Thesis

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LANGUAGE AND THE CONSTRUCTION OF IDENTITY IN LEGAL CONTEXTS

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AND THE CONSTRUCTION OF IDENTITY
IN LEGAL CONTEXTS

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DECLARATION

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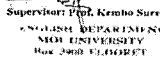Emmanuel Satia   Date: ....10 /11/2014........

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1. Pro Kembo Sure   Date: ......10/11/14.....
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University of Leeds, Leeds, UK

DEDICATION

To the memory of my father, John N. Chemonges.

When the first white missionaries arrived at his village to enlist young boys into their faith and to take them to school, the young Chemonges kept off the missionaries and their schools. Like other young men in his village, he woke up at dawn and fled from home before the missionaries arrived and much as they tried, he always outsmarted them. So, like many people of his time, he never went to school. Yet in his adult life, he believed strongly in the life changing power of education. Consequently, he made sacrifices in order to take his children to school in spite of his meagre earnings as a hotel waiter throughout his working life. With meagre earnings and the little tips that he received from the patrons he served, and with assistance of some of those patrons and one notable employer, Njenga, Mzee Chemonges ensured that his children went to school. Then it was like a mere routine. But, today, many years later, this work, a product of many years of hard work would surely have filled him with immeasurable joy. Sadly, this was not to be as he passed on peacefully a few weeks to its completion. But his spirit lives on through this work. Rest in peace, dad.

To my family - Edith Mugasia,
Eric Chemonges, Elvine Saikwa, Loice Chemtai and Maisy Achesang-
For all the support and encouragement.
To all of you, I wish God's blessings!

ABSTRACT

This study sought to investigate how language is used in the construction of identity in legal contexts. The main objective of the study was to analyze the language used in legal contexts, show how such language aided in the construction of identity and finally, to explain the nature of identities so constructed. Using a qualitative research design, the author collected samples of courtroom proceedings, police statements and prison letters and analyzed them within Norman Fairclough's approach to Critical Discourse Analysis and the Corpus Linguistics method. The corpus linguistics analyses were supported by *WordSmith Software Version 5*. Accordingly, the data were analyzed at three levels namely, grammatical level, lexical level and lastly, at the stylistic level. The study found that there is a close interface between language and identity. At the grammatical level, it was found that interactants in the selected legal contexts constructed their own identities or the identities of their interlocutors by manipulating a variety of strategies which included agency, modality, and intertextuality. At the lexical level, this study found that identities were constructed through strategic lexical choices and the use of euphemisms. At the stylistic level, the study found that identities were constructed through idiosyncratic pronunciations, choice of resister and careful selections of vocatives among others. But beyond linguistic findings, this study also found that identities were constructed through knowledge displays and that when the identities of the interactants were damaged, the affected persons resorted to using image repair strategies such as denial, shifting blame and giving a positive description of self. Among the main identities that were constructed included a professional identity, victim identity and criminal identity. This study concludes that language, the specific social context and the kind of legal system in a jurisdiction affect the construction of identity.

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CHAPTER ONE

INTRODUCTION AND BACKGROUND

1.1 Introduction

This introductory chapter starts by locating this study within forensic linguistics and then provides the rationale for the study by showing how identity has received relatively little attention in forensic linguistics. Thereafter, the chapter provides an overview of some of the main theories of identity. The theories discussed include socio-psychological theories, performative theories and constructivist theories. The chapter then moves to a discussion of the interface between language and identity. This is followed by a discussion of the three legal contexts under study and a statement of the research problem. Next, the chapter presents the research questions, objectives, the purpose of the research as well as the rationale, scope and limitations of the study. The researcher's contribution is presented thereafter. Finally, the chapter ends with a brief list of definitions of terms and a list of abbreviations that have been used in this thesis.

1.2 Background to the study

This study falls within the sub-discipline of Forensic Linguistics. Forensic linguistics is a relatively new branch of linguistics that studies the interface between language and the law. Although initial definitions of forensic linguistics focused on the interface between language and the law and some scholars viewed it as an applied area of linguistics, recent trends seem to prefer more general definitions. Gibbons (2011:234), for example, refers to this discipline as 'communication evidence' since not all forensic linguistics work necessarily involves the legal system and the fact that forensic linguistics work involves semiotics rather than language itself. This

study takes the narrow meaning of the forensic linguistics. As a consequence, it focuses on the interface between language and identity within legal contexts.

Forensic linguistics has seen a phenomenal growth in the last forty years. Studies in this sub-discipline started with isolated articles on language and law matters in various journals for example, the *Journal of Pragmatics* and *Discourse and Society*. Later, these isolated articles found a home in the *Forensic Linguistics* journal. However, with scholars in disciplines other than language and the law showing interest, the journal took a different title; the *International Journal of Language, Speech and the Law* to reflect the divergent interests. In recent years, there has been a growing list of publications including two handbooks - Coulthard and Johnson (2010) *The Routledge Handbook of Forensic Linguistics* and Tiersma and Solan (2012) *The Oxford Handbook of Language and the Law*. A number of key scholars in this field have websites which shed light on various aspects of the discipline.

Similarly, although studies in language and identity have been on the increase in recent years, it is evident that a lot of work still needs to be done. A review of current literature shows that scholars have engaged with the subject at both macro and micro levels. At the macro level are studies such as discourse and identity (Benwell and Stokoe 2006, De Fina, Schiffrin & Bamberg (2006), national identity (Wodak et al. 1999, Oakes (2007), style and identity (Auer 2007) and narrative identity (Thornborrow (2005), Bamberg (2004), De Fina (2003)). Studies at the micro-level have focused on identity in specific institutional and interactional social contexts and include studies by Mullany (2006), Bogoch (2009), and Tracy (2009). While considerable research has gone into identity studies at the macro-level, studies in interactional contexts such as legal contexts show that this context has received relatively minimal attention. As a consequence, this study intends to make a

contribution in identity studies by examining how identity is constructed in legal contexts, namely the police interview setting, the prison context and the courtroom context. Since this study focuses on legal contexts, I focus my attention on studies in these contexts with the view of showing areas that have least been addressed in scholarly works.

Although the courtroom has been the focal point of most forensic linguistics studies, this context has attracted relatively little attention on the question of identity. As will be shown in the literature review section, even where this has been evident, for example in (Eades (2008) and Matoesian (2001)), a majority of such studies have only focused on identity inadvertently (Newbury & Johnson (2006), Johnson and Clifford (2007), Cotterill (2003 & 2004) and Erhlich (2001)). Forensic linguistics work on the prison context has generally been neglected (Gibbons (2003) and Tkačuková (2010). However, the absence of research in this context may partly be attributed to the secluded and restricted nature of the prison institution the world over. The most notable contributions on language in prison contexts include O'Connor (2000, 1995 & 1994), Mayr (2004) and Mckendy (2006). For example, while Mayr (2004) evaluates a cognitive skills course offered at a prison in Scotland, O'Connor (2000) focuses on how prisoners talk about crime. She specifically discusses the question of agency in the crime narratives of prisoners. In contrast, although the police institution has been the subject of many studies; (Rock 2007), (Heydon 2005) (Coulthard, 1996), (Haworth 2009) and (Haworth 2013), I found little evidence of identity construction in 20 articles reviewed. This is in spite of the fact that this and the other two contexts provide a fertile ground for interactants to engage in identity construction work. An examination of police interviews shows that complainants and/or suspects construct criminal narratives in ways that portray

them as innocent persons or criminals. The entire courtroom process largely revolves around determining the guilt or innocence of parties involved in litigation. In the prison context, although it may be assumed that the inmates are criminals or law breakers (owing to the sentences that they have received), there are inmates who regard themselves as victims of an unfair criminal justice system. As a result, some of them resist the criminal identities imposed on them. This calls for an investigation into the ways in which the various interactants in these legal contexts engage in identity construction.

1.2.1 Construction of Identity

Although there is neither a single method nor a single approach in identity construction different theories of identity provide insights into the ways through which identities may be constructed. I provide an overview of four key theories of identity because to show how they explain how identity is constructed. These are socio-psychological theories, performative theories, reflective theories and social constructivist theories.

Socio-psychological theories hold the view that identities are constructed through identification with social groups. Therefore, identities are constructed through the process of differentiation. Group identification occurs along a dichotomy that involves in-group and out-group members. In-group members comprise members who are considered to be similar as a result of sharing certain traits. Those who fall outside of this categorization, because they have different traits, are regarded as out-group members.

Performative theories advance the view that identities are things that people do, simply put, identities are *doings*. In identity studies, gender identity is largely regarded as a performative. Cameron (1996), for example, argues that gender identity

arises from ones' repeated performance over time of the acts that constitute a particular identity.

Reflective theories posit that identities are traits that people have. Viewed this way, identities are considered both static and constant while individuals are considered incapable of altering their identities. But as will be seen in Chapter 2 Section 2.1.4, this and other approaches have faced criticisms.

Finally, according to Bloomberg and Volpe (2008:8 – 9) social constructivists argue that identity is 'socially, culturally and historically constructed through interaction'. However, within this approach, there exists a broad spectrum of approaches which colour the way identities are constructed. For example, in Goffman's (1981) postulation, identity construction is about how we project ourselves in the course of an interaction. Accordingly, interactants make choices on how to present themselves to their co-interactants. In a majority of these approaches, language plays a crucial role. It is regarded both as a means by which identities are mediated and described.

The constructivist approach has two main advantages. First, there is evidence that people actually make choices on what image they wish to project in any interactive setting. It is also apparent that the social context of an event affects what kind of identities will be constructed. The courtroom context, for example, provides for the use of institutional identities. Accordingly, parties in a court process are identified using institutional labels such as Prosecutor, Accused Person, and Witness etc. At the same time, the entire court process largely revolves around determining the guilt or innocence of an accused person in a trial. Similarly, at the statement taking stage in the police interview context, police officers construct a crime incident in a manner that meets institutional requirements by aligning such statements to the

relevant sections of the penal code. Accordingly, a suspect may be portrayed as being criminally liable or innocent. The second advantage is that this approach focuses on language use within a social context. These constructions, reconstructions, impositions and rebuttals of identity take place through language. Pavlenko and Blackledge (2004:21) aptly observe that:

> Individuals are agentive beings who are constantly in search of new social and linguistic resources which allow them to resist identities that position them in undesirable ways, produce new identities, and assign alternative meanings to the links between identities and linguistic varieties.

What linguistic resources individuals use to construct identities and the links between language and identities are the key issues that this study investigates.

1.2.2 The Language/Identity Interface

Language and identity are related in a number of ways. I discuss three of these levels of interface in this section. In the first, and the more extreme postulation, language is viewed as being synonymous with one's identity. This is the sense that one reads from Tabaouret-Keller (1997) and Bogoch (1999). Tabaouret-Keller (1997:315), for example, argues that 'the language spoken by somebody and his/her identity [are] inseparable ...' while Bogoch (1999:330) contends that 'the language chosen [by a speaker] conveys not only the content of the message, but also information about the interlocutors'. This language/identity interface is particularly strong in identifying ethnic or regional identities.

Second, language and identity are related through indexicality. Defined by Bucholtz and Hall (2004:378) as 'a semiotic operation of juxtaposition, whereby one entity or event points to another', some linguistic features are regarded as being indexical of identity. Those who hold this view see a strong correlation between language and identity. Among them is Tabaouret-Keller (1997: 317) who argues that

'the link between language and identity is often so strong that a single feature of language use suffices to identify someone's membership in a given group'. Probably the best known case of this link is found in the book of Judges XII: 6. In the story, a single linguistic feature /ʃ/ in the first consonant of the word 'shibboleth' was used to distinguish friend from foe. The Biblical story has it that on the battle-field after their victory over the people of Ephraïm, the Gileads applied a language-identity test. All of the soldiers were asked to pronounce the word *shibboleth* and those who pronounced the first consonant as [ʃ] were considered to be friends while those who pronounced it as [s] were considered to be enemies and were therefore killed at once.

Indexicality is, however, not limited to extreme situations such as this one. As Johnstone (2010: 33) shows, even the mere selection of a lexical item or the pronunciation of a word can index one's identity. Similarly, Bucholtz (1999:221) shows that the use of (uw) and (ow) associated speakers in her study with 'trendy and cool youth identities' while Ochs (1992:339) shows how gender identities may be indexed through minute linguistic features such as particles. In a study of Japanese she points out that 'sentences that include such sentence-final morphological particles as *ze* pragmatically presuppose that the speaker is a male whereas sentences that include the sentence-final particle *wa* pragmatically presuppose that the speaker is a female'.

Third, Fairclough (2003:159) identifies style as the other level of the interface between language and identity. He contends that style is the 'the discoursal aspect of ways of being'. One's identity is therefore partly a matter of how one speaks, writes as well as a matter of embodiment. Style is therefore indexical of identity. Fairclough further explains that style is realized through a range of linguistic features which include phonological features such as pronunciation, intonation, stress and rhythm,

lexical elements such as words, phrases, metaphor, grammatical patterns and patterns of discourse. Johnstone (2010:31) appears to support a similar view when she contends that, 'Just as pronunciations can index identities, by virtue of being experienced together with other evidence of them, so can any other kind of linguistic form: words, phrases, grammatical patterns, patterns of discourse, even linguistic consistency or inconsistency over a lifetime'.

1.3 Legal Contexts, Systems and Identity

According to Gibbons (2003:2), 'The legal systems of modern states generally consist of four major elements – a court of laws, a court system, a police service and prisons'. These elements provide the contexts being investigated in this study. And although the three contexts appear disparate, they are intrinsically interrelated. When an offence is committed, a report is made at a police station. This is followed by an investigation of the offence. Invariably, this process involves taking statements from (a) suspect(s), witnesses and the complainant(s). When police officers find that there is sufficient evidence to prosecute a case, the matter is presented before a court where a judge or judges listen to and determine the case. But if the guilty party still feels aggrieved, he/she is allowed to file an appeal. At this point, the case may restart and may involve seeking further evidence. So the entire process may commence afresh. However, in the absence of an appeal, the convicted person is sent to jail and this ushers in the prison context. These three legal contexts therefore appear to operate in a continuous chain in which events follow each other in a sequence. In view of the differences in the contexts, the interactants involved seem to resort to different linguistic strategies to either construct or reconstruct their identities.

The legal system used in a particular jurisdiction also tends to affect the way identities are constructed. Two of the more widely known legal systems include the Common Law System and the Inquisitorial System. Komter and Malsch (2012) make a useful distinction between the adversarial legal system and the inquisitorial system which is important in this study. A summary of these differences are presented in section 1.3.1.

1.3.1 The Common Law System vs. Inquisitorial System

According to Komter & Malsch (2012:409), the common law system is adversarial in nature. Accordingly, proceedings in such trials are viewed as contests between the plaintiff and the accused person. Gibbons (2003:6) points out that these proceedings 'take the form of a ritualized battle between the prosecution and the defence' with each 'trying to prove conflicting cases'. During this battle, each side 'fights for their own case' by 'presenting a version of facts that will be challenged by the other party' (Hale 2004:31).

Komter and Malsch (2012:409) further state that there is a greater emphasis on oral presentation of evidence in the adversarial system. In addition, they observe that the decision of the court in this system depends on the evidence that is presented before the 'trier of fact' by both parties. Furthermore, the trial is conducted in open court and emphasis is placed on questioning witnesses and other types of evidence adduced in court. But as this is going on, the court operates on 'the presumption of innocence until proven guilty' (Komter and Malsch 2012:409). In the meantime, 'the burden of proving guilt beyond reasonable doubt' (Gibbons 2003:5), is placed on the prosecution'.

In the inquisitorial system, on the other hand, both inculpatory and exculpatory evidence is gathered by the police, prosecution and the judge but it is the judge who decides whether or not to admit the evidence. Quoting Malsch and Nijboer

(2009), Komter and Malsch (2012:409 - 410) argue that in the inquisitorial system, 'there is preference for documentary evidence'. In the adversarial system, the principle of immediacy applies. This means that all evidence is produced in its most original form. In contrast 'inquisitorial systems tend to sustain the principle of "free proof", which means that any type of evidence may reach the judge'. There is greater emphasis on the pre-trial stages and judges are often satisfied with the written reports of the interrogations conducted during the pre-trial stage.

These contrasting systems, inevitably, affect the ways in which interactants construct their identities in the courtroom. Social contexts in which interactants operate also affect the way identities are constructed. Aspects of the social contexts in each of the legal settings are explained next.

1.3.2 Aspects of the Social Contexts in the selected Legal Settings

The prison context is a restricted environment except for those who work within them. As a result, not much can be said about the prison environment itself and how that environment affects the way inmates construct their identities. This has, however, not affected this study in any way since prison letters constitute my prison data and each is considered to be a complete text on its own.

Similarly, except for police statements made at scenes of crime to the press, police statements are also produced in contexts that are not accessible to the outside world, at least in the case of actual police interviews. But as I have stated with regard to prison letters, this did not inhibit my study in any way because my analysis focused on written police statements that were used in the courtroom during examination-in-chief. In addition, the context of the production of the statements was not totally lost. Some of the contexts could be reconstructed during examination-in-chief.

In contrast, the courtroom context is the most accessible of all. Consequently, interactants and the contexts in which they operate can be examined. This has the benefit of providing insights into what the interactants do, why they act as they do, and how what they do may affect the way they construct their identities. For this reason, I examine the structure of both the local Resident Magistrate's Courts and the International Criminal Court, the design of each of the courtrooms and the role of key staff in both. This is necessary as it aims at providing some of the answers to my research question (ii): 'In what ways do they negotiate their identity across the professional/lay divide in relation to the legal contexts?'

All the courts had a similar design and different parties in the courts were positioned as indicated in Fig.1.1.
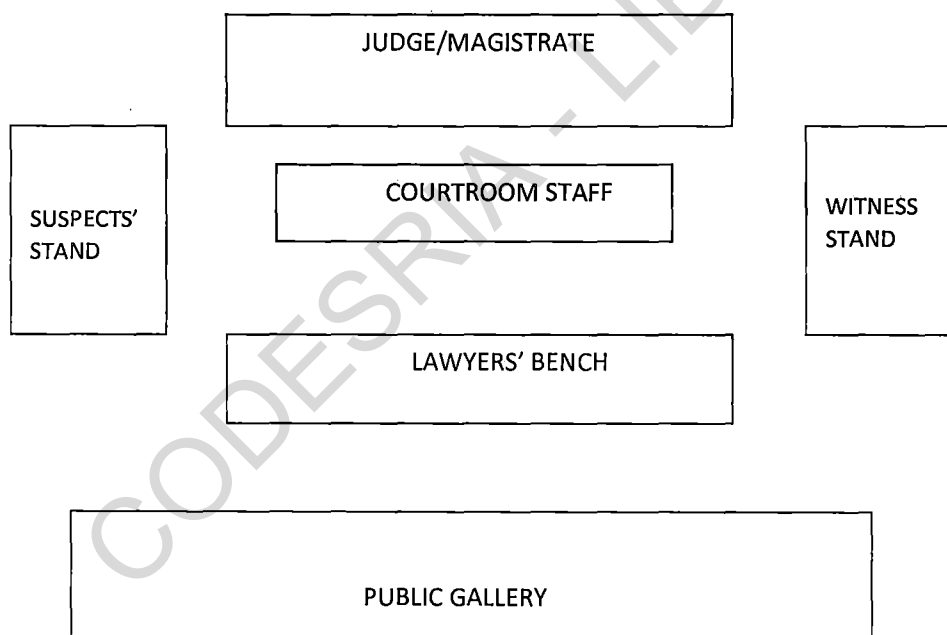
Fig.1.1 A Typical Design of Resident Magistrates' Courts in Kenya

1.3.2.1 Structure of the Courts

In terms of hierarchy, the Senior Resident Magistrate is in charge of the court. But the official works with other magistrates who may be at the same rank. In spite

of this horizontal structure at the top, the seniority of a magistrate or otherwise is determined by the type of cases that they can hear. In criminal cases, it is the gravity of the offence that determines which magistrate will listen to the case. The Chief Magistrate, Senior Principal Magistrate, and Senior Resident Magistrates handle cases relating to arson, stock theft, manslaughter, attempted murder and robbery with violence. Resident Magistrates, on the other hand, listen to and determine cases involving assault, creating a disturbance, traffic offences, defilement and rape. In general, Resident Magistrates deal with cases which attract sentences of up to 7 years in prison. The exception is sexual offences which may be heard by any Magistrate although they provide for a maximum term of a life sentence.

In civil cases, the decision about who determines a case is hinged on the monetary jurisdiction of the case. Senior Principal Magistrates and Principal Magistrates determine civil cases which attract fines of up to Kshs. 5,000,000. Senior Resident Magistrates and Resident Magistrates, on the other hand, listen to cases which attract fines of up to a maximum of Kshs 2,000,000.

Administratively, the Resident Magistrates Courts are structured as shown in Fig. 1.2
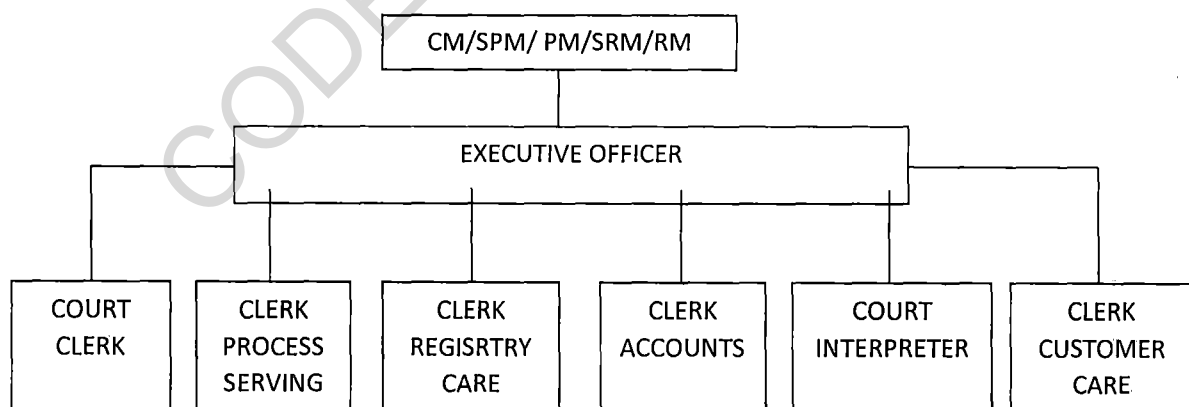
Fig.1.2 Administrative Structure of the Resident Magistrates' Court

Key:

CM   -   Chief Magistrate   SPM   -   Senior   Principal
Magistrate

PM   -   Principal Magistrate   SRM   - Senior Resident Magistrate

RM   -   Resident Magistrate

Having illustrated the structure of the court, I now turn to the roles performed by the various court officials.

1.3.2.2 Functions of Courtroom Staff

Magistrates principally listen to and determine cases brought before them. Executive Officers perform administrative duties of the courts. Their duties include assigning duties to staff working under them, overseeing the day to day operations of the court, managing communication in the court and generally maintaining a link between the court and the public. Executive Officers perform duties that are similar to those performed by Human Resource Officers.

Other courtroom staff, a majority of whom are clerks, perform different duties. Court Clerks primarily work within the courtroom. They attend to magistrates in court, receive pleas and draw up warrants and other documents. In addition, they open files of cases, file away cases and maintain a movement register. Furthermore, they maintain exhibits, the library and archives. Some of them attend to litigants and lawyers. Those involved in Process Serving are in charge of process serving registration of prosecution and civil cases, children's cases and criminal, civil and miscellaneous applications. Accounts Clerks perform a variety of roles, the main one being custodians of accounting matters of the court. They also assist the Executive Officers in administration, procurement matters and preparation of all accounting documents. As far as court matters are concerned, Accounts Clerks are in charge of sensitive strong room exhibits such as cash and other valuables. The Court Interpreter is responsible for court interpreting whenever a need arises. However, in view of the multilingual nature of Kenya, on the one hand, and the homogeneous nature of some parts of the country, a court interpreter is usually drawn from the dominant

community of the locality where the court is situated. In the event that a court interpreter from a different linguistic group is required, courts make arrangements to avail the one required. Finally, and as part of the on-going reforms in Kenya's judiciary, some court officials have been assigned the role of Customer Care. Their duties are to attend to and assist persons seeking information within the courts.

In the foregoing discussion, I have not mentioned the Court Prosecutor although the prosecutor is a significant person in the courts. This is because court prosecutors work under the Directorate of Public Prosecution (DPP) and are not part of the judiciary. The main role of prosecutors is to represent the state by prosecuting cases by making the court to understand facts of a case so that it can make an informed decision. In terms of structure, the International Criminal Court, comprised a bench of three judges with one acting as the presiding judge, the prosecution and defense teams and lawyers appearing for the victims. Other significant staff included court interpreters, the communication team as well as IT staff and court orderlies. The design of the court was markedly different from the design of Kenyan courts. The court was arranged in a conference format with the judge's bench raised (Fig.1.3).
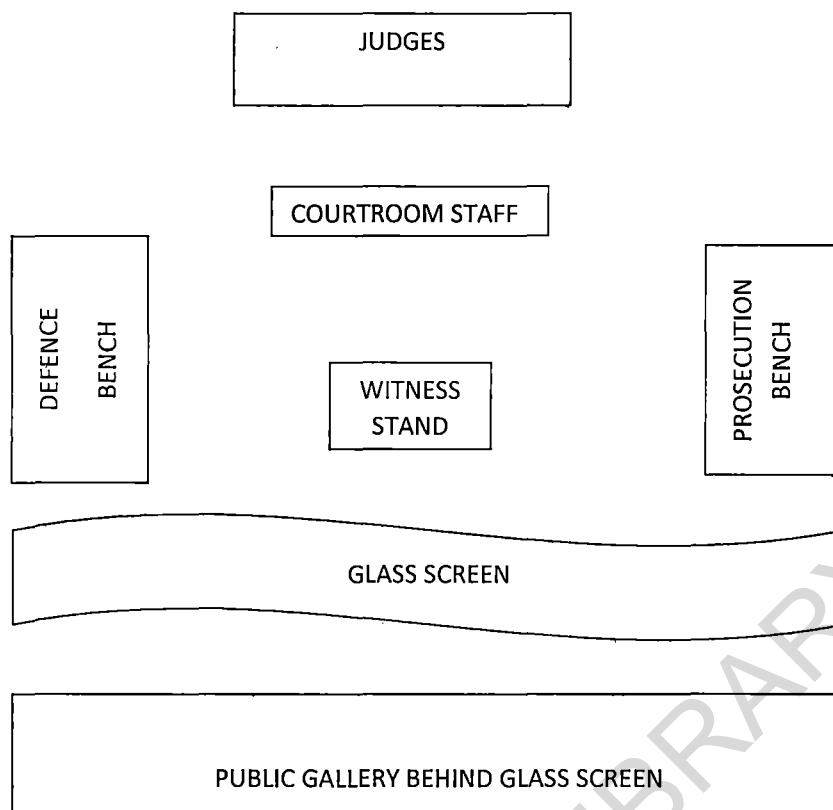
Fig. 1.3 Design of the ICC Chamber

Evidently, some courtroom officials play a key role in the courtroom process, for example, judges, lawyers and prosecutors. The others, for example, all clerks except the court clerk and the interpreter, have peripheral roles and were, consequently, not of concern in this study.

1.4 Statement of the Problem

Studies on identity have covered five main areas which include theoretical accounts about discourse-based approaches to identity, identity categories, approaches to understanding identity and analysis of identity on particular settings and particular analytical perspectives (Stoke and Benwell 2006:4 -5). Although this appears to be a wide coverage of topics on identity, there are three main areas where research gaps exist. First, a majority of the studies have not focused on the role that language plays in constructing identity in general and in legal contexts in particular. Second, the

studies have largely focused on the construction of identity within the courtroom context in the Western world, and third, there are no known studies, to the best of my knowledge, which investigate identity across a range of legal contexts. This study, therefore, investigates what linguistic resources are used to construct identity in the prison setting, the police interview setting and the courtroom setting within the Kenyan context and in the International Criminal Court at the Hague with the view to explaining what linguistic resources interactants in these contexts employ to construct identity, what identities they construct and why they construct their identities and those of the persons that they interact with in the ways that they do.

1.5 Statement of Purpose and Research Questions

The purpose of this qualitative study was to investigate how professional and lay interactants in legal contexts used language to construct their identities and the identities of those that they interacted with. In addition, this study also sought to investigate how interactants used language to negotiate their identities or to rebut the identities imposed on them. In my attempt to explore how language performed these roles, the following four main research questions were answered:

(i)   What linguistic resources do professionals and lay persons interacting in legal contexts employ to construct their identities?

(ii)   In what ways do they negotiate their identity across the professional/lay divide in relation to the legal contexts?

(iii)   What identities do they construct?

(iv)   Why do they construct their identities in the ways that they do?

But apart from these main questions, the following minor questions were also answered:

(i) In what ways are grammatical elements such as modality, transitivity and agency

used to construct identities?

(ii) What is the role of lexical choices in identity construction?

(iii) How do lexical choices reflect identities of interactants in legal contexts?

(iv) In what ways does style contribute towards the construction of identity?

(v) In what ways are registers and speech styles related to identity?

1.6 Objectives

This study sought to:

(i)   analyze the language of interactants in legal contexts.

(ii)   investigate how language used in the police interview, prison and courtroom contexts contributed to our understanding of the identity of interactants in those contexts.

(iii)   explain the nature of identities constructed in the selected legal contexts.

1.7 Research Assumptions

I worked with the assumption that informs social constructivist approaches to identity as propounded by De Fina et al. (2006: 2). Accordingly, I assumed that identities are constructed in the course of interaction within social contexts and that in the process of interaction, interactants construct, reconstruct or negotiate their identities with those they interact with. Additionally, I assumed that language plays a critical role in the process of constructing identity.

1.8 Rationale and Significance

Available literature reveals a paucity of research in forensic linguistics on the African continent. In the extensive literature that I reviewed, there were few studies on forensic linguistics on the African continent. Even then, a majority of them were on courtroom discourse (See Tyengo (2012), Moeketsi (2002), Onyango (2009). The only study that I found dealing with police interviews was one by Bécha (2011 – in

personal communication). Bécha analyzed the manipulative use of linguistic patterns (such as transitivity choices as developed by Halliday) in police interviews and court documents. She also examined how these manipulative instances / misrepresentations frame[d]/colour[ed] the decisions of judges. A study of this nature and magnitude is therefore important.

The scarcity of research in this area may be attributed to the fact that Forensic Linguistics is still a relatively young discipline. Ironically, it is this state of affairs that provides linguists on the African continent with the opportunity to make their contributions to the discipline. In the last forty years or so most of the research in this field has been conducted in Britain, Continental Europe, America and Australia. More recently, there has been a rise of interest in this discipline in China. There is, therefore, need for African linguists to investigate relevant forensic linguistics issues on the African continent.

Thirdly, this study is in furtherance of the main aims and goals of the International Association of Forensic Linguists (IAFL). But more specifically this study meets the association's first aim which is to promote the 'study of the language of the law, including the language of legal documents and of the courts, the police and prisons' (www.iafl.org).

Fourth, being one of the pioneering studies in forensic linguistics in Africa and Kenya in particular, it is expected that this study will inspire interest and research in the discipline. Findings of this research will be shared with relevant government bodies in the hope that the findings will influence the thinking regarding the role of linguists and the use of language within the judicial system and other legal contexts. In Britain, America, Europe and Australia, linguists have been called upon to assist courts to resolve legal matters and their contribution has largely been appreciated. It

is similarly hoped that this study will foster a link between the judiciary, law enforcement agencies and linguists in Kenya in particular and Africa in general with the view of justifying the involvement of linguists in resolving legal matters.

The most significant aspect of this study is probably the fact that it uses extremely rare data. The letters analyzed in this study are probably the highest number of thematically similar prison letters ever collected for forensic linguistic analysis. Second, this study analyzes actual courtroom data both in local Kenyan courts and in the International Criminal Court. It must be noted that access to courtroom data is restricted in many jurisdictions across the world. Furthermore, the two sets of courtroom data provide important insights into the ways that courts using the Common Law System and the Inquisitorial systems operate. Finally, some of the courtroom data that have been analyzed are as current as can be. Some of my analyses include proceedings from the ongoing ICC trial of suspects of Kenya's PEV.

1.9 Scope and Limitations

This study focuses on three legal contexts, namely the police interview setting, the courtroom setting and the prison setting and accordingly analyzes data from each of these settings. This study limited itself to two sets of police statements. The first set comprised statements made at police stations by complainants, suspects, witnesses, police officers or investigating officers in the cases in question. Such statements were generally recorded and used as material for examination-in-chief and cross-examination in court. The second set consisted of press statements made by senior police officers (SPO) to journalists at scenes of crime. These statements were generally used as material for TV news bulletins and were all available as You Tube videos.

Data from the courtroom context comprised audio-recordings of courtroom proceedings form both local Kenyan courts and courtroom proceedings of the International Criminal Court at The Hague. Proceedings from Kenyan courts consisted of segments of trials at Resident Magistrate's courts while courtroom proceedings from the International Criminal Court consisted of the Confirmation Hearing proceedings of the Kenyan Case 2 drawn from 10 days of proceedings lasting over 30 hours and proceedings of the first four days of the Hague trial of the Kenyan case 1. Whereas the ICC cases were of a criminal nature, local Kenyan cases included both criminal and civil ones.

With regard to prison data, this study limited itself to 34 letters written by inmates in various jails in Nairobi to a religious leader seeking his assistance or thanking him for assistance already accorded to them. This corporus comprised about 10,000 words.

A number of challenges arose in the course of conducting this study. First, having to examine letters and police statements meant that the contexts under which the data were recorded were lost. Second, the data collected on You Tube were relatively short because they were materials for news bulletins. This was, however, not a major handicap since it is not unusual for forensic linguistics texts to be short. Coulthard (2005: 2 & 2006:6) contends that some forensic linguistics texts are sometimes as short as short as '200 words'. It must, however, be noted that he may have been referring to instances of authorship attribution where it may not be possible to gather large quantities of written texts from suspected anonymous writers.

With regard to live TV transmissions of the ICC cases, two peculiar difficulties arose. First, the occasional breakdown of transmission signals meant that valuable data were lost. Second, lack of access to evidentiary material meant that

only part of the story was available to the researcher. Although evidentiary material is not mandatory to a forensic linguistics researcher, its absence, nevertheless, inhibits a greater understanding of data collected in courtroom proceedings. Of significance in the ICC cases was the requirement that the status of any evidence being presented to be declared before such evidence was made in public or in private sessions. Confidential evidence was adduced in private sessions. There were many such instances and valuable data were lost. A similar situation obtained in respect of local Kenyan cases. However, given that my interest was not to determine the guilt or innocence of the parties involved in the cases, I did not find this to be a serious limitation.

1.10 The Researcher

My first and most significant engagement with legal matters began in 2001 when I was appointed to the position of District Coordinator to the Constitution of Kenya Review Commission. In the four years that followed my appointment, I was actively involved in the process of writing Kenya's Constitution. The process started with Civic Education and general public mobilization at the   district level (now county level). This later culminated into the National Constitutional Conference that was held at the Bomas of Kenya. Experience at these two levels exposed me to a number of issues. First, in   discharging my mandate at the district level, I actively engaged with various arms of government, security agencies, the judiciary and provincial administration. This gave me the rare opportunity to understand what roles these different bodies performed. It also gave me the opportunity to appreciate the role of language in legal issues. The most interesting of the language issue emanated from civic education materials that received the greatest demand. Whereas the general public wanted Civic Education material to be availed to them in Kiswahili

and in their first languages, the same members of the public found it easier to read the English versions and therefore demanded for them instead of the Kiswahili versions.

Second, as a former high school teacher of English and Kiswahili, I bring along necessary translation skills owing to my competence in the two languages. The two languages feature in the data in this study and I therefore feel confident that I can accurately translate and interpret proceedings in either of the two languages. But being aware that this apparent strength could undermine my interpretation, I verified my translations with a specialist in Swahili. I also informally consulted with colleagues on the meanings of some of the words and phrases. But more importantly, working with a supervisor who is competent in both English and Kiswahili helped me to address some of these challenges.

Third, in view of the emotive nature of some of the cases that I dealt with, I made a deliberate effort to put my subjectivities in check. This was particularly necessary in repulsive cases such as cases of defilement of minors, assault, robbery with violence and murder.

Finally, and most importantly, I have studied linguistics for over 12 years and published some articles in peer reviewed articles and I thus consider myself competent to interpret linguistic phenomena.

1.11 Definition of Terms

Case – This is used with the sense of a trial, especially when used with reference to courtroom data.

Legal Contexts – This study focuses on three legal contexts: the police interview setting, which includes statements made by suspects, witnesses and police officers

either orally or verbally at the police station or at scenes of crime, the courtroom setting and the prison setting.

Segment –This term is borrowed from Bogoch (1999:338) who defines it as 'each examination or speech by a new lawyer'. In this study, a segment refers to a session or a portion of a case.

Judges – this term is used to include all cadres of persons presiding over cases ranging from magistrates, senior magistrates all the way through to Judges of the Supreme Court.

Expert – This term is used in this study with a broad meaning. It includes professionals and other persons who may offer or explain issues related to their areas of expertise.

Grammar – Grammar is used in this study with the sense contemplated in Halliday's (1994) Systemic Functional Grammar and accordingly confines itself to aspects such as modality, transitivity, the use of pronouns, passive voice, active voice etc.

Lexical choices – choice of vocabulary, especially the choice of vocabulary which stands out due to its special use in a text.

Style - I use this term in a linguistics sense as expounded by Coupland (2007:1). Coupland defines style 'as a way of doing something'. My meaning is, however, broader as it includes ways of speaking, for example dialects, register etc.

1.12 List of Abbreviations

        AO   – Arresting Officer

        ACCP 1 – First Accused Person

     BNC – British National Corpus

     CDA – Critical Discourse Analysis

        CM - Chief Magistrate

CW – Child Witness

DFL - Defence Lawyer

DPP – Director of Public Prosecution

EA – East Africa

ICE – International Corpus of English

IO – Investigating Officer

ICC – International Criminal Court

IAFL – International Association of Forensic Linguists

GBH – Grievous Bodily Harm

HIV – Human Immunodeficiency Syndrome

KCPE – Kenya Certificate of Primary Education

KWIC – Key Words in Context

L1 – Letter 1, L2 Letter 3, L3 Letter 3 etc.

ODM – Orange Democratic Movement

PEV – Post Election Violence

P1 – Politician 1

PL – Prosecution Lawyer

PM – Principal Magistrate

PROS – Prosecutor

PW – Prosecution Witness

RM – Resident Magistrate

SFG – Systemic Functional Grammar

SPM – Senior Principal Magistrate

SRM – Senior Resident Magistrate

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This study sought to investigate how identity was constructed within three legal contexts. The study specifically sought to answer the following research questions:

(i)   What linguistic resources do professional and lay persons interacting in legal contexts use to construct identity?

(ii)   In what ways do they negotiate their identity across the professional/lay divide and in relation to the legal contexts?

(iii)   What identities do they construct?

(iv)   Why do they construct their identities in the ways that they do?

Accordingly, a critical literature review was conducted throughout the study in order 'to provide a clear and balanced picture of current leading concepts, theories, and data relevant' to the topic (Bloomberg and Volpe (2008:46)). The literature reviewed included journal articles, books, and critical reviews. The literature was then analysed for similarity and emerging patterns. My reading of the literature was analysable into two parts namely, a review of literature on identity and a review of literature on identity in legal contexts. As a consequence, the first part of the chapter begins with definitions of identity and the debates surrounding the term, a discussion of approaches to the study of identity and ends with a discussion of theories of identity. The second part of the chapter reviews selected literature on identity in legal contexts. This section is divided into two sections, namely incidental studies and directed studies. The section on 'incidental studies' reviews literature which do not set out to discuss identity but nevertheless make relevant observations on the identity of the interactants involved while the section on 'directed studies' reviews literature

which consciously focuses on identity in legal contexts. The chapter then ends with a summary.

2.2   Review of Selected Literature on Identity

This section reviews literature on identity under three main headings: the meaning of identity, identity and other disciplines and theories of identity. Each of these sections highlights different perspectives of identity and is aimed at enhancing an appreciation of identity.

2.2.1 The Meaning of Identity

Benwell and Stokoe (2006:18) state that the earliest record of the term 'identity' appears in 1570 as 'identitie' and argue that identity referred to 'the quality or contribution of being the same in substance, composition, nature, properties, or in particular qualities under consideration'. Identity also referred to the quality of being: 'absolute or essential sameness; oneness'. Ricoeur (1992:116) defines identity by examining its etymology. He traces identity to its root, *idem and ipse*, Latin words for sameness and selfhood respectively. Ricoeur, further makes a distinction among the different types of identity: numerical identity, qualitative identity and uninterrupted continuity. For him, numerical identity referred to 'two occurrences of a thing', qualitative identity to 'extreme semblance', while uninterrupted continuity referred to the 'invariable structure of an entity' (Ricouer 1992:117). By 'invariable structure of an entity' Ricouer implied that there is a semblance between the first and the last stage in the development of what we consider to be the same individual. A phenomenon of this kind is what is evident in biological concepts such as growth. These definitions underscore structuralist positions which emphasize the fixed nature of identity. Viewed from this perspective, identity is regarded as something that individuals have and therefore do not play a part in constructing it.

Within post-structuralist approaches, the thinking on identity takes a turn. Instead of being viewed as static, identity is perceived as 'an ongoing lifelong project in which individuals constantly attempt to maintain a sense of balance' (Omoniyi 2006:35). This perception changes further in social constructivist approaches where identity is perceived as an 'emergent feature of social interactions' (Benwell and Stokoe 2006:51). Individuals are therefore viewed as taking part in the construction of their own identity. Lastly, within post-modern thinking, individuals and groups are perceived as having 'access to a repertoire of choices [which are] socially available to them'. Identity is therefore viewed as fluid, fragmentary [...] and constituted in discourse (Dyder 2007:104). In post-modern thinking individuals are considered to be capable of displaying a multiplicity of identities. There is evidence of a similar phenomenon in the Water Lilly's Case (See Section 7.5), discussed in this study. In that case, a suspect accused of burglary exhibits a range of identities. He positions himself as a knowledgeable person, naïve, well off and crafty depending on what he wishes to emphasize.

2.2.2 Identity in other Disciplines

The concept of identity has been a key subject in many disciplines. Grad and Rojo (2008:3), for example, contend that 'identity has become a central concept in social sciences and humanities' and that 'philosophy, sociology, social psychology, anthropology, and discourse studies have provided different approaches, definitions and research tools for identity'. I discuss views by scholars from three different fields, that is, philosophy, anthropology and sociolinguistics to show that scholars from different fields place different emphases on the meaning of identity.

2.2.2.1 Philosophy and Identity

According to Riley (2007:70) 'identity has been regarded as a philosophical aphoria'. By this he means that identity is a problem that neither invites questions

nor answers. Philosophers were generally interested in identity as sameness. Philosophers such as Locke and Descartes used knowledge and memory to define identity owing to the difficulty of distinguishing between personal identity and physical identity. Descartes, for example, defined the identity of individuals in terms of what they knew and so stated: 'I think therefore I am'(Riley 2007:72). Locke, on the other hand, defined identity in terms of memory by arguing that 'personal identity [is] determined and constituted by memory' (Joanna & Forstrom 2010:117). He, therefore, defined identity as 'the result of a comparison in the mind of an idea of a thing that exists at a particular time and place...' (Joanna & Forstrom 2010:18). Viewed from this psychological perspective, identity is perceived in two ways. First, it is conceptualized in terms of memory so that if 'A remembers doing X, then A is the same person who did X'. However, this approach is weakened owing to the fact that it presumes that if a person cannot remember because of a faded memory, then such a person is, in essence, not the same person. Second, from Locke's argument, identity can be interpreted in terms of continuity of consciousness. Locke hypothesizes that if a person is represented at different times as A, B, and C, A is the same as B if B remembers what A did. Similarly B is the same as C if C remembers what B did. The main limitation with this argument is that it implies that an entity can be 'both identical and not identical at the same time' (Joanna & Forstrom 2010:117). Joanna & Forstrom (2010:117) further argue that any theory of identity must be transitive. This means that if A is presented as being identical to B, and B as being identical to C, then A should be identical to C. However, this is what Locke's theory appears to flout because of its reliance on memory. Locke's theory suggests that in the event that C cannot remember A's experiences, then C will not be regarded

as being the same person as A. Accordingly, C will be regarded as being and not being the same person as A.

This approach has also been criticized for being 'circular' since it analyzes personal 'identity using personal identity'. It also fails to explain why people care about future events (Butler 1975 cited in Joanna & Forstrom 2010: 118). But the more serious of the criticisms, in my view, are those advanced by Riley (2007). Riley (2007:72) argues that while some philosophers argue for the criterion of continuation of identity, such a criterion does not tell 'what identity actually is'. Furthermore, he argues that although people can experience 'mistaken memories' and 'false memories' it cannot be conclusively argued that a person who has lost his/her memory has similarly lost his/her identity. Butler's view has however been contested on grounds that her sense of identity is different from that envisaged by Locke (Joanna & Forstrom (2010:119).

2.2.2.2 Anthropology and Identity

According to Bucholtz and Hall (2004:369) identity is the core issue in linguistic anthropology because 'language is ... most flexible and pervasive' among 'the many symbolic and cultural production of identity'. It is therefore important to understand how anthropologists have conceptualised identity.

An anthropologist, Mauss, cited in Riley (2007:78) articulates a theory which hypothesizes that past societies were bounded and were made up of totemic clans. He further argues that each of the clans had a fixed stock of names that were transmitted by recognized procedures. The theory further posits that those who were given such names were reincarnations of their predecessors. So, because of these connections, it was taken that such persons were born with the social functions of the persons that they were named after. Consequently, identity was viewed as something

that people had and as has been mentioned in relation to poststructuralist thinking, individuals did not have any role in constructing their own identity.

2.2.2.3 Socio-linguistic Approaches to Identity

According to Benwell and Stokoe (2006:25), variationist approaches focus on 'the relationship between social identity and language use'. Variationists examine the correlation between linguistic variables, for example, accent and morphological patterns and social factors such as age, sex, register and social class. These theories show a causal relationship between linguistic variables and social variables. Two key studies within the variationist paradigm are Labov (1966) and Trudgill (1972) study. Wodak and Benke (1998) report that Labov's (1966) study found that women used language in ways that were different from those of men and that there was a correlation between phonological variables and 'a sex/gender, age, socioeconomic status (SES), and situational context'. The study also found that women tended to use more standard forms of language than men did and that lower middle class women contributed to language change by copying 'hypercorrect' forms of language associated with middle class women. This was attributed to their need to 'gain social prestige'. In summary, therefore, Labov's (1966) study found that linguistic variables could determine social variables.

Wodak and Benke (1998) also cite Trudgill's (1972 and 1983) studies in which Trudgill (1972) emphasizes sociological reasons to account for the differences between the language of men and women. Arguing as Labov had, that women use more standard forms than men, Trudgill (1972) explained the difference in the choice in terms of what he called "covert prestige". He argued that men used non-standard forms as marks of group values such as "masculinity" and attributed this to the fact that men tend to be judged on the basis of work. In contrast, Trudgill (1972:91)

argued that women tended to be judged on the basis of their appearance (which included language).

Variationist approaches are widely viewed as a way of explaining the relationship between gender and identity. The general assumption among variationist sociolinguists is that the presence of linguistic variables such as accent, politeness forms, hedges and standard or non-standard forms of language is indexical of gender identity. This theory has, however, come under criticism. For example, Cameron (1997: 59–60), quoted in Benwell and Stokoe (2006: -27) criticized them on account of "correlational fallacy". By this they meant that 'one description [is] yoked situationally and often coincidentally to another and assumed to offer an *explanation* of social or linguistic behaviour' (emphasis in original). In addition, Pavlenko and Blackledge (2001:244) quote Cameron (1990), Johnstone (1996), Tannen (1993), and Williams (1992), who criticize variationist theories for 'considering identity simply as an explanatory concept and for seeing linguistic phenomena, including phonology, as fixed, rather than fluid and skilfully deployed by individual speakers'. Moreover, this approach has also been criticised for being essentialist, reductionist and for having ignored other factors such as the social situation of a speaker as well as psychological factors, both of which affect linguistic choices.

Having examined how identity has been hypothesized in different disciplines, I now wish to examine theories of identity

2.2.3 Theories of Identity

Many theories have been proposed to explain how identities are constructed. In the sections that follow, I discuss six of these theories and then show the significance of each to my study.

2.2.3.1 Social Identity Theory

Social Identity Theory (SIT) is a socio-psychological theory that was postulated by Tajfel to explain intergroup phenomena. According to Licata (2011:900) the theory attempted to explain 'intergroup relationships by relating them to group members' sense of identity'. Going by Umana-Taylor's (2011:793) argument that individuals strive to achieve a positive social identity', Licata must have had a positive identity in mind. But the sense of identity may also refer to the notion that 'identities are constituted through a process of difference' (Benwell and Stokoe (2006:25). A positive social identity is said to be achieved when members identify with the 'in-group', that is, members of the group that they identify with because they are favoured. In contrast, a negative sense of identity is attributed to members of the 'out-group' that is, those members who belong to other groups. Accordingly, 'in-group members' are favoured while 'out-group' members are 'devalued and derogated' (Spears 2011:202). Tajfel (1978), however, found that the relationship between 'in-groups' and 'out-groups' existed on an interpersonal-intergroup continuum along which relationships made group identities more or less salient. The more differentiated they were, the more salient the group identities became. Schildkraut (2011:852) attributes the more salient group identities to the existence of threats. He argues that when a group is faced with threats, members of that group usually employ 'identity protection strategies' in order to enhance their identity. Three such identities included competition, individual mobility and social creativity (Haslam and Ellemers 2011:720). On their part, Haslam and Ellemers (2011) found that the choice of these strategies was dependent on the 'perceived *permeability* of group boundaries, and the perceived *stability* and *legitimacy* of an 'in-group's position relative to other groups' (emphasis in the original). On permeability, they argued that if members of low-status groups believed that group

boundaries were permeable, they tended to select a strategy that led them to seek a positive identity. But if the boundaries appeared impermeable, the group tended to emphasize its positive qualities by engaging in social creativity. Such creativity entailed 'redefining previously negatively viewed symbols in a positive light' (Oakes and Warren 2007:8). In such a case, the group in question would adopt statements of the form: 'We may not be rich but we are human'.

According to Oakes & Warren (2007:7) categorization into 'in-group' and 'out-group' membership is a process that is acquired through the process of socialization and is enhanced through 'popular myths and stereotypes'. They further argue that the process generates a 'state of psychological distinctiveness, which in turn [leads] to a positive social identity'.

One advantage of the social identity theory is that it recognizes the multiplicity of identities. The theory shows that individuals can identify themselves both as individuals and as members of a larger community. Within the courtroom, this theory can be useful in explaining a suspect's identity as an individual and his identity as a member of a group of suspects. However, the social identity theory has been criticized for being 'too simple and reductionist' (Wodak & Reisigl (2001: 375)), for reducing 'social identity and the motivating force within social identity theory to a simple quest for positive value associated with one's group identity' (Spears (2011:204)), for ignoring 'ongoing cultural change' and for viewing 'language users as members of homogeneous groups, divided by language, ethnicity, and culture'. Finally, the theory has also been criticized for failing to take into account social, cultural, gender based, economic, and generational stratification of all societies (Pavlenko and Blackledge (2001:245)).

2.2.3.2 Hierarchy of Identities Theory

The Hierarchy of Identities theory falls within constructionist theories of identity. The theory views identity as a product of social action and assumes that all actions are separable into moments. Each moment is said to project a different identity. Consequently, individuals tend to project multiple identities in the course of interaction. These identities, are, however, allocated a position on a hierarchy based on the degree of salience. The more salient identity option is placed at the top of the hierarchy whereas the less salient identity is placed lower in the hierarchy. Subsequently, an individual's identity in a moment of social action is said to be realized as the one that was placed top on the hierarchy. According to Omoniyi (2006:20), the identity option that an individual projects depends on what that individual considers to be 'the most preferred presentation of the self' or 'the most lucrative' identity option.

