Editions Weblaw, 899-933, Saatavilla: SSRN: https://ssrn.com/abstract=2405378



Käyttöönottohetkellä meitä hermostutti, että työntekijät pitäisivät kuvia alentavina, ja että tästä koituisi työnantajalle ongelmia. Työntekijät kuitenkin ihastuivat sarjakuvaan ja rohkaistuivat myös esittämään siitä kysymyksiä. Kun heiltä kysyttiin, pitivätkö he enemmän teksti- vai kuvamuotoisista sopimuksista, kaikki kannattivat kuvia. He huomauttivat, että myös heidän suosimansa lehdet ja sosiaalinen media ovat kuvia täynnä. Koska suurin osa työntekijöistä oli naisia, he toivoivat, että heille tarjotussa sopimuksessa olisi päähenkilönä nainen. He ehdottivat myös, että otsikot ja muut tekstinpätkät voisivat olla heidän omalla kielellään. Meidän asiakkaamme eli työnantajapuoli suostui näihin pyyntöihin, ja me kehitimme sopimuksesta uusia versioita ripeästi. Nämä muutokset helpottivat työntekijöiden samaistumista sopimukseen ja siten paransivat sopimuksen informatiivisuutta entisestään. Tämä sai meidät ymmärtämään, että sopimusten ymmärrettävyyttä voi parantaa muutenkin kuin kuvilla ja tarinoilla. Työnantaja raportoi, että sarjakuvasopimuksen avulla työhön perehdytykseen vaadittu aika lyheni kolmesta tunnista kolmeen varttiin.

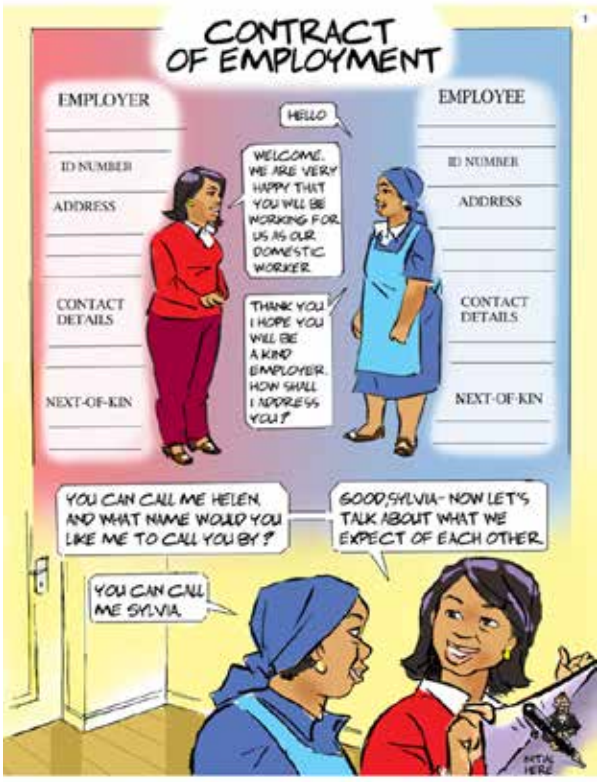
Myöhemmässä vaiheessa tuotimme sarjakuvaversion sopimuksesta, jonka paikallinen, köyhällä alueella toimiva esikoulu tekee lasten vanhempien kanssa. Opimme, että sarjakuvasopimuksen avulla vanhemmat ymmärsivät paremmin, mitä heiltä odotettiin ja miten he voisivat tukea lastensa koulutusta. Tämän lisäksi ymmärsimme, että opettajien oli helpompi toimia, kun heillä oli käytössään työkalu, jonka molemmat osapuolet voivat ymmärtää; heidän oli helpompi luoda vanhempiin yhteys yhteisten asioiden tiimoilta.