This theory is important as it explains how individuals project different identities at different times in the course of an interaction. This is particularly important in understanding identity construction in both the courtroom context as well as within the police interview setting where identities are constructed in the course of interaction. In these contexts, interactants appear to be keen to project positive identities while at the same time suppressing negative ones.

2.2.3.3 The Performative Theory of Identity

The performative theory of identity has its roots in Austin's (1962) speech act theory. According to Coulthard (1977:13), 'performatives comprise statements in which the saying of words constitutes the performing of an action for as long as the saying is made under conditions such as being made by particular persons following an accepted conventional procedure, under a particular person and, following a procedure that is accepted by all participants correctly and completely'.

The theory, advanced by Butler (1996), hypothesizes that gender identity is 'discursively produced' and that it is a 'performative' (Benwell & Stokoe 2006: 32). In other words, gender identity is something that persons do. According to Cameron (1996) quoted in Mullany (2007:23), gender identity arises from one's 'repeated performance over time of the acts that constitute a particular identity'. Butler believed that masculinity and femininity were 'effects that people perform by the type of activities that they get involved in (Mullany 2006: 157). Accordingly, she argues that 'subjects [may] enjoy performative agency through 'repetition 'iteration' of signs or acts: stylised, conventionalised gender performances which are informed by the authority of historical, anterior voices' (Benwell and Stokoe 2006:33). This theory informs my analysis of the letters of inmates. As will be shown in section 7.3, there appears to be a difference between the concerns raised by male inmates and those raised by female inmates. However, my analysis shows that some of the 'gender based concerns' by male inmates are being encroached by female inmates.

2.2.3.4 Accommodation Theory

Accommodation theory as postulated by Giles (1979) theorizes that when individuals speak they tend to adjust their speech style to the speech style of their interlocutors. But because of the complex nature of interactions, the concept of complementarity was introduced to the theory to explain the nature of the alignments of the speech style. Convergence refers to a speech style in which a speaker aligns his speech towards the speech style of his interlocutor. Divergence, on the other hand, refers to a situation in which a speaker does not align his speech style to that of his interlocutor. Apparently, convergence is motivated by the speaker's need to 'express values, attitudes and intentions towards others' (Tabaouret-Keller (1997:322) and to 'reduce social distance' (Gibbons 2003:117). On the other hand, divergence is

motivated by the speaker's need to 'increase [the] social distance' Gibbons (2003:117) existing between the speaker and his interlocutor. But in some of the data under analysis, it appears that convergence may also be employed with the view to making witnesses feel at ease during court proceedings. This is apparent in the GBH case in which the court prosecutor appears to accommodate to the language of the prosecution witness and a minor. In the example provided below, accommodation is apparent at the grammatical level. From observation and through the prosecutor's use of language with other interactants in the courtroom, it was evident that the court prosecutor had a good command of standard Swahili. However, while leading one prosecution witnesses in examination-in-chief, the prosecutor makes a number of deviations from standard-Swahili. This sudden change raised two concerns. Were they mere slips of the tongue or did they have something to do with his interaction with the witness? The passage below reveals three of the non-standard forms:

EXCERPT 1

1.	→**PROSE:** We unaendanga shule?	Do you go to school?
2.	**CW2:** ° Ndivyo°.	Yes.
3.	→**PROSE:** Shule yenyu inaitwaje?	What's the name of your school?
4.	**CW2:** Kolol.	Kolol.
5.	**PROSE:** Eh?	What?
6.	**CW2:** Kolol Primary School.	Kolol Primary School
7.	→**PROSE:** Uko standadi ngapi saa hii?	In which class are you now?

The first one is highlighted in turn 1 'Wewe unaendanga shule?' 'Do you go to school?' The prosecutor uses the suffix –**nga** to mark the simple present tense (habitual actions) as opposed to the prefix **hu**- which is to mark the tense in standard Swahili. Later, the prosecutor again uses the suffix when he seeks to clarify CW2's other name when he asks: *'Mnaitanga yeye Randich huko? Na jina lingine lake unamjua?'* – 'Do you usually call her Randich? Do you know her other name?' This repeated non-standard form points to the fact that the form is not caused by a slip of

the tongue. The second notable feature is the insertion of an infix **-y-** to mark the possessive case in turn 4. *'Shule yenyu inaitwaje? -* 'What's the name of your school?' Elsewhere, he asks: *'Eh? Nyinyi ndio mlikuwa mmebaki nyumbani peke yenu? -* 'Are you the only ones who had remained at home? Again, this appears not to be an accidental digression from standard form. A similar deviation is observed in other instances and would therefore imply that the prosecutor was deliberately aligning his language to that of his witness. The last example is exemplified in turn 7 above -*'Uko standadi ngapi saa hii? -* 'In what class are you?' This involves the insertion of a suffix **-i-** at the end of the word 'standard'. This insertion makes the borrowed word, 'standard', to conform to the structure of Swahili words. Evidence from the proceedings of the case shows the witness responding to questions with greater ease. Apparently, through the prosecutor's convergence strategy, the witness becomes more composed during the examination-in-chief. But other than making the witness calm, this strategy also constructs the prosecutor's identity as a professional who will employ every available strategy to achieve his professional goals.

2.2.3.5 Acts of Identity Theory

Acts of identity represents one of the post-structuralist approaches to identity. The theory, postulated by Le Page and Tabaouret-Keller (1985), examines how people put linguistic behaviour into use as they interact with different groups. Le Page and Tabaouret-Keller (1985:14) argue that linguistic behaviour is 'a series of *acts of identity* in which people reveal both their personal identity and their search for social roles'. They further argue that individuals vary their identity according to their company and that the company can also vary its identity in order to 'proclaim [its] political and cultural identity'. In their view, this process is one of the 'common processes through which mankind has evolved its languages and its sense of

linguistic identity' (Le Page & Tabaouret-Keller (1985:15). Commenting on this theory in the in the introduction to Le Page & Tabaouret-Keller' (1985) book, *Acts of Identity*, Trudgill argues that in performing acts of identity, 'individual users of language strategically deploy varieties and variation to affiliate themselves with groups with which they may from time to time wish to be associated or conversely, to be distinguished from groups with which they wish no such association'. Le Page listed four conditions upon which affiliation to other groups took place. The conditions were that the individual could identify the groups, that the individual had both adequate access to the groups and the ability to analyse their behavioural patterns and that the individual's motivation to join the group was 'powerful'. The fourth condition was that the individuals had the 'ability to modify' their behaviour. One important aspect of this theory is its emphasis on the role of the individual in constructing his/her own identity (Dyder 2007:104).

The last theory that I present is the narrative theory of identity. Rather than analyze it as a single theory, I discuss various aspects of the narrative and how the narrative aids in the construction of identity.

2.2.3.6 Narrative Theories of Identity

According to Labov (1972:363), an oral narrative of fear and personal experience is characterised by the following six elements; the abstract, orientation, complicating action, evaluation, result or resolution and a coda. Accordingly, any narrative is identified by the presence of these features. However, other core characteristics of narratives have been proposed by different scholars. Bruner (1990:272), for example identified action, scene, actor, instrument and goal while Ochs and Capps (2001:73) identified setting, unexpected event, psychological/physical response, an unplanned action, an attempt and a

consequence. In spite of these different emphases, 'temporal ordering or sequentiality' is regarded as the most important feature of narratives (De Fina 2003:11).

Narratives are related to identity in a number of ways. First, as De Fina (2003:16) observes, the mere act of narrating is regarded as an 'act of constitution of identity'. This view is partly supported by Benwell and Stokoe (2006:137) who argue that through narratives, narrators 'produce 'edited' descriptions and evaluations of others.' An example of an 'edited narrative' is found in Section 6.2.2 where an inmate gives an account of her arrest bur omits details about her own involvement, apparently, to construct a positive identity. As a result, some aspects of her identity become more salient in certain parts of the story. According to Labov 1972: 366), this tends to happen in the evaluation segment of a narrative or 'the means used by the narrator to indicate the point of the narrative' (Labov 1972:366). Secondly, identity is also regarded as 'a doing of identity'. But this is different from that envisaged in the performative theory of identity. Thornborrow and Coates (2005:10) clarify that 'performance' in narratives is used with the sense of 'the telling of a story as a performance'. Viewed this way, telling different stories provides an individual with the opportunity to construct 'different versions of [him/her] self'.

Identity in narratives may be viewed as fluid or emergent in interaction depending on the tradition adopted to explain it. De Fina (2003:17) contends that when narrative identity is viewed from a conversational analytic or from the ethnomethodological tradition, it is viewed as emerging in interaction. In contrast, when the same is viewed within an autobiographical tradition, it is considered both fluid and a 'process of construction and reconstruction of personal experience'.

In the foregoing sections, I have presented an overview of available literature on identity. I started with definitions of the term, examined perspectives from which the term is used and concluded by presenting an overview of six key theories of identity. In the remaining part of this chapter, I shift my discussion to literature on identity within legal contexts.

2.3 Identity in Legal Contexts

My discussion on legal contexts is divided into two parts. In the first one, I present literature on incidental studies of identity. In the studies reviewed in this section, I review studies in which authors inadvertently make comments on aspects of identity. The second part of this section reviews literature that directly addresses the identity question in legal contexts.

2.3.1 Incidental Studies of Identity

Johnson and Clifford (2011) examine 'direct and indirect impoliteness' in the case of a libel trial between David Ervingg and Penguin Books Ltd and Deborah Lipstadt (2000). In the case, 'Ervingg claimed that the book, *Denying the Holocaust: The Growing Assault on Truth and Memory,* published by Penguin in 1994, contained words and passages that damaged his reputation as an author and historian. In particular, he rejected being categorized as a "Holocaust denier" (2). However, although Johnson and Clifford's paper investigates 'politeness as a strategic act' (4), they make a valid assessment about the identity of Ervingg insofar as it relates to his lexical choices. Focusing on an accusation of racism through Ervingg's lexical choice, they state:

> We cannot fail to recognize that the accusation of racism is aggravated in the lexical choices; *keep out* (turn 105) is part of the cultural script and is thus a powerful weapon in the lawyer's linguistic arsenal, instantly conjuring up racist associations. The attribution to Ervingg thus paints him as a stereotypical racist...' (18)

The last sentence in this quotation makes an overt statement about Ervingg's identity as one who is racist. At the end of the paper, the authors return a similar assessment, this time by quoting the judge's characterization of Ervingg as "an active Holocaust denier", anti-Semitic and racist' (36 – 37). So, although the authors do not set out to discuss Ervingg's identity in the case, they nevertheless address the identity question. What is interesting in the paper is the fact that the characterization of Ervingg as a racist is pegged on an interpretation of lexical choices. This aspect is a key area of analysis in CDA and Johnson and Clifford's analyses have informed my perspectives on the role of lexical choices in identity construction.

Similarly, although Newbury and Johnson (2006) explore questions and responses in an interview between a police officer and Dr Harold Shipman and focus on the resistance strategies such as contest, correction, avoidance and refusal that Shipman employs, they nevertheless make comments on Shipman's identity. They, for example, argue that through his resistance, Dr Harold Shipman constructs a 'non-culpable identity' (215, 222, &230) and resists the interviewer's alteration of his identity from that of 'doctor to murderer'. Although they discuss Shipman's strategies of resistance, in the end, they conclude that his resistance during the questioning becomes 'the struggle' for his identity as 'he struggles to preserve his image as a caring doctor in the face of accusations which claim to contradict that persona' (231). Just like in the paper by Johnson and Clifford cited above, Newbury and Johnson's approach to the question of identity is incidental. This paper is useful in two respects. First, although these comments are incidental, they underpin the importance of identity construction in the courtroom context. Secondly, this paper provides a rare opportunity in which a medical doctor and an expert in his own right, resists and reconstructs his identity in the face of a more powerful interviewer. My

own study examines how, among others, expert witnesses construct their own identities and resist the identities imposed on them by their interlocutors.

Cotterill (2003) devotes a chapter to courtroom narratives and how they are framed through the use of lexical choices. Her chapter specifically examines how strategic lexicalisation and the use of metaphors construct prosecution and defence narrative frameworks. However, while this is her stated objective, her discussion unwittingly shifts to Simpson's identity. For example, Cotterill finds that the prosecution used several lexical choices such as 'encounter' and 'control' and metaphors such as 'short fuse', 'ticking time bomb', and 'cycle of violence' to construct the image of Simpson as a 'wife beater' 'batterer' or 'abuser' capable of murdering his wife . Similarly, Simpson's image was also constructed as that of 'a belligerent man'. Using corpus linguistic analysis, Cotterill (2003:69, 73) argues that some of the lexical choices such as 'encounter' and 'control' carry negative semantic prosody. 'Encounter' and 'control', for example, collocate 'strongly with a set of negative phenomena' with 'control' suggesting that Simpson's behaviour was totally unjustified. The metaphors, 'short fuse' and 'ticking time bomb', on the other hand, complement these lexical choices. As for the metaphor 'short fuse', Cotterill argues that it implies that Simpson had no control over his violence. In effect, it suggests that Simpson was a violent man.

Whereas these words and metaphors emphasize the negative semantic prosodies, Cotterill (2003) also focuses on how the defence minimizes them through the selection of lexical choices. One such choice is the defence team's reformulation of Simpson's violent acts as 'incidents'. Reformulated this way, the choice of the word 'incidents' appears 'to de-emphasise the systematic nature of Simpson's abuse of his wife, Nicole, and thereby 'reduce the damage to [his] credibility' (Cotterill

2003:80). The other choices were 'altercation', 'dispute' and 'conversation', all which show that the defence was 'attempting to recast the domestic violence as occurring at a *verbal* rather than a *physical* level'. Such choices imply that Simpson was not involved in a physical violence with his wife. In all this, what gains prominence is Simpson's identity. What starts as a discussion of the prosecution and defence narrative frameworks, apparently, turns out to be a discussion of Simpson's identity.

Cotterill's presentation is particularly useful to my study as it employs a corpus linguistic method and therefore provides useful insights into linguistic analysis of identity using this method. This method of analysis is also explored further in Cotterill's (2001:311, 292) paper in which she 'explores various lexical representations of domestic discord in the Simpson trial'. The paper examines the terms used by the prosecution 'to construct an image of Simpson as a violent man capable of murdering his wife' (p. 292).

Cotterill (2002:149 - 150) discusses how evidence from the previous criminal case involving O.J. Simpson is appropriated in O.J Simpson's subsequent civil case. Relying on one of the witness's evidence, the author focuses on how intertextual elements in the O.J. Simpson's criminal trial left discernible 'echoes and traces in the evolving civil trial narrative'. And quoting Hastie and Pennington (1996), Cotterill (2002:151) focuses on how the defence challenged the prosecution's macro-narrative as being unreliable. She summarizes the challenges to the credibility of the prosecution's macro-narrative of crime as follows:

> The defence account comprised four such challenges, as summarized by Hastie and Pennington (1996): 'The O. J. Simpson story', which placed Simpson elsewhere at the time of the murders; the 'real killers narrative'; which suggested potential alternative perpetrators', the 'rush to judgement story'; *which portrayed various LAPD investigative officers as racist, lacking in integrity and unprofessional; and finally 'the bungling investigators" narrative which told of incompetent and unethical criminologists*

responsible for mishandling and cross-contaminating forensic evidence (151) (My emphasis).

Of these four challenges, the last two (highlighted through italics in the quotation cited above) are pertinent in the construction of identity. The descriptions of investigative officers as 'racist', 'lacking in integrity and unprofessional' and 'incompetent and unethical criminologists' focus on the identities of the said officers. Cotterill similarly describes Heidstra's identity in the following descriptions: 'reliable witness' (151), 'unreliable', 'inconsistent' or 'deceptive' (159). By making these evaluations, Cotterill, accidentally, focuses on identity although that is not her primary intention in her paper.

Ehrlich (2008) takes a totally different approach to the question of identity construction in the courtroom. Her paper examines how discourses used in non-stranger rape trials affect the ways in which the identities of the participants are constructed by judges, lawyers or the victims themselves within Canadian sexual assault trials. The author argues that 'for the lack of a better developed discourse' (Ehrlich 2008:174), victims of such rape often describe their experiences using the language of consensual sex such as '... *my father was having sex with me*' (165) or *'We had sex'* in a case where a child had been sexually assaulted by her father. In such language, the victim takes an agentive role and is positioned as a willing participant in the sexual act. As a consequence, such victims deprive themselves of their victim identity. Instead, they position themselves as co-participants in the sexual assault. According to Ehrlich (2008:174), this is occasioned by the fact that such rapes are perpetrated by persons who are known to the victim and that in such cases, 'the complainant may have difficulty deploying a language of assault and violence to describe her experiences'. Interestingly, citing Coates, Bavelas and Gibson (1994), Ehrlich argues that judges also use language of consensual sex to

describe acts of sexual assault. This being the case, Ehrlich (2008:174) proposes that this situation can be remedied through 'a feminist, counter-hegemonic discourse'. She argues that such a discourse should be framed in a manner that presupposes that non-consensual sexual acts are 'aggressive and violent'. Such discourse presents the violence and aggression in such acts as 'givens'. Ultimately, she argues for the use of language which naturalizes such discourse as it will influence how discourses affect the construction of identities. Ehrlich's (2008) work is unique as it addresses how victims in non-stranger rape cases use discourse to construct their identities as victims rather than construct their identities as participants in the rape.

Although the studies that I have reviewed have addressed identity only marginally, Heydon (2005) and Haworth (2009) give substantial coverage to identity in spite of the fact that their publications do not explicitly deal with identity. More importantly, their literature is situated within the police interview context.

Heydon (2005) discusses how police, on the one hand, attempt to construct an identity for suspects and how such suspects construct an identity that conflicts with the one constructed by police officers. She argues that police officers construct the identity of suspects by aligning a suspect's version of events with a criminal or antisocial behaviour or by providing a moral judgement of the suspect's actions. Through this strategy, the suspects' 'inappropriate' actions are juxtaposed with 'appropriate' actions in order to reveal their criminal identity. But while police officers act this way, Heydon shows that suspects mitigate their criminal identity by focusing on their own positive aspects, by presenting themselves as victims or by denying their involvement in criminal incidents.

Finally, although Haworth's (2009) study examines the police-suspect interview and how such interviews are a link in a chain of events in the criminal

justice system in England and Wales, she nevertheless addresses the identity question. The police-suspect interview is regarded as a chain of events because the interview is consumed by different actors at different levels of the justice process. Haworth argues that this necessitates a change in the design of the audience. The study analyzes a corpus of police interviews, including some data taken from the Harold Shipman's case. The data are then analyzed using a variety of methods such as CDA, conversational analysis and pragmatics and case study.

In part, Haworth shows how a suspect in an Assault and Resisting Arrest case supports the prosecution case by concentrating more on portraying himself positively instead of portraying himself as innocent of criminal charges' (184 – 185) and by failing to match his defence with the correct 'legal offence framework' (179). In a different case, a rape case, Haworth, similarly shows how the interviewing officer constructs his own identity in an ironic manner. The officer does so by proclaiming his passive involvement in the interview yet he is actually actively involved in the interview. This is marked through the 'value judgements' that he makes in relation to the decision about whether or not to charge the suspect's mother with GBH and by apparently conducting the interview with the assumption that the interviewee is 'guilty and will be convicted' (190). In the second Case Study, Haworth, similarly, discusses how a suspect in a rape case, unwittingly gives self-incriminating details while he thinks that he is constructing an innocent identity. The suspect is apparently more concerned with depicting the rape victim as an unreliable, unstable and even promiscuous while simultaneously minimizing his agentive role in the criminal act. The result is that he presents himself as 'passive and inactive' in comparison to the victim's behaviour (248). Haworth's analysis of agency has informed my own interpretation of agency in police statements and prison letters.

2.3.2 Directed Identity Studies

Drawing from theories of language and power as well as from feminist theories, Bogoch (1999) analyzes courtroom interaction using both qualitative and quantitative data to determine how gender affects the construction of the professional identity of lawyers and judges in Israeli district courts. Her quantitative data comprised address forms, interruptions, taking over the examination from the lawyer, challenging comments, and the form and use of directives, while 'off-the record comments' by judges constituted her qualitative data. Her study focuses on how lawyers attend to both their clients' needs as well as 'to their self-interpretations'. But leaning towards social constructivist views on identity as well as feminist theories, she argues that 'interactions between the lawyers, judges, and witnesses in the courtroom are integral elements in the construction of the participants' professional identities' (Bogoch 1999:330). She also contends that the language used in the courtroom is generally influenced by gender considerations and concludes that instead of reinforcing the professional identity of women, the language actually 'severely challenges and engenders it' (Bogoch 1999:330).

Bogoch's (1999) study made several findings in support of her argument. With respect to terms of address, Bogoch found that women were addressed using formal marks of respect such as 'Madam' but which did not show deference specific to their professional roles. These address forms were, surprisingly, used by other participants in the courtroom as well as judges. Some judges, for example, addressed women lawyers and professionals using endearments or nicknames such as 'charming', 'my fair lady' etcetera, but no male lawyers were addressed using similar terms (343). On interruptions, Bogoch found that 'women lawyers were interrupted more frequently than men lawyers' and that 'both male and female judges interrupted women prosecutors and defence attorneys more than they interrupted men' (347).

Again, these interruptions were not only restricted to other participants in the courts but they also included those by judges.

Similar findings were also recorded when it came to taking over from lawyers. Her study showed that judges took over from interrogations and questioning from women lawyers much more than they did in the case of male lawyers. Furthermore, the judges also requested more information from women professionals than they did in the case of men lawyers. As a result, they undermined the professional competence of the affected women professionals.

Gendered construction of professional identity was also observed in the comments that were made in courtroom by witnesses, male lawyers and judges. The study showed that when lawyers made comments about women professionals in court, those comments were directed to them as women rather than as professionals. This was in contrast to comments directed at male lawyers as they were addressed as professionals. Judges also tended to ignore comments that infringed on the recognition of the professional roles of women professionals in court. While a number of judges failed to react to them as violations, some actually justified them. Perhaps the most interesting of these findings was what Bogoch found regarding emotions. She observed that when women professionals got angry in the courtroom they were viewed by judges and male lawyers as being 'emotional' but when men lawyers similarly got angry, no comments were made about their emotions. Accordingly, she concludes that these reactions appear to have been informed by gender stereotypes that propagate views that categorize women as being emotional.

Bogoch's (1999) paper is similar to my own study as it investigates the construction of professional identity within the courtroom. This is also one of the contexts that I investigated in my study. The difference, however, is that while her

study focuses on gender identity within the courtroom context alone, my study investigates how identity is generally constructed along the legal/lay divide in a range of legal contexts. Secondly, one important finding in her study relates to the use of honorifics in the courtroom and how they construct the identity of the interactants. In the data under that I analyse, and especially data from the ICC Confirmation Hearing cases, there appears to be a strategic use of terms of address by some of the interactants. The data show the use of different honorifics as exemplified in the following concordance listings.

Suspect Addressed with an honorific of deference, that is, General.

```
23 milarly, it is a fact that Gen (NAME) met with, otherwise, enco
24 to confirm charges against Gen (NAME) that were factually insuf
```

Suspect Addressed simply as Mr.

```
107 d "(…) the defense team of Mr. (NAME) also provided evidence of
108 ) thirdly the police under Mr. (NAME)'s command and at Mr. Muth
(P
109 rpetrators of the attacks. Mr. (NAME) contributed to the organi
(P)
```

Suspect Addressed without any honorific

```
12 nal policy was also adopted by (NAME) who ensured that the poli
(P)
13 call ,there is no direction by (NAME) to any junior officer ,no
DFL)
14 t this meeting Mmmmmmmm called (NAME) and instructed him that t
(P)
```

Bogoch's study is different from my own study at a theoretical level. Whereas Bogoch (1999) analyzes the construction of identity from a discourse analytic approach and a feminist theory, this study uses a Critical Discourse Analysis framework and supplements it with a corpus linguistic method. Second, Bogoch (1999) uses a quantitative approach while my own study is purely qualitative. Finally, whereas Bogoch's study is confined to the courtroom context, my study

examines the construction of identity in the courtroom as well as in the police interview context and the prison context.

Tracy (2009) discusses identity in the courtroom by analyzing judges' questioning during the oral argument phase of the New York Court of Appeal's hearing of Hernandez v. Robles. The case investigated whether the state was violating same-sex couples' constitutional rights by denying them access to marriage. Her study found that the content, format, and language style of judges' questioning turns was instrumental in constructing the identities of judges. She also found that there was a link between a judge's support for same sex marriages or otherwise and the judge's political affiliation. She observed that judges appointed by democrats tended to support same sex marriages while those seconded by the republicans tended to be opposed to such marriages. Tracy attributed these positions to the fact that some state judges were appointed to their positions so that they could advance the executive branch's goal of furthering its own political agenda. Tracy further found that there was a relationship between the content of the question asked by a judge and the judge's identity. She noted that Judges who asked 'more social demographic questions of defendants' and 'posed open-ended questions to determine if the defendants were cognizant of the exact crimes to which they were admitting' had a politically liberal stance. Conservative judges, on the other hand, asked closed questions and did not seek demographic information. In addition, such judges were also found to use extreme case formulation. Other important findings were that the number of questions a judge asked reflected the identity of the judge. The judges who asked most questions as well as longer questions were found to be more aggressive. She also found that making references to earlier cases identified the judges as members of a specialized community. Other strategies included taking a

supportive stance and varying the questioning styles. Tracy's study is different from mine because her study focuses specifically on the identity of judges and how their identity is marked through their style of questioning while my study focuses on the construction of identity across the legal/lay divide in a general manner. Another difference between her study and mine is with regard to the type of data that she uses. Tracy's study, makes use of judges' notes as well as courtroom records while my own study of courtroom proceedings is based on courtroom proceedings only. Finally, whereas Tracy discusses identity on the basis of a single case, my study is based on an analysis of many cases.

Matoesian (2001) devotes two chapters on the construction of identity. In one of the chapters, he discusses the construction of age identity while in the second one, he discusses how a witness gets into and out of his professional identity during a hearing. In the chapter on age identity, Matoesian explores how a prosecution lawyer uses discursive strategies of repetition, repair and intonation to construct the age identity of a witness during cross-examination. He illustrates this by providing an example in which a prosecution lawyer chooses to cross-examine a witness on matters relating to his age and experience rather than on the validity of his testimony. He argues that this line of questioning 'calls into question the expert's competency through an ageist ideology' (Matoesian 2001:195). Matoesian argues that the prosecutor emphasizes the witness's incompetence through reductive repetition and correction. In addition, he emphasizes the fact that the witness is old and probably past his prime by repeating questions and correcting the errors that he makes. Other strategies discussed by Matoesian include metapragmatic cues, in which an individual's voice is inserted in one's own communication through the voice of another. In Kenyan courtroom discourse, this appears as 'I am asking you'. Two

other strategies that Matoesian examines are repair and intonation. Of interest is his contention that repeating some questions implies that the witness is old and may be getting senile. Matoesian further argues that the use of poetic forms such as parallelism and repetition draw the attention of the audience to the form of talk itself and that this is designed to construct social identity.

In a related paper, "The Grammaticalization of Participant Roles in the Constitution of Expert Identity", Matoesian (1999) uses transcripts of taped testimony in the Kennedy Smith rape trial to discuss how a defendant and a prosecution lawyer discursively construct an expert identity during cross-examination. Kennedy Smith had been accused of rape and so appeared in court as a defendant. However, being a physician, he was able to shift into the defendant's identity as well as into an expert identity as the situation demanded. Matoesian (1999:494) contends that both the defendant and the prosecution lawyer constructed the identities by employing a variety of 'participation frameworks' and linguistic strategies which function to 'align and re-align their relation to each other and to their utterances'. Linguistically, the identities are constructed through 'stylistic repetition, reported speech, epistemic modality, evidentials, sequential positioning, conditionals, and tokens of the medical register' (495). On evidentials, Matoesian (1999:504) argues that the defendant's answer is organized through the 'partitive evidential', - a 'construction (expressing part of the whole) and consists of the universal quantifier *all*, a subject noun phrase , for example, *of what I can tell you,* and the temporal adverbial with the embedded comitative, *when she was with me.* This study found that social identities are fluid and are constructed in interaction. Matoesian also found that the grammatical shift to an expert footing strategically minimized the defendant's agency' without making him appear arrogant. This view

is consistent with social constructivist views on identity and provides important insights into my own study.

What makes Matoesian's studies unique is the fact that he explores age identity and how a defendant (and an expert as well) constructs his identity as an expert. Matoesian's analysis of the 'ageist ideology' has influenced my interpretation of the Burial Dispute Case in which the PL seems to draw from the same ideology by labelling a defence witness, *mzee*, Swahili word for 'old man'. His analysis of style in the cases has, similarly, provided insights into ways of analysing similar aspects.

The last of the texts to be reviewed in this section is Eades' (2008) work. This work continues in the tradition of directed identity studies in forensic linguistics settings. Eades (2008) devotes a whole chapter to discuss how identities are constructed and resisted within the courtroom context. Her chapter focuses on the linguistic mechanisms used to construct the identities of the three Pinkenba boys 'as lying *criminals*' (151). While the defence counsel make allegations of criminal tendencies against the boys, thereby imposing a criminal identity on them, the boys resist the imposed identity. In discussing these strategies, Eades (2008) presents a very detailed analysis of linguistic strategies used in constructing identity. The strategies include asserted propositions, assertions in pseudo-declarative questions, a variety of both overt and covert presupposition strategies and lexical strategies. In addition, Eades examines the use of culturally specific presuppositions, entextualisation and lawyers' affective stance. The lawyers' stance, for example, is realized linguistically through metapragmatic directives, sarcasm, and prosodic features. Other strategies in her discussion include terms of address and repetition. What marks out Eades' (2008) study is her focus on identity construction within the

courtroom. Hers is the only study that I found to have delved into the subject in great detail. For that reason, insights from her study have informed my interpretation of similar features of courtroom data under analysis. The main difference between Eades' work and mine is with regard to the contexts being studied. While her work is based on the courtroom context, my study goes beyond this context by exploring the construction of identity in the prison context as well as the police interview setting context.

2.4 Conclusion

The literature reviewed in this section shows that most of the literature on identity in legal contexts has largely been drawn from America, Europe and Australia. To the best of my knowledge, there are no known studies of identity in legal contexts on the African continent. Second, the literature reviewed has also shown that most of the studies on identity have largely been confined to the courtroom setting and have hardly focused on live courtroom data. In addition and to the best of my knowledge, there are no known studies that examine identity over several legal contexts. With regard to both prison and police interview contexts, the literature show clearly that these areas have not attracted a lot of scholarly attention. This state of affairs clearly justifies the current study.

Having reviewed literature on identity in its various dimensions, I now wish to turn my attention to CDA, the theoretical framework that informs this study.

CHAPTER THREE

THEORETICAL FRAMEWORK

3.1 Introduction

This chapter presents the theoretical framework that informs this study. The chapter begins with definitions of Critical Discourse Analysis (henceforth CDA) and then outlines the main tenets of the theory. This is followed by a discussion of three of the main strands of CDA, namely the socio-cognitive approach, the discourse historical approach and Fairclough's approach. A greater emphasis is, however, placed on Fairclough's approach to CDA as it is the approach that informs this study. The chapter then addresses some of the concerns that have been raised against CDA and concludes by reiterating the appropriateness of Fairclough's approach to this study.

3.2   Critical Discourse Analysis

This study employs Critical Discourse Analysis as its theoretical framework. CDA, has been defined as 'a type of discourse analytical research that primarily studies the way social power, abuse, dominance and inequality are enacted, reproduced, and resisted by text and talk in the social and political context' (Van Dijk 2001:352). Titscher *et al.*(2012:144), trace the origin of CDA to Althusser's theory of ideology, Bakhtin's genre theory and the philosophical tradition of Gramsci and contend that CDA has been influenced by Michel Foucault. CDA was developed as a reaction to mainstream linguistics such as Chomsky's generative grammar and 'contemporary trends in pragmatics (e.g. speech act theory) and Labovian quantitative sociolinguistics' (Wodak 2006:5). Critical discourse analysts criticised such grammars for analysing language without taking into consideration its ideological functions. Fairclough (1992:7), for example, objects to the description of

language in a manner that obscures its 'political and ideological investment'. Instead, he argues that linguistic analysis is not value free as suggested by Chomsky.

CDA aligns itself with other disciplines in a number of ways. First, CDA is recognized as an interdisciplinary method (Bloor and Bloor 2007:2). Accordingly, it uses methods from other disciplines such as sociology, ethnography, psychology, ethnomethodology, literary theory, and the philosophy of language and communication. Second, CDA also shares methods with other disciplines. Such methods include content analysis, observational techniques, participant observation and the use of informants. Third, at the thematic level, critical discourse analysts 'identify and study specific areas of injustice, danger, suffering, prejudice etc.' (Bloor and Bloor 2007:3).

3.2.1 Principles of CDA

As a theoretical framework, CDA is founded on a number of principles. First, it is concerned with social problems and pursues a political agenda through which it seeks to have an effect on 'social practice and social relationships'. In pursuing this political agenda, CDA practitioners identify with the underprivileged. Second, CDA concerns itself with power relations and how these are reflected in discourse. It assumes that injustice and inequality are repeatedly produced and legitimized in discourse. Accordingly, Titscher *et. al.* (2005:167) argue that CDA aims at making 'explicit power relationships which are frequently hidden and from that to derive results which are of practical relevance'.

Critical discourse analysts make a number of assumptions. For example, they assume that all discourses are historical and that the discourses can only be understood in relation to their context. Consequently, CDA analysts explore aspects of intertextuality and interdiscursivity in its analyses. Also, following the influence of Bakhtin and Volosinov, CDA practitioners assumes that 'every use of language is

ideological' (Titscher 2012:145). This means that language is regarded as a means of communicating the dominant beliefs of individuals, institutions and culture among others. It is no wonder then that CDA practitioners incorporate 'linguistic categories into their analyses'. Fairclough's approach, for example, uses the Systemic Functional Grammar.

The term 'critical' in CDA is based on a number of assumptions. First, it is assumed that the connections between ideology and language are hidden and that some discourse practices use linguistic forms repeatedly to the point that they come to become 'naturalised'. 'Critical' therefore refers to 'unravelling or denaturalizing' ideologies expressed in discourse and revealing how power structures are constructed in and through discourse' (Fairclough 1989:5). Second, CDA is 'critical' because 'it is self-reflective' in the sense that it must reflect on the interests on which it is based. Third, CDA is 'critical' because 'it must take account of historical contexts of interactions' (Titscher *et. al.* 2012:144).

3.3.2 Varieties of CDA

Proponents of CDA are drawn from different 'theoretical or philosophical orientations' (Fowler 1999:138) and these orientations have influenced their approaches to CDA. Wodak *et al.* (1999:7), for example, identify the following varieties: the British variety, which has drawn upon Foucault's theory of discourse, the cognitive-oriented approach of Dutch Critical Discourse Analysis, the German Critical Discourse Analysis and the Vienna School of Discourse Analysis. By way of illustration, an overview of van Dijk's socio-cognitive approach and Wodak's discourse–historical approach is presented briefly and thereafter, Fairclough's approach is discussed in more detail.

The Dutch strand of CDA is best exemplified in van Dijk's (2008, 2001 & 1995) socio-cognitive discourse analytic approach. The approachproposes a three

dimensional 'discourse-cognition-society' framework (van Dijk 2001:97) and 'focuses on the study of mental representations and the processes of language users when they produce and comprehend discourse and participate in verbal interaction. It, additionally, focuses on 'knowledge, ideologies and other beliefs shared by social groups' (64). Van Dijk (2008:3) argues that in order for one 'to produce and understand language or discourse, one not only needs a grammar (a lexicon, a syntax, etc.), but also vast amounts of 'knowledge of the world'. These knowledge structures are stored in the 'Long Term Memory' from which language users need to access their knowledge structures in order to activate relevant portions of such knowledge. According to van Dijk (1995:19), discourse is understood through models, that is, 'mental representations of events, actions, or situations people are engaged in, or which they read about'. He proposes a number of models which include the mental model, context model and event model among others. According to van Dijk, each of these models performs a particular function in the cognition of messages.

The discourse historical CDA, on the other hand, is a method of analysis that has roots in 'Bernstein's sociolinguistic approach' and within the philosophical and sociological tradition of Critical Theory' (Wodak 2009:7). This approach is characterized by the following four aspects. First, it takes the historical context of a text into account. 'Context' in discourse-historical approach includes co- and context of texts and cover social, political, historical and psychological contexts. The co-text is the 'semantic environment of an individual utterance' and 'concerns [itself with] extra-linguistic social variables and institutional settings of the specific situation of an utterance'. Lastly, context comprises the intertextual or interdiscursive references in the text (Wodak 2009: 9-10). Second, as Titscher *et al.* (2012:155) argue, this approach takes into consideration social-psychological, cognitive and linguistic

dimensions of text production. This dimension deals with strategies of coming to terms with reality and it is from this social-psychological level that 'schemata' and 'frames' for structuring the perception of reality are derived. Third, this approach always attempts to integrate as much available information as possible on the historical background and the original historical sources in which discursive 'events' are embedded (Wodak 2001:64). Inevitably, the 'historical context is always analysed and integrated into the interpretation of discourses and texts' (Wodak 2001:70). Finally, at the methodological level, the discourse –historical approach has adopted the principle of triangulation. This approach accords CDA the benefits associated with theoretical, data and methodological triangulation such as 'using various methods of data collection and the analysis of different sets of data' (Wodak 2009:9). Accordingly, the discourse –historical approach uses a problem oriented approach and does not necessarily focus on specific linguistic items. It incorporates fieldwork and ethnography and entails a movement back and forth between 'theory and empirical data' (Wodak 2001:69-70).

3.2.1 Fairclough's Approach to CDA

The CDA framework adopted for this study is the strand postulated by Fairclough (1992, 1995, 1998, 2001 and 2003) for three main reasons. First, according to Jorgensen & Phillips (2002:60), Fairclough's approach 'is the most developed theory and method of research in communication, culture and society' within the critical discourse analytical movement. Second, Fairclough's approach adopts a linguistic framework, Halliday's Systemic Functional Grammar, and this makes it a suitable theory to explain how language functions to construct identity. Finally, Fairclough (1992:64) is clearly aware about the role of language in constructing identity and identifies the construction of identity as one of the functions of language.

This variety has a Marxist influence which emphasizes the significance of cultural dimensions in the creation and maintenance of power relations. Accordingly, Fairclough emphasizes the importance of the means of production. As Fowler (1991:138) explains, Fairclough's main objective is 'to identify how inequalities and conflicts which arise from the capitalist mode of production are manifest in discourse.'

Fairclough's framework is based on a three-tiered model which conceives discourse as text, discourse as discourse practice and discourse as social practice.
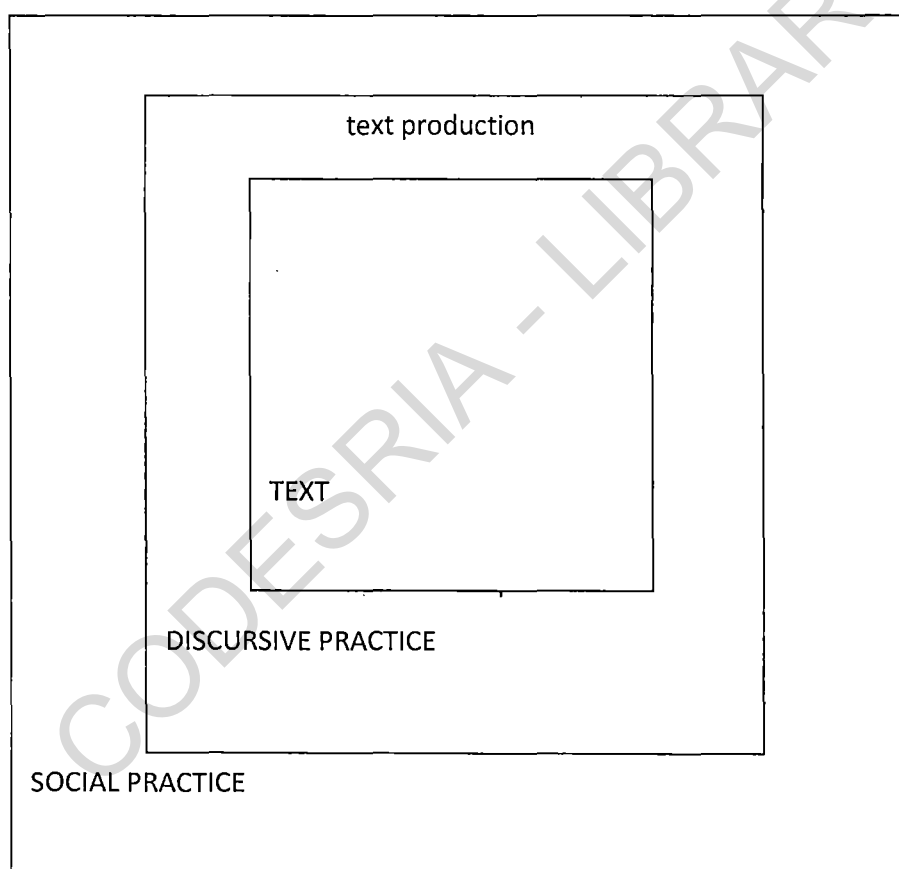
Fig. 3.1 Fairclough's three-dimensional model for Critical Discourse Analysis

(Source Fairclough 1992:73)

Simpson and Mayr (2010:63) argue that the framework explores not only the text itself but also its production and interpretation within a larger social context.

In brief, discourse as text deals with four aspects, namely vocabulary, grammar, cohesion and text structure. Discourse as practice deals with the force of utterances and specifically examines what speech acts are in place. In addition, discourse as practice also examines the coherence of texts as well as intertextuality and interdiscursivity. At the level of discursive practice the processes relating to the production and consumption of the text are analyzed. Fairclough (1992:79) argues that consumption can be individual or collective and contends that 'texts are consumed differently in different social contexts'. This is best exemplified by Haworth (2013) who examines the transcontextual nature of the police interview context in which the police interview is designed for multiple future audiences such as the Crown Court, lawyers, Judges and members of the jury and finds that while interviewers design their talk to future audiences, interviewees orient their talk primarily to interviewer who happens to be the audience closest to them.

Having outlined general principles of the CDA theory, I now wish to examine linguistic aspects of Fairclough's theory in some detail.

3.2.1.1 Linguistic Aspects of Fairclough's Approach

Fairclough's (1992 and 2001) approach is characterized by the following linguistic aspects: vocabulary, grammar and textual structures. Aspects of each of these linguistic categories are discussed in subsequent sections.

The analysis of vocabulary focuses on lexical choices in their experiential, relational and expressive values. According to Fairclough (2001:93), experiential values relate to content, knowledge and beliefs, relational values relate to relations and social relationships while expressive values relate to subjects and social identities. As Fairclough (2001:94) suggests, lexical analysis examines whether there are any 'ideologically significant words', what relational values words have and

whether or not there are any euphemistic expressions or metaphors. In addition, he posits that the analysis should take into account whether or not the words used are formal or informal as well as what kinds of metaphors are used in the text. Other aspects relating to the use of words include whether or not there are cases of 'overwording' that is 'an unusually high degree of wording, often involving many words which are near synonyms' (Fairclough 2001:96) and what values the words have.

At the level of grammar, Fairclough (2001:100 - 110) argues that the focus of analysis should be on the both experiential and relational values. At the experiential level, analysis focuses on the types of processes involved in the analysis for example material processes, mental processes or verbal processes among other processes. In addition, participant roles need to be examined insofar as they relate to agency. It is important to determine whether or not agency is clear, whether or not there is use of nominalization and also whether or not active or passive sentences are dominant. Finally, sentences are examined in terms of whether or not they are positive sentences and which of the two are preferred.

At the relational level, the concern of the analyst is to determine what relational values grammatical features have. Under this level, focus is on what modes are used. Questions for analysis include a determination of the types of sentences used, that is, whether the sentences used are declaratives, interrogatives or imperative sentences. Furthermore, the analysis also entails an analysis of the ways in which sentences are linked together as well as what means is used in referring inside and outside of the text. In addition, analysis at this level also focuses on different types of modality such as deontic modality, epistemic modality, categorical modality and boulomaic modality. Finally, pronouns are also analysed.

Transitivity and modality are core in Fairclough's method and are therefore discussed in more detail.

3.2.1.2 Transitivity

Transitivity refers to the way in which 'the clause is used to analyze events and situations as being of certain types' or 'the way the clause is used to analyze the same event in different ways' (Fowler 1999:71). Simpson and Mayr (2010:65) contend that transitivity is 'concerned with the semantic structure of clauses and refers ... to who does what to whom, and how'. Transitivity is characterized by processes and participants.

In Halliday's (1994) Systemic Functional Grammar, transitivity entails six processes, namely material processes, mental processes, relational processes, behavioural processes, verbal processes and existential processes. These processes are encoded in verbs. They represent 'semantic classifications' and 'tend to correlate with various syntactic contrasts among verbs' (Toolan 1998:76). In the sections that follow, I outline the main features of these processes together with the associated participant roles.

Material processes are processes of doing, happenings and creating. Accordingly, they entail physical activity. The process is encoded in verbs and is marked by their progressive -*ing* form. The process requires a human or human-like entity and entails the following three participant roles; agent or actor, goal or medium[i] and circumstances. The agent or actor is the doer of the action denoted by the verb while the medium or goal is the one affected by the doer's action. Circumstances refer to adverbial elements such as time and place. Actions in material processes are categorized as intention or supervention depending on the participant that causes the action. Intention refers to actions caused by a human or human like entities while

supervention refers to actions that occur on their own. Of interest here is Baker and Galasinski's (2001:71) assertion that material processes may be used as a 'marker of objectivity and facticity'. Elements of transitivity are demonstrated in the example that follows:

Police officers	gunned down	suspects	yesterday.
AGENT	MATERIAL PROCESS	MEDIUM	CIRCUMSTANCE

Mental processes are processes of thinking or perceiving. The process has two main participant roles, that is, the senser (that is, the one who senses) and the phenomenon (that which is perceived). This process is denoted by the simple present tense and is shown below.

The court finds	him	innocent
SENSER MENTAL PROCESS		PHENOMENON

Verbal processes refer to the process of saying. This process has three participant roles, namely the sayer (the one who says) verbiage (that which is said) and the target (the one to whom the message is directed). As may be evident, this process requires a human or human like entity.

"Arrest this man",	the Senior Police Officer	ordered	a junior officer.
VERBIAGE	SAYER	TARGET	

Behavioural processes are processes of behaving such as smiling and playing. The main participant in this process is the behaver (the one involved in the process).

The thief cried.
BEHAVER BEHAVIOURAL PROCESS

The relational process refers to 'being' and having an attribute or identity.

The man in the mask	is	a robber.

                CARRIER   RELATIONAL   ATTRIBUTE
                                           PROCESS

The existential process or the process of being or existing is exemplified by the

following example:

       There are a few cases to be determined

3.2.1.3 Modality

According to Fairclough (2001:105), modality 'has to do with speaker or writer

authority' and focuses on linguistic forms which denote attitudinal features. These

features are encoded in modal auxiliaries such as 'can', 'may', 'might', 'should',

'would' etc, in verbs with a modal meaning for example 'need to', 'have to' and

'ought to' and in verbs of knowledge, prediction and evaluation for example 'knew',

'thought' and 'understood'. In addition, modality is also encoded in modal adverbs

such as 'hopefully', 'certainly', 'interestingly' and in evaluative nouns, adjectives

and adverbs such as 'disgustingly'. Finally, modality is also expressed in categorical

assertions which present matters as if they were incontrovertible truths. In the ICC

courtroom proceedings, for example, one defence lawyer makes the following

categorical assertions:

EXCERPT 2
8.   There's been a clear political decision by the prosecution to bring three people
9.   from each side and put them on trial; to make a case fit, against both sides; to
10.   construct a case without a proper investigation of the evidence and with
11.   complete disregard of the facts.

In line 8 the DFL is making an argument on what led to the prosecution of his client

and although he is stating his opinions, he does so as if he is presenting what he

knows to be and is truthful – that a political decision was made to prosecute his client.

A similar assertion is repeated in his allegation that the case in question was

prosecuted without 'proper investigations' being undertaken yet these are based on

his opinions and not any known facts.

As Simpson (2004:43) explains, there are different types of modality. Deontic modality is the modal system of duty or obligation and permission. The degree of obligation is realized along a continuum each of which is marked by a different modal auxiliary such as 'may', 'should' and 'must' in the following sentences.

(i)   You may read.

(ii)   You should read.

(iii)   You must read.

Sentence (i) expresses permission, sentence (ii) denotes obligation while sentence (iii) denotes a requirement. In addition to these modal auxiliaries, deontic modality may also be denoted by 'adjectives and participles in 'BE…THAT' and 'BE…TO' constructions' (Simpson 2004:44) such as 'You are permitted to leave', and, 'It is necessary that you leave'. Closely related to this is boulomaic modality which is the modal system of 'desire'. It expresses wishes or wants. This type of modality is grammaticalized through modal auxiliaries.

Epistemic modality is the modal system that expresses certainty/uncertainty. Epistemic modality, like deontic modality, views certainty along a continuum of increasing or decreasing levels of certainty. Linguistically, epistemic modality is denoted by the modal auxiliaries 'could', might' and 'will' in the following sentences:

(iv)   If you commit an electoral offence you **will** be disqualified.

(v)   If you commit an electoral offence you **might** be disqualified.

(vi)   If you commit an electoral offence you **can** be disqualified.

In these sentences, the modal auxiliaries highlighted in bold type, denote a decreasing level of commitment with sentence (iv) denoting the highest level of commitment while sentence (vi) denotes the lowest level of commitment. Also, as in

the case of deontic modality, the levels of commitment are also grammaticalized through modal lexical verbs such as 'think', 'suppose', through 'adjectives in 'BE...TO' and 'BE...that' constructions' (Simpson 2004:45) and through epistemic modal adverbs such as 'arguably', 'allegedly', 'certainly' and 'perhaps'. Categorical assertions such as 'He is unwell', however, denote the strongest level of commitment of a speaker to the truthfulness of the statement.

Two other types of modality are perception modality and dynamic modality. Perception modality 'is distinguished by the fact that the degree of commitment to the truth of a proposition is predicated on some reference to human perception'. This is grammaticalized through 'adjectives in 'BE...THAT' Constructions' as exemplified in statements such as, 'It is clear that you have not understood me'. Dynamic modality, on the other hand, is a modal system of ability. It is marked by auxiliary verbs such as 'can' in the sentence: 'I can read'.

At the level of textual structures, Fairclough (2001:110 - 116) proposes that analysis should focus on the interactional conventions used in the text, on the ways in which one participant controls the turns of others and on large scale structures that are evident in the text. Interactional conventions analyse organizational features of dialogue and of monologue at both their relational and experiential values. Participant control is analysed by examining the turn taking systems in place and how participants control the contribution of others by using devices such as interruption, controlling the topics of conversation and enforcing explicitness (Fairclough 2001:113). Analysis of large scale structures examines how 'the whole of a text ... may be made up of predictable elements in a predictable manner' (Fairclough 2001:114).

3.2.1.4 Intertextuality and Interdiscursivity

According to Fairclough (1992:102) intertextuality is based on the understanding that all texts, whether spoken or written consist of snatches of 'other utterances' or 'others words'. Quoting Kristeva (1986:39), Fairclough explains that 'intertextuality implies 'the insertion of history (society) into a text and of this text into history'. Fairclough (1992:102) argues that by 'inserting texts into history and history into texts' texts contain traces of texts from the past. Intertextuality is however not uniform. Following Bakhtin, Fairclough (1992:103) distinguishes between vertical and horizontal dimensions of intertextuality. Horizontal intertextual relations exist between a text and those texts which precede it or follow it in the chain of texts. This is best exemplified in the way a speaking turn is related to speaking turns that come before it and those that come after it. Vertical intertextual relations, on the other hand, exist 'between a text and other texts of more or less immediate contexts (Fairclough 1992:103). A second distinction is made between 'manifest' and 'constitutive' intertextuality. According to Fairclough (1992:115) in manifest intertextuality, 'specific other texts are overtly drawn upon within a text' and are marked by features such as direct speech. Constitutive intertextuality, on the other hand, refers to 'the configuration of discourse conventions that go into its production' (Fairclough 1992:104). Fairclough's sense of intertextuality incorporates these two senses. In courtroom discourse this is best exemplified when there is a discrepancy between what a witness states in a formal context outside of the courtroom and what such a witness states in court. For example, during the Confirmation Hearings of the Kenyan case 2 at the ICC, one of the witnesses is challenged over how long it had taken for him to be rescued.

EXCERPT 3
12. **PL:** Can you tell the chamber how long you were in your house before you
13. were rescued that day?

14. **WIT:** About 4 hours.
15. **PL:** I would like to go back again to your statement that you gave before the
16. Waki Commission and there you say it took about 6 hours in my house, could
17. that be correct?
18. **PL:** No, I can't remember everything I told Waki. But I can see it here, but
19. there were some errors in that report.

In this excerpt, another text, that is, the Waki Commission Report is overtly drawn upon in the current hearing. This is specifically in relation to the duration that it took for the witness to be rescued. The witness had told the Waki Commission that it had taken him 6 hours to be rescued yet in the current hearing he states that it had taken him 4 hours to be rescued. So a text produced at a different commission becomes a topic of discussion in the current exchange in court.

Interdiscursivity, on the other hand, refers to 'the combination of genres and discourse in a text' (Titscher 2012:150). This entails analyzing how different genres merge and manifest in a text. For example, during the Trial of the Kenyan case 1, at the ICC, one of the leading Defence Lawyers appeared to have designed his opening statement to the wider public rather than primarily to the court. In the process he incorporated political discourse into courtroom discourse.

3.2.1.5 Ideology and Hegemony

Hegemony 'is the power over society as a whole of one of the fundamental economically-defined classes in alliance with other social forces' (Fairclough 1992:92). Fairclough argues that hegemony entails domination over subordinate classes and 'constructing alliances'. It is at this level that class struggle exists, struggle which may be at the economic, political as well as at the ideological form. Ideology, on the other hand, is 'a conception of the world that is implicitly manifest in art, in law, in economic activity and in the manifestations of individual and

collective life (Fairclough 1995:76). CDA analysts argue that any language choice is ideological and that such ideologies are naturalized and viewed as common sense.

From the foregoing, it is easy to see that CDA is a well-developed theory and method and why it is a popular method and theory. However, CDA has been criticised by a number of scholars. In the section that follows, I point out some of the criticisms and then address them.

3.3 Responses to Criticisms against CDA

Although CDA has gained popularity because of its multidisciplinary nature, although it has become 'extremely widespread and influential over the years' (Widdowson 2004:173) and although it has 'achieved some degree of stability, canonicity and ... conventionality' (Luke 2002:99), CDA has equally attracted a lot of criticisms. First, CDA has been criticised on the methodological and analytical approaches (Blommaert 2005:31) and on its claims (Phillips and Jorgensen 2002). More specifically, it has been pointed out that although CDA analysts claim that language and discourse exist in a dialectical relationship. Accordingly, discourse affects language and language affects discourse. However, according to Jorgensen & Phillips (2002:90) it is not possible to demonstrate this dialectical relationship in an empirical way. They, similarly, argue that although CDA analysts claim that discourses shape the world, this assertion is undermined by the tendency for CDA analysts to analyze single texts instead of analysing a range of texts. They instead argue that this claim can only be affirmed when a range of texts are analysed. While these assertions may have been true of earlier analyses in CDA, things have clearly changed. There are more studies which have addressed this concern by combining CDA with other methods such as corpus linguistics as exemplified in studies by Baker and McEnery (2005), Orpin (2005) and Krishnamurthy (1996).

Second, CDA has also been criticized for biased interpretations of discourse under the guise of critical analysis (Widdowson 2004), for demonstrating the obvious, for making *a priori* decisions as well as for projecting their own political biases and prejudices onto their data (Blommaert 2005:32). While these criticisms are valid, CDA analysts counter this criticism by confessing their own bias and by simultaneously explaining that their intention is to overturn injustice. Wodak (2001:96), for example, argues that:

Critical Discourse Analysis research combines what perhaps somewhat pompously used to be called 'solidarity with the oppressed' with an attitude of opposition and dissent against those who abuse text and talk in order to establish, confirm or legitimate their abuse of power. Unlike much other scholarship, CDA does not deny but explicitly defines and defends its own socio-political position, that is, CDA is biased – and *proud of it* (my own emphasis).

Third, CDA has been criticised on the basis of the application of its findings. For example, Blommaert (2005:36) argues that CDA research has been limited to the developed world, specifically Europe and USA and yet it has assumed that findings in CDA studies can be applied to all countries. Arguing that CDA takes 'far too much sharedness for granted when it comes to discourse in contemporary societies across the world, Blommaert (2005:36) asserts that CDA 'overlooks sociolinguistics'. This claim may have been valid at an earlier period but it certainly no longer holds. Eades (2008 & 2010), for example, responds to some of these concerns as she works within the framework of critical sociolinguistics in her studies of Aboriginal Australians.

Fourth, CDA has also been criticized on account of not having a sense of history and historical developments. But like the other criticisms that I have already cited, this is not sustainable. Wodak's (2001) Discourse-historical approach

adequately addresses this issue as it always attempts to integrate as much available information as possible on the historical background and the original sources in which historical sources in which discursive events are embedded (64). Similarly, Fairclough (1992) addresses this concern by taking into account the 'conditions of production' which focus the analyst on where and when the text was produced. In fact, he contends that 'discourse is studied historically and dynamically' (Fairclough 1992:35).

Finally, CDA has also been criticised for the non-systematic application of Systemic Functional Grammar in CDA or what Widdowson (2004:97) and Jorgensen's and Phillips (2002:71) refer to as the 'expedient picking and choosing of whatever aspects of it seem useful for its purposes'. Related to this are claims by Stubbs (1996:128) who criticizes CDA for failing to make a clear connection between discourse and grammar 'the study of discourse ... cannot properly be separated from the study of grammar that lies behind it' (Halliday 1985:135). The argument here is that CDA analysts make interpretations of texts without reference to adequate linguistic patterns. Again, this argument is not entirely valid. Fairclough (2001, Chapter 5&6) and Fairclough (1992 Chapter 3 & 4) provide a very detailed approach to linguistic analysis of texts within CDA and this cannot, by any means, be regarded as a mere 'checklist'. Also, linguistic analysis of texts tends to be based on thematically dominant aspects. As a consequence, linguistic features that form the subject of analysis are those that are determined on their own merit rather than in an *a priori* manner as Widdowson (2004) suggests.

3.4 Conclusion

The discussion in this chapter has focused on CDA as a theory. Accordingly, the chapter has presented an overview of the theory. One of the key issues dealt with

in relation to this study is the fact that CDA deals with issues of language and power and the fact that Fairclough's theory draws heavily from Systemic Functional Grammar. I have also reviewed the different varieties of the theory and have discussed in some detail Fairclough's variety of CDA. This discussion has been geared towards underpinning the importance of the theory to this study. In brief, I conclude that the theory is suitable for this study for a number of reasons.

First, a study of language and the construction of identity in legal contexts inevitably focuses on the use of language in asymmetric contexts and requires a theory that explains the relationship between language and power. As has been shown in this chapter, CDA focuses on language and power and therefore CDA lends itself well to this study. Second, the CDA theory postulated by Fairclough draws on Systemic Functional Grammar and therefore provides the necessary tools for linguistic analysis to a study of this kind. Two of the key linguistic tools for analysis discussed in this chapter include vocabulary and grammar and the discussion has shown the various dimensions of studying language in identity construction. The theory is therefore well suited for this study. Third, CDA theory goes beyond language by drawing on methods from other disciplines. Accordingly, it provides a much wider context within which to interpret data, especially on a multidisciplinary subject such as identity. Some of the critics of CDA have suggested the need to combine CDA with other methods such as corpus linguistics for more reliable analyses. I have shown how this is consistent in CDA by arguing that CDA draws from other disciplines. CDA is therefore an appropriate theory for the current study. Finally and most importantly, Fairclough (1992:64) identifies the construction of identity as one of the key functions of language and therefore underscores the

importance of this theory in this study which investigates the construction of identity in legal contexts.

In the next chapter, I discuss methodological aspects of this study.

CHAPTER FOUR

RESEARCH METHODOLOGY

4.1 Introduction

This study sought to examine how language aids in the construction of identities in the police interview context, the courtroom context and the prison context. As a result, data sets drawn from each of the three contexts were analyzed. The data were distributed as follows:

Table 4.1 Distribution of Courtroom Data

1. Courtroom Proceedings	
(a) Kenyan courtroom data	26 hrs
(b) ICC Courtroom data	40 hrs
2. Prison Letters	34 letters comprising 10,000 words
3. Police statements	About 60,000 words

The study was guided by the following research questions:

(i)   What linguistic resources do professional and lay persons interacting in legal contexts use to construct identity?

(ii)   In what ways do they negotiate their identity across the professional/lay divide and in relation to the legal contexts?

(iii)   What identities do they construct?

(iv)   Why do they construct their identities in the ways that they do?

This chapter presents the methodology adopted in this research. The chapter begins by providing the rationale for a qualitative approach and then presents the research design and sample. Thereafter, the discussion focuses on different aspects of data starting with the data type, data collection methods and methods of data analysis. Next, the chapter focuses on the issue of the credibility of this study before

addressing ethical considerations. The last part of the chapter gives a summary of the main issues covered in the chapter.

4.2 Rationale for a Qualitative Research

This qualitative study is grounded in the constructivist philosophical paradigm. The study meets some of the basic criteria for qualitative studies as outlined by Creswell (2007:37 – 39). First, it investigates phenomena occurring in natural settings. All the data under analysis emanate from natural settings, that is, from actual courtroom proceedings, from actual letters written by inmates and from actual police statements. Second, in keeping with qualitative research, the data were collected through several methods, namely document examination, audio-recording and qualitative interviews. More importantly, the researcher collected and analysed multiple sets of data namely: courtroom proceedings, letters from inmates as well as police statements. These were analysed into patterns and themes running across all the data sets. In addition, during the research process the input of key informants was sought with a view of incorporating their meanings into the final interpretation.

Although I have indicated that this study is largely qualitative, I have incorporated corpus linguistics into my analyses because such analyses allow a researcher to analyse large amounts of data in a non-*a priori* manner. For this reason, some would take it to mean that the approach adopted here is a mixed one. However, unlike purely mixed approaches, this study ignores quantitative aspects of corpus linguistics and may therefore be regarded as being purely qualitative.

Informed by the social constructivist paradigm, this study assumes that reality is socially, culturally and historically constructed and attempts to study phenomena from a context specific perspective (Bloomberg & Volpe 2008: 8 - 9). It further assumes that individuals develop subjective meanings of their own personal

experience and interpret the 'meanings others have about the world' (Creswell 2007:37).

4.3 The Research Design

According to Rasinger (2010:56) research design is 'the actual *structure* of how we go about our study' (emphasis in the original). Consequently, I explain the steps involved in this study in this section.

At the start of my PhD programme, my supervisors asked me to collect some data that I would use for preliminary analysis. During my search for the data, I visited an NGO that had a programme with refugees and inmates. I was aware about the group's programme with refugees and knew that the data in their possession would have been good for forensic analysis. However, after visiting the NGO, the organization's leader allowed me to access a file with letters from inmates instead. It is these letters that provided material for my pilot study. After examining the data, it became evident that, in addition to meeting their own communication agenda, the inmates were also constructing their own identities. This aspect was pursued further and it proved quite revealing. Thereafter, after discussions with my supervisors, I settled on a study of language and the construction of identity in legal contexts. Having agreed on this, I embarked on an extensive literature review on language, identity and legal contexts. I divided this task into various sections. First, I reviewed literature on identity covering issues such as theories of identity, identity studies in various areas such as professional settings, in work places, national identity theoretical frameworks used in the studies, etc. Second, I reviewed literature on the interface between language and identity and concluded with a review of studies on identity in legal contexts. This literature review was, however, not conducted in a linear manner. It entailed reviewing literature in the three areas in the order in which

I accessed the literature. Inevitably, this process continued throughout the duration of the research.

After reviewing literature and developing my research proposal, I sought permission from the High Court of Kenya to collect data in the courtrooms. Once permission was granted (See Appendix IV), I embarked on data collection. Courtroom proceedings were audio-recorded using a digital audio-recording recorder. During that period, I also examined a number of relevant documents from the three legal contexts. Some of these were police statements, court rulings, newspapers, and various legal documents such as the constitution, various acts of parliament etc. In addition, I viewed You Tube clips of news reports on criminal incidents as well as a documentary film on the PEV. This was followed by transcription, translation and analysis of the data. A summary of this design is presented in Fig.4.1.
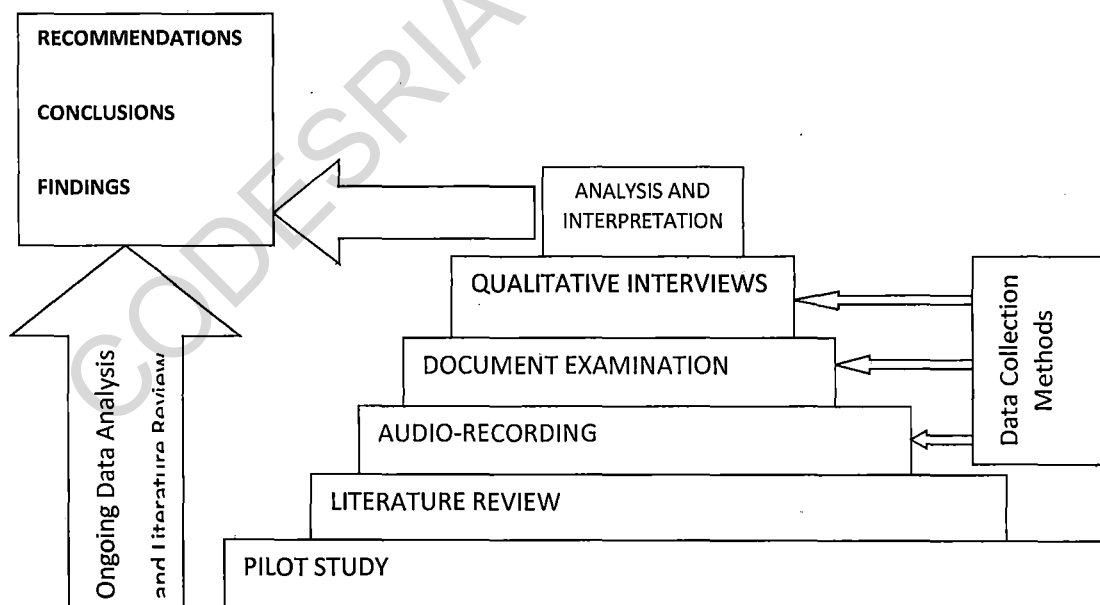
Fig. 4.1 Flow Chart of the Research Design

4.4 Research Location

Audio-recordings of courtroom proceedings of local cases were conducted in four Resident Magistrates' Courts (names withheld because of issues of confidentiality). These were selected on the basis of how easy it was to access the data, how representative it was. Initially, I had intended to collect the data from 7 courts but after a few visits it became evident that this would be an onerous task because of the elaborate steps involved before data collection would begin.

4.5 The Data

As has already been mentioned, the purpose of this study was to investigate how identity was constructed in three legal contexts. Accordingly, the study analyzed courtroom proceedings, letters from inmates and police statements. The nature of each of these data sets is discussed in the sections that follow.

4.5.1 Courtroom Proceedings

Courtroom data comprised audio-recorded sessions of court proceedings and was divided into two categories. The first category consisted of audio-recordings of courtroom proceedings in Resident Magistrates Courts while the second one comprised audio-recordings from the International Criminal Court at The Hague. These data were advantageous on two accounts. First, they provided a diversity that would make the findings of this study generalizable. Second, they provided access to data from courts based on contrasting legal systems. Whereas Kenyan courts are based on the Common Law System, the International Criminal Court is based on an inquisitorial system. These different systems provided the researcher with the opportunity to investigate how identity is constructed in a much broader courtroom context. In addition, data from these contrasting systems would contribute towards

answering one of my main research questions, that is, 'Why do they [interactants] construct their identities in the ways that they do?'

Audio-recordings of courtroom proceedings from Resident Magistrates Courts lasted over 25 hours and covered a wide range of cases of both civil and criminal nature (See Appendix V for a sample of the cases). The cases were, however, not full trials but 'segments' of cases. This was because a trial at RMC's hardly progress to determination without adjournments. Adjournments in courts were occasioned by the absence of witnesses, exhibits, or delays in receiving instructions to commit accused persons to trial. Other reasons included ill health on the part of the accused person or the absence of interpreters. While the idea of segments might appear to be a disadvantage, it actually turned out to be advantageous because the segments provided access to a much wider variety of cases. But any disadvantage of having to analyze segments of cases alone was mitigated by the inclusion of courtroom data from the International Criminal Court which comprised full hearings.

The ICC data comprised audio-recordings of ten days of the pre-trial confirmation hearings of one of the two Kenyan cases. The data comprised 31 hours of courtroom data lasting 11 days and another 9 ¼ hours of the Hague Trials. The audio-recordings were distributed as follows:

Table 4.2 Segments of the Confirmation Hearings

DAY	NATURE OF THE PROCEEDINGS	DURATION
1	Opening Statements	01:13:10
2	Prosecution Statement/Charges	02:10:05
3	Charges and Defence I Statement	01:24:00
4	Defence 1, and Defence Witness 1	03:53:02
5	Defence Witness 2	02:35:10
6	Defence 2	04:15:26
7	Defence Witness 1	03:26:52
8	Defence Witness 2	03:46:29
9	Defence 3, Defence Witness 1	03:22:06
10	Defence 3 Witness 2	01:39:49

11	Final Submissions	03:24:42
12.	The Hague Trials	09:15:39
	TOTAL DURATION	**40:27:06**

These cases were streamed live on local TV stations. As a result, it was much easier to access the data. All that was required was to switch on the digital audio-recorder when the proceedings began and then switch it off when the sessions were adjourned for health breaks or when the day's proceedings ended. These proceedings have since been made public and are now available on the ICC website.

4.5.2 Prison Letters

Prison data was drawn from a corpus of about 10,000 words comprising letters from thirty three inmates and ex-inmates (all considered as inmates) in Kenyan jails. The thirty three letters were written, one each,[ii] by thirteen female inmates and twenty male inmates and were addressed to Rev. Francis[iii] (not his real name). The letters suggest that the inmates knew him because he was involved in pastoral activities in some prisons where he assisted needy inmates. The letters cover an 8 year period starting January 2002 through to December 2009. 21 of the letters were written as requests for assistance, four as expressions of gratitude while the remaining eight were written as expressions of both gratitude for assistance they had already received or as further requests of assistance. One of the letters was written to a government minister through Rev. Francis.

The letters reveal a number of pertinent details about the inmates. These include reasons for their incarceration, their ages, the nature of the crimes that they had committed, the duration of their incarceration and their level of education. All but three letters reflect writers whose command of the English language may be regarded as being below the 'fourteen years' benchmark that Buregeya (2006:204) suggests[iv]. Inevitably, the letters contain many instances of non-standard English. All the examples have been faithfully transcribed. The crimes mentioned in the letters

include child negligence, theft, drug trafficking and murder. Although the letters were written in Kenyan jails, the authors are from four different countries: Kenya, Uganda, the Democratic Republic of Congo, and the United States of America.

From a forensic linguistics point of view, the letters, whose length ranges from 196 and 596 words, would be considered to be of adequate length for analysis. According to Coulthard (2005: 6, 2006:2) such texts 'are very short indeed' and may be below 200 words.

The letters from which illustrative material has been drawn are labelled L1, L2, L3, etc (for Letter No. 1, Letter No. 2, Letter No. 3, etc.) in the analytical sections of this study.

4.5.3 Police Statements

This data set comprises two types of data. The first sub-type contained statements made to police officers at the time of reporting an incident at a police station. In this category are statements made by suspects, witnesses to criminal events and police officers. Made at the time of reporting a criminal incident at a police station, the statements under analysis data covered a range of crimes such as murder, theft, robbery with violence and theft by a servant among others. The authors of these statements were witnesses, suspects and police officers investigating the cases. After being recorded, such statements are used by court prosecutors and lawyers in leading the witnesses and suspects during both examination-in-chief and during cross-examination. This sub-corporus consisted of about 60,000 words.

The second sub-corporus in this data set comprised statements made by police officers at scenes of crime. Most of these statements would have been addressed to journalists about a specific criminal incident leading to the arrest or killing of suspected thugs. These were downloaded from You Tube as most had been aired on various TV channels. These You Tube downloads were generally short,

sometimes lasting just about two minutes. In spite of the relatively short length of the clips, the clips were, nevertheless, valuable as each focused on the critical aspect of the report of the crime which is what I needed for analysis.

4.5.4 Methods of Data Collection

The data analyzed in this study were collected using three methods: audio-recording, document examination and qualitative interviews. The merits of using each of the methods are discussed below.

4.5.4.1 Audio-Recording

Court proceedings at Resident Magistrates Courts in Kenya are not routinely transcribed. So, in order to access courtroom proceedings it was imperative that I carry out the audio-recordings personally. I therefore applied to the Registrar of the High Court of Kenya to be allowed to audio-record proceedings at 7 courts and this request was granted.

The proceedings were audio-recorded using an omnidirectional digital audio-recorder which had the capacity to record continuously for 9 hours. This audio-recorder was advantageous in a number of ways. First, with the large storage capacity that it had, it was possible to audio-record the entire duration of court sessions in a day without switching it on and off. Second, since the digital audio-recorder is small, it was possible to conduct the audio-recordings unobtrusively. This ensured that the recordings were as natural as can be since most of the interactants in court were unaware that they were being recorded. It must be pointed out here that this was necessary since it is one of the conditions under which I had been allowed to record the proceedings. In addition, data collected in this digital format could be stored for a long period of time in MP3 formats and accessed anytime I needed to. Moreover, it was possible to make copies of the recordings so as to ensure that 'files [were] not lost' (Dornyei 2007:139). But this format had another benefit. The recording could

be stored much more easily and in limited space as MP3 files. This allowed for easy downloads and multiple reproduction at no extra expense. Moreover, it was possible to transcribe the data in as much detail as I required because this method 'allow[s] the researcher to make repeated listening to what was said' (Eades 2010:32) and in the process the researcher is able to 'immerse' in the data. Also, as Bowern (2008:17) argues, the quality of such recordings is much better, the files can be edited easily, and it is possible to 'make spectrograms, link text and sound, and create materials without redigitizing' them. But in order to attain high quality recordings, the audio-recorder had to be placed in one spot throughout the recording session. This partly explains why recordings of the ICC cases were of a very high quality as the recording equipment was placed next to a TV set and switched it on when sessions commenced. Audio-recording also accorded the researcher time to concentrate on the flow of conversation and to direct the interview appropriately without worrying about elaborate notes'. Finally, as Jwan and Ong'ondo 2011:74 argue, this method proved useful in providing 'a more accurate rendition of the interview than any other research method'.

In spite of these advantages, this method presented a number of challenges. First, not switching the recorder on and off at the end of every session caused me to record a lot of unnecessary data such as conversations among members of the public within the court during breaks. Similarly, it resulted in recording a lot of background noise. There were two memorable incidents when this happened during the collection of this data. In the first incident, an outdoor business promotional event was taking place a short distance from the court while the audio-recording was in progress. As a result, loud music and speeches from the event could be clearly heard within the courtroom and was recorded as 'background noise'. The result was that this made

the transcription process a little difficult at such points. The second incident occurred when a commotion broke out outside of the court while court proceedings were going on. This, too, was recorded as background noise. Apparently, this is a well-known limitation of using omnidirectional audio-recorders as observed by Schilling-Estes (2007:184).

The International Criminal Court's proceedings were being streamed live from The Hague and this (live streaming[v]) presented a unique set of challenges. For example, there were interruptions of transmission signals resulting in a number of gaps in the recordings. Secondly, in the court's efforts to secure the confidentiality of some of the evidence, evidence was classified as public or confidential. As a result, any confidential evidence was redacted by way of holding the session *in camera*. Consequently, some sections were missed out altogether. On day 2 of the Hague Trials, for example, there were 8 *in camera* sessions. Johnstone (2000:104) alludes to some of these problems when she argues that important contextual information on particular aspects of the recording may be unavailable (for example evidentiary material) and that tapes do not reveal non-verbal aspects of communication. Indeed, there were times when some witnesses complemented their speech with non-verbal actions. These were, however, missed out in the audio-recording and even where notes were made on them it was not possible to reconstruct them fully. However, these limitations did not have major repercussions on the interpretation of the data since the aim of this study was not to determine the guilt or innocence of the suspects but rather to analyze how the various interactants constructed their identities through language.

Other challenges related to technical aspects such as the failure of the recording equipment to work, the researcher's occasional failure to use the audio-recording

equipment correctly, to fix the batteries correctly or by simply thinking that the record button had been switched on when it had not. In one instance this was about the labeling of files. Although I named the MP files using the most notable case in the recordings, it was not always possible to remember all other cases on the tape. So, as Dornyei (2007:139) argues, digital files, cassettes and discs can 'get mixed up' if they are not labeled immediately and appropriately. There were also problems relating to the quality of the recording itself. In spite of a wide range of audio-recording equipment on the market, it is not always possible to have high quality recording which is essential in linguistic analysis. Schilling-Estes (2007:183) underscores this point when she observes: 'Not all "cutting-edge" technologies are capable of producing recordings of high enough quality for fine grained linguistic analysis...'

4.5.4.2 Document Examination

Document examination is a formalized technique of data collection involving the examination of existing records or documents. It is advantageous as it has been found to provide 'an in-depth understanding of the phenomenon under study', 'rigour, breadth and depth' to studies (Bloomberg and Volpe (2008:72, 82 respectively)). It also provides access to data that may not be available in other forms and so provides insights into past happenings in a way that makes such data appear current. Data accessed through this method can also be independently verified and is ultimately more cost effective as compared to other data collection methods.

Some of the limitations associated with this method include the fact that, especially for court proceedings, such data may not have been stored in a manner that is suited to the needs of a linguistics researcher. Eades (1996:251 - 252), for example, contends that 'the transcript as required by the legal profession is not the

same as what linguists or conversation analysts would call 'verbatim' transcripts'. There may also be issues relating to 'cleaning up' of the data during transcription or recording which may affect the interpretation of the data. Finally, good as the data may be it cannot be a "direct representation of 'reality' or 'factual records'" (Mason 2002:107 – 108).

In reviewing and gathering data for this study, three types of documents were reviewed. First, to be examined were files of a Non-Governmental Organization (NGO) that deals with disadvantaged persons such as refugees, street children and women in difficult circumstances. A religious leader running the organization did not have the type of data that I had asked for and so asked me to go through his files to see if there was anything that could be useful. It was then that I found a rather large sample of letters by inmates. The religious leader was gracious enough to photocopy them for me. This is what constituted my prison data. The second set of documents comprised police statements and YOU TUBE recordings. Police statements were accessed through a number of lawyers who allowed me to access some of their files. The third set of documents to be examined related to the courtroom context. In this set, I examined three different types of documents, namely court rulings (available on the Kenya Law Review website) and others that were sourced directly from the High Court of Kenya. The second type of documents to be examined included general courtroom documents such as the Grey Book, The Penal Code and the Magistrate's Act. These documents enhanced my understanding of courtroom procedures and laws relating to different types of cases. With regard to the ICC cases, examined documents included summonses of the ICC to the six suspects in the Kenyan case, Judge Hans-Peter Kaul's Dissenting Opinion on the case of three of the suspects, (ICC-01/09-01/11-2 15-03-2011 1/28 RH PT). Next, I

examined newspaper articles on the ICC cases. Newspapers were particularly important in providing contextual aspects of the cases and reactions of the six suspects (for example The Standard 15/12/10 'See You at the Hague, Named Chaos Suspects Tell Prosecutor'). Last, I watched an audio-visual documentary, "The Road to the Hague". All these documents contained relevant information about contextual aspects of the different cases.

4.5.4.3 Qualitative Interviews

Quoted in Dornyei (2007:134), Kvale (1995:5) asserts that 'the typical qualitative interview is a one-to-one 'professional conversation' meant 'to obtain descriptions of the life of the interviewee with respect to interpreting the meaning of the described phenomena' (Kvale pp. 5 - 6) Silverman (2005:291 - 292) views qualitative interviewing as 'the gold standard of qualitative research' and argues that they give insights into matters that may not be accessed through other methods of data collection. Qualitative interviews also produce 'a version of truth, a snapshot of competence or of ideas elicited for a specific purpose in a particular space and time' (Duff 2008:133). According to Misra (1988:47 – 8) and Nigel and Litosseliti (2010:161), such interviews can also be flexible and can enable the investigator to glean so much information and generate both primary and supplementary data. Misra (1998) further argues that the interviewer's presence allows for 'flexible approaches, probing into an emerging new issue, while the interview guide helps to maintain a systematic coverage of the domain'. The result of these flexible approaches is that interviews 'generate a sense of rapport between the researcher and the researched' (Litosseliti 2003) quoted in Nigel & Litosseliti 2010:170). But qualitative interviews are not without limitations.

One of thedisadvantages of qualitative interviews is that they are time consuming and require persons with good communication skills. In addition, some interviewees may be so shy that they may end up producing insufficient data (Creswell (2007:133) while others can be so verbose that they end up generating a lot of less than useful data (Dornyei 2007:143-144). According to Heigham and Croker (2009:195), interviews are 'easy to do but hard to do well'. They also require researchers to 'meet the challenge of combining close analysis of interview discourse with conventional coding in order to avoid the trap of treating interviews as simply reports to be mined for information'. Moreover, some respondents are known to deceive interviewers, by displaying themselves 'in a better than real light'. Qualitative interviews are also costly and tend to rely on 'talk and text' which, as Mason (2002:83) argues, 'tends to direct our research gaze away from visual, spatial and observational social'. Furthermore, the interview process can be taxing particularly to inexperienced researchers (Creswell (2007:141). But perhaps the severest criticism against interviews obtains in the perceived asymmetric power relationship that exists between the interviewer and the interviewee. This relationship supposedly gives the interviewer control over in the interview. In fact it has been argued that the interview may end up being a one way interview. However, this is not always the case as it is dependent on the type of interview rather than by merely being an interview. For example, semi-structured interviews allow for both the interviewer and interviewee to interact on a more or less equal footing. So claims by Nigel and Litosseliti (2010:161) that data emanating from interviews is 'manufactured', 'contrived' and 'so compromised' that it should be used as a last resort should be taken with some caution.

Qualitative interviews in this study were used primarily to follow up on matters which could not be explained entirely by the data under analysis. Among others, the following three issues in the courtroom data intrigued me. First, I noted that some accused persons tended to use hypothetical questions of the form: *"If I tell this court that ... would I be lying?"* when they cross-examined their accusers or prosecution witnesses. I therefore sought to know how magistrates and lawyers treated such questions. Second, I also noted that some of the accused persons appeared to 'act out' certain roles during court proceedings and therefore wanted to know from magistrates whether this was a common occurrence in courts and what impact such 'acting' had on their judgment. Third, I needed to understand the structure of the court and the role of some court officials. All these issues necessitated qualitative interviews. With regard to prison data, I noted the tendency for some inmates to portray themselves as HIV+ persons although HIV+ persons are generally stigmatized in sections of the Kenyan society. Accordingly, I prepared a list of such issues and interviewed seven respondents who were distributed as follows: two magistrates, two court prosecutors and three lawyers (See Appendix III for all the questions). These interviews were semi-structured and were held during health breaks except for the ones with held with magistrates. I made notes from these interviews and later incorporated them into my analyses.

Whereas this method provided rich and unique information that could not be accessed from the data itself, it posed several challenges. First, it was difficult to secure appointments with interviewees. Judges were particularly difficult to meet owing to their very tight work schedules. For example, it took three visits to one of the courts before I was granted an interview with a magistrate. Even then, the interview lasted about half an hour only. Prior to this, some pre-arranged interviews

had failed to materialize because the official to be interviewed was either too busy to attend to me or was unavailable owing to commitments elsewhere. Finally, some of the challenges emanated from the bureaucratic systems in some of the institutions. Court officials, for example, would not respond to any questions unless they were cleared by the presiding judge. This led to delays in securing interviews.

4.5.5 Transcription

Researchers in linguistics and other social sciences have proposed a number of transcription strategies. The most elaborate of these is Gail Jefferson's Transcription System (See Appendix I). This system was adapted slightly for the purposes of this research since using it in the manner proposed by Jefferson would have posed many challenges. The first challenge would have been the amount of transcription details. Jefferson's transcription system uses an elaborate system[vi] . While this is an advantage, it could also be disadvantageous because 'highlydetailed transcripts are often hard to read' (Johnstone 2000:117-18). As a consequence, she proposes simpler transcripts as they are 'easy-to-read' because they 'include less specific information'. This is what I opted for.

Secondly, the detailed transcription system makes the transcription process and reading an extremely tedious exercise. Many researchers contend that transcription is an extremely time consuming exercise. Eades (2010:16), for example, contends that 'it takes at least six hours to transcribe the propositional content of one hour of talk, where the sound quality is excellent, the transcriber knows the speakers and the language and was present during the recording, and there is minimal overlapping of speech'. Matoesian (1993:52) reports that he took approximately 50 – 60 hours of work to do a detailed Conversational Analysis transcription of one hour of talk while Schilling-Estes (2007:169) states that 'even transcribing alone takes at least ten hours per hour of recorded speech'. However,

the advantage with such detailed transcription is that it allows a researcher 'to know [his/her] data thoroughly' (Dornyei 2007:246).

In view of these challenges, I opted for a lighter form of transcription as suggested by Ochs (2000:168) and Jorgensen and Phillips (2002:81) who argue, respectively, that a transcript "should not have too much information" and suggest that 'if the plan is to do a less detailed textual analysis, it will be sufficient to employ ... a simpler version Gail Jefferson's Transcription system'. Although my study is text based, I use critical discourse analysis which does not focus on minute details the way conversational analysis does. In transcribing courtroom proceedings, I, for example, limited myself to the following transcription symbols:

→	to mark a point of focus in the transcript
(( ))	this indicated the equivalent of stage directions
: [i.e.]	colon(s): extended or stretched sound, syllable, or word.
° ° [i.e.]	degree signs: a passage of talk noticeably softer than surrounding talk.
OKAY [i.e.]	CAPITAL LETTERS: extreme loudness compared with surrounding talk.
(...) [i.e.]	three dots: a significant pause
=	Equal Signs: Latching of contiguous utterances, with no interval or overlap.

The use of some of these symbols is illustrated in Excerpt 4 below.

EXCERPT 4

20. **PROSECUTOR:** You have been asked several questions as to how you
21. **IO:** = Yes, your honour.=
22. →**PROSECUTOR:**= What was your *strongpoint* or points that made you
23. Link the offence to the accused person?
24. →**IO:** My *strong evidence* is that the accused person identified at the time of
25. the Commission of the offence when he was seen by one of the complainant
26. in this case, Julietta, who went on and positively identified him at KPS where
27. an Identification Parade was conducted by Chief Insp. Makini and

28. information from my informer revealed very well that he was there at the
29. scene and committed the said offence jointly with others who two were tried
30. in Matopeni Law Courts and about two are still at large and investigations
31. continue, your honour. (...)

In general, the transcription was done in conformity with Dornyei's (2007:249)

partial transcription. As a result, I took 'notes while listening to the recordings [and]

mark[ed] parts of the data ... that warrant[ed] more elaborate subsequent analysis'.

This meant that at the beginning, my transcriptions were limited to what I considered

to be useful to my study.

4.5.6 Translation of Data

Under Kenyan law, courtroom proceedings may be conducted in either

English or Swahili. However, Article 50 (2) (m) of the Constitution of Kenya

(2010:35) allows the accused person 'to have the assistance of an interpreter without

payment if the accused person cannot understand the language used at the trial'. As

a consequence, court proceedings were conducted in a number of local languages.

However, English and Swahili were the preferred languages. Many segments of the

proceedings were therefore translated into English.

Several steps were followed in the process of translation. First, significant

segments of the proceedings were freely translated into English. Thereafter, the

translated versions were forwarded to a Swahili PhD candidate with a bias for

interpreting to validate my translations. This process ensured a more acceptable

translation of the proceedings and especially of important lexical items in the texts.

This approach was especially necessary owing to the fact that some of the

interpretations of the data were based on translated versions of the proceedings.

In the course of carrying out the translation, particular attention was paid to

key words which were crucial for analysis. For example, in one instance a

complainant stated: '*kulikuwa na majibizano*'. I translated this as, 'There was a

verbal exchange'. In the context of the discussion, especially with regard to the use of the English BNC corpus to analyze the meanings of the expression, it was necessary to be sure that *'majibizano'* could be accurately translated as 'verbal exchange'. Fortunately, in many instances, issues of this kind did not arise as some of the participants constantly switched their codes from English to Swahili and vice versa and thus resolved some of the difficulties.

The format used for the translation was the 'original and parallel free translation' format proposed by Duranti (1997:156). In this format, two versions are placed next to each other, in an attempt to maintain an horizontal parallelism as illustrated in Excerpt 5.

EXCERPT 5

32. **PROS**: Ni wangapi?	**PROS**: How many are they?
33. **CW2**: Ni wawili.	**CW2**: They are two.
34. **PROS**: Wawili. Unawajua?	**PROS**: Two. Do you know them?
35. **CW2**: Ndifyo. (...)	**CW2**: Yes.
36. **PROS**: Sasa hao wawili huyu ako upande hii	**PROS**: Now those two, the one on
37.	this side.
38. **CW2**: Ndio.	CW2: Yes

As Duranti (1997:156-157) argues, this method of translation makes it possible for the reader to compare the original text with the translation and to maintain the unity of the text in each language.

4.5.7 Data Analysis

The data in this study were analysed using the corpus linguistics method and the Critical Discourse Analysis method. In the sections that follow, I explain how the corpus linguistics method was used to analyze the data. The CDA method has been discussed in detail in Chapter Three therefore repeating it here would be redundant.

4.5.7.1 The Corpus Linguistics Method

Baker (2010:93) explains that the word *corpus* is Latin for *body* and that a corpus is a body of texts and McEnery and Wilson (1996:1) have defined corpus linguistics as a 'methodology'. Corpus linguistics is therefore a methodology that is

used in the analysis of texts. The analysis can be conducted at three levels, namely: key word analysis, word lists, and concordance listings. These analyses are usually supported by software programs such as *WordSmith Tools* (Scott 2007).

The analysis of key words in a corpus (that is, words which are outstanding because of having a much higher frequency of occurrence) entails generating the list of words in a corpus and arranging them in order of the frequencies of each. These lists are generated using software such as *WordSmith Tools*. Using the *WordSmith ToolsVersion 5* (Scott 2010), word lists for police data and prison data were generated and then compared with word frequencies in other corpora such as FLOB, the Lancaster/Oslo/Bergen Corpus of English (LOB), the British National Corpus (BNC) and the International Corpus of English for East Africa (ICE, EA). The findings of each are tabulated in Table 4.3. The table shows the word lists for prison data.

Table 4.3 Top 10 word frequencies in Prison Letters

N	Prison Letters
1	I
2	to
3	the
4	and
5	my
6	you
7	in
8	of
9	me
10	for

Thereafter, these analyses were compared with similar findings from other corpora and then interpreted in relation to the identity question.

The second step in corpus linguistics analysis is to generate and analyze concordance listings of key words under analysis. Concordance lines or listings are produced using a concordance program which 'searches a corpus for a selected word

or phrase and presents every instance of that word or phrase in the centre of the computer screen, with words that come before it or after it to the left and right' (Hunston 2002:39). Once the concordance listings from a given corporus have been generated, they can be sorted in an alphabetical order or in the alphabetical order of the last letter in each word (Kennedy 1998:247), on the basis of text, tag or any other available category (Tribble 2010:175) or on the order of first occurrence of the type in the corpus (Hunston 2002:67). In addition, the words can also be sorted by examining words which occur to the left or right hand side of the node or on the basis of likeness so that 'the lines that are like each other in some way appear next to each other' (Hunston 2002:40).

The data analyzed in this study were sorted using different criteria such as thematic similarity, semantic similarity, and collocational similarity. For example, the following concordance listings for 'I am' were generated from prison data.

N   Concordance

```
11 ugust. They did not know where I am since was I arrested in
12 e and concern you have for me, I am kindly appealing before
13 ow he is going to help me when I am in stressed by life prom
14 need Christ as my saviour. and I am orphane I have no mother
15 t lost my life again. that way I am asking for your help Rev
16 th you. Oh! poor me. Oh! Fathe I am asking for your help. by
17 my Reverend. remmber Reverend I am orphane Reverend. I have
18 d have been here from October. I am sincerely pleading for y
19 11 I am an Angolan National at I am at Kitisuru Remand Priso
20 you? I hope you are fine. Well I am an Angolan National at I
21 ONYMIZE THIS LETTER) Tell them I am now in Kilaguni Area Rem
22 FOR ASSISTANCE Dear Reverend, I am the above named person a
23 ted due to the poor diet. That I am physically and psycholog
24 My name is Phylis M. Mary and I am 29 years old. I have a s
25 u in the name of Jesus Christ. I am happy to write to you th
26     fficult for me in Kazi Nyingi. I am HIV +ve and live on drug
27     ase gone over on march and now I am free congratulation REVE
28     of help during time of my case I am glad to inform you that
29     ion and Kapyemit sub location. I am a mother of three childr
30     rated with my husband in 1992. I am a mother of two kids. I
31     a majina ni JENI WANGOI WENWA: I am 34 years old & married
92.         I am a mother of two kids. I am here in Lang'ata serving
33,         and I'm desperate. Reverend, I am a singer,I sings gospel
34     Y Apeal on 18th june 2006. Now I am requesting Daima Organis
35     od bless you. REVEREND Francis I am ashamed to inform you th
36     feet again via these ventures I am considering. I proof tha
37,         with nobody else to turn to, I am appealing to you to help
```

Sorting these concordances on a thematic basis produced the following concordance listings:

Residence

```
11                       Tell them I am now in Kilaguni Area Rem
12 ughters aged 6 and four years. I am currently incarcerated a
13     I am a mother of two kids. I am here in Matopeni serving
14   I am an Angolan National at  I am at Kitisuru Remand Priso
15 efore I was brought to prison. I am currently incarcerated a
16 ughters aged 6 and four years. I am currently incarcerated a
```

Health status

```
17 not sure where to start life. I am positive, my life s not
18 fficult for me in Kazi Nyingi. I am HIV +ve and live on drug
```

Personal and National Identity

```
19 you? I hope you are fine. Well I am an Angolan National at I
20          ASSISTANCE Dear Reverend, I am the above named person a
```

(Data from Prison Corpus)

Sorting concordance listings on the basis of a semantic similarity entailed placing concordances with similar meanings together. This method was particularly useful in analyzing the meanings of words that reflected lexical struggles. For example, meanings of the words 'enquiries' and 'investigations' were analyzed by inferring the following concordance listings among others.

N Concordance Enquiries

```
109 has continued to receive a range of enquiries on charity formation,
110 uraging because of the erm, S and E enquiries, were actually done on
111 s on waste recycling. Many of those enquiries coming from
112 on, has seen a dramatic increase in enquiries on waste recycling.
113 he library, many from overseas. The enquiries have been from those in
114 at number. I wrote them down, trade enquiries, then I (unclear)
115  their enquiries er deal with their enquiries and then tell them to
116 u're to ha-- you're to handle their enquiries er deal with their
117 d cope erm (pause) twenty four en-- enquiries, that's two adverts.
118 n two foot high capitals saying for enquiries ring this number
119  their enquiries er deal with their enquiries and then tell them to
120 u're to ha-- you're to handle their enquiries er deal with their
121 ink it'll be worth making some more enquiries? (SP:KLSPSUNK) Yes.
```

N Concordances on Investigations

```
2 hildren have been subjected to tests and investigations by doctors,
3 hey can involve extensive interviews and investigations throughout
4 vely discussed in a range of surveys and investigations. In the priv
5      d in mind were problem-solving and investigations, collaborat,
6 nal offence not to comply fully with any investigations, and it will
7  or arrange for the carrying out of, any investigations. # (6) # On 7
8 t or arrange for the carrying out of any investigations. On 7 Septe
9  Christmas.' On the basis that there are investigations still going a
```

```
10 mental monitoring and impact assessment investigations in rivers,
11 e valuable than wide ranging background investigations. The
13 sing American data. The results of both investigations suggested t
14nimal research altogether. The so-called investigations of laboratori
```

In addition to determining the meanings of words, collocations of node words were used to identify honorifics that were used by different parties in the ICC courtroom data to address the suspects in court. The example given below outlines the honorifics that were used to address one of the suspects:

Suspect addressed as Ambassador
```
56 ss (…) alleges that Ambassador (NAME) had defactual contro
57 ir characterization Ambassador (NAME) of course is conveni
58  does not report to Ambassador (NAME) ,their characterizat
59  criminal plan that Ambassador (NAME) was part of, it is 1
60   between allegedly Ambassador (NAME), (NAMEII) (NAMEII) and M
61   is vexed tangibly Ambassador (NAME) your honours you hav
62   1 of February and Ambassador (NAME) this in particular,
```

Suspect addressed as Mr.
```
63 pite detailed intelligence Mr. (NAME) and Mr. mmm also ens
64 r Mr. Ali's command and at Mr. (NAME)'s request were compl
65  for hire, the defense for Mr. (NAME) has provided a state
66 this minutes are authentic Mr. (NAME) would have had ample
67 meeting of 23rd March 2002,Mr. (NAME)'s defense relies in
68 hat merit closer scrutiny, Mr. (NAME) and the Nairobi memb
69   resentation of evidence, Mr. (NAME) defense even acknowl
```

Suspect is neither addressed as Mr nor Ambassador

```
70 starting in late December 2007 (NAME) and (NAMEII) togethe
71 t on around 30th December 2007.(NAME) held a meeting in th
72 oth (NAMEII) (NAMEII) and tray (NAME) were involved in thi
73 ed in Nairobi and (NAMEII) and (NAME) were present .as pro
74 ization function? (NAMEII) and (NAME) collaborated with Al
75 to the presidential elections, (NAME) and (NAMEII) organiz
```

The use of these honorifics were thereafter analysed in terms of who used them and why they used them in the way that they did.

The analysis of such concordance listings is a systematic process. Tribble (2010: 178-183), outlines Sinclair's (2003) seven steps that need to be followed in the analysis of concordance lines. The seven steps are: Initiate, Interpret, Consolidate, Report, Recycle, Result and Repeat. In the first step the researcher looks for patterns to the right or left of the node which have some kind of prominence and which may be worth focusing on in order to assess their possible salience to the

analysis in question. Next, repeated words are examined with the view of forming a hypothesis that may link them or most of them. Thereafter, additional patterns are sought but with a focus on patterns that are away from the node. This is done in turns until all patterns have been exhausted. After exhausting the patterns, the formed hypothesis is revised so that 'it is as flexible as can be and as strong as it can be'. This is then followed by 'a further rigorous consideration of the extended contexts in which the node is found' (Sinclair 2003: xvii) quoted in Tribble (2010:180). These observations are then recorded and incorporated into a fuller report. In the last step, Sinclair (2003) proposes a repeat of the whole process with more data.

Although Sinclair (1999), quoted in Baker (2010:107), proposes that such listings should be analysed in batches of 30 lines at random, then another 30 lines and yet another 30 lines until nothing significant is found, I limited my analysis to the first 200 concordance lines from the whole list of concordance listings. It was important to limit the selection of concordance listings to this number since the British National Corpus from which I used to infer the meanings of some of the words is much larger (consisting of over 100 million words) and some of the key words that I analyzed produced hundreds of concordance listings (See Appendix VI). If all concordance listings of selected words, were to be analysed, the analysis would have gone on for a very long time since each words produced hundreds of concordances. In contrast, in instances where concordance lines from the ICE, EA, were used, all concordance lines of key words were analysed because the corpora is much smaller and concordances for some of the key words were often few. According to Schmied (2012:251), the ICE, EA corpus 'is not really sufficient for lexical and collocational research, where a much larger corpus would be necessary'. In all cases, all concordance listings falling below 200 listings were analyzed.

4.5.8 Selection of Data for Analysis

This study adopted a judgemental sampling method. This method 'allows us to choose a case because it illuminates some feature or process in which we are interested' Silverman (1993:387). Accordingly, after all the necessary transcriptions had been done, and I had listened to all the audio-recordings, I chose only those cases that were 'information rich' in so far as they provided answers to my research questions. In addition, I selected cases that were of a substantial length that would lend themselves well to detailed analysis. Some segments were too short to be of any significant analytical value (See Appendix V). As a result, some cases appear to dominate in the illustrative materials provided in the analyses. Second, in cases in which there was translated data, I only used interpreted material and ignored material presented in mother tongue.

4.6 Credibility of the Research

In order to understand how identities are constructed within legal settings, I used three different methods of data collection. These were: document examination, audio-recording and qualitative interviews. These enriched my interpretive framework. In addition I enjoyed the benefits associated with triangulation of methods such as being able to 'produce a more accurate, comprehensive and objective representation of the object of study' (Silverman 1993:369).

The credibility of the study was also ensured by observing several criteria. First, I collected the data over a five-month period divided into three distinct phases. The first three months entailed audio-recording of courtroom proceedings. This was followed by transcription, translation and initial analysis. The second phase lasted about two months and comprised a further audio-recording, document examination and further transcription and analysis. In the third and final phase, I embarked on qualitative interviews to follow up on emerging issues in the analysis. For example,

having analysed courtroom data, I found that accused persons tended to use conditional formulaic questions of the form: *'If I tell this court .... will I be lying?'* and also tended to accuse their accusers of impropriety and therefore followed this up in qualitative interviews to find explanations from magistrates, judges, lawyers, and prosecutors. Similarly, when I found that inmates tended to avoid telling the criminal incidents that led to their detention, I sought to find explanation through qualitative interviews. This period lasted about three weeks. It is important, however, to note that the three phases outlined in the foregoing did not occur in a linear manner. It instead involved a lot of back and forth movement during the duration of the PhD program.

In order to keep my biases to the minimum, I relied on feedback from some of the respondents. These were mainly the 'gate keepers' to some of the data that were collected. For example, after analyzing prison letters, I sent copies of my analyses to the religious leader who had granted me access to them. I did this in order to allow the religious leader and other 'gate keepers' to read and raise any issues with my analyses. In spite of this, I did not receive any feedback. Although the original purpose of seeking "member checks" was not met, I took it to mean that the said parties were in agreement with the analyses and did not have any objections with my analyses.

Unlike quantitative research where results of research can be verified using statistical means, in qualitative research, dependability of research results can be established by keeping track of data collection and analysis. To this end, I stored all data in word document, audio-recorded, and transcribed formats. This study has also been subjected to various levels of validation. Some aspects of this study have been presented at conferences, peer reviewed and published as journal articles. For

example, I presented a paper "Language and the Construction of a Positive Identity among Inmates in Kenyan Prisons" at the International Association of Forensic Linguists (IAFL 10) conference at Aston University, UK, in 2011 and at the 7th Annual International Conference of Moi University (2011). The presentation in Aston was subsequently published as Conference Proceedings which were peer reviewed (See Satia 2012). Similarly, at various periods during the course of this study, I discussed and received invaluable suggestions from my supervisors and this was incorporated into the final work. Third, I have also made presentations at various seminars on various aspects of my research and have received invaluable feedback from peers and faculty and their input has shaped my final work. All these steps have contributed towards the validation of this study.