Kokemuksemme perusteella voimme todeta, että lukutaidottomat ja muuten haavoittuvassa asemassa olevat henkilöt kokevat voimaantuvansa ja tulevansa kunnioitetuiksi, kun heille tarjotaan tietoa kiinnostavalla, selkeällä ja turvallisella tavalla. Tämä näkyy myös ulkopuolisen tahon meille keräämässä palautteessa:

- *”Luotan kuvasopimukseen enemmän. Sitä voi lukutaidotonkin katsella ja ymmärtää sen siten paremmin.”* (Käännös Agatha Le Fleurin palautteesta)
- *“He osoittivat arvostavansa meitä ihmisinä. Muissa työpaikoissa meille vain annetaan käskyjä eikä meistä välitetä. Siksi arvostan, kun pomo osoittaa, että hän välittää meistä. Juuri se tekee minut onnelliseksi.”* (Käännös Nonzwakazi Nowatan palautteesta)

- *”Olen lukutaidoton. On monia sanoja, joita en ymmärrä, mutta ymmärrän ne, kun katson tätä. Saan siitä voimaa tehdä työni.”* (Käännös Dineo Cuphen palautteesta)

Ymmärsimme, että työssämme ei ole kyse pelkästään tiedon välittämisen helpottamisesta, vaan myös haavoittuvien ihmisten omanarvontunnon kunnioittamisesta ja heidän arvokkaasta kohtelustaan. Osoitamme, että on tärkeää, että hekin ymmärtävät sopimuksensa. On tärkeää, että he eivät tunne häpeää, ja että he tietävät, mihin he suostuvat, jotta he kykenevät itsevarmuudella päättämään toimistaan.



YK:n ihmisoikeuksien yleismaailmallinen julistus vuodelta 1948 korostaa ihmisarvoa toteamalla että ”ihmiskunnan kaikkien jäsenten luonnollinen arvo ja heidän yhtäläisten ja luovuttamattomien oikeuksiensa tunnustaminen on vapauden, oikeudenmukaisuuden ja rauhan perustana maailmassa”. Tämä ihmisarvonjulistusmuodostaa arvopohjan useille nykyisille perustuslaeille esimerkiksi Saksassa, Irlannissa, Israelissa ja Etelä-Afrikassa. Ihmisarvo, sellaisena kun se nykyään ymmärretään, pohjaa Immanuel Kantin kategoriseen imperatiiviin, velvollisuuseettiseen moraalikäsitykseen, jonka mukaan toisia ihmisiä tulisi aina kohdella kuin he olisivat päämääriä sinänsä, eivätkä pelkkiä välineitä. Ihmisarvo voidaan määritellä myös negaationsa kautta, kuten Louis Ackerman on ilmaissut: *”Ihmisarvo on se mikä herättää omatuntomme sillä hetkellä, kun katsomme silmiin ihmistä, jonka arvoa loukataan”*[11] (Ackerman, 2012). Ihmisarvoa on vaikea määritellä kokonaisvaltaisesti, mutta siihen sisältyy myös yksilön oikeus elää itsenäisesti (itse säädeltyä elämää) ja tavoitella henkilökohtaisten tarpeiden täyttymistä.

Tämä tarkoittaa, että joka kerta, kun sidomme haavoittuvassa asemassa olevan henkilön sopimukseen, jota tämä ei ymmärrä – teimmepä sen tahallamme, huomaamatta tai välinpitämättömyyttämme – loukkaamme hänen kykyään elää itseohjautuvaa ja vastuullista elämää ja vähättelemme hänen ihmisarvoaan. Tällainen huolimaton ajattelu tiivistyy tavassa viitata haavoittuvaisiin henkilöihin pelkkinä objekteina, ”työvoimana”, ”työntekijänä”, ”vuokralaisena” tai ”kuluttajana”. Tämä terminologia vaikeuttaa sopimuksen lukemista, mutta myös – kirjaimellisesti – identifioi allekirjoittajan hyödykkeenä, joka astuu yrityksen käyttöön: se *”alentaa sopimusosapuolen objektiksi, jota toinen saa taloudellisesti hyödyntää”* .[12] Tämä ongelma koskettaa jokaista meistä, sillä käytämme päivittäin lukuisia tuotteita ja palveluita, joiden globaali arvoketju perustuu tällaiseen hyväksikäyttöön.

11 Ackerman, L. (2012). Human Dignity: Lodestar for Equality in South Africa (1. painos)

12 Naudé, T., & Lubbe, G. (2005). Exemption clauses—A rethink occasioned, Afrox Healthcare Bpk v Strydom. South African Law Journal, 122(2), 441–463.

Asiaan olisi kuitenkin ratkaisu. Jos yritykset käyttäisivät edes pienen osan markkinointi- tai oikeuskulubudjeteistaan siihen, että heidän sopimuksistaan tehtäisiin havainnollisempia ja helpompilukuisia, vähentäisi se sitä institutionaalista sortoa, jota haavoittuvassa asemassa olevat ja muuten syrjäytyneet kokevat. Tämä myös voimaannuttaisi näitä henkilöitä elämään itseohjautuvaa ja vastuullista elämää.