4.7 Ethical Considerations

A number of steps were taken to ensure that this study met ethical requirements. These steps entailed three distinct phases. The first step was the pre-research phase, second, the research phase and finally, the post research phase.

Before embarking on data collection, I made enquiries at the High Court of Kenya about the possibility of collecting courtroom data. I was, accordingly, advised to make a formal application for authorization through my Head of Department. This was done and the Registrar of the High Court subsequently granted the authorization (See Appendix IV). Thereafter, I visited four courts to formally introduce myself and to explain the purpose of my research to relevant court officials. Although a letter authorizing me to collect data had been copied to all the courts that I had requested to visit, one Senior Principal Magistrate (SPM) declined to grant me permission to collect data in courts under her jurisdiction. But having been allowed access to seven courts, I removed the court from my list of courts to visit.

During the data collection phase, I ensured that I adhered to ethical practices. For example, when I was ready to commence audio-recording of courtroom proceedings, I liaised with the Executive Officer in one of the courts about my intention. He in turn consulted the SRM who granted authorization on two main conditions. First, that the audio-recording would not interrupt the proceedings and that the data so collected would be handled in the strictest confidentiality. I assured the court of my interest to observe the conditions and to prove that I was keen to maintain the anonymity of the data, I recorded a very short segment of the proceedings and used it to demonstrate how I was going to anonymize the data. I submitted my sample of transcribed and anonymized data to the Executive Officer (See Appendix II) who thereafter formally consented to my audio-recordings. Later, I formally introduced my Research Assistant to the court so that she could collect data on my behalf.

In the post-research phase, I sent texts of written samples of my work to the religious leader and a magistrate with a view of having them respond to any matters therein. This was in response to Bowern's (2008:151) suggestion that 'subjects in a research should be given the opportunity to listen to the whole recording (or to read the transcript) in all circumstances'. However, no response was received and I considered this to be a sign that they were happy with the analysis.

In addition, in keeping with ethical research practices, the data used in this study were collected and stored in a manner that ensured the confidentiality of the parties involved in the courtroom cases, in the prison data and in the police statements. A number of steps were taken to maintain the confidentiality. The first step was with regard to access and storage of the data.

After collecting the data, it was first transcribed before being stored. But because I had different sets of data, I used different methods to maintain their confidentiality. Letters from inmates and police statements were typed and stored in different files. This was followed by the process of anonymization of the data. This process was effected through an MS Word device which allowed me to find words, names, dates etcetera and then by applying a command, such identified words, names and dates would all be replaced at the click of the mouse. This process was done systematically beginning with names of people, places, file numbers and dates and was repeated several times on both prison letters and police statements in order to ensure maximum anonymity.

This process was followed by labelling of each of the data sets as Anonymized Police Statements and Anonymized Prison Letters respectively. After that, word files were converted into a text file format. Saving the data in the Text files format was necessitated by the need to use the *WordSmith Tools* for analysis (The software only processes texts saved in Text File format). After this had been done, the files were saved on a personal computer and protected using a password.

With regard to audio-recorded courtroom data, the data were first transcribed into a word document. This was followed by the anonymization process in the same manner used to anonymize both prison letters and police statements. The main difference was in the anonymization of names. Names of the parties involved in the various cases were anonymized along the institutional roles that the respective interactants played. Accordingly, accused persons were anonymized as ACCP 1, ACCP 2, ACCP 3, that is, Accused Person 1, Accused Person 2 and Accused Person 3 respectively. Witnesses were anonymized as DWITN 1, (that is, Defence Witness 1) DWIT 2 etc. or PWIT 1, (Prosecution Witness 1), PWIT 2, PWIT 3 etc. Lawyers

were similarly anonymized. A defence Lawyer was identified as DFL1, DFL2 DFL 3 etc. or PL1, PL2, PL3, etc. (that is, Prosecution Lawyer).

The next step was labelling of files. Each file was labelled on the basis of a significant case in each of the collection of cases. Some of the labels were: The Bicycle Theft Case, The Water Lily's Case, GBH case, The Lindi Robbery case etc. This enabled me to access key cases easily whenever I needed to. One shortcoming of this method, however, was that I could not always locate other cases as easily.

4.8 Conclusion

This chapter has provided the methodology used in this research. Other than locating this study within the constructivist paradigm of qualitative research, this chapter has outlined the research design and pertinent issues relating to the location of this study. The better part of this chapter has been on the various aspects of the data used in this study. For example, this chapter has assessed the strengths and limitations of audio-recording, document examination and qualitative interviews as methods of data collection and has presented a clear method about the analysis of data using the corpus linguistics method. The last part of the chapter has dealt with the sampling method, validation of the study as well as ethical considerations.

The next three chapters present both data and analyses. The three chapters: Chapter Five, Chapter Six and Chapter Seven examine lexical aspects, grammatical aspects and Style, Knowledge and Image Repair respectively.

CHAPTER FIVE

LEXICAL CHOICES IN IDENTITY CONSTRUCTION
5.1 Introduction

Using corpus linguistics analyses, this chapter examines how identity is constructed through lexical choices. The chapter shows how concordance listings have been used to index the identities of interactants in the courtroom context, police context and the prison context. This is done by analyzing key words in both prison letters and police statements and also by generating their concordance listings. Thereafter, the chapter focuses on naming and honorifics and how each of these constructs the identities of the persons named. Finally, the chapter explores the various ways through which lexical choices aid in constructing identity. Some of the ways highlighted in this chapter include struggles over lexical choices, the selection of contrasting lexical items, the use of adjectives with positive or negative connotations, overwording as well as the use of euphemisms.

Most of the analyses in this chapter are supported by *WordSmith Tools (Scott 2010) Version 5* software. Using the software, I analyse key words and generate key word lists and concordance listings of selected lexical choices from the corpora under study. Some of these analyses are then compared with concordance listings from other corpora such as the British National Corpus (BNC), the International Corpus of English (ICE-EA), the Lancaster - Oslo/Bergen Corpus of British English (LOB), and The FLOB Corpus of British English.

5.2   Top Word Lists

While reading letters from inmates I was struck by the apparent high frequency of the personal pronoun 'I'. I therefore generated the key words in both prison data and police data and found the following results:

Table 5.1 Top 10 word frequencies in Prison Letters and Police Statements

N	Prison Letters	Police Statements
1	I	the
2	to	to
3	the	I
4	and	and
5	my	of
6	you	a
7	in	was
8	of	in
9	me	on
10	for	that

In prison letters, 'I' ranked top on the list, 'my' was in 5th place, 'me' was 9th and 'am' was in 19th place. These results are significant because they seem to contradict findings of top words in various corpora. Evidence from available literature shows that 'grammatical words are normally the most frequent words in any corpus' (Baker 2010:103). More specifically, Wetherrel *et al.* (2001:118) contend that 'it is often claimed that the word 'the' is the highest frequency word in the English language'. This is further illustrated in the following table 5.2 [vii] which shows the most frequent words in various corpora.

Table 5.2 Top 10 word frequencies in LOB and FLOB and ICE, EA*

N	LOB (1961)	FLOB (1991)	ICE, EA	BNC
1	the	the	the	I
2	of	of	of	you
3	and	and	to	it
4	to	to	and	the
5	a	a	in	and
6	in	in	a	a
7	that	that	is	to
8	is	is	that	that
9	was	was	for	yeah
10	it	for	I	oh

(*This table combines data from Baker Evison (2009:126) and the ICE, EA)

With the exception of the BNC corpus, 'the' ranks highest in three different corpora. That 'I' ranks high in the BNC corpus is explained by Evison (2011:126) as arising

from the fact that the data were derived from conversations. She, further, argues that 'the first and second person pronouns 'I' and 'you' occur higher up the list for intimate conversations and lower down that for more academic conversations'.

Similarly, 'I' appears 3rd in rank in police statements. This is significant given that 'I' is not one of the top ten words in the LOB corpus and the FLOB corpora and it is ranked 10th in the BNC corpus. This unusually high frequency of 'I' in both prison letters and police statements appears to be motivated by the fact that each of the data sets are about personal requests and experiences of the inmates and suspects, witnesses and complainants respectively.

Concordances for 'I' were then generated and the results showed that 'I' collocated most frequently with 'am' to its right. This was important as the words collocating with it, especially to its right, would reveal the social identity of the interactants in question. The concordances were then sorted along the following variables: age, marital status, residence, emotional state, health status, name and nationality in conformity with Riley (2007:88 – 89) and Wetherrell *et al.* (2001:122). This produced the concordance listings indicated below.

Concordance Listings for 'I am' in Prison data

Age
```
1  a majina ni JENI WANGOI WENWA:  I am 34 years old & married b
8   My name is Phylis M. Mary and  I am 29 years old. I have a s
16 WAFULA:REQUEST FOR ASSISTANCE.  I am the above named 36 year
```

Family status
```
6  ion and Kapyemit sub location.  I am a mother of three childr
22 ng you for special assistance.  I am a single mother with fou
28 u can.   Yours MIRITIMI WERU NB  I am a single mother, my husb
2  rated with my husband in 1992.  I am a mother of two kids. I
42 need Christ as my saviour. and  I am orphane I have no mother
45 my Reverend. remember Reverend  I am orphane Reverend. I have
```

Occupation
```
5  , and I'm desperate. Reverend,  I am a singer, I sings gospel
```

Residence
```
38                      Tell them  I am now in Kilaguni Area Rem
```

17 ughters aged 6 and four years. **I am** currently incarcerated a
3   I am a mother of two kids. **I am** here in Matopeni serving
37   I am an Angolan National at **I am** at Kitisuru Remand Priso
23 efore I was brought to prison. **I am** currently incarcerated a
17 ughters aged 6 and four years. **I am** currently incarcerated a

Health status
25 not sure where to start life. **I am** positive, my life s not
9 fficult for me in Kazi Nyingi. **I am** HIV +ve and live on drug

Personal and National Identity
36 you? I hope you are fine. Well **I am** an Angolan National at I
40   ASSISTANCE Dear Reverend, **I am** the above named person a

(Data from Prison Corpus)

Concordance Listings for 'I am' in Police Statements.

Knowledge of Statutory Requirements
1 t is in English language which **I am** able to understand. I ma
2   which is false or untrue then **I am** liable to prosecution. S
16 tement is in English language. **I am** making it knowing that I
56 t is in English language which **I am** able to understand I mak
63 g I know to be false or untrue **I am** liable for prosecution.
66 nt is in English language that **I am** able to understand. I ma

Occupation
5 nd a Pokot by tribe. Currently **I am** working with post Bank K
12 ied with a number of children. **I am** a farmer within Trans Nz
15 ble for prosecution. Statement **I am** the above mention D.O at
18   p in Kakamega town. Currently, **I am** a businessman flying bet
20 above are my full particulars. **I am** an employee of Kenya Pos
42 n adult married with a family. **I am** employed by Mafuta Asili
60 children and Kikuyu by tribe. **I am** a sign written by profes
61   to state. STATEMENT 15 STATES **I am** the above police officer
53 ied with a number of children. **I am** a housewife and a peasan
41 e adult married with a family. **I am** the village elder of Che

Gender
8 ssistance. STATEMENT 24 STATES **I am** the above named female a
59 s follows: STATEMENT 16 STATES **I am** the above named male adu

Ethnic Identity
11   for prosecution. Statement **I am** the above mentioned
21 10/2/2009. STATEMENT 30 STATES **I am** the above named male Kis
22 STATEMENT 34 STATES AS FOLLOWS **I am** the above named Nandi fe
57 and belief. States as follows: **I am** the above Bukusu male ad
64 IGNED. SIGNED BY: Juma Hassan **I am** the above mentioned Kiku

Name
27 at is all. STATEMENT 26 STATES **I am** the above named inspecto
31 9 STATES AS FOLLOWS IN ENGLISH **I am** the above mentioned offi
33 8 STATES AS FOLLOWS IN ENGLISH **I am** the above mentioned lady
37 by CPL Sang. STAEMENT 8 STATES **I am** the above named person,
38 tu ningependa kuelezea. STATES **I am** the above named person,
39 te. Moses. STATEMENT 13 STATES **I am** the above police officer
40 h to state. STATEMENT 9 STATES **I am** the above named person P

```
 43 STATEMENT 3 States in English I am the above mentioned pers
```
Age
```
13 EMENT 22 Statutory declaration I am over 18 years of age. I
51 EMENT 18 Statutory declaration I am over 18 years of age. I
55 EMENT 19 Statutory declaration I am over 18 years of age and
65 EMENT 17 Statutory declaration I am over 18 years of age and
```

(Data from Police Corpus)

The concordance listings for 'I am' reveal various social identities of the inmates. Just by looking at them we get to know that the inmates belong to certain age groups, they belong to certain families and are involved in certain economic activities. They also reside in certain geographical space, are of a certain health status, and are identified by name or nationality. These varied identities corroborate positions which argue for the fluidity of identity. Rector and Grad (2008:5), for example, contend that 'current conceptions of identity stress the fluidity, complexity and context sensitivity of identities'. This view is supported by Goffman (1969), Mead (1934), Strauss (1969) and Berger and Luckmann (1966). The concordance listings cited above, therefore, reveal that the inmates are not one aggregate entity but instead exhibit multiple identities. The following social identity markers: health status, family status, economic status and personal and national identity were analysed and the results of the analysis are discussed in subsequent paragraphs.

It was significant that a number of inmates foregrounded their HIV+ and orphan status. This was unusual because HIV + persons continue to face stigma in Kenya and other nations. Li and Hui (2008:18) presenting a similar situation in China, for example, state that HIV/AIDS patients face 'discrimination and stigma'. A qualitative interview with a medical personnel working at a health facility in one of Kenya's prisons revealed three possible explanations for patients openly declaring their HIV + status. First, it was explained that as a matter of procedure, new inmates undergo a medical examination to ascertain their health status. During such

screening, they are expected to specify what diseases they suffer. Accordingly, they are required to declare their HIV status. During such screening, the inmates are usually cautioned that if they do not state such facts at the time, they would not be allowed to do so later. Second, inmates who are found to be suffering from serious conditions such as HIV/AIDS, TB and cancer are subsequently exempted from performing certain types of manual tasks[viii] during their incarceration. Instead, they are accorded what are considered to be 'privileges'. These include more than normal portions of food and soap (for HIV+ and AIDS infected inmates). Such privileges are not available to other inmates[ix]. Third, foregrounding one's HIV+ status was considered to be a means of 'seeking sympathy'. This last reason appears to be the more plausible one in the case of the inmates as they wrote the letters to their benefactor seeking his assistance. Apparently, declaring their HIV + status appeared to enhance their chances of securing a favourable response. This may also have been the reason why some inmates openly declared their orphan status.

In contrast, some inmates identified themselves by their occupations and as Li and Hui (2008:192) argue, specifying the inmates' 'specific job function' implies that they 'are important in society' and 'have distinct talents and abilities, worthy of mention'. This positions the inmates positively as they are consequently viewed as persons who can fend for themselves and are not merely persons in need of assistance. This aspect has been discussed in more detail in Chapter Six, Section 6.7 and will therefore not be discussed further in this section.

Several arguments may be advanced to explain why the identities of the inmates were constructed in this manner. First, this appears to emanate from the way police officers record statements. According to English and English (2003:598), 'when an investigating officer has visited a scene of crime and has made preliminary,

on-the-spot enquiries, he will submit a crime report (by whatever means are the order of the day within the force) which provides details which form a permanent record of the crime'. Of particular significance is the requirement that the investigating officer records the 'name and address of aggrieved person, date and place of birth, occupation and sex'. It would, therefore, seem that in responding to each of these questions, an interviewee inevitably uses the *'I am ...'* construction. The inmates' regular use of the structure in their reports may be assumed to have been derived from police statements. Alternatively, this could have resulted from their interaction with police officers, either as accused persons or as inmates. Accordingly, the use of the 'I am' construction indexes a police institutional identity. Secondly, it also appears that some of the letters were written on behalf of the inmates by prison warders. Indeed this appears to be a plausible reason owing to the fact that one of the letters had a visible trace of a warder's input. The letter, L9 had a clear inscription, 'Censored by SWO (NAME)' and was signed. Therefore, following Olsson (2004:72 – 75), the presence of the *'I am ...'* structure may be indicative of dual authorship. It is possible that the inmate dictated the contents of the letter to a prison warder who then wrote the letter. Third, Giles' (1979) accommodation theory partly explains this. It is likely that the identities of the inmates' are constructed in this manner since they may be accommodating to the more powerful institutional discourse as a result of exposure to the institution. Finally, given that 'speakers telling life-story narratives use "I"- centred narrative discourse' (O'Connor 2000:39), this may be regarded as a product of the "I"- centred narrative.

Concordance listings for 'my' were also run but a discussion of the resulting concordance listings will be discussed in Chapter Seven section 7.3.What I wish to

address in the next section is how naming is used as a means of identification within the courtroom.

5.3 Naming, Honorifics and Identification

Books on speech making such as Sproule (1996) recommend that an introductory speech should, among other things, give the name of the person being introduced. The importance of one's name is emphasized through a caution to the reader that care must be taken to ensure that the person making the introduction pronounces the name of the speaker correctly and uses appropriate honorifics. Indeed, naming is widely used in identifying persons or groups and as Edwards (2009: 35, 48) argues, names are significant because some have 'powerful religious significance' and may be 'markers of strength, or as defences against waywardness'. At the group level, names are used to identify in-group members and out-group members and sometimes tend to mark ethnocentric positions of communities.

Within the courtroom, one's name acquires even greater significance since suspects ought to be identified correctly. This appears to be the one context where 'identity as sameness' (Ricoeur1992:116) acquires greatest significance. This can be attributed to the fact that courts are keen to establish whether or not the person appearing before it is the same person as the one who is alleged to have committed the offence under adjudication. In the event that a different person presents himself to the court on behalf of the actual suspect, court proceedings cannot continue. This message was powerfully illustrated in a traffic offence case in which a suspect's employee appeared in court on behalf of his employer. When the presiding magistrate discovered this anomaly, she immediately directed that the actual suspect be brought to court. The case was stopped immediately. Inevitably therefore, court sessions begin with the identification of the accused persons by either the

complainant or witness(es) in a process that focuses on the suspect's name, age, occupation, residence and ethnicity among others. In subsequent hearings, any witness appearing to testify against the accused person is first asked to identify the suspect. In this latter identification process, a witness mentions the suspect's name (if he/she knows it), the suspect's mode of dress, the suspect's location in court and any other features that can correctly identify him or her. Once this has been established, the court then 'imposes' institutional identities on the parties involved. These 'imposed identities' (Pavlenko & Blackledge 2004:21) are generally derived from the roles of the interactants in the trial. Excerpt 6 demonstrates this identification process.

EXCERPT 6

39. →**PROS**: Huyo ako upande hii, *ni namba moja*. **PROS**: That one on this side is
40. number one.
41. **CW2**: Ndifyo. **CW 2**: Yes.
42. **PROS**: Na mwenye ako upande hii ingine **PROS**: And the one who is
43. on this other side
44. →*ni namba mbili*, eh? is number two, yeah?

The new identities in this extract are Number One (line 40) and Number two (line 44); 1st Accused person and 2nd Accused person respectively in courtroom parlance. Witnesses may be Police Witness 1 (PW1, PW2, PW3 etc. if they are police witnesses) or Defence Witness 1(DFW1, DFW2, etc. if they are defence witnesses). Expert witnesses, on the other hand, are identified on the basis of their professional roles such as ballistic expert, doctor, nurse etc.

There were, however, three notable differences in the way that police officers/expert witnesses and lay accused/witnesses were introduced in the courtroom. Whereas lay persons were subjected to a series of questions in order to establish their identity, experts and police officers were merely asked to introduce

themselves as illustrated in Excerpt 7. In this excerpt, a police officer, PO, is asked

to introduce himself.

EXERPT 7
45. →**PROSECUTOR:** Introduce yourself to the court.
46. **PO:** Am number XXXXX
47. **PROSECUTOR:** X? X?
48. **PO:** Double XXXX.
49. **PROSECUTOR:** Hmm...
50. **PO:** Chief Inspector of Police, currently OCS Matopeni Police Station.(...)
51. **PROSECUTOR:** I'd like you to...=
52. **CLK:** =The name.
53. **PROSECUTOR:** Did you say the name?
54. **PO:** Chief Inspector Maarifa Sabuni.

This example, which is typical of the introductions of police officers, captures

the following details: the witness's police force number, rank and name and the

officer's work station. Occasionally, duties assigned to them or the role they played

in the case at hand would also be mentioned. 'Expert witnesses' are similarly asked

to introduce themselves. I found that in the local Kenyan court trials, the suspect's

or witnesses' personal names were used very rarely. In contrast, suspects' and

witnesses' names were prominent in the ICC trials and both suspects and witnesses

were asked to 'introduce' themselves. In one instance during the Confirmation

Hearings, the Presiding Judge, for example, read the witness his rights and

obligations and simply said to him: 'I will ask you to identify yourself'.

There are a number of reasons that may be offered to explain these different

introductions. First, the difference in the introductions between lay persons and

experts in local cases may be interpreted along the in-group out-group categorization

of Tajfel (1978). According to this categorization, members of the in-group are

'valued' and 'viewed more positively' than those of the out-group Russell

(2011:203). Expert witnesses and police officers in the local courts may be regarded

as 'in-group members' because of their supportive contributions to the court.

According to Gray (2010:599), for example, expert witnesses have the overriding duty to 'assist the Court on matters of their expertise', not to act as 'an advocate for a party even when giving testimony' and to be dutiful to the Court rather than to 'the person retaining the expert'. In contrast, by being an out-group member, suspects and ordinary lay witnesses may not automatically be regarded as reliable.

In the ICC Confirmation Hearing, on the other hand, the difference may be attributed to the different systems used by the respective courts. Kenyan courts use the common law system whereas the ICC largely uses the 'inquisitorial system'. Accordingly, these systems structure the discursive roles of the courts differently and hence play different roles in constructing the identities of interactants in the respective contexts. Thirdly, in the ICC case, the suspects or witnesses were regarded as friends of the court and were therefore treated as persons who were out to assist the court to establish the truth. In fact, the ICC repeatedly maintained that the accused persons remained suspects until proven guilty. Naming as identification was therefore a significant aspect of constructing identity within the courtroom.

With regard to prison data, personal identification by name and nationality were least frequent in the data. Concordance listings for 'I am' showed that one of the inmates in question identified himself by name and the other identified himself by his country of origin. A possible explanation for this occurrence is provided by Ngugi wa Thiong'o, a renowned Kenyan writer who was once detained. Reflecting on his experience in detention, Ngugi (1981:3) appears to attribute the non-use of names by prisoner's to the dehumanising nature of prisons (at least in the Kenyan context)[x] when he states: 'I am in cell 16 in a detention block enclosing eighteen other political prisoners. Here I have no name. I am just a number in a file: K6, 77'. The assertion that numbers mattered more to fellow detainees instead of their names

implies that their sense of self was seriously undermined. With regard to nationality, the low frequency of identification by national identity may be attributed to the apparent low numbers of aliens in Kenya's prisons in general or in the prisons from which the prison letters originated.

But beyond the naming process itself, honorifics played a significant role in constructing the identity of the persons addressed. Courtroom proceedings from the Confirmation Hearings reveal interesting points with regard to forms of address and their role in identity construction. The suspects in the case were prominent personalities; one was a senior politician and two were senior public servants. During the proceedings, it appears that both defence and prosecution lawyers attempted to construct the identities of their clients by addressing them with different honorifics. Concordance listings with the names of the suspects listed below gives a summary of the honorifics used by different parties to construct the identities of the suspects. In each of the cases, the suspect is addressed with at least two different honorifics. In the first case the suspect is addressed as 'Ambassador':

Suspect addressed as Ambassador

```
29 ss (…) alleges that Ambassador (NAME) had defactual contro
30 ir characterization Ambassador (NAME) of course is conveni
31  does not report to Ambassador (NAME) ,their characterizat
33  criminal plan that Ambassador (NAME) was part of, it is 1
34   between allegedly Ambassador (NAME), (NAMEII) (NAMEII) and M
35   is vexed tangibly Ambassador (NAME) your honours you hav
36   1 of February and Ambassador (NAME) this in particular,
```

Suspect addressed as Mr.

```
15 pite detailed intelligence Mr. (NAME) and Mr. Abc also ens
16 r Mr. Abc's command and at Mr. (NAME)'s request were comp
17  for hire, the defense for Mr. (NAME) has provided a state
20 this minutes are authentic Mr. (NAME) would have had ample
21 meeting of 23rd March 2002,Mr. (NAME)'s defense relies in
22 hat merit closer scrutiny, Mr. (NAME) and the Nairobi memb
23   resentation of evidence, Mr. (NAME) defense even acknowl
```

Suspect is neither addressed as Mr or Ambassador

```
119 starting in late December 2007 (NAME) and (NAMEII) togethe
120 t on around 30th December 2007.(NAME) held a meeting in th
```

```
121  (NAMEII) (NAMEII) and Francis (NAME) were involved in thi
122  ed in Nairobi and (NAMEII) and (NAME) were present .as pro
123  ization function? (NAMEII) and (NAME) collaborated with Al
124  to the presidential elections, (NAME) and (NAMEII) organiz
```

Out of the 206 times that (NAME) is addressed in court, he is addressed as Ambassador 70 times, as Mr.73 times and simply as (NAME) 62 times. The tendency was for the prosecution, the judge and the lawyers of the victims to refer to (NAME) as 'Mr' or without any honorific reference. His lawyers, on the other hand, addressed him with the honorific of deference - 'Ambassador'. The choice of each of these honorifics is significant in terms of identity construction if we are to go by Barker and Galasinski's (2001:78) argument that 'How we address each other is an extremely powerful way of setting up a relationship between interactants'. For the defence lawyers, it appears as if they were keen to foreground the positive attributes of their client and therefore used 'Ambassador', the honorific marker of deference. Prosecution lawyers, on the other hand, addressed the suspect simply as 'Mr'. This honorific, is a sign of respect (Leech and Svartvik 1975:138) and shows the respect with which the prosecution holds the suspects. Although it is not always the case that 'Mr' is used with a respectful sense as Eades (2008:167) shows, it is possible to interpret the use of this vocative as focusing on his ordinariness and by extension, on the suspect's culpability.

A similar use of honorifics was also observed in the address forms used in relation to the two other suspects. Concordance listings with the names of the suspects show the various vocatives used in respect of the suspects.

Suspect 2 referred to as General or Commissioner
```
18   uestion what s Commissioner (NAMEIII), whats going on in the
19e department with Commissioner (NAMEIII) at the head and all the
21 he told you that Commissioner (NAMEIII) setup a test force of
22tances as to what Commissioner (NAMEIII) and his men and women
23 milarly, it is a fact that Gen (NAMEIII) met with, otherwise, e
24 to confirm charges against Gen (NAMEIII) that were factually in
25 onfirm the charges against Gen (NAMEIII). And before I hand over
26 he prosecution has accused Gen (NAMEIII) of contribution through
```

Suspect 2 referred to as Mr.

```
92   ever met Mr. (NAME) (NAME) (NAMEIII)? Mr. Owiso: I have never (
105  e defense team of Mr. (NAME) (NAMEIII) Lawyer: I have before me (
88           never met Mr. NAME NAME (NAMEIII) Lawyer: This period you w
107  d "(…) the defense team of Mr. (NAMEIII) also provided evidence of
108  ) thirdly the police under Mr. (NAMEIII)'s command and at Mr. Muth 109
rpetrators of the attacks. Mr. (NAMEIII) contributed to the organi
110  ver to the defense team of Mr. (NAMEIII) to proceed Thank you your
111  Mr. Buhari who represents Mr. (NAMEIII) was also representing som
```

Suspect 2 Named without any honorific marker

```
8  cted by (NAMEII). (NAME)and (NAMEIII) were part of a widespread (P)
9  es that (NAMEII). (NAME) and (NAMEIII) knew that the crimes comm.(P)
10ng of impunity by (NAME) and (NAMEIII) to the main perpetrators (P)
1  anon militaristic approach. (NAMEIII) implemented a more centra (P)
12  policy was also adopted by (NAMEIII) who ensured that the poli (P)
13      here is no direction by (NAMEIII) to any junior officer o (DFL)
14  this meeting (NAME) called (NAMEIII) and instructed him that t (P)
```

Suspect 3 referred to as Honourable/Cabinet Minister

```
14   questioned your honourable(NAMEII) (NAMEII) few days ago M (DFL)
18   site (…) Cabinet minister(NAMEII) (NAMEII) has denounced (DFL)
```

Suspect 3 referred to as Mr

```
19 right now. One of them Mr (NAMEII) (NAMEII),= KITL:=((Whis (ANT)
```

Suspect 3 referred to without any honorific marker

```
15 d killing innocent Kenyans'. (NAMEII) (NAMEII) was striving f (DFL)
16 erence, with Murila Kipanga, (NAMEII) (NAMEII) wants an end t (DFL)
20 he source close to Mungiki, "(NAMEII) (NAMEII) was present at (P)
21 t time State House, Mungiki, (NAMEII) (NAMEII) were mentioned (P)
```

Addressing the suspects as 'Mr' shows a respectful way of addressing the suspect.

In fact, during an interview with a local TV station, The Nation TV (NTV18th

October 2013, 'The Trend') a local representative of the ICC argued that the court

treats everybody with respect and that that is why the court addresses all parties using

the honorific 'Mr.' The address forms which omit honorifics would appear to be

neutral except that it is argued in CDA that all linguistic choices are ideological.

Therefore, the absence of an honorific may, in fact, be raising the possibility that the

suspect in question is capable of committing the offences for which they are charged.

This sense would particularly be relevant in instances in which the omission is made

by a prosecution lawyer.

What is noteworthy in the use of these honorifics is the fact that DFL are the only ones who use the vocative 'honourable' and 'cabinet minister' in reference to Suspect 2. Prosecution lawyers only use 'Mr' and do not use any vocative in other instances. One reason may be offered to explain this. As far as the defence side is concerned, their client, Suspect 2 is innocent and is incapable of committing the crimes as those being investigated in the confirmation hearing. The same may be said of Suspect 1 who is addressed as 'Ambassador'.

5.4 Lexical Choices

The data under analysis suggest that lexical choices are used to construct identity in five main ways. The methods include struggles over lexical choices, the choice of contrasting lexical choices, the use of adjectives with a positive or negative connotation, the use of 'overwording' and the use of euphemisms.

5.4.1 Struggles over Lexical Choices

I found many instances where interactants in the courtroom tended to 'struggle' over lexical choices. One party would select a word and in response, a member of the opposite side would contest the use of such a word by selecting an alternative word, very much in the same way that Drew (1990 & 1992) and Eades (2008) show. It is my view that these lexical struggles play a part in constructing the identities of the respective interactants. I discuss lexical struggles over the following pairs of words and expressions to illustrate my point: *strong point versus strong evidence, enquiries versus investigations,* and *rumours versus investigations.*

5.4.1.1 Strong Point vs. Strong Evidence

My first example is taken from a local case, the Lindi Robbery Case. Facts about the case show that some school girls, together with other passengers, had been

travelling home in the wee hours of the morning after closing school for holidays when they were accosted and robbed of their property by a gun wielding gang. Unfortunately, some of the school girls were raped. Following that incident, a number of suspected gang members were arrested and charged in court but their alleged ring leader managed to flee. However, two years later, the suspected gang leader returned to his village. The IO in the case was informed of this development and he promptly arrested and charged the suspect with the offence of robbery with violence. During the trial there was a heated debate between the defence lawyer (DFL) and the IO over his (IO's) decision to prosecute the suspect. While the IO maintained that he had investigated the case against the suspect and charged him after gathering sufficient evidence against him, the defence lawyer alleged that his client had been victimised because of his economic advancement, because of a personal grudge with the local area chief and because of his failure to bribe the IO. The DFL also claimed that the IO had been jealous of the 'young man's progress'. The defence lawyer further alleged that his client had been arrested as a result of rumours that had been spread against him. So during re-examination, the prosecutor sought to clarify why the IO had had the suspect arrested.

EXCERPT 8
55. **PROSECUTOR:** You have been asked several questions as to how you
56. linked the accused person to this offence. As the Investigating Officer=
57. **IO:** = Yes, your honour.=
58. →**PROSECUTOR:**= What was your *strongpoint* or points that made you
59. link the offence to the accused person?
60. →**IO:** My *strong evidence* is that the accused person identified at the time of
61. the Commission of the offence when he was seen by one of the complainant
62. in this case, Julietta, who went on and positively identified him at KPS where
63. an Identification Parade was conducted by Chief Insp. Makini and information
64. from my informer revealed very well that he was there at the scene and
65. committed the said offence jointly with others who two were tried in Matopeni
66. Law Courts and about two are still at large and investigations continue, your
67. honour. (..... Some lines omitted)

Perhaps being conscious of the semantic prosodies of the words, the prosecutor asks the IO what 'strong point' (line 58) made him link the suspect with the case. In response, the IO appears to resist the prosecutor's choice of 'point' and substitutes it with 'evidence' (line 60). The significance of this lexical choice only becomes apparent when concordance listings for the two words are compared.

BNC Concordance listings for Evidence

```
73 o this. Okay? It is , he is competent to give evidence against (unclear). His
79 unclear), alright? So, assuming that he gives evidence (unclear) any to give e
80 secution do not call evidence. Now, they call evidence under a section nine, yo
81 aper trials where the prosecution do not call evidence. Now, they call evidence
85  which is actually the earliest and strongest evidence that the historical Pytha
86 n equivalent section that relates to criminal evidence which allows a, a statem
87 ean criminal trials are oral trials where the evidence is given orally so that t
26 t in his room at college. The court had heard evidence that the woman making the
27 nged their stories when presented with police evidence. One child referred to in
```

Evidence – Scientific texts

```
12 fact there's a fair amount of circumstantial evidence that geologists and astro
19  they've got no proven record and no medical evidence, if he was that good this
20 ey they w-- s-- they withheld and suppressed evidence of suicides occurring dur
24 een years time with proper proven er medical evidence. (SP:PS3GX) Okay, it's qui
25 n is anti-semitic, I don't think there's any evidence of that at all, er, a (pa)
28 add and medical evidence based on er factual evidence reviewed by physicians. Er
29  It's based on medical fact add and medical evidence based on er factual eviden
```

ICE – EA

```
N Concordance    Set
1 atives of the complainants while P.W.2's evidence was that it was he who identify
2 een treated with utmost caution. P.W.2's evidence is that of an eye witness. He
3 als of model forecasts to test for:- (a) Evidence of time variance, indicating t
4  I think, fairly be drawn from the above evidence. Firstly the auditors were onl
5 tions of many kinds all provide abundant evidence of this growth. There is hardl
```

Concordance listings for 'evidence' suggest that the word is largely used in both legal and scientific contexts.

The word 'evidence' was also examined within the context of Kenya's Evidence Act for a greater depth of meaning. Although the Act does not directly define the word, Article 5 of the Act limits its use to 'the existence or non-existence of a fact in issue, and of any other fact declared by any provision of the Act' (Republic of Kenya 2009:11). Accordingly, 'evidence' in legal contexts presumes the existence of 'fact'. This presumption is underscored by Shuy (2003b:443) who states:

a fact is defined as a thing done, the quality of being actual, and information having objective reality, something that has actual existence ... Information

conveyed as fact is capable of independent verification while information conveyed as opinion is not.

The choice of 'evidence' therefore tends to portray the Investigating Officer as an impartial and professional officer.

In contrast, concordance listings for 'point' appear to provide the opposite meaning.

BNC Concordances for Point

```
5  rtroom. (SP:HV2PSUNK) Nicky can I make a point? (SP:HV2PSUNK) (unclear) (SP:HV2P
6  lear)2. (SP:PS3E4) You're talking from a point of view of where? (SP:HV1PSUNK) W
7  K) Can I just make a point. Can I make a point. I've had a bald patch for twenty
16 air enough, that's er that's a very fair point but is being thrown in a bath er
17 ke, can we just please make make a final point. This was really sold to us. This
25 int is the point is that's that's a good point what you've said 177 HVD S_brdcas
```

ICE – EA

```
251 ication or recognition was the important point at the trial. The evidence of id
252 g to the respondent. This most important point was never challenged. Had there
255 a, Dr Omolo, the CPMO, made an important point when he warned prostitutes "agai
256  school. Kenya is an interesting case in point in this discussion for three rea
```

The concordance listings for 'point' show that the word tends to be used with the meaning of an opinion. If we go by Shuy's (2003b: 443) definition of 'opinion' as 'a view, judgment, or appraisal formed in the mind about a particular matter', it can be argued that when the IO in the Lindi Robbery case uses 'evidence' instead of 'point', he is using a domain specific word positions him as a professional. The choice of 'point', on the other hand, with its dominant sense of 'a view' indexes the speaker as a non-professional.

5.4.1.2 Enquiries vs Investigations

In the ICC Confirmation Hearings, one of the allegations made by the prosecution against one of the suspects, and by extension all police officers during the PEV was that the suspect (and other police officers) had failed to contain the marauding gangs of attackers because he had been partisan. Being keen to counter these allegations, the DFL argued that police officers had investigated cases

professionally and had taken the necessary action against alleged perpetrators of the

PEV crimes. In Excerpt 9, while leading one of the defence witnesses during

examination-in-chief, the DFL attempts to relexicalize the witness's choice of

'general enquiries' as 'investigations'.

EXCERPT 9

68. **MDFL:** Now, during the PEV, did you receive any information regarding the
69. recruitment of pro-PNU youth at the KANU to participate in the attacks in
70. Kilaguni?
71. → **WITNESS:** We did receive such information, Madam President. We made
72. *general enquiries*, but really, we did not get anything leading us to the
73. existence of those pro-PNU gangs.
74. **MDFL:** When did you receive this information?
75. **WITNESS:** That was during the second week of PEV, Madam President.
76. **MDFL:** And that would be in mid January?
77. **WITNESS:** Yes, Madam President.
78. → **MDFL:** And you carried out *investigations?*
79. → **WITNESS:** We carried out *enquiries* and we did not come out with
80. anything substantive, Madam President.

In lines 68 – 69, the lawyer asks whether they had received any information regarding

the recruitment of gangs in Kilaguni to participate in the violent activities and the

witness responds by stating that they had made 'general enquiries' (line 71). The

following concordance listings reveal the meaning of 'enquiries'.

```
Concordances - Enquiries
N    Concordance     Set
1 WITH VERBAL ENQUIRIES # All verbal enquiries should be dealt with
2 immediately. # DEALING WITH VERBAL ENQUIRIES # All verbal enquiries 3 in
order to deal with the numerous enquiries of the guests. The
4 of information necessary to answer enquiries are immediately to
5 WITH VERBAL ENQUIRIES # All verbal enquiries should be dealt with
6 immediately. # DEALING WITH VERBAL ENQUIRIES # All verbal enquiries
7 ice will deal with all messages and enquiries for guests. The key
8 e already had a couple of tentative enquiries. However, I don't see
9 s Ltd as soon as practicable. Press enquiries: Anglo-Welsh Breweries
10  you should make the normal credit enquiries to assure yourself you
11  the sales department dealing with enquiries, necessary records and
12 asers in making investigations and enquiries. From the above
13 t of their accounts. # 5. # Handle enquiries and complaints anprovi
```

Although 'enquiries' is used in reference to seeking information, its concordance

listings from the BNC corpus show that such requests are not necessarily of the

investigative kind. The two words, that is, 'enquiries' and 'investigations' are

different as suggested in concordance listing number 12 in the BNC corpus cited above. It seems that in making 'enquiries' one requires information about matters of a general and casual nature. Such matters may be within that person's knowledge. Therefore, when the defence witness modifies 'enquiries' with 'general' he further downgrades the nature of the 'enquiry' and removes any possibility that the matter in question was one that required diligence on the speaker's part. It, therefore, appears that the collocation 'general enquiries' might have sounded unprofessional hence the lawyer's attempt to reformulate his question by suggesting 'investigations' (line 77) which would have most likely conveyed a amore professional meaning. However, the witness appears to rebut that version as he insists that they carried out 'enquiries'. This rebuttal shows that the witness is clear about what he did in respect to the matter at hand, 'negative semantic prosodies' notwithstanding. In the end, the officer, inadvertently portrays himself as having acted unprofessionally.

In contrast, defined in the *Macmillan English Dictionary* as 'the process of trying to find out all the details or facts about something in order to discover who or what caused it or how it happened' (757) the use of 'investigations' instead of 'enquiries' would have indexed a professional identity. Therefore, when the DFL reformulates 'enquiries' as investigations, he appears to index a professional identity. The witness, however, misses the point by resisting the word in line 79 by insisting that they carried out inquiries.

My last example on lexical struggles is on the contest over the use of 'rumours' and 'investigations' by the DFL, on the one hand, and an Investigating Officer in a robbery with violence case, on the other.

5.4.1.3 Rumours vs Investigations

The DFL in the Lindi Robbery Case also appears to exploit this strategy. He specifically attempts to construct an innocent identity of his client through relexicalization. I have mentioned in Section 4.2 that the DFL had argued that his client had been a victim of envy and consequently attributed the arrest of his client to rumours circulating in town. It is while the DFL was pursuing this line of argument that he set the background to his client's arrest as depicted in the following excerpt:

EXCERPT 10
81. *DFL*: Before the accused person was arrested, there were *rumours* in that ...
82.   when he was in Nairobi he heard rumours that there was a robbery which
83.   took place and he was being implicated,=
84. **IO:** That is=
85. **DFL:**=was that, were there such *rumours*? Or in your investigation did you
86.   find people who said there were such rumours?
87. **IO:** My *investigations* were not rumours...

In lines 80 – 82 and line 84, the DFL asks the IO to confirm whether or not there were such rumours. Had the IO gone along with this 'alternative description' (Drew 1992: 486), he would have acquiesced to the embedded insinuations that he had not performed his duties professionally. However, the IO's categorical rebuttal of the DFL's claim about the 'rumours' - My *investigations* were not rumours... (Line 86) suggests that the IO acted professionally. This relexicalization by the DFL was, apparently, not accidental as he had earlier on managed to lure a prosecution witness to assent to his version of events in a similar manner. *The Macmillan English Dictionary* defines a 'rumour' as 'unofficial information that may or may not be true' (p.1242). So by selecting 'rumours', the DFL positions the IO as one who is acting unprofessionally. However, the IO positions himself as a professional by selecting 'investigations' rather than 'rumours'. These lexical struggles appear to be a

common strategy of identity construction as Eades (2008), Drew (1990, 1992) and Danet (1980) show.

In the foregoing discussion, I have shown how struggles over lexical choices construct different identities. I now wish to examine how the selection of words with contrasting meanings constructs identity through differentiation.

5.4.2 'Otherness' through Contrasting Lexical Choices

Some of the lexical choices appear to have been selected to construct identity through differentiation. The lexical choices constructed an 'Us' vs 'Them' dichotomy. The essential point in this categorization, consistent with Tajfel's socio-psychological theory, suggests that the group referred to as 'us' are the good ones whereas those categorized as 'them' are the bad ones. In the discussion that follows, I discuss three such contrasts: *'decorated public servant'* versus *'blood thirsty criminals'*, *'accomplishments'* versus *'discredit'* and *'belongings'* versus *'rags'*.

The first contrast, 'decorated public servant' and 'blood thirsty criminals' was observed in the ICC's Confirmation Hearings. One of the suspects had served as a senior police officer at the time of the PEV and had been accused by the prosecution lawyers of having supported the activities of a militia group linked to the PEV. In arguing for his client, one of the defence lawyers resisted the allegations by selecting words that depicted his client in a positive light. At the same time, the defence lawyer constructed the identities of the perpetrators of PEV negatively by describing the alleged perpetrators of the crimes with words that depicted them negatively. The DFL described his client as 'a *decorated and devoted public servant who ha[d] tirelessly worked to uphold Kenyan laws to protect Kenya people'* (my emphasis). This description was in contrast with his description of the alleged perpetrators of the PEV whom the DFL described as 'bloodthirsty street criminals'.

These two expressions carry contrasting meanings and therefore place the two groups into different categories that are mutually exclusive. The following concordance listings for 'decorated' give a sense of the meaning of what the word means in the BNC and the ICE, EA.

BNC Corpus
```
15 nza, net and hand woven gauzes decorated with embroidery in
16 ART CRYSTAL See -- glass being decorated by sand engraving (
17 terior. The interior is richly decorated in a lavish Chinese
18 ton jersey, generously cut and decorated with a primitive fi
19 sticated waist band discreetly decorated with the sport moti
20 daily. Its stations are richly decorated with sculptures, mo
```

In the first 203 concordance listings of the BNC corpus, the overriding meaning of 'decorated' was 'beautified' or 'adorned'. The same meaning was also evident in the concordance listings for the ICE-EA corpus as exemplified in the following examples.

ICE – EA Corpus
```
1 ession of something cut out of stone and decorated by an experienced
2  ust faded. On board of one of the carts, decorated with colourful
   have been chilled. In the lights of the decorated hall and flashing
```

In two instances, 'decorated' was used with a militaristic sense in the BNC corpus while there was no instance of 'decorated ... public servant'. Granted that the lawyer was representing a former military officer, it can safely be assumed that he was appropriating the expression with a militaristic sense in mind. But used with this sense, 'decorated', in the BNC corpus tended to refer to achievement in warfare as exemplified in:

```
  7   eshire, he was the RAF's most decorated bomber pilot after
127   vice, Bailey and Richey being decorated for bravery. Those
```

It therefore appears that the lawyer used the expression, 'decorated public servant' to construct the identity of his client positively. In addition, it may also be argued that he intended to foreground his client's loyalty to his nation and not with the 'bloodthirsty criminals' as had been implied in the prosecution's case.

In contrast, 'bloodthirsty street criminals' is a highly emotive choice and its negative semantic prosodies are unquestionable. The classification scheme in which this vocabulary is organised (Fairclough 2001:95) suggests that the two are mutually exclusive as they exist on extreme ends of the scale. In arguing as he does, the defence lawyer, by extension, suggests that his client would never work with the militia gang suspected to have perpetrated PEV.

A final example of this type of lexical manipulation occurred in a hate speech case that involved three prominent politicians in Kenya. The suspects in the case were alleged to have made utterances 'which were intended to stir up ethnic hatred contrary to Section 13 (1) (a) as read with Sub-Section 2 of the National Cohesion and Integration Act No. 12 of 2008'[xi]. One of the suspects was alleged to have uttered the following words:

EXCERPT 11

88. *'Bungoma hata jina ni yetu. Kule Trans Nzoia ni kwetu. Na vile wanasema*
89. *Trans Nzoia is cosmopolitan, sisi tunaambia watu wa Trans Nzoia kura*
90. *ikipita, funga **viraka** mwende kwenu. Wale wako Bungoma, katiba ikipita*
91. *wafunge viraka waende kwao'.*
92. 'The name Bungoma is ours. Trans Nzoia is our ancestral home. They say
93. Trans Nzoia is a cosmopolitan area. We are telling them that if the (proposed)
94. constitution goes through, 'Pack up your *rags* and go back to your (ancestral)
95. homes!' To those in Bungoma, if the (proposed) constitution goes through,
96. pack up your *rags* and go back to your (ancestral) homes'.

In the Swahili text, the suspect uses the word *'viraka'* – 'rags' (line 89, 93) instead of the usual expression *'virago'* derived from the Swahili expression '*Funga virago'* or 'Pack your belongings'.This choice is ideologically significant as it reveals the speaker's attitude towards the 'others' and dichotomizes the persons referred to into two groups, that is, 'Us' and 'Them'. The group referred to as 'us' are regarded as the owners of both counties. By implication, they are the well-off group. The 'others', being in possession of 'rags' and who must leave for their ancestral homes,

are, by implication, poor but thriving on the wealth of the group referred to as 'us'. Ultimately, the group referred to as 'us' is portrayed as one that is well off while the other group, that is , the group referred to as 'they' are portrayed as weak, poor and inferior. The net effect is that these descriptions 'inferiorize' (van Dijk 1995:30) the out-group members.

Identities were also constructed through the selections of adjectives with positive or negative connotations. These choices form the basis of the discussion that follows.

5.4.3 Adjectives with Positive or Negative Connotations

Another example in which positive semantic prosodies of words is exploited to construct the identities of interactants in the courtroom is found in the proceedings of the Confirmation Hearings of the Kenyan Case 2. In one instance, one of the DFLs describes the arrest of 156 suspects of PEV in a single day as 'accomplishments'. The choice of 'accomplishments' appears to be a strong one as the following concordance listings from the BNC corpus show.

```
1   lauding Elena's scientific accomplishments was bitter for the
2   d in the form of cinematic accomplishments of great merit
3   r appreciative of sporting accomplishments, then the black
4 gacy of a sequence of great accomplishments is subsumed and given
5 n BBC Radio 4 The technical accomplishments of modern medicine
6 here a tribute to his great accomplishments for deaf education in
7 alued most.' His genius and accomplishments, his grace a
8  idea of Smith's precocious accomplishments at the age
9 an and Italian to his other accomplishments, and attending
```

'Accomplishments' appears to be used with the sense of extra-ordinary achievements. Most of its collocates suggest that it is usually used with nouns with a generic meaning, in order to attribute the achievements to a whole group. In line 1, for example, the nature of achievements referred to generically refer to all scientific achievements. So when one of the DFL's in the ICC case describes the arrest of 156 suspects as an 'accomplishment', he appears to be exaggerating the achievements of

the members of the police force thereby positioning them in a positive light. In contrast, the same lawyer counters the prosecution's argument that police officers did little to stop the violence by describing theirs as attempts to 'discredit' police officers. 'Discredit' implies that the DFL sides with his client and by extension police officers and is critical of the prosecution side. Accordingly, 'accomplishments' positions police officers in a positive light while 'discredit', when used in reference to the prosecution team positions the prosecution in a negative light.

Similarly, in the same Confirmation Hearings, one of the lawyers representing one of the suspects made a strong case for police officers. While the prosecution had misgivings about the way police officers had conducted themselves during the PEV, one of the defence lawyers for the Senior Police Officer (SPO) described police officers and their action as follows:

EXCERPT 12

97. '... these **brave, dedicated** men **and womenof honour** representing the 40 plus ethnic in Kenya and whom the prosecutor **seeks to discredit** before your honours put all their hearts in their job without regard to ethnicity or political affiliation'.
98. 'Kenya today would be one huge graveyard were it not for the efforts of these **gallant men and women'** (My emphasis).

In these two short excerpts, the DFL uses four words with positive connotations. The adjectives in the expressions: '*brave*', '*dedicated*' men and women '*of honour*' and efforts of these *gallant* men and women' portray the officers positively. Apparently these descriptions appear to have been effective as the SPO was eventually acquitted of the charges. In contrast, one of the DFL's constructed the identity of the prosecution negatively through the use of adjectives with negative connotations. For example, one DFL in the Hague Trial repeatedly described the prosecution as 'lazy' and some witnesses as 'liars'. While it is not clear how the court would rule on these

utterances (owing to the fact that the trials are still on-going), the utterances seem to position the DFL as one with little decorum or too assertive or too self-opinionated.

The use of similar adjectives is also found in prison letters. For example, the author of letter L28, describes his arrival in prison as a 'landing'. He explains that he had been arrested following a disagreement with his business associate and concludes his account by stating: 'That is how I *landed* here.' Concordance listings for 'landed', show that the word tends to convey a number of meanings such as securing a job, falling, and reaching a place as demonstrated by the following BNC concordance listings for the word.

Securing a job
```
22 y worked hard at his game, and soon landed a job as an assistant to
24 tely comes first. Caddie Ian Wright landed his job with Seve Balles
25 ary of the beach, and Pottz finally landed the world title. He bare
57 k-time Burke Report, and from there landed a plum assistant produce
70  again -- the British Open -- and I landed a job carrying Toney Pen
```

Fall
```
36 evening. Tony jumped from high up, landed heavily and pulled a fac.
49  and most of the baby shot out and landed on my tummy. The head wa
58 s spread across the floor where it landed. Sometimes in the evening
59 adversary. As the earth and stones landed they formed Blakey Toppin
86 w down her bunch of ragwort and it landed, splayed out limply, on
87  stood off even further and almost landed on top of it though he ne
99  never managed to remember how she landed on her head instead! We s
```

Reach
```
83 et in the Osprey Colour Series has' landed' on the review desk. Sky
100 otally confused. Once she suddenly landed up in hospital for what
```

Arriving at a place
```
53 ientation and allow the model to be landed safely while still movin
67 aeroplane only the day after he had landed his Boeing 707 full of p
68 uch extreme climatic conditions. We landed at Troms, which is over
75 the flight that took you to Iceland landed at the base itself rathe
76 ouse and the engine of the aircraft landed a mile away. Iida's main
77 at they hired their own helicopter, landed in the local village, re
80 ose days. We went over the Alps. We landed and a meal was set out
81  or damaged. When the last aircraft landed, Nagumo ran up a signal
82 le at Strathallan in Scotland. They landed the King Air at Sir Will
```

Although 'landed' denotes arrival by ship or arrival by aeroplane, 'landed' with the meaning of arrival by plane is most frequent in the BNC concordance listings. Accordingly, the use of 'landed' as used by the inmate may therefore be viewed as a

magnificent entry into prison. It may therefore be argued that the inmates' choice of 'landed' positions the inmate positively.

5.4.4 Overwording and Identity

A different use of lexical choices is realised in the Lindi Robbery Case in which the IO used carefully selected synonyms to construct a criminal identity for suspects in a robbery with violence case. After a report of the robbery had been made at a nearby police station, the IO in the case visited the scene of crime the following day to commence investigations. Later, while submitting his evidence in court, he appears to have carefully selected words that would construct the identity of the suspects in the case as criminals. The choices also appear to be aligned to the institutional discourse. The IO states:

EXCERPT 13

```
99.  IO: Yes on the very day at about 3:00am I was aleep when a report
100.      was received at Mlango Kubwa Police Station by those who were
101.      violentlyrobbed on their way from Bondeni area to Matopeni
102.      township [in] Lindi area, Lindi river, your honour.
103.  PROSECUTOR: Those are the complainants in this case? (...) The
104.      complainants in this case?
105.  IO: Yes , your honour. The driver of a motor vehicle number QRX came with
106.      passengers who complained that they were robbed on their way to Matopeni.
107.      They were heading to Matopeni. So upon receiving the report, Adamu said
108.      he was the driver of the same motor vehicle and when they reached Lindi
109.      area, Lindi river, he saw the road was blocked with the use of barricaded
110.      stones and he was forced to stop. There was nowhere he could pass through.
111.      And when he stopped, about six men emerged from a nearby bush (...) they
112.      were armed with an assault rifle, AK 47 and others were armed with pangas,
113.      your honour ... and they continued robbing. Everybody was robbed. ...we
114.      visted [the]scene at Lindi area, Lindi river, your honour. And we found the
115.      stones which were used to block the road were placed on the side of the road,
116.      your honour. There was a commotion at the scene with footsteps, your
117.      honour...even tyre marks of the same motorvehicle.
```

In this excerpt, the IO constructs the identity of the suspect as a criminal through 'overwording' or 'a high frequency of wording' (Fairclough 2001:96), usually of synonyms (Liu 2008:60). This is realized in the excerpt through repetition. Being keen to construct a criminal identity, the IO repeats the word 'robbed' four times as 'violently robbed' (line 100), 'robbed' (twice in lines 105 and 112) and as 'robbing'

(line 112). In addition, he uses near synonyms of the word 'forced' to reinforce the criminal identity. The near synonyms include expressions such as 'the roads were barricaded with stones', 'the road was blocked', there was nowhere he could pass' 'forced to stop' all of which suggest that the passengers in the motor vehicle could not move and were therefore at the mercy of the attackers. But it is the mention of the weapons which the gang had in its possession that indexes the group's criminal identity. They had 'an assault AK 47 rifle' and 'a *panga*' (machete) in their possession. As Tannen (2007:80) argues, this kind of repetition gives the word a marked presence and emphasizes the topic under discussion or 'some aspect of reality' (Fairclough 2001:96). 'The aspect of reality in this context may be the identity of the suspects. I use 'may' advisedly. In Chapter 6 section 6.2.1, there is evidence to suggest that reasonable doubts may be raised over the manner in which police officers use such detail to ascribe a criminal identity to suspects.

It also appears that the IO constructed the identity of the suspect the way he did in order to orient his talk to the law relating to the charge of robbery with violence[xii] while at the same time exploiting the negative semantic prosodies associated with the word. This was apparently aimed at arousing the court's, and no doubt, the public's revulsion against the accused person and his accomplices. The use of '*commotion*' to describe the scene of crime hours after the crime had been committed is particularly interesting. According to the *Macmillan English Dictionary* (277), 'commotion' is 'noise and confused activity'. But having visited the scene of the crime hours after the incident, there could not have been a '*commotion* at the scene' (My emphasis). Nevertheless, the IO uses the word because it, apparently, reinforces the criminal identity that he has constructed of the suspect

in the case. Through these 'domain-specific' expressions, the IO portrays himself as a professional.

5.4.5 Euphemisms

The data also show that some of the lexical choices were euphemistic. I discuss examples of euphemisms in the GBH case and the Lindi Robbery case, and then discuss how inmates exploit them. I begin my discussion with the GBH case.

In Excerpt 14, Chumba, who had been assaulted by both his sister and step mother, was being led in examination-in-chief by a court prosecutor. He used some euphemisms in his responses apparently to minimize his agentive role in the fight. My discussion focuses on Chumba's assertion that they had '*some bit of prolonged argument*' (line 129).

EXCERPT 14

118.	**PROS:** Hmmh? So?	Hmmh? So?
119.	**COMP:** Nika, tuka, nikanyamasa.	**COMP:** I..., we... I kept quiet.
120.	Saa hiyo akachukua upanga.	She then took a machete.
121.	Akachukua upanga.	She took a machete.
122.	Akachukua upanga, akanipointia	She took a machete and pointed it
123.	ati mbona unaita... ninahisi	at me (saying 'Why do you... It pains me
124.	uchungu ukishika mtoto	that you arrested my brother
125.	wa ... bwana ya sista yake	in law's son.
126.	hivyo ati ye anahisi uchungu.	[She said] that it pained her
127.	**PROS:** Hmmh?	Hmmh?
128.	**COMP:** Saa hiyo there was	At that time there was
129.	→*some bit of prolonged argument.*	*some bit of prolonged argument*
130.	**PROS:** Hmmh?	Hmmh?

In the excerpt, the complainant, Chumba, explains what happened. He states that his step mother had picked up a machete and complained to him about his involvement in the arrest of his nephew and uses the expression 'some bit of prolonged argument' (line 129). Whereas a 'prolonged argument' may lead to a physical confrontation, Chumba's use of the expression removes this possibility through the downgrader, *'some bit of...'* The expression, at least in this phrase, suggests that the disagreement was insignificant and need not have resulted in a fight or the vicious attack that

Chumba suffered. Yet, as a consequence, Chumba is slashed – '*akanifyeka*'- 'She

slashed me'. Similarly, in describing how he ended up being assaulted by his sister,

Chumba describes his role in the following way.

EXCERPT 15

131.	**PROSECUTOR**: Hmmm.	Hmmm.
132.	**COMP**: Akasema ati, 'Kwani nimekusema?	She asked have I talked about
133.	yes	
134.	Nikanyamasa.	I kept quiet.
135.	'Ati ata kama ni wewe	Even if it were you,
136.	utanifanyia nini?	what will you do?
137.	Ati by the way	By the way,
138.	ulipotesa wakati wako mwingi'	you wasted a lot of your time
139.	so nikam…then kulikuwa	Then I… then there was
140.	→ na…*mvutano kitoko* then	→ a *little disagreement* then
141.	nikamuuliza mbona we	I asked her whether she
142.	ndio unanipangia kazi	was the one planning
143.	yangu ile nafanya?	for me how to utilize my time.
144.	By the way wale watu waliiba	In any case, those people eloped
145.	mwanafunzi wa std. six.	with a standard six pupil.
146.	Kesho wakikuiba sitafurahia?	I will be unhappy were they to
147.		elope with you
148.	Akasema wakiniiba	Then she said,
149.	utanifanyia nini?	'What will you do if they eloped
150.		with me?'
151.	Ata kesho ati niko na plan	I am planning to travel to (name)
152.	ya kwenda (Name) kesho yake.	tomorrow.
153.	→ **PROSECUTOR**: Kwa hivyo *kulikuwa*	So there was
154.	*na majibizano?*	*a verbal exchange?*
155.	**WITNESS 1**: Eh, Kulikuwa	Yes. There was
156.	na majibizano.	a verbal exchange.
157.	**PROSECUTOR**: Baada ya hiyo majibizano	What happened after the verbal
158.	nini ilifuatia?	exchange?
159.	→ **WITNESS 1**: So nikasimama alafu	So I stood up and then
160.	*nikamchuna masikio*	*pinched her ears*
161.	nikaambia ati usiniambie	and warned her against telling me
162.	ati unaeza enda (Name).	that she could travel to ((name))

The four expressions: '*a little disagreement*' (139), '*verbal exchange*' (line 153),

'*pinched her ears*' (line 159) and '*some bit of prolonged argument*' (line 129) are

euphemistic references to the quarrel since they do not explicitly state what Chumba

did. So, if we are to believe his sister's claim, elsewhere in the proceedings, that

Chumba had insulted them (both his sister and mother); we see how the use of these

expressions removes his agentive role in the quarrel. Accordingly, we are likely to

listen to him more sympathetically. With the 'negative values' and 'embarrassing

words' neutralised, Chumba is portrayed more positively in the incident. So, by selecting the expressions highlighted in the excerpt quoted above, Chumba positions himself as an innocent victim of unprovoked anger while at the same time portraying his assailants as vicious and mindless attackers.

Euphemisms are also used as a means of casting doubt on the credibility of a witness or complainant. This occurs in the same case when, while casting doubt on the credibility of the prosecution's witness PW1, ACCP 2 accuses her of having been *'bought'* (line 167). In this accusation, the expression 'bought' metaphorically stands for 'bribed'.

EXCERPT 16

163.	ACCP2: Wakati... unaweza kueleza maakama	When.. can you tell the court
164.	kwa nini tulipigana na Chumba?	why we fought Will?
165.	CW1: Siwezi elewa. Sijui.	I don't understand. I don't know.
166.	→ACCP2: Nikielezahii koti	If I tell the court (that)
167.	wewe *ulinunuliwa*	you were *bought*
168.	ndio uweze kuja kuto ushahidi	so that you may give evidence
169.	hujui mbele ya koti	that you do not know
170.	nitakuwa nimedanganya koti?	will I have lied to the court?
171.	CW1: Sijakuelewa.	I haven't understood you.
172.	→ACCP2:Nikielza maakama	If I tell this court
173.	wewe *ulinunuliwa*	that you were *'bought'*
174.	uje utoe ushaidi	so that you may give evidence
175.	ambao hujui chochote mebele wala nyuma	(which) you know nothing about
176.	nitakuwa nimedanganya maakama?	will I have lied to the court

Although the expression '*ulinunuliwa*' or 'you were bought' (line 173) makes an accusation of impropriety on the accused person, it is used as a euphemism for bribery. The euphemism is however, also disguised by being embedded in the hypothetical question in turn (165 – 169), of the form: *'If I tell the court that you were bought...'* To the ordinary listener, this would be difficult to understand. Ultimately, it minimizes the 'embarrassment' that a direct accusation would have caused. Secondly, the hypothetical question offers an avenue through which the

ACCP 2 can safely construct the identity of the witness as that of a liar without drawing the ire of the court.

A similar accusation is also made by the DFL in the Lindi Robbery Case. Intending to cast aspersions on the IO, the DFL alleges that the Investigating Officer's decision to prosecute his client was based on the fact that he wanted *'something'* from him and when his client declined to give him 'something' (a bribe), he pressed charges against him.

EXCERPT 17

177.	**DFL:** OK. And out of this business, when he is getting money you are
178.	questioning,' Where does this man get money, and he is not working?'
179.	**IO:** Not that way, your honour.
180.	**DFL:** Eh?
181.	**IO:** That is no question, your honour.
182.	**DFL:** Yes.
183.	**IO:** He is connected with the case. That's why he is here, your honour.
184.	**DFL:** →And because he had money, you wanted him to do *something* and
185.	when he failed to do it you decided to put him in.
186.	→**IO:** Not that way, your honour. Am being paid. Am not interested in that,
187.	your honour.
188.	**DFL:** No am trying to tell you the feelings of the accused. Your name features
189.	so much in his case defence case that he does not understand he is being
190.	victimised. And he was away from 24th August 2014 up to 25th August 2015.

In the excerpt quoted above, the accusation of impropriety on the part of the IO is made in line 184 and is reformulated as *'something'* - a euphemism for 'a bribe'. Through this accusation, the DFL portrays the IO as a corrupt officer. This accusation is, nevertheless, resisted by the IO in lines186 -187 – when he argues that he is paid by his employer and is therefore not interested in soliciting for bribes. He responds by saying, 'Not that way, your honour. Am being paid. Am not interested in that, your honour' (lines 186 – 187). While the euphemism portrays the Investigating Officer (IO) as a corrupt official, it simultaneously portrays the defendant as a victim of the investigating officer's envy (turn 188 - 190).

In discussing lexical choices and how they function in constructing identity, I have largely confined myself to the courtroom context. I now wish to turn my attention to the prison context as a site for the construction of identity from which context I analyze a sample of letters that were written by inmates in a number of Kenyan jails. My discussion focuses on the euphemistic uses of the following words and expressions: *misunderstanding, accident got me, collided* and *landed* and how each of the expressions dissociates the inmate from the crimes that they had committed. As a result, the inmates are portrayed positively.

My first example is drawn from letter L16. In that letter, the inmate explains that he had been arrested following 'a misunderstanding with [his] landlord' over some money that was owed to him. Apparently, this 'misunderstanding' caused him to be imprisoned. What is not lost in this description is the fact that by describing the offence that he had committed as a 'misunderstanding', the inmate distances himself from the criminal incident. He writes: 'I was put into prison due to [a] *misunderstanding* with my landlord who owes me 10,000 and a further 18,000 from unregistered women groups' (my emphasis). The inmate in letter L20 similarly explains the circumstances that led to his detention. He also claims to have had a 'misunderstanding' with police officers at a police station where he had gone to report a case of ill-treatment by a *matatu tout*[xiii]following which he was detained. In both cases the inmates use the word *misunderstanding* to refer to the offences which they had committed and which subsequently led them to jail. The *Oxford Advanced Learner's Dictionary (7th Edition)* defines a *misunderstanding* as 'a slight disagreement or argument'. The fact that the 'misunderstanding' in the case of the two inmates caused both of them to be jailed appears to camouflage the seriousness

of the crimes that they had committed and therefore positions them more positively than would have been the case had they specified the offences.

The inmate in L20 similarly attributes his arrest to a *collision*. He writes: 'I came here [to prison] after *colliding* with the police at ... station'. Again, although the word *colliding* connotes a serious disagreement, it does not mention the actual crime or offence committed and is therefore euphemistic. This word introduces the possibility that there was more than one party involved in the 'misunderstanding'. Therefore, should blame be apportioned it should not go to the inmate alone but also to the police officer(s) involved.

In L22, on the other hand, the inmate describes his offence as an '*accident*'. He writes: 'I came here [Kenya] as a musician whereby this *accident* got me...' Through this euphemistic reference, the inmate distances himself from the crime that he has committed. His detachment is further emphasised through the use of the verb *got* in the segment '*whereby this accident got me' (my emphasis)*. That the 'accident got him' positions him in a non-agentive role and we are likely to view him as a victim. Indeed, the inmate views himself as a victim rather than as the perpetrator of the crime. However, the 8-year jail term that he was serving suggests that he must have committed a serious offence. So the inmate's use of *accident* is probably aimed at constructing a positive image.

All the examples cited in the discussion above illustrate how the inmates' choice of euphemistic vocabulary helps them to avoid 'embarrassing ... words' (Mulholland (1994:99)) and 'negative values' (Fairclough (2001: 99)) all which may portray them negatively.

5.5 Conclusion

This chapter has presented three main findings. First, the chapter has shown that aspects of social identities are revealed through concordance listings of pronouns such as "I am". Among the social identities revealed through these concordances are gender, age, ethnic identity, economic occupation, names and national identity and as well as medical status. Key among these findings has been the tendency for inmates to foreground their medical condition, especially their HIV + status and their orphan status with a view of seeking sympathy from their benefactors. Being HIV + is, ironically, a means by which inmates are offered extra rations or the means by which sympathy is sought from their religious benefactor. Foregrounding one's socio-economic potential reflects the inmates' sense of self-worth. This chapter has also shown that the focus on the self by inmates is partly motivated by the need to align police statements to institutional discourse of relating to recording statements and partly by the inmates' need to accommodate to the more powerful police discourse which gives them a sense of prestige.

Second, this chapter has also shown how naming is used in local Kenyan courts and in the International Criminal Court to identify interactants. The chapter shows that personal names are rarely used in Kenyan courts. Instead, the court imposes new identities on participants based on their roles in trials. In contrast, the ICC court places emphasis on personal names as a sign of respect. In addition, this chapter has also shown that lawyers use honorifics strategically to foreground either positive or negative aspects of their clients' identities. In Chapter 5 section 5.3 for example, I have shown how DFL's have used honorifics of deference while addressing their clients while the prosecution tended to use either the respectful vocative, 'Mr' or avoided using them altogether. I have argued that by avoiding honorifics, the

prosecution, strategically, implied that the suspects in question were ordinary persons who were capable of committing the crimes for which they had been charged. In contrast, the DFL's use honorifics of deference such as 'Ambassador' or 'General' suggested that their clients were not capable of committing crimes such as the ones that had been charged with.

Respect for witnesses is marked in the way they are introduced in court. For example, while accused persons in Kenyan courts were identified through physical and spatial attributes such as clothing and location in court and witnesses were identified by their role in court, expert witnesses were simply asked to introduce themselves. Identification of accused persons by physical and spatial attributes is based on the need to be sure that the person appearing in court is the same person who is alleged to have committed a crime. The identification of witnesses by their roles in the courtroom seemed to be designed to protect their personal identities. Expert witnesses, on the other hand, were simply asked to introduce themselves and this mode of introduction appeared to confer respect and recognition of their professional standing. One reason suggested for this was that expert witnesses have the overriding duty to 'assist the Court on matters of their expertise' (Gray 2010:599).

Finally, this chapter also finds that lexical choices are used in a number of ways to construct identity. Through struggles over choices of words and 'overwording' interactants constructed a professional or lay identity. Similarly, through the use of adjectives with positive or negative connotations, interactants constructed a positive or negative identity respectively. Moreover, a positive identity was also constructed through the use of euphemisms.

Indeed, as Riley (2007:71) argues 'a domain-specific discourse, including its lexis, will be perceived in itself a claim to membership of the epistemic community in question' and it is my view that lexical selections of this kind play a part in constructing the identities of the interactants involved.

In the next chapter, I discuss grammatical choices that are used to construct the identity of various interactants.

CHAPTER SIX

GRAMMATICAL CHOICES IN IDENTITY CONSTRUCTION

6.1 Introduction

The purpose of this study was to investigate how professional and lay interactants in legal contexts used language to construct their identities, to negotiate their identities and to rebut the identities imposed on them. In this chapter, I analyze how grammatical choices have been used for the same purpose. The choices discussed in this chapter are based on the key aspects of the Systemic Functional Grammar which informs Fairclough's (2001) CDA approach. They are presented here in order of preponderance within the data. For that reason, the discussion focuses on agency, passive voice and active voice constructions, processes, modality and intertextuality. The last part of the chapter discusses presupposition. The analysis shows that both lay and legal professionals made use of these grammatical choices to construct their own identities or the identities of those that they interacted with.

6.2 Agency and Identity

Downing and Locke (1992: 128) define the agent as 'an entity having energy, volition and intention that is capable of initiating and controlling the action, usually to bring about some change of location or properties in itself or others'. Agency may also be viewed as who does what in relation to the verb in the clause. This participant role is contrasted with the recipient of the action initiated by the agent, that is, the goal/medium or patient. They clarify that patient or goal refers to 'someone or something affected by the action denoted by the verb in an active clause, as a result of the energy flow' (Downing and Locke 1992:129). But agency is not a uniform term. O'Connor (2000) contends that agency is realized along a three line continuum

which includes claiming agency, deflecting agency and problematizing agency. In brief, O'Connor (2000:50) argues that in claiming agency the speaker indexes himself/herself as the one responsible for initiating the action denoted by the verb in the clause. In deflecting, agency the focus is on the speaker's position as one who is acted upon while in problematized agency, the speaker presents a "thinking" self or one who is grappling with the stance connected with his acts and with his current subjectivity. Each of these aspects of agency has implications on identity construction. When a speaker claims agency in a criminal incident, the speaker indexes himself as a criminal. However claiming agency in criminal incidents is not always the first choice for an individual since individuals are agentive beings who resort to linguistic resources to construct their identities.

In the data under analysis, it appears that various interactants in the three contexts under analysis manipulated their agentive roles to construct either their own identities or the identities of those that they interacted with. It is this aspect that I examine in this section by discussing police statements at scenes of crime and two police statements of a murder. Thereafter, I examine how inmates minimize their involvement in criminal incidents by manipulating agency, passive voice and active voice.

6.2.1 Attribution of Agency

In a majority of the reported criminal incidents, whereas suspected criminals were positioned in agentive roles, police officers presented themselves in the patient/medium or goal participant role. For example, in Excerpt 18, a robbery had taken place at a supermarket after which police officers shot and killed the suspected criminals. The journalist covering the incident reported that police officers had ordered the suspects to identify themselves. However, instead of identifying

themselves as ordered, a shootout ensued. Subsequently, a Senior Police Officer

(SPO) at the scene of crime reports the incident as follows:

EXCERPT 18

191.   SPO: Wakati watu wetu wamefuata na kusimamisha hao, wakaanza
192.   kufyatulia hao risasi ndio wakakimbia, wengine wakakimbia ile
193.   direction, wengine wakakimbia direction hii.
194.   (When our people (police officers) ordered them to stop, they (criminals)
195.   opened fire on police officers before fleeing. Others ran in that direction
196.   while others ran in this direction).

Although this is reported in the aftermath of a crime, the SPO portrays suspected

criminals as the agents in the shooting. He reports that 'they (criminals) opened fire

on police officers' after being ordered to stop. The Senior Police Officer assigns the

medium role to other police officers by describing them as recipients of the 'fire'

from criminals. By assigning the medium role to them, police officers are portrayed

as victims while the suspected criminals are presented as being criminally liable.

These contrasting roles, that is, criminals as agents and police officers as patients,

construct a criminal identity and a victim identity for the suspects and police officers

respectively.

    A similar characterization is also evident in the Retail Shop Robbery. The

SPO in that incident reports that when his officers came across the suspects:

EXCERPT 19
197.   PO: *Wakaonywa na askari wetu wasimame lakini wakakataa amri*
198.   *wakaanza kupiga askari wetu marisasi. Kwa kujibu maaskari wetu walipata*
199.   *kuwapiga.*
200.   They (suspected criminals) were ordered to stop but they defied the orders and
201.   then started shooting at our officers. Our officers returned fire and **managed** to
202.   shoot them)

    As in the previous incident, the SPO reports the incident in a manner that attributes

agency to the suspected criminals.The presentation of criminals in the criminal

incidents as agents appears to be the most common means by which police officers

construct the criminal identity of the suspects. Agentively, it suggests that criminals

are the ones who initiate the shooting (and are therefore criminally bent) while it is the police officers who are always on the receiving end (victims). But this report also shows, as in other similar reports, that while police officers are portrayed as victims, in the ensuing shootouts it is the suspected criminals who end up being killed. In this incident, the SPO reports that police officers returned fire and managed to kill them (suspected thugs). In a different police report regarding rising crime in one area, the SPO reporting the matter states as follows:

EXCERPT 20
203.   SPO: Police --- wishes to inform the public that early this morning,
204.   investigators caught up with part of the gang within Maili Saba area of
205.   Northern Province. When they were confronted by police, the criminals
206.   engaged the police in an exchange of fire as a result of which three of
207.   the criminals were fatally wounded.

Again, as in the previous incidents, it is the suspected criminals who engaged the police in an 'exchange of fire'. The Senior Police Officer (SPO) reports that 'the criminals engaged the police in an exchange of fire' (line 206). This style of reporting portrays the suspects as criminals and as callous men who will shoot their victims for no apparent reason. And as has already been indicated, although it is police officers who present themselves as victims, it is the criminals who end up being killed. This sequence of actions makes little narrative logic and it probably suggests that police officers were deflecting their own agency in the shooting incidents. If viewed this way, police officers would be regarded as minimizing their agentive roles deliberately so as to look good when they are in fact not.

While police officers positioned themselves on many occasions in non-agentive roles in the criminal incidents, there are instances when they assumed the agentive role. However, these were instances where their agency did not position them in undesirable ways. For example, in Excerpt 18, police officers claim agency where they are involved in their professional role. This is realized in line 194 'police

ordered the criminals to stop'. Similarly, in Excerpt 19, lines 200 and 201, police officers 'return fire'. In these two examples, police officers construct a professional identity since we see them doing what they ought to do in the course of their duty.

In these incidents, I have shown how agency was manipulated by police officers to attribute a criminal identity to suspected criminals. I now wish to examine how police officers reacted to accusations of involvement in criminal incidents.

6.2.2 Mitigating Agency

When police officers were directly linked to the shooting incidents they tended to react by mitigating their agentive role. This was done through euphemistic expressions such as there was an 'exchange of fire' and 'police officers returned fire'. As O'Connor (2000:67) argues, the expression "exchange of fire" indicates (euphemistically) that people were giving and taking in shooting at each other'. Such 'exchanges' need not result in deaths. But viewed in terms of agency, the expression 'an exchange of fire' attributes the shooting to both parties with the consequence that the casualties cannot be blamed on either party with certainty. This creates the impression that the suspected thugs could have been shot by friendly fire or by police fire.

Apparently, the expression 'exchange of fire' is the most common of the euphemistic expressions used by police officers to describe such incidents. In another incident, the Roundabout Hijacking incident, a witness reports that some armed men had lain in wait for motorists at a roundabout while armed with firearms before they were confronted by police officers. The SPO completes this story in Excerpt 21 by explaining what happened:

EXCERPT 21
208.   **PO:**   In the ensuing **exchange of fire**, two of the suspects were gunned
209.   down, five escaped and they are being pursued.

The expression 'exchange of fire', suggests that the shooting may have originated from either side. But as in the other two incidents already referred to, it is the suspected criminals who get killed in the exchange.

In the Retail Shop incident cited above, the SPO reports that his officers 'managed' to shoot the suspects. The word 'managed' tends to suggest that there was some difficulty in effecting this action. It may therefore be regarded as another means of deflecting the agency of the police officers in the shooting. The use of the euphemistic expressions and the choice of 'manage' appear to aid in constructing both a victim identity and a criminal identity. Police officers are presented as victims in the situation while suspected thugs are portrayed as people who are criminally bent. In these reports, police officers seem to validate the criminal identity of the suspects by reporting that the suspects were in possession of some weapons. In a majority of the incidents, the suspects were reported to have been in possession of pistols, AK 47 assault rifles, rounds of ammunition, *pangas*, machetes or some other crude weapon. The situation described in the foregoing does not appear to be any different with regard to inmates who described their involvement in criminal incidents in their letters.

One aspect that stands out in the letters by inmates is the fact that very few of them provide details of the criminal incident that led to their incarceration. But what is even more significant is the fact that for the few inmates who chose to describe their role in crime, they assumed a non-agentive role. The following examples illustrate this point. In a letter by inmate L1 (Excerpt 22), for example, the inmate explains the circumstances surrounding her arrest and subsequent incarceration. She states:

EXCERPT 22

210. In the year 2010 September I was working for a European couple
211. when about seven men armed entered the couple's house
212. and ordered everybody to lie down.
213. The men started [ransacking] the couples goods
214. and three of them took me to the bedroom and raped me.
215. When those three finished
216. the other four joined in and raped me till I became unconscious.
217. After the robbers went with money & the goods
218. I was arrested
219. and charged in court for [with] the offence of robbery with violence.
220. After the proceedings I was given [handed] a death penalty [sentence]. (L1)

From this narrative, the robbers and the inmates assume contrasting roles. The robbers are positioned in an agentive role while the inmates are positioned in a medium/patient role. As agents in the criminal incident, the robbers order the inmate to lie down (line 212), they ransack the house (line 213), and they rape the inmate (line 214 & 216) and steal property. All these acts portray the robbers' criminal tendency. In contrast, the inmate is positioned as one who is on the receiving end of the robbers' actions, in other words, she assumes the medium role. She is ordered to lie down, she is raped in turns but she is eventually arrested, charged and jailed apparently for being an accomplice in the robbery. By positioning herself in the patient role she apparently portrays herself as a victim of circumstances rather than as a perpetrator of the crime. From her account, it would therefore seem surprising that she ended up in jail. A similar phenomenon was observed in the letter by inmate L4. In excerpt 23, the inmate explains how she ended up in prison:

EXCERPT 23

221. I used to stay in Kisumu with my parents
222. since I had no good job to keep me in the city.
223. On 2/08/2008, I planned to come to Nairobi city
224. to visit my aunt.
225. I had no enough money
226. so I accompanied another man who was also going to Nairobi,
227. although he was a total stranger to me.
228. To my surprise,

229.   he accepted since he had a private car.
230.   [Up]on reaching Kericho,
231.   I saw a policeman who stopped the car
232.   and thereafter arrested us.
233.   Later on while in police custody,
234.   I came to find out that the car we came with was stolen.
235.   I tried to explain that I didn't know of any robbery
236.   and its only that the man was a good Samaritan,
237.   but it was all in vain.
238.   That is how I landed in Kazi Nyingi Prison
239.   with capital offence and charged with 2 files.(L4)

In this narrative, the inmate's agency in the criminal incident is totally minimized. She is not seen engaging in any criminal act. What we see instead is that she seeks a lift from a stranger and for that she ends up being arrested, allegedly, for being an accomplice in a motor vehicle theft. Although her plea of innocence falls on deaf ears, her lack of involvement in any criminal or criminal-like activity positions her as a good person. This series of events evokes the reader's sense of pity and she is viewed as a victim of circumstances. Interestingly, the agentive role of the 'good Samaritan' (that is, the person who gave her a lift) is as muted as his presence. So anyone listening to this incident may be left wondering why the two were arrested. But as we have stated elsewhere, this may just be a strategy by which the narrator detaches herself from the criminal incident. What the inmate appears to have done is to omit details about her involvement in the criminal incident. The nearest we come to seeing this is in line 238, *'That is how I landed in Kazi Nyingi Prison'.* According to O'Connor (1995:431), this is an example of 'deflecting agency'. By doing so, the inmate apparently distances herself from the criminal incident and therefore portrays herself in a positive light. This interpretation is informed by agentive role that she takes in the narrative. The inmate states that she *'found out'* that the car they were using was a stolen one. One would ask how she found this out. Although no answer is provided in the data, one can, by analyzing agency, conclude that she took the

initiative to find out what had actually happened. This apparently depicts her as a rational and moral person who is disturbed by the unfortunate turn of events and who therefore wishes to understand what happened. Her own evaluation is that the man who offered her the lift performed a good deed just as the Biblical 'good Samaritan' did. Accordingly, she does not understand why such a person's act should be punished. This logic, premised on Christian ethics, appears aimed at projecting her moral ethics.

Another inmate, L27, similarly constructs a victim identity. He explains that he landed in trouble after a disagreement with his business partner. The inmate states:

EXCERPT 24

240.	The nature of my case is am a business person
241.	in dealing in horticulture,
242.	I register accompany
243.	and I was lacking capital
244.	so we join partnership with somebody
245.	after this we went to Turkey to sign contract for fresh fruits Export
246.	after coming back from (Turkey)
247.	this man refused to be both join account or signatory to the company
248.	account so I decided to withdraw
249.	after withdraw he arrested me,
250.	claiming I stealing his money (1,000,000/=)
251.	when the (C.I.D) complete the investigation
252.	they finds what the person was claiming is Air ticket and local expenses.
253.	Thus [that is] why I'm here
254.	even I was advice not to accept on that
255.	so me am innocent
256.	I never been in prison
257.	I brought the idea in business
258.	but now the thing is ruined my family now. (L 27)

The inmate's disagreement with his business partner was apparently occasioned by his business partner's refusal to be a co-account holder (line 247). This is, by all means, a good reason for which one may withdraw from such a contract. His actions therefore seem understandable. According to Rhymes (1995:502) the inmate

discursively mitigates his role. This portrays the inmate as a good person as he does what any other normal person would do in similar circumstances. Secondly, the inmate mitigates his agentive role by blaming some unnamed persons. He contends that he was innocent because he had been advised not to accede to the accusation (line 254). This act of shifting blame and denying his involvement on account of external advice suggests that the inmate is amoral. He does not seem to have a strong sense of judgement about what is right or wrong. Apparently, anything goes for him.

But given that the inmate claims to have been advised not to admit the accusations levelled against him by his business partner, it is most likely that his account was a deliberate attempt to construct an innocent identity when he might actually have been guilty. The inmate seems to do this by focusing on the positive things that he had done; he had registered a company, secured a business contract in the Europe and formed a partnership. All these are positive actions that project his identity positively. In contrast, his partner refuses to be a joint account holder and ultimately has him arrested. From the inmate's point of view, it would appear that it is his business partner who was responsible for his incarceration. The inmate therefore presents himself as an innocent victim of circumstances by appealing to our sense of pity while simultaneously deflecting attention from his criminal acts.

A clearer case of deflected agency is found in inmate L22's explanation of the circumstances that led to his incarceration. The inmate explains in his letter that he came to Kenya as a musician before he ended up in jail. What is significant in terms of agency is how he describes his involvement in the unspecified crime. He states: 'I came here [Kenya] as a musician whereby this *accident* **got me**....' In the expression 'got me', the inmate positions himself in the patient role. He views himself as one who is acted upon by the circumstances (the 'accident got me') that

lead to his confinement. Accordingly, the inmate depicts himself as a victim of circumstances. The inmate appears to construct a non-criminal identity by presenting himself in a non-agentive role.

But perhaps the best example of the discursive mitigation strategy was what I found in police statements of a murder incident. The statements contained several reports of a murder but two were significant in terms of the way the narrators manipulated their agentive roles. One was narrated by a witness and the other by the suspected murderer.

The suspect's narrative shows that one Olum had been staying on his sister's farm. However, following her death, Olum was asked to vacate the land because her will revealed that she had bequeathed the land to her grandson. In the meantime, Jane was to hold the land in trust for the boy until he turned 18. However, Olum refused to vacate the land. In the ensuing conflict, Jane reported the matter to the authorities and the matter ended up in court. The court, in turn, issued an eviction order against Olum and the order was thereafter forcefully enforced by the local District Officer. The day after Olum had been evicted, Jane and Opicho (Ulum's uncle) went to the farm to demolish Olum's house. It was then that Olum accosted them and later murdered his uncle.

The main difference between the two accounts revolved around the agentive roles taken by Olum (the suspect) and Opicho (the victim). This is provided in the witness's account and in Olum's own account of the incident. The witness' account is given in Excerpt 25.

EXCERPT 25

259. As we were at the site, the wife of Olum started causing cause [chaos]
260. and Michael left us at the site
261. to come as the woman was intending to cause chaos.

262.   Also one of the people we had called

263.   to assist us demolishing the house

264.   left to go and look for screw driver.

265.   We were left at the site the three of us.

266.   Opicho, now the late,

267.   thus the man we have called to assist us with the demolishing

268.   and I saw the man started to remove the door frame

269.   and my uncle Opicho was unscrewing a screw from the window.

270.   I saw Olum entering the house armed with a *panga*.

271.   Since we were inside the house

272.   we were not able to see Olum from far,

273.   I only saw him entering the house where we were

274.   this was about 8.00a.m

275.   On seeing this I cried

276.   and this man who we had called

277.   to assist us with the demolition shoot [shot] up

278.   and we all started running away

279.   through the rear door.

280.   Since Opicho, [the one] we were with was elderly,

281.   aged about 60 years

282.   and could not run very first [fast]

283.   Olum caught up with him

284.   and started cutting him severally.

285.   As I was running away,

286.   whenever I glance[d] back

287.   I saw Olum still cutting Opicho.

What is significant here is the way the witness frames his narrative agentively. On seeing Olum armed with a *panga* (line 270), the witness raises the alarm and those persons who were demolishing the house flee. As a result, Olum pursues them but catches up with Opicho before hacking him to death. From this account, agency in the criminal act is directly attributed to Olum. The criminal incident is portrayed both as one that is unprovoked and premeditated since the assailant is reported to have gone to the farm while armed with a *panga*. The assailant

also accosts and confronts his uncle and the people helping them without any apparent reason (at least on the material day). By assigning the suspect the agentive role, the witness portrays him as a callous murderer. In contrast, Opicho, the victim, is assigned the patient role which portrays him as a victim in the attack.

The suspect, Olum, on the other hand, provides a contrasting account of the murder in terms of agency. According to him, it was Opicho who had initiated the attack – 'He then raised his *panga*' (line 292), 'and wanted to cut me with the *panga*' (line 293). Opicho, apparently, did not stop attacking the suspect but continued confronting him and injured him in the process (lines 288 - 297).Olum explains:

EXCERPT 26

288. Immediately when Opicho saw [me] outside the house
289. whereby he was holding a *panga* on his hand
290. [he] came towards me.
291. He then asked me as to why I came to the house
292. where I was evicted from.
293. He then raised his *panga*
294. and wanted to cut me with the *panga*
295. but I jumped back to avoid the *panga*.
296. The deceased did not stop attacking with a *panga*
297. but continued confronting me
298. and all of sudden he injured me with the *panga*
299. and [I] sustained two *panga* cuts on my right hand.

In this account, Opicho is assigned the agent role while Olum is assigned the patient role. It is Opicho who is armed when Olum finds him and it is Opicho who initiates the attack. In contrast, Olum walks into the compound unarmed, the only reason for going back to the farm after being evicted being to collect what remained of his demolished house, and when he is confronted and attacked, his initial actions are aimed at defending himself. This frames him as the victim rather than the perpetrator

of the crime. But though Olum later reports his role in the murder through agentive self reporting - 'I then kicked the deceased on the chest using my leg' (line 308), 'and I cut him with the *panga* on the head,' (line 318) and 'I remember inflicting several cuts on the fore face of the deceased with the *panga*', (line 321) he minimizes his role by presenting his actions as acts of self defence. In the narrative, Opicho explains that he reacted as he did after sensing danger:

EXCERPT 27

300.	This is the time I sensed danger
301.	that the deceased had an intention
302.	of either to kill me or injure me
303.	I then used a piece of timber
304.	which I had picked when entering the house compound
305.	to block the panga from injuring [me] further.
306.	This the time, I then blocked the attack of the *panga* the deceased had
307.	and [the] *panga* felled down from his hand.
308.	I then kicked the deceased on the chest using my leg
309.	and the deceased felled [fell] down.
310.	I then picked the same *panga*
311.	and the deceased started running away.
312.	As soon as the deceased was struggling with me,
313.	Purity and the plumber man
314.	had run away from the scene while screaming.
315.	However, after picking the *panga*
316.	and the deceased was running away,
317.	I then followed him from behind
318.	and I cut him with the *panga* on the head
319.	and the deceased felled down as he was running away.
320.	After falling down
321.	I remember inflicting several cuts on the fore face of the deceased with
322.	the *panga*. I then left the *panga* at the same place I left him lying.

Acting in 'self-defence' as Olum suggests here is meant to justify the reprehensible act of murder. And just like in the case of inmate L27, (the Turkey Business case), Olum appears to suggest that what he did was what any person in similar

circumstances would have done. This was, however, not convincing as the court found him guilty of murder.

Closely related to agency is the use of passive voice which I now turn to.

6.3 Passive and Active Voice Constructions

The letters by the inmates revealed a rather high frequency of passive sentences. A number of these are highlighted in the table that is given below:

Table 6.1 Passive Constructions in Letters by Inmates

Apparently, all inmates who described the circumstances leading to their arrest and detention used agent-less passives. But for the sake of brevity and to avoid repetitiveness, I will discuss inmate L13's use of the passive voice. The inmate describes the circumstances of her arrest as follows: 'I was a house girl before *I was brought* to prison' (my emphasis). In this passive construction, the inmate avoids the agent-phrase, which most likely would have been the prepositional phrase *by the*

police. By not mentioning the police, she appears to distance herself as a participant in police matters and therefore avoids the attendant negative associations of wrongdoing which the phrase would have elicited. It also creates ambiguity, as it raises the awkward 'Who by?' question (Simpson 1993: 87). As a result, it is not clear whether she was taken to prison for a visit or whether she was taken there because she was being jailed. The following examples, all taken from different letters, are constructed similarly.

EXCERPT 28
323.   '*I was arrested* on January 3rd 2011' (L5);
324.   '*We were arrested* in 2000 and charged with an offence of murder' (L21);
325.   '*I was arrested* back in the year 2001 with a case of murder at home district Marigat' (L25).

But this argument on the use of agent-less passives is certainly not conclusive. It is also possible to interpret the use this type of passive as a means of avoiding 'redundancy' (Fairclough 2001: 104) given that the notion of being arrested would imply that it was by the police. The important issue here, however, is the fact that the choice of the agent-less passive distances the inmates from whatever crime that he/she may have committed. This ultimately portrays the inmates in a positive light.

Interestingly though, the inmate in L20, uses the active voice when she states: '*I came* here after been [being] arrested...' The main clause, '*I came here,*' suggests that the inmate decided to be imprisoned, as if imprisonment can be as a result of one's own volition. If this were true, it would imply that it was somewhat heroic for the inmate to be jailed. However, given that prisons limit freedoms, the decision by one to be incarcerated may be viewed as an attempt by the inmate to project herself as a resilient woman who is capable of withstanding harsh prison life. Similarly, by juxtaposing '*I came here*' with '*after [being] arrested*', avoids the construction '*I*

was brought here after being arrested' which may have sounded more humiliating, and in turn, may have positioned the inmate negatively.

In this section, I have examined how agency, passive and active voice have been used to construct the identities of various inmates. I now turn to the ways through which identity is constructed in the courtroom through transitivity. I specifically examine how this is realized through material processes, verbal processes, and mental processes. Thereafter, I discuss the role of modality in identity construction.

6.4 Processes and Identity Construction

That the ICC's Confirmation of Hearing Charges was also about the construction of the identities of the parties is brought to the fore through Suspect 2's DFL who states that he intended 'to construct the identity of his client' for the benefit of the lawyer representing victims of PEV. The DFL made it clear that language was going to be the site of that construction when, way into his presentation, he says: 'Now we have seen [Name's] language. What was Suspect 2 saying?' Later on, after focusing on OPP Leader I's actions, he rhetorically asks: 'What was [Suspect 2] *doing*, in fact?' These two questions, 'What was [Suspect 2] saying?' and 'What was [Suspect 2] doing point to both verbal and material processes. And following the DFL's argument, it is clear that he viewed both the verbal process and the material process as important elements in identity construction. I, accordingly, discuss how these processes aid in constructing the identities of the various parties in the case.

6.4.1 Verbal Processes

As has already been stated in Chapter 3 section 3.2.1.2 , the verbal process is the process of saying and has three participant roles namely: the sayer (the one who says) verbiage (what is said) and the target (the addressee) (Simpson 1993:84). This

process was significant in constructing identity in both the police interview setting and the courtroom since proceedings in these settings are conducted through questions and answers. In the discussion that follows I focus on what some of the parties involved in the Confirmation of Charges Hearings said. I begin with Suspect 2 and then turn to OPP Leader I.

Suspect 2's verbiage was presented through clips that were played in court. In one of the clips, Suspect 2 is heard saying:

EXCERPT 29
326.   All of us want to be recognised as Kenyans. And we are *saying* that Kenya
327.   should be one, and everyone should feel free to go everywhere they like. We
328.   also want policies that will uplift the state of the citizens and policies taking
329.   people back to 1900's.

The verbal process is signalled here through the verb 'saying'. The verbiage here being that Kenya should be one and that 'everyone should feel free to go everywhere they like'. Viewed within the context of the PEV, this statement positions Suspect 2 as a nationalist who is genuinely interested in the freedom of Kenyans to move around the country and live wherever they please. Later, during a meeting with the local District Commissioner, Suspect 2 reiterates this position by urging the official to ensure that there was adequate security so that non-locals who chose to remain in the area would feel secure to do so. His commitment to the rule of law is also highlighted in his remarks to the effect that their competitors follow 'due process' to resolve 'outstanding issues' relating to the disputed election results. Supported by his lawyer's remarks that Suspect 2 was striving for peace and was seeking to resolve the violence through democratic means, Suspect 2 is positioned as a democrat and peace maker. His peaceable nature is further underscored in his calls to warring parties to end the violence. He states that 'It is paramount to us *that there's peace* in our country *and an end to the killings* and the destruction of property that we have seen' and that 'in the interim *we must stop the bloodshed*'.

In contrast, Suspect 2's DFL lawyer portrays OPL I and his supporters negatively. He blames them for instigating the PEV. The lawyer does so by presenting a clip showing what the leader had said after visiting a rural hospital at the height of the PEV. The leader is heard on tape saying:

EXCERPT 30

330.	What we have seen actually defies description. We can only describe it as
331.	genocide on a grand scale. We've seen so many (...) dead kids, children, cut
332.	with *pangas*, we've seen bodies that have been decimated by fire. We have
333.	seen people with bodies that are riddled with bullets. We ((?)) what's
334.	happening in our country right now is nothing short of genocide. And this is
335.	being done mainly by police officers ((?)) and a gang, a terrorist gang known
336.	as (NAME), which has been around for a long time which is supposedly
337.	banned but it is connected to the political class which us now sitting at
338.	location B as we are talking right now. One of them Suspect X.
339.	OPL II :=((Whispers)) The Principal=
340.	OPL I: =The principal master. (...) Another one called
341.	[Name].

The remarks that OPP Leader I, together with others who were with him on that visit, had witnessed 'so many (...) dead kids, children, cut with *pangas*[xiv] ... bodies that have [had] been decimated by fire' and 'people with bodies that are riddled with bullets' (line 333) may have been truthful. However, apparently wishing to exculpate his client by incriminating a person who had not been charged with the PEV crimes, Suspect 2's DFL represents these observations as 'cunning lies' and 'whispered prompts of planned misrepresentation'. These accusations portray the OPL I as a rumour monger. But perhaps the most damaging of the claims was the lawyer's allegation that the said opposition leader had later apologised to one of the persons he had accused. If true, this would lend credence to the interpretation that OPL I was indeed malicious.

Moreover, the OPL I's verbiage also appears to have positioned him as one who was belligerent. This appears to be the case when he states:

EXCERPT 31

342.	People of Kenya, as I have said many times, will not accept results of rigged
343.	elections.... I want members to know that we will have contingency measures
344.	to deal with rigging at the polling stations, also at the tallying centres (?)

The sections highlighted through bold type foreground three important aspects. First, OPL I's call to the citizens to conduct themselves with dignity and to desist from acts of hooliganism and *'thuggery'*, his call for mass action and his intention to inform the police about the mass action. When the OPL I asks his supporters to desist from engaging in unlawful acts, he is clearly showing his preference for the use of peaceful means in resolving the conflict. But one would still have argued, as had Suspect 2's DFL, that making the call for mass action at the time was highly provocative. In fact, Suspect 2's DFL's position was that OPL I's call for 'mass action' is what had eventually led to the escalation of PEV. Indeed, some of the suspects in this Confirmation of Charges Hearing had levelled the same accusations at various public meetings organised prior to their appearance at The Hague. In making this assertion, the DFL appears to have been exploiting the negative associations of 'mass action'[xv]. Accordingly, it would have been understandable for a Kenyan to have interpreted the call for mass action as a call to violence. However, OPL I appears to be clear in his mind that he did not intend to cause violence. This is revealed by the way he modifies 'mass action' and its close synonym 'demonstrations' as shown in the following examples (lines 353 - 354):

(i)   we are going to call *mass action*

(ii)   *peaceful* mass action,

(iii)   *peaceful* demonstrations

In these examples, when OPL I makes reference to mass action in (i) it would have been possible to interpret 'mass action' in a general way that would have included violent actions. But, probably being conscious of such a possibility, OPL I clarifies his intended meaning by modifying 'mass action' with 'peaceful' in examples (ii) and (iii). Secondly, his call to his supporters to use peaceful means is amplified in his advice to them to 'desist from any acts of hooliganism or *thuggery*[xvi](line 348 - 349)' as well as calls to his supporters to be patient and to handle themselves with dignity. Both these calls are inconsistent with persons inciting other people to violence. However, what I find most exculpatory in his statements is his revelation that the police would be informed about their intended protest march 'as is required

by law' (line 363). Clearly, a person intent on causing violence will not involve police officers in his planning. Ultimately, these modifications of 'mass action' and the leader's calls to his supporters and Kenyans at large to act responsibly contradict the negative depiction of OPL I by the DFL and instead position him favourably.

But such construction and rebuttal of imposed identities is not limited to the 'big' cases alone. In one local case, the Lindi Robbery incident, the DFL constructs an innocent identity by focusing on the verbiage of witnesses in the case. In the excerpt that follows, the DFL cross-examines a prosecution witness about what he had heard about the case and about his client.

EXCERPT 33

364.	**ATT**: Ok, hii kuhusu baadaye (...)	**ATT**: Now about (what happened) later
365.	umesema baada ya hii kesi	you've said that after this case
366.	ya Mombasa,	in Mombasa,
367.	ulisema baadaye ulisikia	you say that you later *heard* (that)
368.	mtu alishikwa anaitwa Sila	A man called Sila was arrested
369.	**WITN**: Yes.	**WIT**: Yes.
370.	**ATT**: Nani alikuelesa?	**ATT**: Who told you?
371.	**WITN**: Eh... *nilikuwa nasikia tu*	**WIT**: Eh, I *just heard*
372.	maana hiyo kesi ilikuwa ni ...	because that case was ...
373.	**ATT**: Ehe.. nani alikuelesa?	**ATT**: Yes, who told you?
374.	Ama ulisikia wapi?	or where did you hear this?
375.	**WITN**: Nilisikia kwa shule	I heard it at school
376.	kwa wanafunzi.	among students.
377.	**ATT**: Kwa shule ...	At school ...
378.	**WITN**: Na pia watu City hapo.	And also among people in the city
379.	**ATT**: Oh, shule na City Center?	Oh, at school and in the city centre?
380.	*Walikuwa wansema nini*?	*What were they saying*?
381.	WITN: Kuna mtu ambaye wanasuspect	(they said) that there's a man
382.	Ambaye *wanasuspect* (that) they *suspect*
383.	lazima alikuwa hapo,	(that) *he must have been involved*
384.	anaitwa Sila.	a man called Sila
385.	**ATT**: Hata wanafunzi	**ATT**: Were the students
386.	Walikuwa wansema hivyo?	also saying that?
387.	**WITN**: Yes.	Yes.
388.	**ATT**: So there were *rumours*=	So there were *rumours*=
389.	**WITN**:=Yes	=Yes.
390.	**ATT**: to the effect that	to the effect that
391.	kuna mtu anaitwa Sila=	there's a man called Sila=
392.	**WITN**: =Yes	= Yes.