Gandhin kerrotaan todenneen, että *"kansakunnan suuruus voidaan mitata siitä, kuinka se kohtelee heikoimpia jäseniään"*. Meille on jo itsestään selvää, että vammaisen henkilön arvokkuus tulee taata tekemällä rakennuksista, tuotteista ja palveluista saavutettavia, esimerkiksi teettämällä ramppeja pyörätuoleja varten. Yhtä itsestään selvää tulisi olla sen, että sopimusten kaltaisten instrumenttien tulisi olla saavutettavia, jotta haavoittuvat ja syrjäytyneet voisivat elää itseohjautuvaa ja vastuullista elämää.

Yksilöiden lukutaidon taso vaihtelee joka ikisessä yhteisössä. Useimmiten ja useimmille lukijoille käyttäjälähtöisessä selkeässä viestinnässä tärkeintä on kielen selkeys. Ihmisarvon kunnioittaminen on periaate, joka on yhtä relevanttia lukutaidon jokaisella tasolla. Siinä on kyse sopimusosapuolen kohtelusta vertaisena, ei pelkkänä välineenä; siinä on kyse kunnioituksesta.

Etelä-Afrikassa yksilön oikeus selkeäkieliseen viestintään kirjattiin muutamiin lakeihin, joista näkyvimmät olivat kuluttajansuojalaki (Consumer Protection Act, 68) vuodelta 2008 sekä kulutusluottolaki (National Credit Act, 34) vuodelta 2005. Sen lisäksi, että nämä lisäykset toteutettiin kömpelösti (ne esimerkiksi puhuvat ”keskivertolukutaidosta” määrittelemättä sitä mitenkään), ne myös perusteltiin huterilla viittauksilla kansainvälisiin trendeihin ja taloudelliseen tehokkuuteen.

Mielestäni me pystymme parempaankin. Kansantaloutemme (ja viime kädessä myös ihmiskuntamme) pysyy kasassa sopimusten avulla.[13] Sopimustemme laatua, pätevyyttä ja täytäntöönpanokelpoisuutta tulisi mitata sillä, kuinka ne tukevat tai heikentävät osapuolten ihmisarvoa, joko suorasti tai epäsuorasti.

Selkeä kieli ja oikeusmuotoilu ovat aloina välttämättömän tärkeitä ihmisarvon tukemisen näkökulmasta. Perustuslait sitovat hallituksia ja oikeuslaitoksia turvaamaan kansalaisille lakien sanelemat oikeudet. Näin ollen jokaisen kansalaistensa ihmisarvon tiedostavan valtion tulisi vaalia tätä arvoa säätämällä ja panemalla täytäntöön lakeja, jotka vaativat kiinnittämään huomiota sopimusten ja muiden tärkeiden asiakirjojen selkeään kieleen ja muotoiluun.

Itse ehdottaisin jopa, että tilanteissa, joissa henkilöä sitoo asiakirja, jota hänen ei kohtuudella voida olettaa kyenneen ymmärtämään, voisi kyseessä olla loukkaus perustuslaissa turvattua ihmisarvoa kohtaan, ja asiakirjan laatineen tahon vastuulla tulisi olla näyttää, miksi asiakirjaa ei tulisi syrjäyttää.

Näitä parannuksia odotellessa selkeän kielen eteen tehty työllä, kuten käyttäjätestauksella ja muilla edistämistoimilla, on tärkeä rooli herättää eri instituutiot huomaamaan ne tiedon esteet, joita eri tavoin haavoittuvat ja lukutaidoltaan heikommat henkilöt kohtaavat. Uusia kiinnostavia mahdollisuuksia syntyy koko ajan, kun ymmärrämme yhä paremmin, kuinka selkeän kielen, visuaalisen viestinnän, oikeusmuotoilun ja teknologian alat voivat yhdessä parantaa tiedon saavutettavuutta. Tämän edistystyön keskiössä ei tulisi pitää myynnin, klikkausten määrän tai taloudellisen tehokkuuden kasvua. Niiden sijaan kehityksen tulisi edistää ihmisten autonomiaa, ihmisarvoa, parempaa elämää ja parempaa yhteiskuntaa.

13 Hart, O., & Holmström, B. (n.d.). The Prize in Economic Sciences 2016.

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