In this excerpt, the lawyer focuses on the verbal process. He specifically focuses on the sayer, that is, 'who says' and verbiage, that is, 'what was said'. This is signalled

though his preponderant use of the verbs related to saying such as 'say', 'saying', 'hear' and 'told'. Once the DFL establishes that the witness is saying what he had 'heard' (not what was investigated, line 380), he shifts his attention to the verbiage and specifically asks: 'What were they saying?' The witness's account of what he had heard unwittingly enhances the lawyer's hearsay argument. First, the witness attributes what he had heard to 'people' in the city centre 'and 'students'. Secondly, he states that they were saying that they *suspected* that the suspect in the case must have been involved in the robbery (lines 380 - 388). Although the witness uses a strong modal auxiliary 'must have been' to describe the accused person's alleged involvement in the robbery, this is considerably weakened by the preceding verb 'suspect'. So through the verbal process, the DFL categorizes what was said as 'rumours' (line 388) to which the witness accedes in lines 371 and 382. Ultimately, the focus on what the witnesses were saying helps to portray the suspect as a victim of common hearsay. In effect, this casts the allegations against him in doubt and apparently portrays him as an innocent person.

In the foregoing I have shown how the verbal process (that is, what people were saying) was used to construct identity. I now discuss material processes - what different persons were doing and how their actions constructed their identities. Later I discuss the role of modality and intertextuality.

6.4.2 Material processes

As was stated in Chapter Three section 3.2.1.2, material processes are defined as processes of doing. This process is significant in the courtroom as it fundamentally constitutes doings that may be of a criminal nature. And since the courts decide whether what a suspects has done is lawful or not, it is important to examine this aspect. I begin by focusing on the actions of police officers and the actions of Suspect 2 in the ICC Confirmation of Charges Hearings.

Although the ICC Confirmation of Charges Hearings were about the six suspects who were arraigned in court for crimes against humanity, there were other underlying issues that came to the fore. The most important of these was the role played by police officers during the PEV. While the prosecution maintained that police officers were complicit in the violent acts, DFL's representing one of the suspects, a senior police officer, argued that police officers had acted impartially and professionally. So to a large extent, the debate was whether or not police officers had acted professionally.

In defending his client, the DFL states that the police boss 'beefed up security patrols with the view to avert[ing] attacks and avoid[ing] violence'. This action suggests that the police boss, and by extension all police officers, deliberately took steps to ensure that the insecurity was contained. Given that this is what police officers ordinarily do when there is a rise in crime, the police boss is portrayed as a professional. In addition, the DFL, points out that police officers at a rather small station manned by only 30 police officers were able to arrest 150 criminals in one day alone. This apparent high number of arrests in a volatile situation implies that police officers must have reacted diligently and professionally. Police officers are also said to have saved persons who would have been victims of the PEV. During the examination-in-chief of one of the senior police officer's witnesses, the witness recounts how police officers had rescued him together with his neighbours. He explains that he had requested police assistance through a neighbour who in turn called a police officer and soon after the:

EXCERPT 34

393.	woman came to the window and told us the police are outside there. We
394.	walked from the house with my family and entered a GK land rover of the
395.	police. Some meters from my house, some people were besieged. The police
396.	went there. I remember they were also saved and entered the police land rover
397.	and we ended at the police station.

In this excerpt a victim of PEV who had been trapped in his house called for help from police officers through a neighbour and was evacuated to safety (lines 393 – 395). But as the man and his family were being evacuated, they came across other people who had, similarly, been besieged. They, too, were rescued by police officers (lines 395 - 396). So it appears that police officers generally came to the rescue of the persons who needed assistance. These actions, realized through material processes, portray police officers as being both professional and humane.

Furthermore, police officers are also said to have 'prevented and responded to many violent attacks' and in the process 'sheltered about 10,000 IDPS'. One of the DFLs representing the senior police officer argues as follows:

EXCERPT 35

398.	You will find from the evidence that will be given here, that police responded
399.	to all forms of violence and they did not respond because this was a (NAME)
400.	or what. They confronted criminal gangs as they would confront anybody
401.	who was committing a criminal act.

In this excerpt, police officers are shown responding to violence impartially as is expected of all police officers. In this particular instance, their impartiality is foregrounded as the officers are shown taking action against suspected members of the militia alleged to have been involved in the PEV just as they would against any suspected criminals. That 'they confronted criminal gangs as they would anybody who was committing a criminal act' implies that police officers were acting professionally. Ultimately, whereas the prosecution constructs the police force as unprofessional and partisan, the DFLs constructed the police force as being both professional and impartial.

At the beginning of section **6.4**, I pointed out that Suspect 2's DFL asks rhetorically: 'What was Suspect 2 *doing*, in fact?' (my emphasis) and suggested that by providing the answer to this question, the DFL provided glimpses into Suspect

2's identity. The DFL's own response to the two questions was that Suspect 2 did two main things. First, he *'offered to be questioned* in response to a letter by the OTP' and second, he *'went on a peace talk'* (my emphasis). Offering himself 'to be questioned' by the ICC authorities projects the suspect as one who is willing to cooperate with the international court and therefore projects him as a law abiding person. This interpretation gains weight particularly when it is viewed against cases where prominent persons who have been indicted by the ICC have refused to present themselves before the court while others have been on the run for years since being summoned to appear before the court. Although, as the lawyer indicates, this offer was rejected, the fact that Suspect 2 took this action positions him positively. Equally, going out on 'a peace talk', portrays Suspect 2 as one who is peace-loving. These actions contrasted with the actions of his nemesis, OPL I.

6.5 Modality

In Chapter Three section **3.2.1.3**, I stated that modality 'has to do with speaker or writer authority' and that it is marked by modal auxiliaries, verbs with a modal meaning, and verbs of knowledge, prediction and evaluation among others. As Fairclough (2003:166) observes, 'modality is important in texturing identities ... in the sense that what you commit yourself to is a significant part of what you are – so modality choices in texts can be seen as a part of the process of texturing self-identity.' It is with this in mind that I examine the use of modality in the ICC Confirmation of Charges Hearings. I focus on three types of modality namely; categorical assertions, deontic modality and epistemic modality.

6.5.1 Categorical Assertions

In the section on material processes, I have argued that one of the prosecutor's argument had been that police officers were complicit in the commission of PEV. I

have also shown how these claims were countered by the defence. The defence teams

apparently used two strategies to undermine the Prosecutor's claims. The first was

to openly attack the prosecutor by terming him incompetent. The second was through

subtle means. Accusations that the prosecution was incompetent were clear-cut and

need no further attention. What, in my view, constitutes subtle means is the DFL's

use of categorical assertions regarding his view about prosecution witnesses and the

prosecutor's evidence. Suspect 2's lawyer had shown the court a number of clips in

which his client had featured. In one of the clips, the DFL had focused on what his

clients had said. Thereafter the DFL had stated as follows:

EXCERPT 36

402. These are not the words of a man taking revenge against people in order to
403. retain power. So how has it come about that he has been brought here?
404. *There's been a clear political decision by the prosecution to bring three*
405. *people from each side and put them on trial; to make a case fit, against both*
406. *sides; to construct a case without a proper investigation of the evidence and*
407. *with complete disregard of the facts.* Why do I say that? *Not a single person,*
408. *who was with (NAMEII) (NAMEII) fromJanuary toFebruary 2006, hasbeen*
409. *interviewed by the prosecutor to find out what he said and what he did.* Not
410. a single one of those exculpatory media clips of what he said and did were
411. presented to you the judges by the prosecution. *Not a single person who*
412. *attended the meetings he went to, places he went to, in his efforts to solve*
413. *and prevent the crisis that befell Kenya was interviewed.* He offered to be
414. questioned in response to a letter by the OTP and that offer was not taken up.
415. No checks have been made on the truthfulness of the three key protected
416. witnesses upon whom the whole prosecution case is based. *The prosecutor*
417. *has deliberately shielded his evidence from the witness stand in these*
418. *proceedings to avoid their exposure.* At the first and only status conference,
419. we were told the prosecution would call ten live witnesses. Well, where have
420. they gone? What would they have said, and look like liars? The case has been
421. built on the truthfulness of those three protected witnesses. However, two of
422. them, numbers 11 and 12, were first interviewed by the defence team in 2011
423. and they gave fully exculpatory account to that now relied upon by the
424. prosecution. It utterly contradicts the accounts that they have tried to advance
425. in this court today based on those statements. Those protected witnesses,
426. number 11 and 12, then attempted to extort money from my defence team and
427. ==== but they were thrown out of our offices. They then moved on to another
428. Defence witness whom we're calling to testify, and attempted to extort and
429. blackmail him. He, in fact, knows exactly; where they were during this
430. conflict and what they were doing as he came across them several times in
431. circumstances that utterly contradict their statements to the prosecutor. In
432. pursuit of money which was their sole motivation, they discovered the ICC
433. prosecutor offered better packages than we did. So that is where they went to
434. provide a lying and utterly false account. *Not a single fact within their*
435. *statements has the prosecutor sought to corroborate. I guarantee that their*

436. *truthfulness has not been investigated.* If that were to happen, the prosecutor
437.   would meet only disappointment. This is a clear sign of desperation to
438.   construct a case.

In this statement, the DFL makes several claims regarding the prosecutor's evidence, the prosecutor's witnesses and the prosecutor's conduct. Regarding the witnesses, the lawyer contends that the decision to prosecute six suspects to the court was politically motivated. He states:

EXCERPT 37
439.   There's been a clear political decision by the prosecution to bring three people
440.   from each side and put them on trial; to make a case fit, against both sides; to
441.   construct a case without a proper investigation of the evidence and with
442.   complete disregard of the facts.

In his view, having three persons drawn from either side of the political divide (of the Kenyan political contest) was a deliberate attempt to make the case 'fit' (line 440). Moreover, he argues that the prosecutor had prosecuted the case without conducting proper investigations and that he had disregarded the facts of the case. The DFL's claims were made in a manner suggesting that he was absolutely sure about what he was saying. Yet it is known (at least from the court proceedings) that the DFL had not participated in the prosecutor's investigations and would therefore not be as certain about his claims as he sounded.

With regard to the prosecutor's conduct, the DFL similarly made a number of claims to the effect that the prosecutor had not ascertained his claims:

EXCERPT 38
443.   **Not a single person,** who was with [Name] from [Date], has been interviewed
444.   by the prosecutor to find out what he said and what he did. ... **Not a single**
445.   **person** who attended the meetings he went to, places he went to, in his efforts
446.   to solve and prevent the crisis that befell Kenya was interviewed (My
447.   emphasis).

In fact, the DFL made a damaging allegation to the effect that the 'The prosecutor [had] deliberately shielded his evidence from the witness stand in these proceedings to avoid their exposure'. Later, he argued that the Prosecutor had not corroborated the statements of his witnesses. Finally, the defence lawyer, made another strong

assertion: 'I guarantee that their truthfulness has not been investigated'. These claims by the DFL are presented as 'incontrovertible truths' (Jorgensen & Phillips (2000:84). However, these can only be his opinions since he would have no way of verifying all the claims. What is interesting, however, is that the DFL emphasizes the claims stylistically through the repetition of the phrase: *'Not a single person ...'* This repetition appears to mark the DFL's high level of certainty about the claims. This style depicts the DFL as both a knowledgeable and an authoritative person. At the same time, the claims depict the prosecutor as an incompetent official.

With regard to whether his client was guilty or not, the DFL makes similar categorical assertions. For example, he makes claims to the effect that the OPL I was solely responsible for the PEV. He does this when he makes comments on a clip in which OPL I is shown talking about the bodies he had seen at a morgue. It was at the same venue that the leader alleges that security agents and an outlawed militia group were accomplices in the PEV. The DFL categorically asserts that *'No one else was responsible at that time for any violence other than the supporters of the man standing in the clip and pointing his finger'*. By so doing, the DFL positions he OPL I's supporters as criminally liable and not his client.

As would be expected, the DFL constructs the identities of these other parties negatively as a means of deflecting attention from his own client. Ultimately when the judges consider the facts of the case, they will find that there is hardly any evidence to commit Suspect 2 to trial. Instead, there would be evidence against OPL I's supporters. By advancing this line of thinking, it was apparent that the DFL's argument was that innocent persons had been arraigned before the court while those who were guilty were free. Incidentally, the same strategy is also used by the DFL representing the Senior Police Officer who had been indicted. While responding to

prosecution allegations during the closing statements, Suspect 2's DFL states as follows:

EXCERPT 39

448.   ... it's only witness 100, another one talks about a meeting in stadiums where
449.   people are registered to go and fight in public and no other Mungiki seems to
450.   know about this and this is actually happening in the open. So there is
451.   something wrong about this case and we know what it is. It's because these
452.   are **fabrications**. It's because these are **lies** (my emphasis).

The DFL categorizes the Prosecutor's claims that police officers did little to quell the violence as 'fabrications' and 'lies' (line 452). This creates the impression that the DFL is stating absolute truths. In the process, he portrays himself as one who is authoritative while simultaneously portraying the prosecutor as one who is unprofessional and incompetent. It had been claimed that the Prosecutor had not 'relied on his own investigations'. Categorical assertions therefore tended to construct an authoritative identity.

6.5.2 Deontic Modality

In one of the clips that were played out in the ICC court during the Confirmation Hearings, Suspect 2 is quoted expressing his views regarding the freedom of association. He states as follows:

EXCERPT 40

453.   All of us **want** to be recognised as Kenyans. And **we** are saying that
454.   Kenya **should** be one, and everyone **should** feel free to go everywhere
455.   they like. We also **want** policies that will uplift the state of the citizens
456.   and policies taking people back to 1900's.

Uttered when the ethnic divide in the Kenyan nation was at its worst, Suspect 2's expression of his desire for a united and democratic Kenya where everybody would be free to live wherever they pleased was significant. The speaker's desire was marked through deontic modality which manifested in the modal auxiliary of obligation, 'should' (line 54) and the attitudinally loaded finite' (Hussein 2008:139)

'want' (lines 453 & 455). Through deontic modality, the speaker expresses his desire

for a united Kenya and the right for all Kenyans to live wherever they please.

In a second utterance, Suspect 2 calls upon their rivals to embrace dialogue.

He states as follows:

EXCERPT 41
```
457.      [Our rivals] should accept the invitation to dialogue, engaging each other on
458.      the way forward does not in any way compromise the possibility of
459.      challenging the results in court. If our colleagues are not satisfied, and follow
460.      due process, we will be more than willing to file our defence. (...) There is a
461.      process in which the outstanding issues should be followed; but our position
462.      is, is that in the interim we must stop the bloodshed.
```

Again, as in the previous utterance, he shows preference for modal auxiliaries of

obligation, that is, 'should' and 'must'. Whereas 'should' in the first sentence

emphasizes the need for the rival party to accept the invitation to discuss peace, he

makes it clear that there must be an end to the violence. He emphasizes this through

his choice of a strong deontic modal auxiliary 'must'. The final statement from the

speaker emphasizes the need for peace in the country when he states that 'it is

paramount to us that there's peace in our country and an end to the killings and the

destruction of property that we have seen' (My emphasis). The choice of the

adjective 'paramount' reveals that the speaker has a very high level of commitment

towards peace. This leaves the listener without any doubt that the speaker is for the

restoration of peace. Accordingly, the use of deontic modality portrays him as

peaceable and one who believes in free choice. In citing these utterances, the DFL

indirectly resists the criminal identity imposed on his client on account of being

accused of involvement in criminal acts during the PEV.

6.5.3 Epistemic Modality

Identity was also constructed through epistemic modality. Although

epistemic modality is generally marked through modal auxiliaries, evidence from the

data show that identity was constructed through the use of hedges. In spite of the fact that there were several instances where this was used, I limit my discussion to two notable instances; one in the ICC cases and the other in one of the local cases. The first of these was observed when one of the suspects was reacting to allegations of his involvement in PEV. The allegations had been made through the mass media and journalists promptly sought their reactions to the accusations. Suspect 3 responded as follows:

EXCERPT 42

463.   I think I am not new to this. Eh ... I have been at it for a while now. And eh...
464.   all the issues eh.. (...) that I raised have now come to pass. And eh... it didn't
465.   come to me as a surprise to me that my name was mentioned because all
466.   along, eh... I had come (...) eh... to know that there was a deliberate scheme
467.   (...) Eh... hatched and eh... executed by fellows who are not interested in
468.   justice, but interested in (...) other considerations. I want, however, to say that
469.   eh... am ready, am willing am available as I said before (...) eh... to face the
470.   prosecutor with his ... witnesses in court (...) as and when I am required to do
471.   so.

What is evident here is the suspect's preponderant use of pauses (...) and hedges (Eh...) in his utterances. Compared to the speaker's known manner of speech, this was uttered in a considerably slow tempo. These hedges, therefore, seemed to mark suspects 3's lack of or the low level of commitment to what he was saying. According to Olsson (2008:114):

> ... if we are committed to what we are saying we tend to be brief and to the point, we tell it 'like it is', as the saying goes - we do not hedge. On the other hand if we do not believe what we are saying or if we do not believe *in* what we are saying, we will probably beat about the bush, we will be hesitant and non-committal, and even the sequence of events we are describing will most likely be somewhat disordered. We will certainly not be demonstrating speaker commitment.

Following this interpretation, it can be argued that the suspect's pauses and hedges portray him as one who was not committed to what he is saying and may probably be unreliable. But having reacted to the claims soon after the accusations had been made public, it is possible to assume that the pauses and hedges and the accompanying slow tempo were signs of distress following the announcement.

Indeed, it appears that pauses alone may not be signs of a low level of commitment as suggested by Olsson in the excerpt quoted above. In a different case, the Water Lily's case, the accused person uses an inordinately high number of pauses. This was probably the highest number of pauses and hedges used by any lay person or professional in the entire corpus of court proceedings recorded for this study. But as I have argued in Chapter Seven Section 7.6, pauses were used by the accused person on that occasion to index his knowledge about courtroom procedures.

The choice of some of these aspects of modality such as categorical assertions appears to have been informed by the legal system used by the court. As I have explained in Chapter One section 1.3.1, the inquisitorial system which is used in the International Criminal Court allows for uninterrupted monologic presentations which present the lawyers the freedom to exploit a variety of linguistic resources to argue their cases.

6.6 Intertextuality and Identity

In a number of cases, texts produced outside of the court for other purposes became subject of court proceedings. There were a variety of such texts in the entire courtroom data. These included police statements, P3 Forms, Identification Parade Forms and evidence presented at other judicial commissions of inquiry. The texts that I have selected for analysis involve both legal professionals and lay persons and would thus be considered to be representative. I discuss four such cases. In the first one, a lay accused person cross-examines a witness over statements made to the police with regard to when a criminal incident took place. In the second case, a lawyer cross-examines a senior police officer over contents of an Identification Parade Form while the third and fourth cases involve witnesses at the International Criminal Court. In the latter cases, the witnesses, one a lay person and the other, a

legal professional, are questioned about the testimony that they had given to a judicial inquiry.

The first case is drawn from the GBH case in which a lay person appearing in court on a Grievous Bodily Harm case, ACCP2 questions a witness over when an alleged assault took place.

EXCERPT 43

472.	**ACCP2:** ∘Hii ni statement yako∘?	**ACCP2:** Is this your statement?	
473.	**CW2:** Ndifyo.	**CW2:** Yes.	
474.	**ACCP2:** ∘Uliandika?∘	**ACCP2:** You wrote it?	
475.	Nisomee hapa.	Read this.	
476.	**MG:** Soma tu, atajibu aseme.	**MG:** Just read it. He will answer and explain.	
477.	**ACCP2:** ((reads))'I do recall on		
478.	9 tieth January 2010,		
479.	at 20 hrs when at our home with my sister		
480.	Sharon Kipchirchir and my brother Joseph Koech		
481.	as we were studying in our parent's house		
482.	when we, when we ha:t somebody screaming,		
483.	screaming we got out of the house		
484.	to know where the scream was ematating [emanting] from		
485.	... from... we learn it was from our		
486.	grandmother's home.		
487.	**MG:** Sasa swali inatoka wapi?	**MG:** Now, where's the question?	
488.	Si usome penye ambapo unataka	Read where you wish to draw your	
489.	kuuliza swali?	question	
490.	**ACCP2:** Sasa umeandika kwa hapa tarehe 9	**ACCP2:** Now you've written	
491.		here 9th	
492.	na umesema mbele ya maakama tarehe 8.	While you are telling the court 8th	
493.	Gani unaweza kueleza maakama ni ya ukweli?	Which is the correct one?	
494.	**CW2:** Tarehe 8.	**CW2:** 8th.	

In this example, the inconsistency is about the discrepancy between the date that the witness gave during a police interview and what he informs the court during the hearing. The witness had indicated in her statement that the incident had occurred on the 8th (line 494) yet during her evidence in chief, the same witness states that the incident had taken place on the 9th (line 478). Attributing two dates to the same incident may give rise to two different interpretations. First, this may be interpreted to mean that the witness is not sure about what he/she is saying and this would be taken to mean that the witness is unreliable. But such an interpretation would disregard a basic fact about human beings; that it is human to forget. Second,

whereas this inconsistency would contradict the evidence of the witness it does not change the substantive facts of the case. As such, the inconsistency may be ignored. Apparently, it is this second line of interpretation that seems to be preferred by magistrates and judges in such instances. According to one of the magistrates that I interviewed, the court does not usually give a lot of weight to such minor discrepancies for as long as the facts of the case are not substantially altered. This position was also asserted rather strongly by the presiding judge in The Hague trials in an instance in which a DFL lawyer branded a witness a liar for cheating while he was still under oath. The witness had mentioned in his evidence that a certain radio station had covered an event in which his client had made some damaging statements. The DFL argued that since the said radio station had not even been launched, the witness had perjured himself. The judge made it clear that the witness's case was not an act of perjury because, 'The offence of lying [perjury] is intentionally lying. That is to say, the witness deliberately lies to the court. It does not include human errors that may be made'. So whereas, ordinarily, such an inconsistency of facts would portray one as unreliable, the interpretation does not hold in all instances.

In another incident drawn from the Lindi Robbery Case, a Senior Police Officer is questioned about how he had conducted an Identification Parade and whether or not he had properly informed the suspect of his rights. The DFL questioned the Senior Police Officer over the contents of the Identification Parade Forms that had been filled in immediately after the Identification Parade had been conducted. During cross-examination, the police officer appeared to have contradicted himself.

EXCERPT 44

495.   **DFL:** Did you indicate in this form (...) that you actually informed him of the
496.   reason of the parade? (...) Did you? ((walks to him and shows him the
497.   Identification Parade Form)) From these forms, did you write ((Witness looks

498.   at the form))
499.   **WIT:** Yeah, Yes, I said Yes, he said he was informed.
500.   **DFL:** No, no, no. There is somewhere it says: 'Suspect informed of purpose of
501.   arrest' (...) Who informed him?
502.   **WIT:** It's me, your honour.
503.   **DFL:** Did you write there?=
504.   **WIT:** No, your honour.
505.   **DFL:** That is it. OK. (...) And there's a place that says: 'Suspect asked if he
506.   consents to appear on the parade and re[lies thereto [Yes] *Sindivyo*?
507.   **WIT:** [Yes]
508. →**DFL:** But this 'Yes' you have are talking about is not it it does not, it does
509.   not ah... it's not 'yes' to explain that the suspect was informed of the purpose
510.   of the parade. *Sini hivyo?* (Is that so?)
511.   **WIT:** According to me it's 'Yes'. *Bwana* (Mr.) Security Officer... the Chief
512.   Inspector So according to me there's [no reason
513.   **WIT:** [It's 'Yes'. I indicated 'Yes' your honour (...)
514.   **DFL:** I disagree with the witness , your honour, because where it is state
515.   'Yes' it is on a different column. But=
516.   **WIT:** First column I didn't indicate, but the other column I indicated 'yes',
517.   your honour.
518.   **DFL:** Or I read it this way: Suspect asked if he consents in reply thereto.
519.   **WIT:** Yes.
520.   **DFL:** But it does not talk of the reason, it does not talk of having been
521.   informed of the reason.
522.   **WIT:** Of course yes, your honour.
523.   **DFL:** Thank you. That's what I want.

In this excerpt, the contest is over whether or not the police officer who conducted

the identification parade had communicated to the accused person his rights, that is,

the reason for the Identification Parade (lines 497 - 499) and whether the accused

person's consent had been sought as is required by law (lines 505 - 506). The DFL

contests the answers given by the said police officer on grounds that the 'Yes' in

line (507) did not necessarily refer to the suspect's consent for the Identification

Parade (line 509 - 510). Although the Police Officer states that his 'yes' referred to

the suspect's consent, the DFL disagrees because the 'Yes' had been written in a

different column (lines 514 – 515) and also because it did not specify the reason

(line 520 - 521). Assuming that this was a breach of the suspect's rights this would

lead to a constitutional interpretation on whether or not the rights of the arrested

person had been violated (see Constitution of Kenya 2010. Article 49 outlines the

rights of arrested persons). This would have implications on the identity of the Senior Police Officer. Through these questions, the lawyer indirectly projects the police officer as one who is incompetent and unprofessional because he 'fails' to communicate to the accused person his rights as is required by law and by breaching the law on the rights of arrested persons. In these two cases, 'discourse extractable' from a police interview and police records is used in a subtle way by both an accused person and a lawyer to construct the identities of the witnesses.

The same strategy was also employed by lawyers in the ICC Confirmation Hearing case. One witness who had testified at another inquiry into the causes of PEV found himself being interrogated about the consistency of his testimony to the Waki Commission in the light of his testimony at the ICC Confirmation Hearing case. There are many instances of such discrepancies but for the sake of brevity only two such instances will be discussed. In the first instance, a Defense Witness (DW) talks about the eve of the PEV and what time he got back to his house that night. The PL asks him:

EXCERPT 45
<pre>
524.   P. LAWYER: May I ask you again, what time did you reach your house?
525.   WITNESS: Around 9.45.
526.   P. LAWYER: In your testimony before Waki Commission you mentioned that
527.   it was around 8.30 is that also possible?
528.   WITNESS: No, because when I talked to the Waki Commission, I have never
529.   seen that report again. I remember telling them that the mass at the Catholic
530.   Church starts at 8.30 pm. It could have been possible for me to go to town and
531.   back and I stated that very
532.   clearly though I cannot remember everything I told Waki Commission. I
533.   think there was a problem in that, but when I reached my house from town on
534.   the 7th it was around 9.30 or 9.45
</pre>

The point of discrepancy here regards the time when this witness allegedly reached his house. During the hearings of The Waki Commission of Inquiry, the witness had indicated that he had reached his house at 8:30pm (lines 526 – 527) while during the ongoing proceedings the same witness alleges to have reached his house at 9:45 (line

525). So as expected, the cross-examining lawyer highlighted this discrepancy, apparently to cast the credibility of the witness in doubt. The witness's answer does not make things any better. In response he claims not to remember what he had told the commission (line 532) and also varies the time '9:30 or 9:45' (line 534).

Similarly, during the same cross-examination, the witness provides contradictory information regarding how long it had taken for him to be rescued from his house.

EXCERPT 46

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535.      LAWYER: Can you tell the chamber how long you were in your house before
536.      you were  rescued that day?
537.      WITNESS: About 4 hours.
538.      LAWYER: I would like to go back again to your statement that you gave
539.      before the Waki Commission and there you say it took about 6 hours in my
540.      house, could that be correct?
541.      WITNESS: No, I can't remember everything I told Waki. But I can see it
542.      here, but there were some errors in that report.
```

The Witness had indicated to the Waki Commission of Inquiry that it had taken 6 hours (lines 539- 540) yet during the Confirmation Hearings he stated that it had taken 4 hours (line 537). When he is questioned about the discrepancy, he blames it on his memory. As in the previous instance, the witness claims not to remember what he had told the previous commission. Although we have stated in Chapter Seven Section 7.6 that this helps the witness to avoid self-contradiction, the witness, nevertheless, comes out as one who is unreliable.

Probably the most effective use of intertextuality was utilized by the Prosecutor in the ICC case in relation to a witness who was also a legal professional. During examination-in-chief, the witness had been asked many questions about the meetings of a security organ over a three month period. The DFL had questioned him about the reasons behind certain decisions and details relating to some of the meetings. The Witness's responses portrayed him as a one who was conversant with everything that had taken place during the meetings. As expected, the prosecutor cross-examined him. But rather than cross-examine the witness on the statements

and matters that he had stated before the court, the prosecutor chose to question him about the record of attendance in those meetings. Most of the questions arose from minutes of the meetings (data produced outside of the court but which form the basis of cross-examination in a courtroom). Excerpt 47 contains the prosecutor's line of questioning on this matter.

EXCERPT 47
533.   **PROSECUTOR**: One of them is the ---- minutes of 23rd June 2010
534.   and i.e. EVD===.((searches the pages)) Now Mr (NAME) could you tell me
535.   where your name is there amongst those who were present in that meeting?
536.   →**WITNESS**: (...) Your Honours, on the 24th May 2010, *I was absent*
537.   *with apology*.
538.   **PROSECUTOR**: So you were not there on this particular day, 24th of
539.   May 2010? Ah, Mr (NAME) could you move to the next one. It's the 23rd
540.   of June 2010. (...) It's EVD (NUMBER) Again I put this question to you,
541.   could you show me where you are present in this meeting?
542.   →**WITNESS**: The the ... *I was absent with apology*.
543.   **PROSECUTOR**: Thank you Mr (NAME). The next one is the minutes of the
544.   24th of May, 2010. (...) May I please request you Mr (NAME) please
545.   point out where you were present at this meeting?
546.   →**WITNESS**: Your Honour, on the 24th of June, *I was absent with apology*.
547.   **PROSECUTOR**: Thank you Mr (NAME). I would now refer to the minutes of
548.   the 17th of June 2010. EVD: D12...Mr (NAME) could you please point out
549.   where you are present in this meeting?
550.   →**WITNESS**: Your honours, on this meeting of 27th of June *I was absent*
551.   *with apology*. (My emphasis)

In all the responses the Prosecutor's question regarding his attendance in meetings, the witness states that he had been absent from the meetings (lines 536 – 537, 542, 546, and 550 – 551) yet he had given detailed accounts about how members of the security committee had reached certain decisions in their meetings. This raises a serious epistemological question: How did the witness know all the details of the meetings, including the reasoning behind the decisions, if he had not attended the meetings? Of course as he states elsewhere, he was given minutes of the meetings by virtue of being a member of the security committee. This, notwithstanding, the question still remains unanswered and as Conley & O'Barr (1998:29) argue, this calls into question the facts the witness claims to know. Evidently, a person who gives

very detailed information about meetings that he never attended cannot be relied upon. These questions therefore position the witness as one who is not credible.

In these cases, it appears that intertextuality is used with a view of undermining the credibility of witnesses and / or accused persons. Through the discrepancies arising from their testimonies, the court is, indirectly, persuaded to ignore or to take lightly, the evidence presented by such persons. As Eades (2008:256) argues, such discrepancies are treated as 'lies'. By and large, these were the main means by which identities were constructed through grammatical selections.

6. 7 Presupposition

The study found that presupposition was used most sparingly to construct identities. In one instance during the Confirmation of Charges Hearing, the Defence team appears to have used presupposition to imply that the prosecutor was incompetent. While the prosecution advanced its argument about the culpability of the six suspects, DFL's, presented a contrary argument; that the prosecutor was unprofessional. In the incident regarding the arrest of the 150 suspects by the police and why they had not been charged, for example, the DFL states:

EXCERPT 48
552. 'The police could not charge them with murder if they did not find them
553. committing murder and the Kenya Police, *unlike some prosecutors*, first of
554. all investigate, gather evidence and once they are sure of the offence they
555. charge someone so in this case'.

The presupposition here was that Kenyan police officers were professional and that is why they would never charge a suspect with murder unless they found the suspect in the act of committing the crime. Of course this argument has its own loopholes. It may, for example, be taken to mean that if the police do not catch an offender in a criminal act they should not take action. This is obviously a false position. Members of the Kenyan police force are then contrasted with 'some prosecutors' who the DFL

brands unprofessional as they can charge persons with murder even when they do not have sufficient evidence against them. That the DFL was referring to the prosecutor in the ICC is not lost. The presupposition implies that the court prosecutor was incompetent while police officers were diligent and competent. In other instances, DFL's made accusations of impropriety against the prosecution very directly.

6.8 Conclusion

This chapter has discussed grammatical choices made by interactants in the courtroom context, police context and the prison context and has shown how each of the choices has been manipulated in the process of constructing the identities of interactants. The first section of the chapter has shown how a criminal identity is constructed by positioning suspects as agents in criminal incidents. In contrast, the chapter has shown that a victim identity is constructed by assigning the medium role to the interactant. The chapter has, however, shown that when an interactant is involved in a criminal incident, the interactant tends to deflect his agentive role by minimizing his/her involvement by framing the incident as one in which he had no option but to act as he did. Alternatively, their agency was deflected through the use of euphemisms. I have argued that these strategies were employed by both lay and professional interactants. Passive voice and active voice constructions have similarly been used. Apparently, interactants used agent-less passives to detach themselves from criminal incidents and in the process construct a positive identity. Although active voice constructions were relatively rare, evidence from prison letters shows that they, too, were used to construct a positive identity. The chapter has also shown that material and verbal processes are crucial in constructing the identities of interactants within the courtroom. Significant, however, was the finding that these

processes were used mainly by lawyers working in courts founded on the inquisitorial system. This is probably the case because such courts allow monologic presentations which give lawyers the freedom to include what people say and do as was evident in the ICC Confirmation Hearings. In courts which use the Common Law System such as Kenyan courts, lay interactants can only respond to topics introduced by the lawyers or prosecutors and as a result their contributions are controlled. Besides, I have also shown how aspects of modality, that is, deontic modality, epistemic modality and categorical assertions have been employed to construct identities. This also appears to be the domain of lawyers and may be as a result of the power that lawyers have to introduce new topics in the course of their presentation in court. In the last section of the chapter, I have shown how intertextuality was employed by both lay and legal professionals to construct a non-credible identity and argued that this finding corroborates Eades' (2008:256) finding that interetxtuality is used to cast doubt on the credibility of the interactant in question. This chapter finally found that presupposition was used most sparingly to construct a non-professional identity.

The next chapter, which is also the last of the analytical chapters, discusses the role of style and knowledge displays in constructing identity and concludes by showing how damaged identities are repaired.

CHAPTER SEVEN

IDENTITY AS STYLE, KNOWLEDGE AND IMAGE REPAIR

7.1 Introduction

This final analytical chapter explores three main aspects of identity construction. First, the chapter discusses how style is used to construct identities. The range of stylistic options utilized for this purpose includes register, gender style, speech styles and rhetorical style. Thereafter, I examine how knowledge displays construct the identities of the interactants and in the last part of the chapter I discuss the strategies of reconstructing damaged identities. The strategies used for this purpose include denials, mitigation of guilt and cataloguing one's own good deeds. The chapter then ends with a summary of the key findings.

7.2 Register

According to Simpson (2004:104), register is defined according to the *use* to which language is being put and manifests through a regular, fixed pattern of vocabulary and grammar. Register is usually discussed under three concepts, that is, tenor, field and mode. Field of discourse refers to the setting and purpose of the interaction, tenor to the relationship between the participants in interaction and mode to the medium of communication (that is, whether it is spoken or written). Coupland (2007:57) defines register as 'a way of speaking linked to a situational type or genre' and further asserts that 'many of the most commonly described registers can be called addressee registers – ways of speaking that are defined principally by who speakers are addressing'. On his part, Wardhaugh (1986:52) defines register as 'sets of language items associated with discrete occupational or social groups'. While these definitions emphasize the ways of speaking which are marked by specific vocabulary

and grammar, I discuss how the use of vocabulary marks both a religious register and a legal register and how the use of each marks the respective identities of the interactants involved. My apparent disregard of the tenor, field and mode is informed by the fact that the relationship between the interactants, the setting and the medium of interaction are predetermined in the data under analysis and may not affect the current discussion considerably. I discuss two registers; the religious register and the legal register.

7.2.1 Religious Register

An indication of the use of a religious register by the inmates manifests in the prevalence of the word 'God' in their letters. There are 57 occurrences of the word in the corpus of prison data which contains 1,901different words. This constitutes 0.57% of the prison corpus. When compared with other corpora, this occurrence is rather high. For example, although police statements consisted of 2,252 words, there was no instance of the use of the word 'God' while there were only 313 instances of the word in a corpus of 39,632words in the ICE, EA corpus. This comprised 0.02 % of the corpus. So, although the word 'God' may be used in other contexts, its rather high frequency of occurrence in the letters of prisoners points to their religious identity. Besides, concordance listings of the word show that it is used in certain specific ways that reveal a religious conviction. The following concordance listings show some of the uses.

Concordances of God

```
 N    Concordance  Set
 1 are in critical condition. May  God bless you in whatever you
 2    I say that let the almighty   god bless you and other peopl
 3 stance. Thanks in advance. May  God bless you. Yours faithful
 4    ing you with prayers so that  God can flow HIS showers of b
 5 5   rd more, but only to pray that  God continue to give you long
 6 you are the only man of God I can praise in the rest
 7 to observe it all. Servant of God, I have no word more, but
 8 urch duties serving  our Lord God devotedly. Please Rev. Re
 9  blessings abundantly. Surely God is with you and believe o
10 shall come out but through God everything went success
```

The collocates of 'God' show three distinct uses. First, it is used as a prayer to God for blessings to the religious leader apparently because of his assistance to the inmates. In lines 1 – 4, the inmates pray to God to proffer His blessings to the religious leader and to grant him a long life (line 5). Second, the collocates also show that the inmates identify the religious leader as a man of God through honorifics (lines 6 – 7). Finally, the collocates also reveal the inmates' belief in God (line 8). In lines (9 – 10), the belief is revealed through the proclamation that God is with the religious leader and also through the affirmation that everything will be successful because of God. So the religious identity of the inmates is indexed through the collocates of 'God'.

But this is not the only way through which religious identity manifests in the corpus. According to Crystal and Davy (1969:159) some of 'the linguistic features which uniquely identify texts as belonging to a single variety of religious English are concentrated in vocabulary...' This assertion seems to be supported by some distinct vocabulary choices that the inmates make. This is exemplified by collocational idiosyncrasies, formulaic expressions, and quotations, paraphrases and own creations of Biblical verses in the three examples that follow.

7.2.1.1 Collocational Idiosyncrasies

The selection of lexical items in the letters by inmates are indexical of Christians. Specific illustrations of these lexical items are indicated in bold type in the examples given below.

EXCERPT 49
556. 'I greet you in the name of Jesus Christ our Saviour; I hope you are doing well
557. through **God's mercies'.** (L2)
558. '... through **God's will** he was released last year by court of appeal'. (L24)
559. '**Servant of God,** I have no word more, but only to pray that God continue to
560. give you long ... life to serve **the poor and the sick'.** (L20)
561. '... will guide and touch your kind hearts to do his *will.* (L32)

562.'Connection to that I want to remind you once again that am still **saved...**' (L26)

In these examples, the expressions *God's mercies, God's will, Servant of God* and

the poor and the sick,[H]is will and *saved* identify the inmates as sharing similar

Christian beliefs with their benefactor. A word' like *saved'* in line 562 may be

regarded as an affirmation of the inmate's Christian conviction. Consequently, the

collocational idiosyncrasies serve to mark their religious identity. This appeal to

sameness further underscores a shared religious identity.

7.2.1.2 Formulaic Expressions

A further illustration of the religious identity of the inmates is found in the

inmates' use of formulaic expressions (indicated in bold type) in their letters.

EXCERPT 50

563. 'I salute you **in the name of Jesus Christ.** I am happy to write to you this
            letter and I know that God will bless you' (L4).
563. Much greeting **in the name of Jesus Christ for** staying with us during
            Easter...'(L6)
 564. 'Kindly accept my humble Christian **greetings in the almighty Precious
            Name of our Lord and Saviour Jesus Christ'.** (L7)
 565. '**May God bless the work of your hands'.** (L28)
 566. '**And God bless you'.** (L31)

These formulaic expressions, marked in salutations and signing off in the letters, are

apostrophic and lend a sense of immediacy to the letters. They also appear to be

designed to create a bond and a sense of brotherhood between the inmates and Rev.

Francis. In a few of the letters written to Rev Francis, especially those from persons

who do not show a strong Christian conviction, the signing off was different. For

example, in L5, the writer who is an inmate merely seeking assistance from

'anybody' signs off with a 'Yours faithfully' as does the inmate of L10 who is not

an inmate. Similarly, letter L7 is written in a legal style and does not end in a formal

style. Instead, the writer signs off by stating who has written the appeal. The inmate

simply states: 'Drawn and filed by ...' As the examples in lines 563 -566 show,

formulaic expressions and collocational idiosyncrasies were used by a cross section

of the inmates who appeared to profess the Christian faith. One inmate, however, stood out by quoting directly from the Bible, paraphrasing some verses and by equating Biblical verses to Swahili proverbs. These aspects are illustrated in the following section.

7.2.1.3 Quotations, Paraphrases and Creations of Bible verses
In a bid to exploit the Christian bond that he shares with his benefactor, one inmate, who admits to liking St. Augustine whom he describes as 'the former criminal like I', (L25), quoted or attempted to quote some verses in the Bible, paraphrased some and equated other verses to Swahili proverbs as the following examples show. In Excerpt 51, the inmate quotes Romans 8:1. He writes:

EXCERPT 51
567. 'The bible says that, there's no condemnation to those who are in Christ Jesus, who do not walk according to the flesh, but according to the spirit Rom 8:1'

This accurate quotation apparently identifies him as an 'in-group' member (a Christian like Rev Francis) since he positions himself as one who 'knows' the Bible. In Excerpt 52, the inmate paraphrases a verse in his attempt to quote from Jeremiah 29:11 and Corinthians 10:13. The inmate writes:

EXCERPT 52
568.　　　God has good plans to me, plans of good but not plans to destroy me [J]eremiah 29:11. Corth 10:13'.

This is a paraphrase of the two verses which read as follows: Jeremiah 29:11: 'I will bless you with a future filled with hope – a future of success, not of suffering' (Holy Bible: 673). The verse in Corinthians is not specific as there are two books in Corinthians, Corinthians I and Corinthians II. However, an examination of the chapter in the two books suggests that the inmate was quoting from 1 Corinthians: 13, which reads: 'But God treated me with undeserved grace! He made me what I

am, and his grace wasn't wasted. I worked much harder than any of the apostles, although it was really God's grace at work and not me', (Holy Bible: 966). 2 Corinthians 10:13, on the other hand, reads as follows: 'But I was worried when I didn't find my friend Titus there. So I left the other followers and went to Macedonia' (Holy Bible:1000). In the final example of Biblical paraphrases, the inmate purports to quote from Mathew 25:39-40 and Hebrews 13:3 and so writes:

EXCERPT 53

569. 'Why? Coz - have frontiled [volunteered] to help me personally without

expecting fame from people or nobody else. Mathew 25:39-40 Hebrews

13:3'.

The actual verses read as follows: Matthew 25:39-40: 'When did we welcome you as a stranger or give you clothes to wear or visit you while you were sick in jail?' The king will answer, 'Whenever you did it for any of my people, no matter how unimportant they seemed, you did it for me' (Holy Bible: 853). Hebrews 13:3, on the other hand reads as follows: 'Remember the Lord's people who are in jail and be concerned for them. Don't forget those who are suffering, but imagine that you are there with them' (Holy Bible, p. 1050). In each of these paraphrases the inmate equates the preacher's visit and assistance to what the scriptures say. He appears to suggest that Rev. Francis's visit is similar to that which is envisaged in the Bible. In the process, the inmate constructs Reverend Francis' identity as that of a caring person.

The inmate's ingenuity is to be found in the following examples which illustrate how the inmate equates Biblical verses to Swahili proverbs, apparently, to demonstrate his knowledge of the scriptures. In Excerpt 54 the inmate writes:

EXCERPT 54

570. 'Wise man says in Swahili, *Ada ya mja hunena muungwana ni kitendo*-[Actions

speaklouder than words]*auakufaaye kwa dhiki ndiye rafiki.*[A friend in need is a

friend in deed],Prov 17:17'.

In this quotation, the inmate equates the two Swahili proverbs to the verse in

Proverbs 17:7 which reads: 'A friend loves at all times, and a brother is born for

adversity'. Although the two Swahili proverbs may not be substituted for the relevant

Biblical verses, the fact that both the proverbs and the verses are thematically similar

may be regarded as a reflection of the inmate's knowledge of the Bible. Viewed

against Riley's (2007:155,123) arguments that the 'use of domain specific discourse,

including its lexis, will be perceived in itself as a claim to membership of the

epistemic community in question,' and that 'knowledge is largely constitutive of

identity', these collocational idiosyncrasies, paraphrases, and associations of Biblical

verses to Swahili proverbs may be regarded as the inmate's attempt to portray

himself as one who is conversant with the scriptures. Ultimately, the inmate positions

himself as a religious person. This identity carries positive connotations and contrasts

with his earlier criminal identity.

The use of the religious register illustrated in the preceding paragraphs, seems

to go beyond just reflecting strong Christian convictions on the part of the inmates.

As Johnstone (2002:126) argues, the inmates may be 'adopting their behaviour to the

behaviour' of their benefactor in order 'to reduce social distance' (Gibbons

2003:117) between them. But more significantly, going by Giles' (1979:48)

argument that where choices are involved, 'we tend to choose the alternative which

maximizes the chances of a positive outcome...', the inmates' choice of the religious

register may also be a deliberate attempt to align their identities with that of their

benefactor, a Christian minister, in order to achieve their goals, that is, gain his

assistance. This interpretation appears to explain why a number of the inmates wrote to Rev. Francis to either express their gratitude for assistance that he had already accorded them or to make further requests for his assistance.

Within the courtroom, a religious identity is invoked in the oath that witnesses and suspects must take before testifying. But an individual's specific religious identity is indexed in the interactant's choice of either the Bible or the Quran in taking the oath. The Bible and the Quran marks one as a Christian and a Muslim respectively. Non-Christians, some Christians and non-Muslims are, however, identified by their choice not to use either to take an oath. Although this appears to be a logical interpretation, caution must be taken in order to avoid generalizing the implications of this interpretation since taking oath in Kenyan courts is done routinely and may therefore not be a good indicator of one's religious conviction.

Proclaiming one's religious identity also appears to be a useful means of deflecting accusations of impropriety for some people who find themselves on the wrong end of the law. One example is to be found in the reactions of some of the suspects in the ICC cases. In one instance Suspect 3 responded to accusations made against him as follows: '...and the truth will come out and we will definitely ashame [shame] the devil'. The claim that speaking the truth will shame the devil marks out the suspect as religious person. Additionally, in using the solidarity pronoun 'we' suspect 3 presents himself as part of a group that is innocent but which has been maliciously accused. His group appears to be against the 'other' group which comprises persons who may be malicious and criminally bent. The speaker therefore equates his to a fight against evil. In this matrix, he presents himself as one who belongs to the group of the good ones while his accusers belong to the other group which comprises the bad ones.

7.2.2 Legal Register

The range of lexical choices in the letters by inmates also reveals elements of the legal register. This is revealed in some of the expressions tabulated below.

Table 7.1 Lexical Markers of the Legal Register

CATEGORY	EXPRESSIONS
Expressions relating to the actors	the magistrate, accused persons, and five others, Assessors, Prosecution, Am the biological mother of the said child,
Expressions relating to offences	Negligence of a child, cruelty of a child, assault, malicious and merciless act, fresh charges, charged with obtaining money by false pretences, second count, stealing by a servant,
Expressions relating to confinement	Serving inside [Kazi Nyingi] , in remand prison, Being in confinement/ custody, am in condemn*, we were committed to [the High Court]
Vocatives	your honour the magistrate, hear my plea, my humble plea,
Archaic Expressions	Aforesaid, the said child,
General Courtroom Expressions	First hearing, court summons, verdict/ruling, bail/bond, the proceedings, judgement will be heard or read, to be served, sentence of three years, mistrial,

*the word, 'condemn' refers to a wing in prison that is set aside for criminals on a death row.

These expressions have been divided into six categories, namely expressions relating to the actors, expressions relating to offences and to confinement, vocatives, archaic expressions and general courtroom expressions. Expressions relating to offences include *negligence of a child, assault, cruelty of a child,* and *charged with obtaining money by false pretences* among others. The use of these words by lay persons suggests that the inmates may have acquired them through their interactions in the courtroom with magistrates, court prosecutors and lawyers. They may also have come across them in prison during the period of their confinement.

The second category of vocabulary relates to words which relate to confinement. In a number of letters, inmates talk of having *been in confinement, serving inside the ... (NAME) prison [sic], and being in remand prison.* This choice of vocabulary appears to be largely informed by the fact of their incarceration. The next category of legal vocabulary comprises words which refer to their status as inmates or accomplices in crime. Such words include 'accused person', 'of sound mind', and 'and five others'. Other words and expressions relate to courtroom discourse. In this category are words such as 'fresh charges', 'second count' and 'first hearing'. While the categories outlined in the foregoing are common, some have been used rather sparingly for example vocatives such as, 'Your honour' and archaic words such as 'said', and 'aforesaid'. What is interesting here, however, is the fact that some of the inmates appear to be conversant with these technical words. This may be because the inmates may have accommodated to and assimilated the technical jargon of lawyers and legal practitioners. Excerpt 55 provides three examples of vocabulary that is found in both the legal and non-legal register but which the inmates distinguish clearly and which may be indicative of their awareness.

EXCERPT 55
571. 'My **term** ends in January 2008.' (L14)
   572.'The judgement was read and **heard** on ...[date provided](L26)
   573.'To be **served:** Attorney General ...' (L8)

Although the words highlighted in bold type above, that is, 'term', 'heard,' and 'served' are common words and therefore their ordinary meanings may be easily understood by their users, the contexts in which these words are used tend to bring out their legal meanings instead of their ordinary meanings. Concordance listings of each of the words derived from the ICE, EA corpus seem to prove this point.

Concordance listings for *term, heard* and *served*:

N   Concordance   Set

Term

```
1 es So uh I would actually this term cult having been coined

2 they have to yield in the long term This democratisation pro

3 ments that wish to offer short term courses to users Uh also

4  Maybe you are using the Greek term that's right but the RRR

5    eyond the normal range then we term that condition as glauco
```

These concordance lines show that 'term' has two main meanings. The first refers to duration (lines 2 and 3) and the second to name (line 4 and 5). In addition, they also show that the use of this term with its legal sense is rare. Although this may partly be attributed to the small size of the corpus, it can be concluded that the use of 'term' with a legal sense is even rarer. While this may seem unusual in view of the apparent little exposure to formal education by a number of the inmates, this serves to show that the inmates are beneficiaries of a legal knowledge through their practical exposure to the legal system and through their interaction with these words in either the prison context, police context or the courtroom context.

Concordance listings for 'heard' in the ICE, EA were as follows:

Heard

N   Concordance   Set

```
1 at's wrong as you BBBas youRRR heard giving them money is a

2 s too costly Now you must have heard uh recently in some of

3    a point here perhaps you never heard before I've lived in a
```

Evidently, these are too few to be used to infer any generalizations about the actual uses of the word. Nevertheless, the concordances suggest that 'heard' is generally used with the sense of perceiving sounds rather than with the sense of listening to and determining a case which appears to be its legal sense.

The word 'served' did not return any concordances in the ICE, EA. The absence of 'served' in the corpus may be because of the relatively small size of the

corpus. According to Schmied (2004:252), the ICE-EA corpus has about 1.388 millionwords. This is a very small corpus compared to other corpora such as the British National Corpus (BNC) which has over 100 million words. However, if we are to go by this corpus, the fact that some inmates use the word accurately is significant. It seems to give credence to claims that new inmates are usually inducted into courtroom discourse by the more experienced and long serving inmates. Through these exposures, inmates acquire legal knowledge and vocabulary. However, in the absence of studies on this aspect, I reserve further comments on it.

My assertion that inmates acquire vocabulary by experiencing and listening to lawyers during court sessions stems from a common practice in Kenyan Resident Magistrates Courts. During hearings in these courts, all accused persons sit in court for the duration of all of the day's court proceedings. As a result they listen to cases, how other accused persons mount their defence and at times listen to lawyers arguing out cases. But more importantly, they also listen to determinations of trials. There is no doubt that they pay attention to the reasons that judges and magistrates give in determining cases. Although none of the words and expressions cited in the examples provided so far are inherently legal, the context of their use gives them a legal sense and in turn confers a legal identity on the inmates that use them.

The legal register is also marked in the opening sentences in police statements which appear to be formulaic. Such sentences echo common formulaic expressions such as 'I put it to you that ...' which index the legal register. In the data under analysis, a number of letters from the inmates began with sentences of the kind provided in Excerpt 56.

EXCERPT 56

574. 'I am 34 years & married but we separated with my husband in 1991. I am a mother of two kids. I am here in ....' (L1).
575. 'My names are ...... and am in condemn at ....' (L3).
576. 'My names are as stated above. Am in .... remand prisons' (L5).

577. 'I am the above named 36 year old man married and blessed with two
daughters aged 6 and four years' (L12).

These sentences begin with the expressions: 'I am' or 'My names are' and are

identical to the following first sentences that have been sampled from police

statements.

EXCERPT 57
578. 'I am the above named female aged 30 years and a ..... by tribe.' (2009)
579. 'I am the above named Inspector of Police attached to .... as ... and performing
general investigations besides other duties...' (2009)

580. 'I am the above named.... by tribe aged 28 years residing [at] the above
address.' (2005)

581. 'I am the above mentioned [.] A .... by tribe aged about 67 years, married with
a number of children.' (2006)

This regular pattern marks out the texts as having been sourced from police discourse

and suggests that the inmates have assimilated to the formal and more powerful

institutional style. Perhaps this gives them some prestige.

The use of the legal register and the religious register reveals the fact that the

identities of the inmates are flexible. Having interacted with legal professionals,

police officers and prison warders, the inmates appear to accommodate to the legal

register. Similarly, when they interact with the religious leader, they accommodate

to the religious register. So, it can be extrapolated that when the inmates interact in

a different context, they will similarly adjust their identities.

Having dealt with aspects of style relating to both religious and legal

registers, I now wish to focus on gender style and speech styles of various

interactants in both the prison context and the courtroom context.

7.3 Gender Style and Gender Based Concerns

In Chapter 5 Section 5.2, I have argued that the personal pronoun 'I' ranks

high in prison letters and that concordance listings with 'I am' reveal the social

identities of the inmates. Since 'speakers telling life-story narratives use "I" - centred

narrative discourse' (O'Connor 2000:39), it was necessary to examine other references to self. Consequently, I generated concordance listings for the pronoun 'my' and the results were as follows:

```
N   Concordance        Set
      1   nd or stood with me on that my family are poor and my wife
      2   and my wife has no job. In  my family Im the first born I
      3   can help me to cater for   my family. Yours faithfully, Pet
      6      year. Iam too far from my family to give them courage a
      7    Cash bail so I can rescue my family not to suffering or no
   8    request to consider me and  my family as if I'm the one feed
     10  which I managed to sustain  my family. During the four years
     14   ful for your assistance to my family since the sickness of
  16     meet the growing needs of  my family-education, clothing,
```

These results show that 'my' collocated most frequently to its right with 'family'. This result suggests that the inmates had a very strong attachment to their families. But upon further examination of the actual uses and users, the data showed that male and female inmates appeared to relate to their families differently. Female inmates appeared to be mainly concerned about the well-being of their families and the education of their children while male inmates seem to have been only marginally concerned about these issues. I therefore sought to examine these differences in the letters. The concerns of these two groups are discussed in the following section.

7.3.1 Concerns of Inmates

In L2, the inmate expresses her role in her family following the death of her father. She states: 'My father died and *I was my mother's Bread winner*, My two brothers don't work, and it has become a very big problem, and I'm desperate (My emphasis). In this excerpt, the inmate identifies herself as a 'bread winner' and implies that it was her responsibility to provide for her family since her brothers were unemployed. This partly explains why she mentions that she was worried about her family after her incarceration. Another inmate, L3, is clearly worried about her children. She writes in part:

EXCERPT 58

582. I am a mother of three children whom I left under the care of my aged parents
583. and my brother. Last year, 2007, that brother who was the breadwinner to my
584. aged parents and my children passed away. My first born child, Philip
585. Chepkoechi, sat for his K.C.P.E. at Kivumbini pri. School in November this
586. year 2008 and am afraid because my aged parents cannot afford to take him to
587. secondary sch[ool].
588. Now please Reverend Francis I feel it is only you who can help my son to join
589. secondary school in 2009 after he gets his results. I therefore kindly, humbly
590. and honestly request you to help my son join a secondary school.

This inmate is clearly worried about her children because their uncle, who had been their benefactor from the time she was incarcerated, had passed on (lines 583 – 584). In addition, she appears to be troubled because her 'aged parents cannot afford to take her son to secondary school' (lines 586 – 587). As a result, she requests Reverend Francis to meet the cost of her son's education (lines 588 – 589). A similar concern is raised by inmate L6 who specifically requests to be given money to buy a pair of school uniform for her daughter. She states:

EXCERPT 59

591. Also I said thank [you] because FILIPO give the 600/= for last term Tuition
592. and informed me for this term I can also go and see him so if Pamela go back
593. to school tomorrow I will go and see him also Pamela don't have school
594. uniform bye REVEREND

She, however, thanks Reverend Francis for the Kshs 600/= that she had received as tuition fees through a proxy, Filipo (line 591). Being concerned about the health and shelter for her children, the inmate asks for money to pay her house rent and medication for her child. Her child appears to be ill with pneumonia. She states:

EXCERPT 60

595. REVEREND we had no otherwise in our life but we are staying in a diveute
596. [difficult] life in our *mabati* [iron sheet] house so don't be annoyed with me
597. to sent Salome. I had teeth problem which want to be removed. So please for
598. your kindness help me with 2,500 which will be enough to pay rent and pay
599. another house because now Pamella is sick in her chest because we spent the
600. whole night in a house with water (flooded house).

Concern for the well-being of children is also reflected in L33's letter. Having been

jailed on a drug trafficking charge, the inmate expresses her concern for the well-

being of her children as follows:

EXCERPT 61
601.   I was arrested with drug trafficking while I tried to meet my children's needs.
602.   I have six children and four orphans under my care, yet all were at school. I
603.   left them in a rented house in Arusha city in Tanzania where I was working.

She explains that the need to provide for her children and orphaned children under

her care (lines 601 – 602) was the reason for her involvement in drug trafficking. She

was also worried about their safety as she had left them in a rented house (line 603).

Stating that her children had no idea that she had been incarcerated, she asks Rev.

Francis to educate and to provide shelter for them. The inmate is also worried about

the possibility of her children ending up as street children or being influenced

negatively. She states:

EXCERPT 62
604.   My cry to you is a shelter and Education for my children [who] are vulnerable
605.   now. Words alone are not enough to express the pains I am going through to
606.   see my children out of school, worse still to imagine them join wrong groups
607.   because of lack of food and accommodation, may be enter to streets if no
608.   alternative is achieved.
         Away from family concerns, two female inmates, L12 and L15 make requests

to be helped to reconstruct their lives afresh. The inmate in L12, for example, is

explicit about this: 'My request is for financial help to start up my life again'. She

thinks that she can realize this if she is given 'little funds to buy wool and rent a

room' and to buy a sewing machine so that she can make and sell sweaters. She hopes

that by doing so, she will be able to fend for herself and her family when she is

released from prison. The inmate in L15 makes a similar request: '...with your

assistance, I believe I can get back on my feet and [be] settled again. With legal

licence of 3,500 I will be able to contribute my commodities'. Here she requests to

be given KShs 3,500 which should enable her to restart her business. Just like the

inmate in L12, this inmate considers engaging in business as a means of rebuilding

her life. But as is the case with requests from other female inmates, these requests appear to be motivated by their desire to provide for their families. From these examples, it is evident that the concerns of women largely revolve around the well-being of their families. Accordingly, this projects the women as both caring and responsible. But this positive self-presentation may be occasioned by the desire of the women to portray themselves as 'good women' in conformity with societal demands. Apparently, the general thinking in many African societies is that the ideal woman is both responsible and caring. So, by expressing these concerns, female inmates may be enacting what may be regarded as ideal femininity. This is apparently aimed at enhancing their chances of securing Rev Francis' assistance.

Notably, the women who talk about having left their children behind do not mention the role of their spouses in taking care of them. This may be because the inmates in question were single parents as is the case with many families or that, in keeping with the norms of patriarchal African communities, the responsibility of raising children is predominantly a woman's job while the responsibility of men is to provide for their families. It may therefore not be surprising that the letters show that a majority of male inmates are concerned with the general suffering of their families owing to their confinement. The inmate in L21, for example, states that his wife 'has suffered a lot' while the one in L27 states: 'Now my wife and children[s] are suffering'. Through this concern, the inmate constructs himself as a socially responsible male with responsibilities to his wife and family. This may also be said about the few male inmates who directly mention the specific needs of their children. This is exemplified in the letter L24 in which the inmate states: 'My prayer is to be assisted in educating this child who is bright and ready to continue with her education'.

The inmate in letter L11similarly requests to be assisted to improve his business so that he can provide for his family from the proceeds of the business (lines 612 – 614). The inmate states:

EXCERPT 63

609. However, because of my lengthy imprisonment *my business suffered*
610. [concern] about business) greatly and its present status cannot be able to meet
611. the growing needs of my family-education, clothing, rent and all (need to take
612. care of his family) I am therefore hoping that when I leave prison *I will be*
613. *able to upgrade it by stocking more battery acid, battery water and other*
614. *such materials and also by adding more battery chargers* (the need to
615. improve his business). Because it may be quite some time before the business
616. may pick up, I may need to invest in other viable small scale business to
617. supplement the income from the battery charging business... [alternative small
618. scale business] (My emphasis)

Clearly, this inmate wishes to be assisted to improve his business so that he can provide for his family. Part of the improvement of his business entails investing in other viable businesses. Another business minded inmate is L27 who asks to be helped to pay the cash bail of Kshs 100,000 that he has been granted so that he 'can do business while [his] case continue[s]'.

One main difference between the concerns of female inmates and those of male inmates lies in the fact that whereas female inmates appear to be resigned to their situation as inmates, there is evidence to show that some male inmates are actively involved in attempts to secure their freedom both literally and metaphorically. The letter by inmate L19 provides an example of a literal attempt to secure freedom. In that letter, the inmate requests to be linked up with persons who can help him to secure an early release from prison. Similarly, the inmate in L16 seeks to be provided with bus fare so that he may return to his country of origin. The most interesting of these attempts to secure freedom is an audacious request by inmate L21 to be helped to jump bail after he had failed to meet bail conditions[xvii]. The inmate states: 'I have not even *reported to the police as indicated* in the attached

prison paper. So the earlier the better to leave this country otherwise I can find myself again inside' (My emphasis).

It can also be argued, metaphorically, that some male inmates seek their own independence through employment. The inmates in L17 and L18 request to be assisted to secure jobs. The inmate in L17 specifically asks to be helped to secure a 'licence plus [a] certificate of good conduct' so that he may be employed as a driver. On his part, the inmate in L18 requests to be given '1,000/= to enable [him] to secure – a badge and a uniform so that he 'may get – employed as a conductor'. Inmate, L18, states that somebody wishes 'to employ [him as a van driver] - at his rural home. Significantly, in both instances, the inmates show that they have made some effort at fulfilling some of the pre-conditions for their employment. The inmate in L18, for example, specifies what is required of him and what he has been able to fulfil. He writes:

EXCERPT 64
619.   These are the necessary documents:-
620.   Good conduct certificate   - 1,000/= (Obtained)
621.   Conductors certificate (P.S.V)   - 625 (Obtained)
622.   A badge (Identity card)   - 300/= Not yet
623.   A uniform   - 600/=
624.   Police endorsement (stamp)   - 100/=

L17, on the other hand, implies that he has met some of the conditions as he presents his request as a list of 'big debts' that he has incurred. He states:

EXCERPT 65
625.   Due to lack of [a] job, it has made me to incur big debts as below which I
626.   really need your assistance i.e.
627.   Reward of Driving licence   - 1,250/=
628.   Certificate of good conduct   - 1,000/=
629.   Rent arrears   - 3,000/=
630.   Medicines for ulcers   - 700/=
631.   Totalling to   - 5,650/=

In addition, these requests portray the two inmates as persons who are socially worthy and responsible.

Thirdly, some male inmates overtly express their quest for freedom. For the inmates in L20, this can be achieved if they secure an early trial. They have therefore written to a government minister asking to be assisted to secure a trial since their case has gone on for years. The inmates in L20 state:

EXCERPT 66
632. Honourable Minister, We requesting your kindly to assist us and see that we
633. are suppose to attend at all Court Summons I close the file of my case
634. 25/11/02 and up to now the case has not yet finished We are Waiting for
635. defence I don't know what is now going on since the process is like coming
636. from Remand Without entering to Court

In contrast, only one female inmate expresses a similar concern. Inmate L32 requests to confide her problems to the religious leader. She states: 'I could like you Reverend *sharing my problems with you* please Reverend. I need you to come to come to pray for me' (my emphasis). This request to the religious leader to be her 'sounding board' is aimed at freeing her from the psychological pain occasioned by her incarceration. This request is significant as it, apparently, implies that female inmates are generally resigned to their situation as inmates. This is unlike their male counterparts who appear to be keen to secure their freedom.

These contrasting roles of male and female inmates appear to corroborate the performative theory of identity as propounded by some feminist scholars. For example, Wareing (1999:78) and Shari and Tannen (2001), quoting Tannen (1990) have found that, 'women ... select more personal topics: their family, their emotions and their friendships' whereas men '[are] said to prefer more impersonal topics'. Shari and Tannen (2001:553) explain that 'conversation rituals common among women focus on intimacy (that is avoiding the loss of connection which results in being "pushed away") whereas conversational rituals common among men focus on independence (that is avoiding the one-down position in a hierarchy, which results in being "pushed around"'. So when the men concern themselves with matters of

business, freedom, job security and providing for their families, they may simply be 'performing' a masculine gender. Similarly, the concern by female inmates about the needs of their families may be construed as performing a gender identity. As I have already stated, this appears to be the role that women in some patriarchal African communities are expected to perform. Benwell and Stokoe (2006:55), quoting Coates (2003: 34–5) appear to emphasize a similar aspect. They point out that when Coates contrasted women and men's stories, she found that women's stories focused 'on more ordinary and mundane topics ... than the men's topics (for example, contests, violence, heroism, skills ...) and concluded that 'men's stories 'perform dominant masculinity' via their choice of topic, focus on action, lack of hedging, competitive style, and use of taboo language (p. 110)' while 'women's stories perform 'ideal femininity' (p. 111) through the choice of personal topics, displays of sensitivity, and telling stories cooperatively in sequences that orient to the importance of mutual understanding and friendship'. Finally, although there may be factors other than gender that affect language, the evidence provided in the foregoing appears to support the view that gender affects how people speak (and write).

I now wish to turn to the way identity is constructed through the actual speech style of various interactants in courts.

7.4 Speech Styles

In analyzing concordance listings for 'I am' (Chapter 5 section 5.2) I indicated that the following concordance listings revealed the ethnic identities of prisoners, suspects and witnesses within the police interview setting. I reproduce the concordance listings that reflect this aspect.

Ethnic Identity

```
1 10/2/2009. STATEMENT 30 STATES I am the above named male Kis
2 STATEMENT 34 STATES AS FOLLOWS I am the above named Nandi fe
3 and belief. States as follows: I am the above Bukusu male ad
```

4 IGNED. SIGNED BY: Juma Hassan **I am** the above mentioned Kiku

The specific ethnic identities that are revealed in these concordances are: Kisii, Nandi, Bukusu and Kikuyu, all of which are Kenyan ethnic groups. Ethnic identity is therefore overtly marked in such statements. But the data under analysis also shows that identity is also constructed in subtle ways such as through pronunciation, phonological aspects and metapragmatic directives. I discuss these aspects in the following sections.

7.4.1 Identity through Pronunciation

My analysis of the data shows that identity was also constructed through pronunciations. Identification of ethnic identities through pronunciation is a common feature in many Kenyan communities, and I suppose, in many African communities. Schmied (2006:193) alludes to this aspect when he argues that difficulties in pronouncing certain phonemes such as /r/ and /l/ may be a 'clear subnational identifier'. What Schmied calls 'subnational identifier' is, in fact, ethnic identity. Evidence from courtroom proceedings show that pronunciation and the placement of stress on certain words revealed the ethnic identities of the speakers as the following illustrations drawn from The Hague trials show.

Owing to the sensitivity of the cases and the fact that the cases involved senior political personalities, there were concerns about the security of witnesses. Accordingly, it became necessary to protect their identities. This was done through the use of pseudonyms, through the use of voice and facial distortions and through other measures such as lowering the blinds when witnesses walked into the courtroom and by ensuring that members of the public could only see them from the rear. Following attempts by some unknown persons to disclose the identity of one of the witnesses, the court issued warnings to all the parties against making any attempts to identify the witnesses.

In spite of these warnings, it was still possible to identify the regional and even the ethnic identities of the witnesses. Excerpt 94, and Excerpt 95 illustrate my point. Excerpt 94, occurs during the examination-in-chief of one of the witnesses. The witness is asked about the media houses that had covered a certain political party's media briefing.

EXCERPT 94

851. **PROSECUTOR:**   Now the..., are those TV stations that you've mentioned?
852. **WITNESS:**   Yes. Those are TV stations. There were also other radio stations.
853. **PROSECUTOR:**   Now regarding the radio *stations*, were there both national and
854.   regional radio stations? Do you recall?
855. **WITNESS:**   Yes. (...) There were vernacular stations. There were the *national*,
856.   those could address people in Swahili and English. (My emphasis)

Later, the witness is also asked about an incident in which offices of one of the political parties had been burgled. He is asked about persons suspected to have been involved in the burglary:

EXCERPT 95

857. **PROSECUTOR:**   And when you refer to the other party, which party do you
858.   think that was?
859. **WITNESS:**   The Party of *National* Unity.
860. **PROSECUTOR:**   Would that be the PNU? Is that the correct acronym?
861. **WITNESS:**   Yes. (My emphasis)

The witness's pronunciations of the words highlighted through italics reveal two peculiarities. The first one relates to the placement of stress while the second relates to the confusion over the pronunciation of certain sound segments. Some of the peculiarities are listed below.

Expression	Witness's Pronunciation	Received Pronunciation
National	/naso'noːl/	/nɛiʃǝnǝl/
Coalition	/ koali'soːn/	/kɔǝliʃǝn/
Financial	/fainan'soːl/	/fainanʃǝl/
(Radio) Citizen	/ siti'seːn/	/sitizǝn/
Anxiety	/aŋsaja'ti/	/aɛŋzaíǝti/
Station	/ste'ʃon/	/stɛiʃǝn/
Region	/ri'dʒoːn/	/ridʒǝn/

(Radio) Maisha   /maiʃa/

The data show that almost invariably, the witness stresses the last syllable of each of the listed words given above. This is in contrast to the way each of these words is pronounced in RP. The absence of stress in the RP is marked by the presence of the schwa, /ə/. Second, there are specific sound segments that the witness confuses. In the first five words, the witness consistently confuses /s/ with /ʃ/. The only exception occurs in the realization of the Swahili word 'maisha'. These confusions which involve the voiceless alveolar fricative with the palato-alveolar fricative and the consistent placement of stress on the last syllable of each of the words indexes the speaker as originating from the Nyanza region, especially from the lakeside region. The speaker's pronunciation of 'maisha' with the voiceless palato-alveolar fricative instead of the expected voiceless alveolar fricative may be due to the speaker's familiarity or exposure to Swahili.

My second example involves a female witness. Her regional identity was similarly revealed through her pronunciations. In Excerpt 96 the witness explains what happened during an incident in which a number of people were burnt to death inside a church. Although her evidence is translated into English, my analysis is based on her pronunciation of Swahili words.

EXCERPT 96

862.	**PROSECUTOR:**	Now, the people who took all those bicycles and put them
863.		there. Who did that?
864.	**WITNESS:**	Ni wale vijana. Those young men
865.	**PROSECUTOR:**	Do you know why they did that?
866.	**WITNESS:**	Ilikuwa ni **jia** moja ya kufanya sisi tusitoke kanisani.
867.	**PROSECUTOR:**	Just to be perfectly clear, which young people are you
868.		referring?
869.	**WITNESS:**	Vijana ya **Wakalejin.**
870.	**PRSECUTOR:**	You then mentioned that there were other young people
871.		standing at another door. Can you describe this other door?
872.	**WITNESS:**	Hata wao ni vijana ya **Wakalenjin.**
873.	**PROSECUTOR:**	And what were they doing?
874.	**WITNESS:**	Walikuwa wakikuona unaweza kutoka wanakugonga unarudi

875.   ndani.

In line 866, the witness pronounces the word 'njia' (way/manner) with a deleted

alveolar nasal from the word initial position and therefore pronounces it as /ɟia/

instead of /nɟia/. This deletion is also evident in line 869 in which the witness

pronounces /wakalenɟin/ as /wakaleɟin/. But in line 872, she pronounces the word

correctly. The speaker's use of these two different pronunciations suggests that the

witness is not able to clearly distinguish when to delete or not to delete the alveolar

nasal when it occurs before a word beginning with a voiced palato-alveolar fricative

/ɟ/. Later, the same witness is asked how she came to know about PEV. In response,

she states as follows:

EXCERPT 97
876. **WITNESS:**   **Niansie** that ... Nainzie **talehe** moja ama nianzie wapi? Nifafanulie (My
877.   emphasis).
888. **INTERPRETER:**   Would you like me to start with the 1st, what should I start with?
889.   Perhaps explain that to me.

In line 876, the witness confuses /r/ with /l/ so that instead of saying 'tarehe', (date),

she says 'talehe'. Similarly, the witness confuses /s/ with /z/ and so says 'niansie'

and 'nianzie' as if both alveolar fricatives were allophones. These features, that is,

dropping the alveolar nasal /n/ before /ɟ/ and confusing /r/ with /l/ index the speaker

as one originating from the Central Kenya region. The confusion over /z/ and /s/ does

not seem to play any particular identification role in this case.

While confusion over certain sound segments and stress placement can reveal

the regional identities of the speakers, it must be noted that these features perform

this function when viewed in relation to other features such as tempo and tone.

Similarly, it can be argued that there can be no absolute protection of witnesses in

court since regional identities can still be revealed through phonetic and phonological

features even where measures have been taken to distort voices.

7.4.2 Metapragmatic Directives

Identities were also voiced in a much subtler way through metadiscursive strategies. According to Vande Kopple (1985) as quoted in Cavalieri (2011:81), metadiscourse is defined as "discourse about discourse or communication about communication" and is divided into two categories; textual metadiscourse and interpersonal metadiscourse. Of these two, interpersonal metadiscourse, is important in identity construction. Vande Kopple (1985:87) argues that metapragmatic discourse 'helps to express our personalities' while Cavalieri (2011:85) contends that metadiscourse '... signals the attitude towards the content and the audience of a text'. As Cavalieri (2011:98) points out, in metadiscourse, 'I' tends to co-occur with, among other things, 'verbs in the progressive forms'. Such verbs take the expressions like 'I am asking you...' which are common in Kenyan courtroom data under analysis.

In the discussion that follows I show how identities were constructed through metadiscourse within the courtroom. My discussion begins with a case in which both the prosecution lawyer and the defence witness in a Burial Dispute Case construct their identities through metadiscourse. Thereafter, I examine how a lay accused woman uses the same strategy to construct an authoritative identity. Finally, drawing examples from the ICC cases, I discuss metadiscourse as an example of voicing identities because in each case, both metadiscursive comments as well as prosodic features are used to construct identities.

Excerpt 67 is derived from the Burial Dispute Case. The facts of the case show that a family was in dispute with a local church over the burial site of the head of that family. The deceased person's children had been buried on a parcel of land belonging to the church and so when he passed on members of his family demanded that he be

buried next to his children. The church, on the other hand, resisted this move by alleging that the said land belonged to the church. As expected, the prosecution lawyer put up a spirited fight to have the deceased buried on the disputed parcel of land. This fight was partly realized at the phonological level. The following exchange occurs during cross-examination by the PL.

EXCERPT 67
637. **P LAWYER:** 244 according to you, 244 is next to 243.
638. **WITNESS:** You mean you don't have eyes to see 244 here?
639. **PROSECUTOR:** No, just answer the question.
640. →**PLAWYER:** Don't be too clever. *I am asking you* 244 is next to 243?
641. **WITNESS:** °Yes.°
642. **P LAWYER:** Is that correct?
643. **WITNESS:** °Yes.°
644. **P LAWYER:** Don't just say, 'Yes'. You have to have ears. 244 here.

In an attempt to intimidate the witness in the case, the prosecution lawyer (PL) makes sarcastic comments on the witness's response to his questions. In line 640, he sarcastically refers to the witness's response as an attempt at being 'too clever'. He immediately follows this with the metapragmatic directive: '*I am asking you*, 244 is next to 243?' which suggests that the witness has not responded to the question that he has been asked. This comment seems to have had an immediate impact on the witness as she responds feebly (line 641 and 643). But the prosecution lawyer does not stop at that. He goes further by making another sarcastic comment in line 644, '*Don't just say, 'Yes'. You have to have ears*'. This comment implies that the witness is not paying attention to what the prosecution lawyer has been saying. The prosecution lawyer here appears to be exploiting sarcasm to intimidate the witness.

The intimidation was also expressed through the manipulation of prosodic elements. In Excerpt 68, the prosecution lawyer gradually increases his volume to 'bully' the witness into responding to the questions that he has asked when he realizes

that the witness is not responding to his questions in a manner that will help his case.

This develops gradually starting in line 650 and climaxes in line 652.

EXCERPT 68
645. **P LAWYER:** Yes, you don't know who showed you the plot as yours?
646. **WITNESS:** I have said the District Surveyor, your honour.
647. **P LAWYER:** There are so many whom you don't know. But there are so
648. many plots=
649. **WITNESS:** = The one that=
650. →**P LAWYER:** = THERE ARE SO MANY PLOTS? ((Increasing volume))
651. **WITNESS:** =We are talking of plot number 244, your honour.
652. →**P LAWYER:** WHO IS YOUR NEIGHBOUR? WHO IS NUMBER 243?
653. **WITNESS:** 243 is for Nineveh Church.
654. **P LAWYER:** 243 is Nineveh Church?
655. **WITNESS:** Yes.

In line 647, the PL states that there were many plots but the witness attempts to

take over the turn by specifying the parcel of land that was in question in the case. In

response, the PL repeats his statement (Line 650: THERE ARE SO MANY

PLOTS?). This is said with a gradual rise in loudness. When, in response, the witness

completes the statement he had started in line 651 in line 653, PL responds loudly

(marked through capitalization) in turn 652. Although this may be viewed as

indicative of his authoritative stance and even knowledge, this speech style also

appears to construct the identity of the prosecution lawyer as one who is

condescending, patronizing and arrogant.

However, such manipulations of language may have been more strategic rather

than purely aimed at reflecting the lawyer's true identity. The same prosecution

lawyer appears to manipulate his language in order to persuade the court to rule in

his favour. This was apparent when the PL's made references to the deceased person.

As he made the references, the PL spoke softly, slowly, fast and loudly depending

on what he wanted to achieve. In Excerpt 69, for example, the PL speaks both softly

and slowly. The slow tempo is marked through the four pauses (…) that he uses in

one speaking turn. The prosecution lawyer states:

EXCERPT 69
656.   **P LAWYER:** =°I want to ask you, I want to ask you, if the children were
657.   buried there, (...) children of this Mzee laying in (NAMEII) Referral were
658.   buried there, (...) what (...) What prevents (...) because you don't have a letter
659.   from the church, what prevents him from being buried next to his children?°

Incidentally, this strategy is also employed by lay persons. In the GBH case, a lay accused woman utilizes a similar strategy. In Excerpts 70 and 71 I present examples of metapragmatic directives that the accused person uses. There are two variations of this directive; *'I am asking you...'* and *'I am telling you ...'* In Excerpt 70, the accused person cross-examines a prosecution witness who also happens to be her step grand daughter.

EXCERPT 70

660. ACCP1: *Mimi nauliza*	*I am asking*[my emphasis]
661. *hiyo silaha ilipatikana wapi?*	where was that weapon found?
662. *Kama mimi nilikuwa (?)*	If I was (?)
663. *Ilipatikana wapi?*	Where was it found?
664. *Iko alinisika na silaha*	Did anybody arrest me with a weapon?
665. *nikaenda polis station na hiyo silaha?*	(...) and then I went to the police station
666.	with it?
667. ACCP1: *Mi naulisa wewe...*	*I am asking you...*[my emphasis]
668. *hiyo panga ilipatikana mstuni,*	the machete that was found in the
669.	bush
670. *ilipatikana mstuni*	(that) was found in the bush
671. *nani alikuwa anapata kwa mstuni?*	(...) who found it in the bush?
672. ACCP1: *Mi naulisa wewe*	*I am asking you (my emphasis)*
673. *hiyo panga ni ya nani?*	whose machete is it?

The questions in Excerpt 70 all of which are preceded by the metapragmatic directive, *"I am asking you"*, or *"I am telling you"*, sound intimidating. This interpretation is supported by Eades (2008:164), who, while commenting on a similar incident in a case involving three Aboriginal boys in an Australian court, argues that such directives "sound as if they could be used by an authoritarian teacher disciplining a delinquent child". The effect of this directive is similar to the one realized in the Burial Dispute case (See line 641 and 643 above). The two witnesses at whom the directives are targeted respond softly.

In Excerpt 71 CW2 reacts in a similar manner to the metapragmatic directives.

EXCERPT 71

674.	ACCP1: *Mimi nauliza*	**I am asking**
675.	*hiyo silaha ilipatikana wapi?*	where was that weapon found?
676.	*Kama mimi nilikuwa (?)*	If I was (?)
677.	*Ilipatikana wapi?*	where was it found?
678.	*Iko alinisika na silaha nikaenda*	Did anybody arrest me and take me
679.	*polis station na hiyo silaha? (...)*	and then I went to the police stationwith
680.		that weapon?
681.	→CW2: ((Silence))	((silence))
682.	PROSECUTOR: *Unajua hiyo?*	Do you know (the answer) to that
683.	(question)?	(question?)
684.	*Umeelewa?*	Have you understood?
685	→CW2: ((Silence))	((silence))
686.	PROSECUTOR: *Unajua hiyo?*	Do you know (the answer) to that
687.	(question)?	(question?)
688.	*Umeelewa?*	Have you understood?

CW2's reaction of silence (lines 681 and 685) may be construed as a sign of fear by both CW2 and the witness in the Burial Dispute case. The audio recordings show a marked increase in both tempo and volume at these points. CW2's fear therefore appears to have been accentuated through loudness and the fast tempo in which the utterances are made.

In an earlier exchange, when the boy was asked where the alleged weapon of the assault had been found, he had responded feebly, in silence and by stating that he did not know the answer. These three responses imply that the witness was uncertain about what he was saying or that the intimidation strategy has worked. The claim that he did not know the answer probably suggested the fact that he did not know the answer. A similar interpretation may be reached at with regard to his responses in silence. However, if we go by Gibbons (2003:88) argument, these kinds of responses may be interpreted to mean that the person is "less convincing as a witness". In fact, according to Nakane (2007:8) this kind of silence is associatedwith the formation of a negative impression of the speaker.

7.4.3 Code Switching and Code Mixing

Code switching is used in this context with the definition advanced by Akmajian *et al.* (2000: 32) in which they argue that in code switching 'the speaker is in effect using two distinct language varieties at the same time'. According to Powell and David (2011:227 – 228), code switching is characterized by four patterns. In the first pattern, that is, lexical code-mixing, words from one language are embedded in utterances with a lexico-grammatical matrix largely drawn from another. In the second pattern, that is, code-switching, a speaker juxtaposes clauses and whole sentences in different languages while in the third pattern, code-shifting, a speaker uses one language with one interlocutor and a different language with another. In the fourth pattern, non-convergent dialogues, two speakers converse in separate languages and understand each other without the help of an interpreter.

What appears to be a common phenomenon in the data under analysis is code-switching and code-mixing. In the GBH case, for example, during examination-in-chief, the exchange between the prosecutor and CW1 goes as follows:

EXCERPT 72

698.	**PROSECUTOR:***Last term ulikuwa namba ngapi?*	What position were	
699.	you last term?	you last term*?*	
700.	**CW1:** Mimi?	Me?	
701.	**PROSE:** Eh.	Yes.	

In this excerpt, although the Prosecutor conducts his examination-in-chief in Swahili, he switches his code to English (lines 698 - 699). Later in the case, the same prosecutor introduces one of the suspects in the case as follows:

EXCERPT 73

702	**PROSE:** Sasa huyu namba moja	What's your relationship with	
703.	unajua ye namna gani?	ACCP1?	
704.	CW2: **She is my grandmother.**	She is my grandmother.	
705.	PROSE: OK. Ile 'real' ama kwa ukoo?	Ok. Is she your 'real'	
706.		grandmother or your grandmother	
707.		through kinship?	
708.	CW2: ᵒUkoo.	Through kinship.	

In this excerpt, the prosecutor shows both lexical code-switching and code mixing when he mixes English and Swahili in the same utterance. Later on, when he examines witness CW2 in-chief, the witness switches her code from Swahili to English when she responds to a question with: 'She is my grandmother'. This is in spite of the fact that she had been asked the question in Swahili. The Prosecutor, on his part shifts again into lexical code switching by questioning whether the witness's is her 'real' grandmother or a grandmother on account of their kinship. These shifts highlight the social identities of the interactants. The shift portrays CW2 as a school-going child. Her preference for English suggests that the language accords her some social status. As for the prosecutor, the lexical code switching to 'real' marks him as a person who is keen to accommodate to his client's language with a view of achieving his professional goal of assisting the court to find the truth. The shift may therefore be reflective of his professional identity.

In another case, the Burial Site Dispute Case, a lawyer similarly, makes use of a lexical code-switch to imply that the respondent in the case is not educated. When he notices the witness's inability to follow a map presented as evidence in the case, he discredits the witness through a lexical-code switch. He addresses the witness as '*mzee*', a Swahili word for 'old man'.

EXCERPT 74
709.　　**WITNESS:** This one is by error.
710.　　**PL:**　　You marked it also?
711.　　**PROSECUTOR:** I have seen the difference. =
712.　　**PL:** = Yeah, the difference, Your honour.
713.　　**PROSECUTOR:** That's why he has... this one was marked.
714.　　→**PL:** Yeah, yes, Your Honour. Now (...) *mzee*, sorry. You are not a surveyor.
715.　　Is that correct?

The switch from English to Swahili in line 714, constructs the witness's identity as one who is uneducated, aged and therefore prone to making the kind of 'error' that he admits to making in line 709. This interpretation seems to find congruence in

Mautner's (2007) review of the use of a similar word, 'elderly'. Using a corpus linguistics analysis, Mautner (2007:53), argues that 'elderly' is a lexical term that is problematic as it is used with both positive and negative connotations. However, she cites Nuessel (1984:18) who argues that 'elderly', is "stigmatic because [it] has been employed by media reporters who have traditionally portrayed this social subdivision in a negative and derisive fashion". Given the confrontational nature of the case, and the fact that the witness appeared to be of the same age as that of the PL, it appears that the prosecution lawyer was using the word 'mzee' (old man) derisively.

The GBH case provides an example of code switching by a lay person. In the case, the accused person, ACCP1 states as follows at the start of her cross-examination of the prosecution witness, CW1.

EXCERPT 75

716.	→**ACCP1**:... umesema mimi ni **koko** yako,	You've said [that] I'm your **koko**
717.	kweli mimi ni nyanya yako,	I'm your grandmother,
718.	mimi ni nyanya yako	(If) I'm your grandmother
719.	nilisaa baba yako? (...)	did I give birth to your father?
720.	Mimi nilisaa baba yako?	Did I give birth to your father?

In this instance she switches her code to mother tongue. In line 716, she uses 'koko'- a Kalenjin word for 'grandmother' as opposed to 'nyanya' (Swahili word for grandmother). This shift reflects her identity as a member of the Kalenjin community. In addition, the switch portrays her as a rural woman. This is because the use of mother tongue is more prevalent in rural areas than Swahili or English. Finally, the shift appears to highlight the fact that she has not received formal education. In fact, elsewhere in the proceedings, she admits that she does not understand English.

7.4.4 Rhetorical Strategies

The most persuasive strategy employed by a defence lawyer to construct an innocent identity of one of the suspects in the ICC cases, and on behalf of the police

officers, was a combination of rhetorical strategies. This was, generally, evident during the closing argument by a DFL. After depicting police officers as victims of the PEV, one of the defence lawyers juxtaposed their actions with the consequence of being charged for what he called the 'offence' of protecting civilians. In a moving address to the court, the DFL's summary was particularly persuasive.

Describing police officers as 'gallant' 'men and women of honour', the DFL argued that in spite of having inadequate resources and facing countless challenges, police officers worked impartially and diligently, and yet the prosecutor ignored all their actions and instead chose to prosecute them. And to emphasize his point, the DFL juxtaposed the actions of police officers, as men and women who saved 'thousands' with the accusation of failing to save the lives of 'the few they could not save due to no thought [fault] of their own because they were not superhuman'. He similarly juxtaposed those accusations with the challenges that they encountered. The DFL argued that some police officers were mocked, taunted, injured, and even killed and yet they 'never turned away any soul that turned to them'. This argument which employs parallelism emphasizes the plight of police officers. In fact the DFL argues that the officers saved no less than ten thousand lives alone in one day in one of the hotspots during PEV and that were it not for their efforts, the country would have been turned into one 'huge graveyard'. The claims that they never turned away any soul and that Kenya would have become one big grave appear to be clearly exaggerated as is the claim that police officers saved ten thousand would be victims in just one day. In conclusion, the DFL makes parallels between the officer suspected of involvement in the PEV and all police officers. Using synecdoche, he equates the officer facing charges with all police officers because, as he argues, they worked on

his behalf. The DFL then concludes by making an extremely passionate appeal to the court:

> Hundreds of thousands of Kenyans trusted in them in a dark moment of madness and those Kenyans were not disappointed. Today in their turn they are in your hands. They hope and trust you will understand what they went through. I trust that they will not be disappointed for this General here represents those men and women.

Arguing that hundreds of people trusted police officers during the chaos and were not disappointed, the DFL pleads with the court to appreciate the challenges that they went through and to exonerate the General, and by extension all police officers, from the accusations of wrong doing. But while the lawyer utilized these strategies, Suspect 3 spoke very loudly through his non-verbal behaviour. Throughout the proceedings, Suspect 3 maintained a calm, composed and pensive demeanour.

The extensive use of rhetorical skills – hyperbole, parallelism, juxtaposition, and synecdoche - and the suspects' own conduct must have had a very big impact on the judges as he was eventually acquitted. Apparently, when these skills are not utilized as skilfully, the results can be disappointing. This is apparently what happened in the case of a one of the Defence Lawyers in Case 2. The lawyer had attempted to construct an innocent identity for his client by shifting blame to someone else and by using a two-part structured argument which apparently flopped.

7.4.4.1 Structure of Arguments

In the opening statements, one of the defence lawyers had argued that his client was innocent and that the person who was supposed to have been in court was someone else, P1. So, he argued for the innocence of his client by shifting blame to P1. However, his evidence unwittingly exonerated P1 from wrong doing. This was partly occasioned by the structure of his argument. The DFL introduced this argument with the following comments:

EXCERPT 76

721.   These proceedings arise from a course of conduct connected and commenced
722.   by senior ... politicians and activists before the .... elections
723.   in Kenya, in which they were determined to cry that if they lost the election
724.   then it was stolen from them. Their cries were not to be made by a plea to the
725.   judicial process for an orderly and proper challenge in the courts to the
726.   validity of the election results. No. Their cries were to be to their supporters
727.   as they called to arms to attack their political opponents, and to create such
728.   civil disturbance and violence so as to make Kenya ungovernable, and cause
729.   the elected government to surrender and enable them to take power. *This*
730.   *technique of challenging the democratic process by such means is not new.*
731.   *It was witnessed in Ukraine in 2004 when another Orange Democratic*
732.   *Movement carried out precisely the same strategy. That was ... this was a*
733.   *copycat production that was organised with foreign assistance not for the*
734.   *benefit of Kenya but for the benefit of those senior ... politicians.*(My
735.   emphasis)

In this extract, the DFL accuses the ODM party for calling their supporters to arms to attack their political opponents (lines 726 -727), to cause such civil disturbance as to make Kenya ungovernable (line 728) and that they were aided by foreigners (line 733) to cause the mayhem. The lawyer then plays out excerpts which allegedly support these allegations. This last claim, highlighted through italics, stands out and will be discussed in more detail. The allegations cited above are consistent with the lawyer's earlier claims against P1. Being the leader of the party, the accusations against his party appear to have been aimed at portraying him negatively.

The lawyer's argument was that P1's party caused violence largely as a result of the influence of foreigners. In order to support this argument, he played out a media clip which revealed two issues. First, P1's reasons for engaging the 'foreigner' Dick Morris and two, a journalist's account of who Dick Morris was. The clip reveals that P1 was fascinated by Dick Morris's idea during a visit to the US and the fact that Dick Morris had offered to offer services to P1's party on a *pro bono* basis. P1 further explains that Dick Morris was well known for his role in the re-election of President Bill Clinton.

The journalist, on the other hand, reveals that Dick Morris had written books about how to win an election and that he had helped a less known British party to

win seats in the European Parliament. The lawyer's argument that foreigners advised another ODM in Ukraine and similar chaos as the one that erupted in Kenya appears to have been aimed at blaming the party for the PEV. This was done through insinuations to the effect that since the local party had secured the services of the same person, the violence that greeted the announcement of presidential results in Kenya could therefore be attributed to Dick Morris's advice to the party. Reports that followed long after the election violence, and mainly from politicians, seem to suggest that this argument was popular especially among persons opposed to P1's party. The structure of this argument is interesting and merits further attention. The lawyer's argument appears to have been premised on the argument that since Dick Morris had advised the Ukrainian party and the elections there were disputed and became violent; it follows that the same situation would obtain in Kenyan. But this argument appears to have been flawed on the basis of its structure.

In a clip on how P1 came to engage the services of Dick Morris, P1 is heard saying:

EXCERPT 77
698.   P1 (on tape): In most of the world he is best known for the role he
699.   played in the 1996 re – election of the US president Bill Clinton.

The journalist covering that story offers more information on Dick Morris. He states:

EXCERPT 78

700.   **JOURNALIST:** ...Wright America's most ruthless political consultant.
701.   Accredited with engineering Bill Clinton's election and re-election as ...
702.   vacancies, Dick Morris was zealous principal architect of President Bill
703.   Clinton's re-election in 1996. He worked with little known United
704.   Kingdom's Independence Party in the 2004 European elections helping
705.   them to win 12 of Britain's 78 seats in the European Parliament. He was
706.   also the campaign consultant for Victor Kruschenko whose presidential
707.   campaign in Ukraine in 2004 in the so called Orange Revolution.
708.   **JOURNALIST:** Morris says his job is purely voluntary and will attract no
709.   payments from ODM.

The two arguments presented here differ in two respects. First, the defence lawyer's argument is structured on a two-part structure while P1's argument is premised on a three-part structure. The lawyer's argument is based on the following premise:

(i)   DM worked with Krushenko and there was violence.

(ii)   DM worked with P1 and there was violence.

However, as with two part structured arguments, this argument sounds incomplete and does not logically conclude the argument that he proposes which has it that since P1 worked with Krushenko then the result would be violence. In contrast, P1's argument was based on a three-part structure:

(i)   DM advised Bill Clinton.   **Result:**   Bill Clinton was re-elected.

(ii)   DM worked with Britain's Independence Party **Result:** The party won seats in the European Parliament.

(iii)   DM advised P1's party.   **Result?**

The natural result of this argument would be that P1's party won the elections. That this argument would be logical is based on the fact that the party leader's argument was based on a three-part structure. This three-part structured argument appears convincing as it focuses one's 'mind on the connectedness of the three matters and so have them considered as one complex whole' (Mulholland 1994:374). The result of joining three dissimilar matters is that the triplet gets 'a sense of familiar completeness, which is lacking in two- or four-part lists'. It therefore appears that instead of portraying P1 negatively, the lawyer's evidence, in fact, unwittingly portrays his identity positively.

My analysis in this section has shown how style reflects identity in legal contexts. In the next section, I discuss how identity is constructed through displays of knowledge.

7.5 Identity as Knowledge

As has been pointed out in section 2.2.2.1 of the literature review, identity was perceived by philosophers as knowledge. This claim is attested in Descartes' famous claim, 'You know so you are'. Courtroom data under analysis shows that knowledge display is an important aspect of identity construction.

In the Water Flowers Hotel Burglary case, Kazini had been charged with burglary and stealing but also faced an alternative charge of handling stolen property. Kazini had appeared in court a number of times when the case was recorded. During his defence, Kazini had the opportunity to not only proclaim his innocence but also to reconstruct his identity from that of a 'criminal' as had been argued by the court prosecutor to that of an innocent person. In the discussion that follows, I focus on the ways in which Kazini positioned himself differently to suit different needs in a manner similar to what Omoniyi's (2006) envisages in his hierarchy of identities theory. Kazini projects multiple identities at different times; one who is well off, knowledgeable, naïve and even crafty depending on his situation

One of Kazini's main acts of identity occurs when he begins his defence. His response is given in Excerpt 79.

EXCERPT 79
736. **MAG:** '...Today being your day to put up your defence, what will you say
737. in mitigation?
738. **ACCP:** Your honour, (...) in May (...) 2009 (...) I was in a hotel (...) The
739. Water Flowers Hotel. (...) at about 4:30pm. (...) When I was taking tea, I
740. saw three people (...) one of them being PW 2 and two others that I didn't
741. know. (...) Your honour, they told me (...) (that) they wanted to see me
742. (...) I finished taking the tea, paid and then got out. (...) When I got out (...)
743. I was told to accompany them to the DC's place, (then) those people told
744. Me: 'We are police officers'. They handcuffed me, and shoved me into a
745. car. (...) They took me to Matopeni town, Mafuta Oil Company station
746. where the car stopped. (...) One policeman (...) asked me where my
747. home/house was. I asked: 'what do you want to go and do at my house?'
748. (...) PW2 in this case told me that they wanted to go and conduct a search
749. at my house. (...) I asked: What bad thing they wanted to go and do at my
750. house.(...) I asked the police officer that I am not against you going to my

751.   house to conduct a search. But what I am asking for is a 'search of warrant'
752.   so that I can take you to my house.(...) Your honour, I saw PW2 in this
753.   case (...) and another police officer standing on the side while talking. (...)
754.   Later they came back to the car (...) (and) they told me: 'Although you have
755.   refused to take us to your house, there's someone who will take us there.' A
756.   person that I did not know. (...) Your honour, I was shoved into a car (...) and
757.   driven through this route to Matopeni Fitness Club going downwards with that
758.   person sitting in front of the car.

In this extract Kazini pauses 24 times. This is an inordinately high number of such pauses in such a short excerpt. Not even legal professionals paused as many times. In fact, Kazini's pauses constituted the highest number of pauses used by any interactactant in the entire corpus of courtroom recordings. Kazini seems to have used the pauses to show his knowledge about the fact that that magistrates record the proceedings manually. His pauses were therefore aimed at facilitating the recording of the proceedings.

Kazini's knowledge of courtroom procedures is also revealed through his preponderant use of the vocative, 'Your honour'. Again, Kazini was the only lay interactant who used the vocative more than all other lay interactants in the courtroom. In both cases, Kazini portrays himself as a knowledgeable person and he appears to be communicating to his 'audience' in court that he is informed about courtroom procedures. So, just as has been argued in the preceding paragraph, this conscious use of the vocative may also be viewed as one that indexes his knowledgeable identity.

Kazini's knowledge is further illustrated through his display of knowledge about courtroom identification labels. In Excerpt 80, Kazini identifies a prosecution witness, not by name but by his role in court.

EXCERPT 80

759.   **PROS:** Sasa, kuna washahidi   **PROS:** Now, there are witnesses
760.   pia walikuja kutestify. Mmoja alikuwa   who came to testify. One of them
761.   ni afisa wa prison   is a prison warder

762. alikuwa anachunga wewe huko — he used to guard you (in prison)
763. huyo nayo angekuwa na shida gani — what differences would he have
764. ndio akuwekelee hii maneno? (...) — so as to frame you?
765. →**KAZINI**: Mshahidi ambaye PW1 ama — **KAZINI**: Is it Witness PW1
766. PW2? — or PW2?
767. **PROS**: PW1 ni complainant (...) — **PROS**: PW1 is the complainant (...)
768. ((he looks through a file)) (....)
769. Musa Odingo, unajua huyo? — Musa Odingo, do you know him?
770. →**KAZINI**: Simjui kwa jina unless — **KAZINI**: I don't know him by
771. — name unless
772. uniambie ni PW. — you tell me his PW number.
773. **PROS**: Lakini kuna ofisa wa prison — **PROS**: But there was a prison
774. — officer
775. alikuwa hapa? Ambaye alikuwa ni= — who was here? He was=
776. →**KAZINI**: PW2, your honour. — **ACCP**: PW2, your honour.

Asked about a witness who had testified against him in an earlier hearing, Kazini asks to be told whether it was Police Witness Number 1 (PW1) or Police Witness Number 2 (PW2) (line 765 – 766) because, as he argues, he could not tell which of the two witnesses the prosecutor was referring to unless he was told the witness's PW identity. When this is clarified, Kazini identifies the witness in question as PW2 (line 776). Granted that he was talking about a witness who had appeared in court in a much earlier session, Kazini was clearly putting his knowledge on display and accordingly positions himself as a knowledgeable person.

Interestingly, though, when it appears that knowledge displays may be prejudicial to his case, Kazini is quick to claim ignorance or naivety in legal matters. This claim of ignorance is shown in Excerpt 81.

EXCERPT 81

777. **PROS**: Nasema wakati — **PROS**: I'm saying: 'when
778. Ulikumbushwa na koti — you were reminded by the court,
779. ulisema ni tarehe ngapi — on what date did you say (that)
780. ambayo makosa ilitokea? — The offence was committed?
781. **KAZINI**: Sijakumbuka vizuri, — **KAZINI**: I can't remember well,
782. your honour. — your honour.
783. **PROS**: Huwezi kumbuka? — **PROS**: You can't remember?
784. So tarehe 1/1/1997 — So on 1/1/1997,
785. wakati huo ulikuwa wapi? — where were you on that day?
786. **KAZINI**: Siwezi kumbuka — **KAZINI**: I can't remember the
787. waka ... siku — ... tim... day ...
788. mahali nilkuwa , your honour, — where I was, your honour,
789. siku hiyo. — on that day

When he is asked about his whereabouts when the alleged offence was committed, Kazini feigns inability to recall (lines781 – 782) and 786 – 789). This becomes apparent when he later reveals that during that period he had been jailed for a period of three years on a charge of stealing by a servant. The prosecutor's question seems to have been designed to portray him as a potential criminal. Later, when the court prosecutor asks him if he had known that at the time of his arrest police officers had the right to inspect his house, even without a search warrant, he states: *'Sielewi sheria mzuri'* – 'I do not understand the law'. And finally, when the magistrate asks him why he had not opted to submit his written defence orally or in a written form as is required by law, Kazini, similarly states that he does not understand the law.

EXCERPT 82

790. **KAZINI:** Your honour, kulingana na	**KAZINI:** In my view, your honour,
791. mimi, sielewi sheria mzuri.	I do not understand the law.

Given that this response contradicts his earlier displays of knowledge, Kazini may have been avoiding the questions deliberately. This strategy seems to corroborate Drew's (1992:481) finding with regard to such answers during cross-examination. Drew states:

> One sense of such answers is that the witness might be anticipating that what she is being asked to confirm will turn up to be prejudicial to her story and prosecution case. "Not knowing or remembering" can therefore be an object conveniently used to avoid confirming potentially damaging discrediting information.

Similarly, Walker (1999:69) argues that 'I don't know' may indicate 'reluctance to take a risk rather than a lack of knowledge'. But there are other explanations for this type of answer. Eades (2008:170) explains that while this may be due to the 'high stress involved in answering questions in legal contexts', Ehrlich (2001:43) suggests that such answers also 'neutralize' the version of events presented. It would therefore appear that Kazini was deliberately constructing his identity differently to suit his need to appear innocent.

I have argued that knowledge displays were one of the means by which interactants constructed their identity. However, the most memorable aspect of identity construction using this method was displayed by two professionals, one a medic and the other a police officer. The medic displayed her unique professional identity in a case of defilement of a minor. During her examination-in-chief, the prosecutor asks her about the victim's medical report as follows:

EXCERPT 83
792.   **PROSECUTOR:** What report is this?
793.   **MEDICAL WITNESS:** This is the Age Assessment Form for (Name). On
794.   15th of September this year, (Name) was brought for examination, and
795.   according to the assessment, I found that the child is 7 years old, and then for
796.   classification, when the child is under 7 years, he or she has more than 20
797.   teeth, as compared to a child who is below six years who has 20 teeth. So
798.   according to (name), (NAME) had 22 teeth so she still qualifies to be above
799.   six years to seven years. So I also confirmed this from the child's (?) which
800.   indicates that the child was born in 2000.

The response by the witness provides a rather unusual means of determining a person's age. She does so by counting the teeth of the victim. Her testimony is that that defiled child was aged below six years because such children have 20 teeth whereas those with over 20 teeth are over 7 years (lines 795 – 799). This knowledge is specific to practitioners in the medical profession and therefore marks the witness as a medic. A police officer, who was also a witness for one of the suspects in the ICC Confirmation of Charges Hearings, similarly constructed his identity. During cross-examination, the DFL asked him to spell the name of the place where a certain religious leader had been killed. In reply, the witness responded as follows:

EXCERPT 84
801.   **WITNESS:** Mike, Uniform, Sierra Echo, Romeo, Echo, Charlie, India.

This style of spelling is profession specific and is also used by professionals in other fields such as air traffic control and the military. In this particular instance, this spelling indexes the officer's identity as a police officer.

So far, I have examined how interactants constructed their identities in both the courtroom and the prison settings. In each of these settings, the interactants in question appeared to construct their identities by employing a number of strategies such as knowledge displays, pronunciation, code switching and metapragmatic directives. In most of the instances, the interactants have largely constructed their own identities. What I have not examined is how the interactants reconstruct damaged identities. As Pavlenko and Blackeledge (2004: 27) argue, it seems that when the identities of the interactants are damaged, the affected individuals use 'linguistic resources which allow them to resist identities that position them in undesirable ways...' It is these strategies, which Shuy (2003a:1) refers to as image repair strategies that I now wish to turn to.

7.6 Repairing Damaged Identities

Shuy (2003a:1-2) argues that when people are caught in the wrong, they 'can admit that [they] were wrong and simply take the consequences' or 'try to repair the damage done' through such strategies as:

> denial or mitigation of our guilt, explaining that our intentions were actually quite good, shifting the real blame to someone else, placing ourselves in the best light by cataloging [sic] all the good things we've done, or trying our best to minimize or distance ourselves from the problem with ambiguity, often redefining and camouflaging it in the process.

A number of these strategies appear to have been used by various parties in the courtroom, in the prison context and even in quasi-legal contexts such as when suspects responded to allegations of involvement in criminal activities. In the remaining part of this chapter, I discuss how each of the following strategies - denial, admission of guilt and simultaneous mitigation of guilt, shifting blame and positive descriptions of their own lives – were used to repair damaged identities.

7.6.1 Repair through denial

In using this strategy, interactants first mentioned the crime they were accused of and then immediately after denied being involved in it. Examples from prison letters and responses to allegations of wrong doing by suspects in the ICC Confirmation of Charges Hearings of the ICC cases support this.

The inmate in L12 appears to use this strategy when he states: 'I am currently incarcerated at the above mentioned prison undergoing trial for murder [mention of crime] which I know deep down in my heart that I never committed [denial]'. In this example the inmate mentions his crime but immediately after denies any involvement in it. The inmate emphasises his innocence by indicating the extent of his denial through the relative clause, that is, 'which I know deep down in my heart'. Similarly, the inmate in L14 mentions the crime for which she has been incarcerated and immediately after denies her involvement in it. She writes:

EXCERPT 85
802.   I got arrested on 18/5/05 and charged with a murder case [mention of the
803.   crime] on 25/11/05 and talking the truth before the living god I don't know
804.   where the child went [denial]. Am the biological mother of the said child and
805.   we quarrelled with the father of the child and I left the child with him. ... The
806.   case now is NEGLIGENCY OF A CHILD but the child was never found
807.   meaning nobody knows where the child is (emphasis in the original).

This inmate's extent of denial is emphasised in her vow, 'and talking the truth before the living [G]od'. In addition, the inmate downgrades the offence from that of 'murder' to that of child negligence. The emphasis, marked through capitalization, may be indicative of her conscious effort to minimize the charge of murder which would project her negatively. In both cases, denial appears to be a means that is used to distance the inmate from the crime and the negative associations that may arise. But through the denials, the inmates simultaneously portray themselves positively to their benefactor, Rev. Francis.

Another example of this strategy is found in L5 in which the inmate implies her innocence by denying any knowledge of the theft of a car in which she was arrested (lines 813 -814). The inmate's denial is presented in a fairly consistent narration of the events leading to her arrest. Her denial appears to be aimed at inviting her benefactor to evaluate her request without being prejudiced about her involvement in the robbery. She states:

EXCERPT 86

808.　On 2/08/2008, I planned to come to Kisumu city to visit my aunt. I had no
809.　enough money so I accompanied another man who was also going to Kisumu,
810.　although he was a total stranger to me. To my surprise, he accepted since he
811.　had a private car. On reaching Kericho, I saw a policeman who stopped the
812.　car and thereafter arrested us. Later on while in police custody, I came to find
813.　out that the car we came with was stolen [identification of crime]. I tried to
814.　explain that I didn't know of any robbery [denial and identification of crime]
815.　and its only that the man was a good Samaritan, but it was all in vain. That is
816.　how I landed in Kazi Nyingi Prison with capital offence and charged with 2
817.　files.

A similar strategy is used by some of the suspects prior to the ICC Confirmation of Charges Hearings. In Excerpt 87, three of the suspects make the following statements: (all verbatim)

EXCERPT 87

818.　'I thoroughly repudiate any suggestion that I have engaged in any activity that gives rise to the responsibility under the Rome Statute of the international court'. (Suspect 1)

819.　'The suggestion that I have done anything to warrant that I have done anything to warrant criminal investigation is manifest nonsense' (sic). (Suspect 1)

820.　'I am absolutely innocent of any wrong doing'. My conscience is clear (...) eh... hmm... I am very prepared for this because eh ... I am absolutely certain in my mind that I neither pas...participated, financed or had anything to do with the post-election violence at all. (Suspect 1)

821.　'My conscience is clear, has been clear (...) and will always be clear that I have committed no crime'. (Suspect 3)

822.　'I state categorically that I had nothing, whatsoever, to do with the 2008 post-election violence and I am innocent of the allegations made'. (Suspect 2)

The suspects express denial in two ways. First, the denial is made explicitly as in (818), (819) and (822) where the suspects declare that they had nothing to do with PEV, or that they committed no crime. In these examples denial is emphasized through modification by adverbs of degree such as 'thoroughly' (line 818)

'absolutely' in (line 820) and (line 822) and 'categorically'. The adverbs indicate a rather strong denial. Secondly, the denials are also made indirectly through declarations of innocence rather than through explicit denial (lines 819 and 821), through euphemistic references to the crimes such as 'any activity that gives rise to the responsibility under the Rome Statute of the International Court' (line 818) or through derogative reclassification of the accusations exemplified in 'manifest' nonsense (line 819). When taken as truths, these denials tend to portray the suspects positively. However, when these denials are viewed as cases of euphemism, they point to the suspects' attempt to save face by avoiding 'embarrassing ... words' (Mulholland 1994:99) and 'negative values' (Fairclough's 2001: 99).

7.6.2. Repair through Mitigation and Admission of Guilt

Examples from prison letters show that the inmates positioned themselves positively through two strategies namely, through admissions of involvement in crime and simultaneous mitigation of the guilt and through admissions of guilt followed by expressions of remorse. The inmates who repaired their identities using the first strategy first admitted to having committed the crime and thereafter provided a justification for their involvement in the crime. In justifying the crime, the inmates in question tended to suggest that they were involved in criminal acts because of factors such as poverty or family pressure. For example, in L34, the inmate admits to having been convicted on a charge of drug trafficking but immediately after justifies her involvement by attributing it to the need to meet the needs of her large family as well as orphaned children under her care. She states: 'I was arrested [charged] with drug trafficking [admission of crime] while I tried to meet my children's needs [mitigation]. I have six children and four orphans under my care, yet all were at school' [justification]. A similar phenomenon is found in L16 where

the inmate admits to having had a 'misunderstanding' with his landlord. However, immediately after making this admission, he indirectly justifies it by stating that his landlord owed him 28,000/=shillings. The misunderstanding is therefore meant to be viewed as a natural consequence. The inmate states: 'I was put into prison due to misunderstanding with my landlord [indirect admission of guilt] who owes me 10,000 and a further 18,000 from unregistered women groups' [justification/mitigation]. This constructs a positive identity since the inmate implies, as indicated in Chapter 6 section 6.2.2 that, anybody in a similar situation would have acted in the same way.

In the second strategy the inmates admitted to having committed a crime and then immediately after expressed their remorsefulness. In L13, for example, the inmate states: 'I did steal [admission of guilt] and I am remorseful of what I did [remorse]. I have promised God not to do the same in my life [further evidence of remorse].' The reasons provided to justify the inmates' involvement in the crime seem to suggest that the inmate in question had no alternative other than to commit the offence. And illegal as it may be, some of the inmates believed that they had good reasons to commit the offences and should therefore not be viewed negatively.

7.6.3. Repair by Shifting Blame

Some of the interactants repaired their damaged identities by shifting blame to other parties. This is illustrated in excerpt 88.

EXCERPT 88
> 823. '... it didn't come to me as a surprise to me that my name was mentioned because all along, eh... I had come (...) eh... to know that there was a deliberate scheme (...) Eh... hatched and eh... *executed by fellows who are not interested in justice*, but interested in (...) other considerations'.
> 824. 'Although an independent and fair process gives me the chance to clear my name, that process must be devoid of *political interference*, of any nature whatsoever'. (Suspect C)

In example (823), Suspect 3 blames his predicament on some people who he describes as 'fellows who are not interested in justice'. He accuses them of having hatched a plan to accuse him of involvement in PEV crimes. Suspect 2, similarly shifts blame to his political foes. Accordingly, he demands that the process be devoid of political interference. These arguments position the suspects as innocent victims. Indeed Suspect 2 claims not to have been granted the opportunity to respond to 'allegations' of his involvement in the PEV crimes.

7.6.4 Repair through Positive Description of Self

In describing their own lives some of the inmates were keen to show that they were useful members of their societies before they were jailed. Some of them portrayed themselves as creative, skilful, hardworking, financially stable, and generous persons. The following examples reveal how some of the inmates used this strategy.

In L2, the inmate seeks to have her songs produced for sale so that she may use the proceeds not only to hire a lawyer but also to support her mother and children. She writes:

EXCERPT 89

825. Reverend, I am a singer, I sings gospel songs with my own composition. I
826. think you've hears it singing in the church, and it has been a blessing to the
827. madam's and also to capital and ordinary. It has also changed many, because
828. God has blessed me with this talent. Reverend, I now plead to you, to help me
829. to produce these songs, and sell them, so that I can afford to hire a lawyer,
830. and also help my mother and my children.

The underlying argument here is that the inmate is talented (lines 825 & 828) and capable of utilising her musical skills to earn a living and to cater for her own needs. She is, however, forced by circumstances to seek assistance (line 829). A similar argument is advanced by the inmate in L13 who describes herself as one who is skilful in 'making sweaters' and is therefore seeking funds which would help her

to put her skills into good use, raise money and fend for herself and her family. She writes: 'I have got good skills in making sweaters with the machine, and I am sure that if I am given that machine with little funds to buy the wool and rent a room, I will be able to support myself with my children'.

Another inmate, L16, portrays himself more positively as an entrepreneurial person when he writes:

EXCERPT 90

831.   I hereby would like to express my personal problem. Regard, I was very
832.   focused and hardworking, capable of taking care of my siblings affectionately
833.   and financially. I was in the vegetable business and able to educate my
834.   children. I built a latrine pit for my village community of which I
835.   volunteered to do with own funds. I was generous and gave out debts which
836.   I have not been paid back to date.

This inmate constructs a positive identity by focusing on his magnanimous contribution to his community: obviously, a man who sinks a pit latrine out of his own resources for the benefit of his community (line 834 – 835), 'gives out debts' [gives loans to members of his community] (line 835), supports his siblings financially and is hardworking is certainly worthy of respect. So, such a man's present predicament should be viewed as a 'little failing', rather than as a flaw to his otherwise positive contribution to society.

Apparently, this strategy is also utilized by non-inmates. For example, when the ICC prosecutor named some of the alleged masterminds of the PEV, they all reacted by making statements in which some of them portrayed themselves positively. Two of the suspects positioned themselves positively by recounting their achievements and good deeds. Suspect 1 chose to elaborate on his contributions towards the formation of the International Criminal Court example (837) and (838).

EXCERPT 91

837.   Indeed I've spent my life in public service and attempted, to the best of my ability, to be a loyal servant to the government of Kenya and to serve its people faithfully. That is why today I hold the highest office in the civil service of the republic of Kenya as Secretary to the Cabinet, Head of Public Service and Permanent Secretary

to the presidency (Suspect 1).

838. I respect the ICC as an institution and indeed as Kenya's Permanent representative to the United Nations in New York; I participated and supported the ICC preparatory meetings before the court was even founded. I believe in the rule of law domestically and internationally. (Suspect 1)

In these statements, Suspect 1 outlines his achievements in public service which have seen him rise to the highest position in Kenya's civil service. He attributes this achievement to his loyalty and commitment to public service. Similarly, the suspect explains his role in founding the ICC as an institution and affirms his commitment to the rule of law at both the local and international levels. These statements position him as an innocent, loyal and law abiding citizen who is was unlikely to be involved in criminal activities that were the subject of the International Criminal Court's investigation. Similarly, suspect 2 focused on his positive contributions to victims of the PEV as well as his calls for peace during the chaotic period. The suspect stated:

EXCERPT 92

839. 'My record speaks for itself; after the ... elections, I personally called for peace and moved around NAME and its environs, asking residents to keep the peace, and this is a well-documented fact'

840. '... and indeed we did help desperate Kenyans to get tents over their heads, clothes on their bodies and food in their stomachs. And this, ladies and gentlemen, I would do again.

In line 839, he states his peace initiatives while in line 840 he mentions the nature of his assistance to victims of the violence. These two contributions are geared towards absolving the suspect from allegations of involvement in the crimes and therefore position him as an innocent person. Further evidence of their positive attributes is found in their willingness to corporate with the ICC as shown in Excerpt 93.

EXCERPT 93

841. 'In the event that they decide to issue sermons, I will voluntarily attend the Hague and respect any request the judges have (Suspect 4)

842. 'I want, however, to say that eh... am ready, am willing am available as I said before (...) eh... to face the prosecutor with his ... witnesses in court (...) as and when I am required to do so' (Suspect 3)

843. 'I have already written to it providing it with all my det...contact details. I've also confirmed to the court that I am ready and willing to avail myself at the court at anytime and I will offer any information that may properly be required' (Suspect 4)

The willingness of the suspects to 'voluntarily attend the Hague' and 'respect any request of the judges' (841), 'to face the prosecutor with his ... witnesses in court (...) as and when I am required to do so'(842) and to 'avail' themselves and to 'offer any information that may properly be required' indicates their level and corporation with the ICC. This willingness to cooperate indicates their readiness to prove their innocence.

This section has discussed the use of denial, shifting blame and the portrayal of positive attributes by various interactants to repair their damaged identities. The underlying argument has been that through these strategies, the interactants either distanced themselves from criminal acts and thereby positioned themselves positively before their benefactor or simply used the strategies to construct their identities positively. Through the admission of guilt, and expressions of mitigation and remorse, shifting blame, and by placing themselves in 'the best light' by cataloguing the good things that they have done, the inmates and suspects in the PEV reconstructed their damaged identities.

7.7 Conclusion

This chapter has examined how identities are constructed through style and knowledge displays and how damaged identities are repaired. In doing this, I have demonstrated that the use of both religious and legal registers confer identities on the inmates and that the identities of inmates are as flexible as the interactional contexts in which they find themselves. As a result, I have argued that it may be predictable

that when the inmates move to other contexts they will similarly align their identities to those contexts. This trend is compliant with modern socio-constructivist positions of identity which 'emphasize the active process of the production of discourses and their potential production and transformation of social realities' (Grad & Rojo 2008:5). For inmates, this flexibility is motivated by the need to maximize chances of a positive outcome with regard to the requests that they make to their benefactor.

My analysis of the concerns of inmates along the gender divide appears to support findings by scholars on language and gender to a large extent. This chapter has shown that while women are concerned about the welfare of their children ('soft issues' in feminist literature), men are concerned with issues of freedom ('hard issues'). In addition, both men and women tend to perform roles assigned to them by their societies. Consequently, the data generally show that men are providers while women are 'carers' of their children ('ideal femininity'). But beyond these roles, the data also show that some women are performing what were previously considered to be masculine roles such as paying tuition fees for their children, providing for the upkeep of their children as well as supporting their parents.

An analysis of speech styles shows that pronunciation, metapragmatic directives and code switching and code mixing index identity. A significant finding in this chapter is that even when voices and faces of courtroom interactants are distorted, pronunciations of interactants can still reveal their regional identities. This therefore shows that the notion of concealing identity in legal contexts cannot be guaranteed if an interactant's speech is availed. In addition, evidence in this chapter shows clearly that metapragmatic directives, coupled with other prosodic elements, can be used to index either an authoritative identity to undermine an interactant's credibility. The latter part of the section on style focused on rhetoric strategies and

found rhetoric strategies to be effective means of reconstructing identity only when used skilfully.

The chapter also dealt with knowledge displays as means of constructing identity and seems to prove the long held philosophical view that identity is knowledge. The last part of the chapter has shown that, to a large extent, persons whose identities have been damaged resort to different linguistic strategies to reconstruct their identities. The strategies demonstrated in the data, that is, denials and shifting of blame, mitigation and admission of guilt as well as descriptions of one's positive attributes, support Shuy's (2003a) theory of the Speech Event of Image Repair.

The final chapter of this study presents a summary of my findings, conclusions and recommendations.

CHAPTER EIGHT

FINDINGS, CONCLUSIONS AND
RECOMMENDATIONS

8.1 Introduction

The purpose of this study was to investigate how professional and lay interactants in legal contexts used language to construct their identities, to negotiate their identities or to rebut the identities imposed on them. In my attempt to explore how language played this role, I answered the following research questions:

(i)   What linguistic resources do professionals and lay persons interacting in legal contexts employ to construct their identities?

(ii)   In what ways do they negotiate their identity across the professional/lay divide in relation to the legal contexts?

(iii)   What identities do they construct?

(iv)   Why do they construct their identities in the ways that they do?

Accordingly, the main objectives of this study were to analyze the language of interactants in legal contexts, to investigate how language used in the police interview, prison and courtroom contexts contributed to our understanding of the identity of interactants in those contexts and to explain the nature of identities constructed in the selected legal contexts.

This chapter presents a summary of my findings and conclusions and ends by making recommendations. The summaries of my findings are presented in the order of the research questions.

8.2 Summary of the Findings

The first research question sought to establish linguistic resources that were used by various interactants to construct their identities and the identities of the persons

they interacted with. Accordingly, this study found that three main linguistic resources were used by various interactants to construct identities. These are lexical, grammatical and stylistic choices.

(i)   At the lexical level, this study has established that identities were constructed through lexical struggles, selections of adjectives with positive or negative connotations, selections of words and expressions with contrasting meanings, euphemisms and overwording. Using corpus linguistic analyses, it has been shown that selections of words with certain meanings can be indexical of the identity of the speaker.

(ii)   With regard to grammatical choices, this study has found that interactants constructed their own identities and the identities of others through manipulations of their agentive roles in relation to criminal incidents. The study found that identities were agentively constructed through claiming agency and through deflected agency. Interactants minimized their own involvement in criminal acts by deflecting agency. As a result, they constructed positive identities. Additionally, this study has found that positive identities were also constructed through the use of passive and active voice constructions. With regard to transitivity, this study has found that material and verbal processes were commonly used to construct identity. This largely consisted in examining what the interactants said and what they did. Interestingly, it was found that while some interactants apportioned blame on others, what the affected interactants said could exonerate them from the blame. This study also found that there were three main aspects of modality that were exploited to construct the identities of the interactants. These were categorical assertions, epistemic modality and deontic modality. Through

these selections, various identities were constructed. For example an authoritative identity (realized through categorical assertions a democratic identity (realized through deontic modality) and a non-credible identity (realized through epistemic modality). However, aspects of modality were predominantly used by lawyers. This study also found that non-credible identities were constructed through intertextuality and this corroborated positions taken by Eades (2008) on this matter. Finally, the study found that pronouns were used to construct social identities and otherness when used with collocates (such as 'am') or through pronouns which categorize persons into 'us' and 'them'.

(iii)   With regard to speech styles, the study found that identities were indexed through idiosyncratic pronunciations of some phonemes and that through such pronunciations the notion of disguised identities through voice distortions is not guaranteed. The study found that even where voices were distorted, it was still possible to identify the speaker's regional identity. The study also found that identities were also constructed through metapragmatic directives coupled with prosodic elements such as loudness and tempo as well as through code switching and code shifting. Furthermore, this study found that the content of the letters of inmates revealed the gender of the respective writers. Apparently, men expressed concerns that were different from the concerns raised by women. Finally, the study found that identities were also indexed in their choice of register. Some interactants marked their Christian identity through the use of a religious register while others displayed their knowledge through the legal register. But of importance is the finding that the use of these different registers is indicative of the fact that the identities of

interactants are constructed in interaction and that through register shifts interactants displayed multiple identities.

(iv) While most of the strategies employed by various interactants were of a linguistic nature, this study also found that identities were constructed through knowledge displays and naming. Naming was particularly important in the courtroom context.

(v) Finally, this study found that when the identities of the interactants were damaged, the affected interactants repaired their damaged identities through denials of involvement in wrong doing, through admissions of involvement in crime and simultaneous minimization of their involvement. This was achieved through discursive mitigation, by shifting blame to other parties and by foregrounding their own good deeds. All these findings corroborate Shuy's (2003a) theory of image repair.

Secondly, this study sought to establish how identities were constructed along the legal/lay divide. The findings on this aspect are based on the roles of the various interactants. The study identified the following groups of interactants: Prosecutors, Witnesses, Lawyers, Magistrates (in the courtroom context), Police Officers, Suspects and witnesses (in police statements) and inmates and the religious leader (in letters by inmates). This section provides a summary of the identities displayed by interactants in each of these groups:

(i)   Prosecutors

Court prosecutors essentially prosecute cases. However, the main function of prosecutors consisted mainly in assisting the court to reach a fair decision by presenting 'all the facts' before the court. Prosecutors were therefore involved in examination-in-chief, cross-examination and re-examination of both witnesses and

suspects. In the course of exercising their duty, prosecutors constructed a professional identity at times by accommodating to the language of the witnesses (See Chapter 2 section 2.2.3.4), or merely by encouraging witnesses to respond to questions from hostile lawyers during cross-examination (See Chapter 7 section 7.4.2). They also did this by guiding witnesses or suspects and by ensuring that such interactants stuck to matters relevant to the case at hand. But while prosecutors constructed a professional identity, other interactants such as defence lawyers, at times, portrayed them as incompetent and unprofessional (See Chapter 6 section 6.7).

(ii)   Magistrates and Judges

In a majority of the cases that were analyzed, it was found that Magistrates rarely took part in the cases. Their involvement was limited to making comments relating to the law, to warning interactants whenever they thought that such interactants were not acting with the decorum expected of court interactants or to issuing directives and court rulings. Accordingly magistrates positioned themselves as both impartial and authoritative.

(iii)   Lawyers

This study found that lawyers were divided into two groups in the courtroom. The first group comprised prosecution lawyers (PL) and the second, defence lawyers (DFL). In the course of performing their assigned roles, the lawyers constructed different identities. The prosecution lawyer's task was to prosecute cases. Accordingly, such lawyers constructed a professional and authoritative identity by sticking to the facts of the cases and by foregrounding the pertinent issues in the cases which helped the court to incriminate the accused persons. In contrast, defence lawyers fought to exonerate their clients from wrong doing. As a consequence, they

tended to portray themselves as all knowing and authoritative. In some cases, this was achieved through categorical assertions (See Chapter 6 section 6.5.1).

(iv)   Witnesses

Witnesses, like lawyers, were divided into two groups. In the first group were prosecution witnesses and in the second, defence witnesses. The study found that witnesses did not have much leeway in constructing their own identities because their participation was dependent on what they were asked to respond to in courts. However, for a majority of them, their identities were constructed by either lawyers or accused persons. Generally, defence lawyers portrayed prosecution witnesses as 'liars' or 'unreliable persons'. In contrast, prosecutors constructed their identities by presenting them as reliable and trustworthy persons during re-examination.

Thirdly, this study also sought to determine what identities the various interactants constructed. Given the range of data that has been analyzed it is not feasible to present all aspects of identity that have been constructed. Consequently, I will only focus on the main ones.

(i)   In a majority of the cases involving lawyers, police officers (as officers and as witnesses), as professionals (medics or police officers) the authoritative identity was dominant.

(ii)   This study also found that a number of professional interactants constructed a professional identity through knowledge displays.

(iii)   The study also found that one of the dominant identities that were constructed in the courtroom context was the criminal identity. Prosecution lawyers in criminal cases tended to portray accused persons as criminals. Similarly, police officers tended to construct the identities of suspected criminals as criminals (See Chapter 6 section 6.2.1). In most cases, however, this identity

tended to be contrasted with an innocent identity. While the accused persons were portrayed as criminals, they presented themselves as innocent persons. Criminal and innocent identities were therefore constructed simultaneously.

(iv)   One other dominant identity that was constructed was the victim identity. This was particularly common in police statements and courtroom proceedings. Of interest is the way police officers positioned themselves as victims in the proceedings of the ICC Confirmation Hearings as well as in police statements to the press (See Chapter 6 section 6.2.2). Similarly, some inmates and accused persons portrayed themselves as victims.

Finally, this study sought to explain why interactants in the three legal contexts constructed their identities in the ways that they did. The study found that various interactants constructed their identities depending on their unique circumstances. This study found that interactants constructed their identities as they did for two main reasons:

(i)   It has been found that inmates constructed their identities positively as a means of ensuring that they received support from the religious leader that they were writing to. Generally, inmates constructed their identities in a manner that was consistent with Giles' (1979) postulation of the accommodation theory. Accordingly, interactants constructed their identities in a manner that ensured that they maximized benefits to themselves. This finding can be applied to virtually all situations in which various interactants constructed their identities.

(ii)   The second finding is that construction of identity within the courtroom setting is largely dependent on the nature of the legal system used by the court. It has been shown that interactants in inquisitorial systems have more leeway to

construct their identities as opposed to interactants operating within the common law system. This difference has been attributed to the monologic and dialogic styles of presentation that are used in the respective courts.

8.3 Conclusions

A number of conclusions may be drawn from the findings of this study.

(i)   This study has found that identities were constructed through a number of ways. These included: lexical choices, grammatical choices, stylistic naming and through knowledge displays. It is therefore concluded that in addition to meeting the communication needs of interactants, language is critical in the construction of identity in legal contexts.

(ii)   This study has also shown that while both professional and lay interactants were involved in constructing identities, in the courtroom, the more powerful interactants were the ones who largely constructed the identities of the less powerful interactants. In the police interview setting, both police officers and lay interactants were involved in constructing identities while in the prison context, the data show that it is the inmates who constructed their identities. It can therefore be concluded that the role of constructing identity is largely dependent on the specific contexts of interaction.

(iii)   Thirdly, in view of the fact that this study finds that the dialogic style used in the Common Law System gives rise to more aggressive mechanisms of constructing or resisting imposed identities while the monologic style used in the inquisitorial systems provide for less aggressive styles of constructing identity. In view of these findings, it is concluded that the legal system in place affects how identities are constructed.

(iv)   Finally, in all the three contexts, interactants appeared to construct their identities in a way that tended to maximize 'the chances of a positive outcome' (Giles (1979:48). The findings of this study therefore provide evidence to support Giles (1979) accommodation theory in general and the concept of convergence in particular.

8.4 Recommendations

(i) I stated in Chapter 1 section 1.8 that this study is important by virtue of being a first study of its kind in this region and Africa in general, it was hoped that it would inspire research in this discipline. But to be able to realize this   objective, it is recommended that security agencies and the judiciary should allow researchers access to data. This study found that records of important documents are periodically destroyed. It is therefore recommended that such material be availed to researchers on request as both researchers and relevant institutions will benefit from such an exercise. Evidence from jurisdictions in America, Europe and Australia show that research in these sectors is of mutual benefit.

(ii)   It is also recommended that departments of linguistics at local Universities be encouraged to introduce courses in forensic linguistics. Locally, there are two universities that offer courses in this discipline yet there is growing demand for experts in this field.

(iii)   Although this study has attempted to address the knowledge gap in forensic studies in both prison and police contexts, more work still needs to be done. It would be interesting to find out what police training manuals and actual training procedures provide with regard to reporting incidents of crime and how such training is reflected in actual police work. With regard to the prison context, there is need to investigate the language of interaction between prison officials and inmates. Generally, it is

recommended that interactions between prison officers and inmates be investigated. This study has examined prison data arising from communication between inmates and non-prison officials and it would be interesting to examine communication within prison walls.

(iv)   This study found that identities were constructed through idiosyncratic pronunciations. Although I have discussed this aspect, I have indicated that pronunciations are indexical of identity when they are combined with prosodic elements such as tempo, intonation and tone. However, discussions on this issue have been limited because of difficulties of formalizing analyses. Accordingly, no substantive interpretations can be provided, especially with regard to applying these findings in legal contexts where the standard for evidentiary proof is much higher. It is therefore recommended that further research be undertaken in this area. It is also recommended that relevant institutions invest in equipment that will facilitate advanced research in this area.

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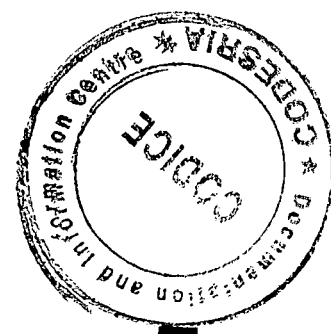
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APPENDICES

APPENDIX I   Gail Jefferson's Transcription System

The transcription notation system employed for data segments is an adaptation of Gail Jefferson's work (see Atkinson & Heritage (Eds.), 1984, pp.ix-xvi; Beach (Ed.), 1989, pp.89-90). The symbols may be described as follows:

: Colon(s):	Extended or stretched sound, syllable, or word.
Underlining:	Vocalic emphasis.
(.) Micropause:	Brief pause of less than (0.2).
(1.2) Timed Pause:	Intervals occurring within and between same or different speaker's utterance.
(( )) Double Parentheses:	Scenic details.
( ) Single Parentheses:	Transcriptionist doubt.
. Period:	Falling vocal pitch.
? Question Marks:	Rising vocal pitch.
↑ ↓ Arrows:	Pitch resets; marked rising and falling shifts in intonation.
° ° Degree Signs:	A passage of talk noticeably softer than surrounding talk.
= Equal Signs:	Latching of contiguous utterances, with no interval or overlap.
[ ] Brackets:	Speech overlap.
[[Double Brackets:	Simultaneous speech orientations to prior turn.
! Exclamation Points:	Animated speech tone.
- Hyphens:	Halting, abrupt cut off of sound or word.
>< Less Than/Greater Than Signs:	Portions of an utterance delivered at a pace noticeably Quicker than surrounding talk.
OKAY CAPS:	Extreme loudness compared with surrounding talk.
hhh .hhh H's:	Audible out breaths, possibly laughter. The more h's, the longer the aspiration. Aspirations with periods indicate audible in breaths (e.g., .hhh). H's within (e.g., ye(hh)s) parentheses mark within-speech aspirations, Possible laughter.
pt Lip Smack:	Often preceding an in breath.

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pt Lip Smack: Often preceding an in breath.

hah Laugh Syllable: Relative closed or open position of laughter heh
hoh

$ Smile Voice: Laughing/chuckling talk between markers.

APPENDIX II   Sample Transcription
CASE 1

Note: In the courtroom discourse below, CRT CLK stands for Court Clerk, ACSD P is Accused Person and M is Magistrate and (...) a pause. In all cases, the names of places ,persons, and other details that may identify the case in question have been altered.

(...inaudible)

CRT CLK: Kosa la pili; umeshtakiwa kwa kutoweka vizuri sehemu za gari kinyume cha sheria za barara. Sikiza maelezo: Mnamo tarehe 20 mwezi huu saa saba mchana katiak barabara ya Kitale –Eldoret saa saba mchana uliendesha gari hilo usajili XXY 223 kwa barabara na windscreen yake ilikuwa imepasuka.

Ni kweli ama si kweli?

(The second offence; you are accused of driving a faulty car contrary to traffic rules. The facts of the case are as follows: On the 20th of this month, along the Kitale – Eldoret road, at 1 p.m. you were found driving a car with the registration number XXY 223 which had a broken windscreen. Is it true or not?)

ACSD P: Ni Kweli. (....)

        (It is true) (Cough) (....)

MAGISTRATE: For the first offence a fine of 500/= or one month in prison. For the second offence, a fine of 2,500 or one year in prison.

APPENDIX III Qualitative Interview Schedule

Name (Optional)   **Age**

Occupation   **Gender**

Experience

1. What is the structure of the Senior Resident Magistrate's court?
2. What are the functions of each of each of the following court officials?
   (a) The Executive Officer
   (b) Court Clerks
   (c) The Prosecutor
   (d) Judge
   (e) Court Interpreter
3. I have come across questions of the form: 'If I tell the court that .... will I be lying?' in the courts.
   (a) Is this a common type of question in the courts?
   (b) Who, in your opinion, uses this type of question most frequently?
   (c) As a Judge / lawyer, what value do you give to this type of question?
   (d) Do you take the insinuations of this type of accusation seriously?
4. I have come across situations where the defendant or witness has accused a witness or the accuser by , for example, claiming that the defendant has accused him because he is envious about his progress, prosperity etc.
   (a) Is this a common occurrence in court?
   (b) Who, in your opinion, makes these accusations most frequently?
   (c) As a Judge/ lawyer, what value do you give to these accusations?
   (d) Do you believe such accusations?
5. When there are children in court and they are unable to answer questions put to them or when they answer weakly, how do you interpret their responses? Do you doubt their credibility on account of their weak responses? Do you 'understand' that they are children and may have language limitations and therefore ignore the fact that they did not answer the questions confidently?
6. Are there times when you get the impression that an accused person is acting out to the audience in court, i.e. he /she seems to be answering questions in such a manner as to speak to the audience in the courtroom rather than merely to answer the court's questions?
   If yes, could you give examples that you remember? What reasons would you give for this kind of responses kind of behaviour in the court?
7. In the courtroom, the contest between the prosecution and the defence is always about whether or not a defendant is guilty.
   (a) How does each of these sides present their cases?
   (b) Are there common ways of doing this?
8. Are there situations when you have got the impression that a defendant /witness/or litigant was deliberately presenting himself or herself positively to the court? Briefly explain what the defendant/witness or litigant did in one such situation.

APPENDIX IV   Letter from the High Court of Kenya

Telegrams : "COURT", NAIROBI
Telephone: Nairobi 221221

When replying please quote

THE REGISTRAR'S CHAMBERS
HIGH COURT OF KENYA
LAW COURTS
P.O. Box 30041-00100
NAIROBI

REPUBLIC OF KENYA
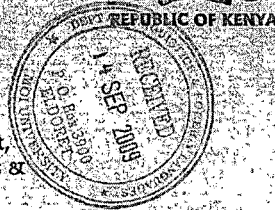
45/18

3rd September, 2009

The Head of Department,
Department of Linguistics &
Foreign Languages,
Moi University,
P.O. Box 3900,
ELDORET.

RE: REQUEST FOR A PHD STUDENT TO COLLECT DATA WITHIN THE LAW COURTS

Reference is made to your two letters dated 28th July, 2009 and 26th August, 2009 respectively on the above subject matter.

Authority has been granted for Mr. Emmanuel Satia to collect data within the Courts for his PhD research in Eldoret, Nakuru, Kitale, Kakamega, Iten, Kabarnet and Nairobi Law Courts. He may contact the Magistrates in-charge of the respective stations for assistance and guidance.

S. M. KIBUNJA
CHIEF COURT ADMINISTRATOR
For: REGISTRAR

Copy to:-   The Chief Magistrate,
Law Courts,
NAIROBI.

The Chief Magistrate,
Eldoret Law Courts.

The Chief Magistrate,
Nakuru Law Courts.

The Chief Magistrate,
Kakamega Law Courts.

The Senior Principal Magistrate,
Kitale Law Courts.

The Senior Resident Magistrate,
Kabarnet Law Courts.

The Senior Resident Magistrate,
Iten Law Courts.

**APPENDIX V   Sample of Nature, Duration and Description of Audio-
Recorded Cases**

Case No.	Nature of the Case	Duration of Case
1.	Grievous Bodily Harm (GHB) Family	01:49:29
2.	Bicycle Theft Case	0:32:29
3.	Burial Dispute Case Church	0:15:37
4.	Maize through False Pretence	0: 50:32
5.	Water Lily's Case	0:42:03
6.	Father in Law Assault Case	0: 18:35
7.	Lindi Robbery with Violence Case	02:20:58
8.	Burial Dispute Case Family I	00:15:36
9.	Burial Dispute Case Family II	00:34:16
10.	Burglary Case	00:25:07
11.	Mugging Case	00:06:01
12.	Defilement Case (plea taking)	00:04:40
13.	Miscellaneous Applications to the Court	00:11:49
14.	Application for Bail in a Murder Case	00:06:35
15.	Miscellaneous Succession Cases	01:00:23
16.	Lorry Theft Case involving Businessman	00:52:45
17.	Defilement of a Child by Teacher Case	00:38:45
18.	Murder Charge Bail Application	00:06:35
19.	Bicycle Theft Case	00:52:28
20.	Forest Product Case	00:35:28
21.	Breach of Contract Case	01:19:23
22.	Bail Application Verdict	00:07:53
23.	Traffic Offences – Miscellaneous	00:12:00
24.	Forest Produce Case – Plea (2cases)	00:05:14
25.	Court Ruling	00:02:32

APPENDIX VI Random Concordance Listings for 'EVIDENCE'.

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CONCORDANCES EVIDENCE
N  Concordance
1  well know, but I found an additional piece of evidence for the proposition that while they
2   greater standing before the court, and their evidence is judged by Magistrates on the sam
3  ou think might be important, or what kinds of evidence do you think I ought to collect, or
4  ; it correlates very well with the historical evidence. Of course all of this took place o
5  he way that normal people do not, and there's evidence too that around the areas of damage
6  iding the production of antibody. So there is evidence that the immune system is caught up
7   disease is not so clear. There is quite good evidence that some external agent, possibly
8  in which he himself took part, he weighed the evidence very carefully, erm he produced ver
9  ou think might be important, or what kinds of evidence do you think I ought to collect, or
10 convergent and first people gathered lots of evidence, and then they wrote a set of recom
11 hat. I mean people don't always agree on what evidence means; they don't always agree on w
12  fact there's a fair amount of circumstantial evidence that geologists and astronomers who
13 k be rather affected by dedication and by the evidence that they amassed with such enormou
14 it's difficult not to see, in his own nature, evidence of some of his clearest gifts as a
15  the atmosphere. We're always finding out new evidence. erm We have to study the atmospher
16 s -- setting off against that -- there's also evidence that doctors are sometimes too relu
17 r c-- coming to this point, there is abundant evidence that er say two thousand for exampl
18 ern Ireland prepared to stand up now and give evidence in open court, because if they do t
19 e they've got no proven record and no medical evidence, if he was that good this guy will
20 hey they w-- s-- they withheld and suppressed evidence of suicides occurring during the pr
21 he evidence is just against that you know the evidence is totally contrary to that. (SP:PS
22  , the latest research says (SP:HV1PSUNK) the evidence is just against that you know the e
23 he evidence is just against that you know the evidence is totally contrary to that. (SP:PS
24 teen years time with proper proven er medical evidence. (SP:PS3GX) Okay, it's quite a seri
25 in is anti-semitic, I don't think there's any evidence of that at all, er, a (pause) and,
26 t in his room at college. The court had heard evidence that the woman making the accusatio
27 nged their stories when presented with police evidence. One child referred to in court as
28  add and medical evidence based on er factual evidence reviewed by physicians. Er psychiat
29 K) It's based on medical fact add and medical evidence based on er factual evidence review
30  add and medical evidence based on er factual evidence reviewed by physicians. Er psychiat
31 K) It's based on medical fact add and medical evidence based on er factual evidence review
32 heartening of his life. We know from external evidence that Milton is clearly talking abou
33 n he does with Adam. But I'm going to put the evidence in front of you and ask you to deci
34 be sure that that isn't the case. There is no evidence that the laws are different in the
35  would be bound to belief when faced with the evidence. (people-laughing) (SP:PS5T8) And I
36 son has shown in one particular case is clear evidence of (unclear) punctuation, but no re
37 al traits, shapes, characters and so on, what evidence we have -- and it's nothing like en
38 enough, it would be nice to have more -- what evidence we have suggests that, as a matter
39 lutionary at the moment -- there really is no evidence for that view. I think really what
40 s very patchy, but I think that there is some evidence that, certainly younger men, younge
41 ow to bring them up, and I think there's some evidence that that actually is happening. So
42 at's the extra dimension? (SP:PS5VR) Well the evidence is that they will erm much more lik
43 yle. erm we're starting again and there is no evidence, and I am sure that Margaret Thatch
44  philistine complacency. I suggested that the evidence seemed, in the context of language
45 that (pause) and not only that, you must send evidence of the service by recorded delivery
46 ion, but in my judgement there is no tangible evidence whatsoever of this. Now I go on the
47 ing, really pretty rapidly. So it's admirable evidence for what I call the minor claim of
48 cular group of people, if they looked at this evidence that I've got, would want to say th
49 istory might be doing and they would view the evidence and argue about it in this way. So
50 ee, even four different attitudes towards the evidence, according to what one thought was
51 t it. Now the next question is what does this evidence mean and what does one do with it.
52 nd so on, then you've got a certain amount of evidence about it. Now the next question is
53 t it. Now the next question is what does this evidence mean and what certain amount of evi
54 this evidence mean and what certain amount of evidence about it. Now the next question is
55  I mean I think the first is that the kind of evidence one picks up, none of it on its own
56 hether there's any evidence for it erm or any evidence against it. erm let me consider fir
57  of erm let's now discuss whether there's any evidence for it erm or any evidence against
58 hether there's any evidence for it erm or any evidence against it. erm let me consider fir
59 ade erm let's now discuss whether there's any evidence for it erm or any evidence against
60 of a picture and gradually different sorts of evidence build up a rather more complicated,
61 ally the cross-checking of different kinds of evidence that in the end gives the thing som
62  the nature of this challenge? erm what's the evidence for and against it? What's it's lik
63 t, the latest research says (SP:HV1PSUNK) the evidence is just against that you know the e
64 ar) (SP:PS30B) What would be the point of the evidence if it's not implicating (-----) in
65  is important to them, how would they get the evidence in? (SP:HYHPSUNK) (unclear) (too-qu
```

66 call (-----). Okay? (pause) Can (-----) give **evidence** about (-----) trial? (SP:HYHPSUNK)
67 e inadmissible are stuck out and you can give **evidence** only to the parts that are not self
68 that he gives evidence (unclear) any to give **evidence** that y-- (unclear), alright? So, as
69 unclear), alright? So, assuming that he gives **evidence** (unclear) any a-- evidential points
70 e against your own interest. Erm, the rule of **evidence** is that it is inherently unlikely t
71 he's pleading guilty, he is competent to give **evidence** against (unclear). His evidence is
72 gainst (unclear). His evidence is then direct **evidence**. I saw (-----) do this. Okay? It is
73 o this. Okay? It is , he is competent to give **evidence** against (unclear). His evidence is
74 etent to give evidence against (unclear). His **evidence** is then direct evidence. I saw (---
75 etent to give evidence against (unclear). His **evidence** is then direct evidence. I saw (---
76 etent to give evidence against (unclear). His **evidence** is then direct evidence. I saw (---
77 gainst (unclear). His evidence is then direct **evidence**. I saw (-----) do this he's pleadin
78 he's pleading guilty, he is competent to give **evidence** against (unclear). His evidence is
79 unclear), alright? So, assuming that he gives **evidence** (unclear) any to give evidence that
80 secution do not call evidence. Now, they call **evidence** under a section nine, you, you can
81 aper trials where the prosecution do not call **evidence**. Now, they call evidence under a se
82 secution do not call evidence. Now, they call **evidence** under a section nine, you, you can
83 aper trials where the prosecution do not call **evidence**. Now, they call evidence under a se
84 ⋅   Concordances - **EVIDENCE** . There's a story about er Pythagora
85 which is actually the earliest and strongest **evidence** that the historical Pythagoras actu
86 n equivalent section that relates to criminal **evidence** which allows a, a statement to be i
87 ean criminal trials are oral trials where the **evidence** is given orally so that the witness
88 ill give evidence. If he doesn't want to give **evidence** that y-- (unclear), alright? (-----
89 lear), alright? (-----)? So (-----) will give **evidence**. If he doesn't want to give evidenc
90 ill give evidence. If he doesn't want to give **evidence** that y-- (unclear), alright? So, as
91 evidence. Okay (-----)? So (-----) will give **evidence**. If he doesn't want to give evidenc
92 d always assume that witnesses will give more **evidence**. Okay (-----)? So (-----) will give
93 evidence. Okay (-----)? So (-----) will give **evidence**. If he doesn't want assume that wit
94 n't want assume that witnesses will give more **evidence**. Okay (-----)? So (-----) will give
95 courtroom fell silent as Dr (-----) gave his **evidence**. It was shocking testimony and the
96 ssed with Mr Adams? (SP:PS3CN) Well I have no **evidence** of any description of Mr Majors app
97 initiative is dead? (SP:PS3CN) Well I have no **evidence** from either of them, you know, er t
98 y at the James (-----) murder trial has heard evidence **from** a Home Office pathologist abou
99 . (SP:PS32D) The court has been today hearing **evidence** from witnesses building up a pictur
100 ough the first two days. The court also heard **evidence** today from a nurse who was in the s
101 exhibits were passed round. Earlier there was **evidence** from a train driver who said he had
102 eal discouragement to bid, and we've a lot of **evidence** er that they feel that and that the
103 t of people who take Prozac get suicidal. The **evidence** is (SP:PS3E8) Fifteen per cent, the
104 t, the latest research says (SP:HV1PSUNK) the **evidence** is just . The evidence is (SP:PS3E8
105 says (SP:HV1PSUNK) the evidence is just . The **evidence** is (SP:PS3E8) Fifteen per cent, the
106 ac. (SP:HV1PSUNK) Well y-- you know, th-- the **evidence** is overwhelming that these drugs ar
107 alidity benefit, together with much anecdotal **evidence**, suggest that somebody in Whitehall
108 e the problem (unclear) to take one anecdotal **evidence** of of one about one or two cases an
109 it's claimed in America and there's a lot of **evidence** that might be true, erm and that is
110) Yes, I certainly do! There is absolutely no **evidence** to suggest (pause) that by taking a
111 e? Yes? (SP:FL4PS004) I will. I there is no **evidence** that it's an inherited or venereal
112 ut there aren't (pause) isn't much obli--, er **evidence** of their respect. They're not willi
113 putting out that you talk about? What is the **evidence**? (SP:FL7PS002) Oh, (laughing) it's
114 ts it out of their mind if they find that the **evidence** is inadmissible, doesn't work. Righ
115 gainst (unclear). His evidence is then direct **evidence**. I saw (-----) do this. Okay? It is
116 P:PS30B) We, if you (unclear) comes and gives **evidence** against us, then we can either show
117 're bent as well. Right. So, if (-----) gives **evidence**, having become competent because he
118 7PS000) There. Yes? (SP:FL7PS005) I think the **evidence** though is that men like (pause) oka
119 om lone parents. (SP:FLDPS000) Now, we've had **evidence** and descriptions of actually quite
120 (SP:FLEPSUNK) Yes. (SP:FLEPS004) But I see no **evidence** of Scotland having become a classle
121 this and I personally would like to have more **evidence** of what actually happens to the ani
122 in trouble but I don't think there's (pause) **evidence** to say that it's because of from lo
123 're talking generally, but if you look at the **evidence** of how many women are raped, one in
124 iples will all for nought. At the moment, the **evidence** is that the sort of money that's be
125 a sociologist and I don't think there is any **evidence** to suggest that (pause) children fr

[i] There is usually a distinction between agent and actor and medium and goal. I have, however, opted to use ergative analysis as suggested by Simpson 2004 in which the respective terms are not differentiated.

[ii] Four of the letters were written jointly but I have treated each of the letters as having been written by one inmate.

[iii] The researcher is grateful to Rev. Francis for allowing him to access the letters and their use for this analysis.

[iv] Buregeya (2006: 204) argues that this benchmark was inspired by Skandera's (1991: 47- -9) discussion. He argues that 'after so many years of having been taught the language and having been widely exposed to the English as a medium of instruction, whatever English as a medium of instruction, whatever English grammar one has acquired is definitive'. This argument would apply to these letters because all but one was written by inmates who would have learnt English as a second language.

[v] Although the streaming was said to be live, the proceedings were timed to start half an hour after the actual start of the proceedings at The Hague.

[vi] See Appendix I (Gail Jefferson's transcription system)

[vii] This table combines Baker's (2010 p.103) table, Evison's (2009:106) and one run by the researcher on the ICE-EA corpus.

[viii] Prisons in Kenya assign inmates various manual tasks as a way of keeping them productive and busy when they are in jail.

[ix] Some Non Governmental Organizations such as AMPATH are largely involved in programmes of this kind. AMPATH, for example, provides medical care and foodstuffs to HIV/AIDS patients that are registered with them.

[x] Conditions in Kenyan Prisons have changed considerably since these letters were written. There have been major reforms in the prison institution and as a consequence, they are now referred to as Correctional Centres rather than prisons. The institution's name has also since changed to the Kenya Prisons Service.

[xi] See Criminal Case No. 1140 of 2010.

[xii] The penal code in Kenya defines robbery as : 'Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to prevent or overcome resistance to its being stolen or retained, is guilty of the felony termed robbery'.

[xiii] A *matatu* is a kind of public service vehicle in Kenya, typically a minibus.

[xiv]*Panga* a Swahili word for machete. Here the word is inflected with an English plural marking morpheme –s.

[xv] In Kenya, previous political events that were associated with mass action were usually violent.
[xvi] A coined word that refers to criminal acts.

[xvii] A suspect may be granted bail under certain conditions under the Kenyan law. Usually, when such conditions are breached, the bail may be withdrawn and the suspect held in custody. In the case of this