(RE) CONSTRUCTION OF LINGUISTIC AGENCY IN THE CONFIRMATION HEARING OF THE KENYAN CASE ONE AT THE INTERNATIONAL CRIMINAL COURT

BY

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DECLARATION

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DEDICATION

I dedicate this work to my family: Ezra my spouse, our kids Victor, Adrian and Andie; as well as my late dad who gave me a firm foundation in education and always told me how big my potential was.

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ABSTRACT

This study seeks to examine how the professional and the lay court interactants employed language to construct different versions of 'who did what to whom' during the Confirmation Hearing of the ICC-Kenya Case One to represent the events of the 2007/2008 post-election violence differently. The study's specific objectives were: 1) to examine how the Prosecution and the Defence lawyers employed transitivity structures and address terms to construct agency at the trial; 2) to evaluate how the lawyers used agent deletion strategies, collective nouns and nouns denoting groups of people as well as nominalization to background agency at the trial; and 3) to examine how the suspects used the first person pronouns, nouns denoting kinship and deictics to distance themselves from criminal liability at the trial. Using a qualitative case study design, the study took a critical discourse analysis approach adopting document examination as the main method of data collection and analysis, to collect and analyze the data within Leeuwen's Representation of Social Actors framework. The study found that the Prosecution lawyers on the one hand, consistently and explicitly made specific reference to the three suspects using proper nouns and coded them as Doers in material processes, Carriers in relational processes and Sensers in mental processes as a way of foregrounding agency. On the other hand, the Prosecution lawyers used collective nouns and nouns denoting groups of people to generally refer to other individuals in the PEV discourses as a way of backgrounding agency. With regard to the Defence teams, the study found that they coded the suspects as being on the receiving end of the PEV using transitivity structures as well as expressions with positive connotations, and coded the PEV activities as self-engendered by omitting human agents in their utterances. The Defence teams also phrased actions related to the process of the investigations as nominals facilitating the restructuring of the actions in terms of abstractions. The study found these as strategies of fronting a positive perception of the suspects while backgrounding a criminal one. Finally, the study found that the first and the third suspects employed the first person pronoun and nouns denoting kinship relations to represent themselves favourably to the court as a means of backgrounding agency. This study therefore concludes that both professional and lay court interactants manipulate the happenings of a specific social practice in the courtroom through language to variedly construct agency and that, besides meeting the communicative needs of discourse participants, language is fundamental in the construction of agency. The study recommends further studies assessing the contribution of other linguistic mechanisms like questioning and question types in the construction of agency; and also recommends the use of the same transcripts/data to investigate other ways in which language was used during the hearing to depict other aspects such as power relations, identity construction, language as advantage/disadvantage among others.

OPERATIONAL DEFINITION OF TERMS

Agency – this is 'the socio-culturally mediated capacity to act' (Ahearn, 2001 p.112). In this study, Agency was taken to mean, 'who did what to whom' in the context of the Kenya's 2007/2008 post-election violence (PEV) at the Confirmation Hearing of the ICC-Kenya Case one hearing.

Agency (re)construction – In this study agency (re)constructed was taken to mean the different ways in which various court interactants strategically framed their utterences in order to construct different versions of who did what to whom at the hearing regarding the PEV.

Collective Nouns – In this study, collective nouns mean the nouns that denote groups of people

Confirmation Hearing – this is a pre-trial that is an innovation in the procedure of International Criminal Courts acting as a filter to determine cases that should proceed to full trial by confirming that the prosecution has sufficient evidence and to establish substantial grounds to believe suspects committed each of the crimes they are charged with.

Crimes against humanity - any of the following acts such as murder, extermination, enslavement, deportation or forcible transfer of populations, rape among others when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

Backgrounding agency – is the arrangements of words that shift the focus from the speaker's (or the person being spoken about) agentive act to their position as acted upon.

Foregrounding agency – arrangement of words to focus explicitly on the doer of the actions referred to in an utterance.

Linguistic Agency – This was taken to mean the concept of 'who did what to whom' through an evaluation of the grammatical element; Subject, Agent, and Object in sentence constructions.

The International Criminal Court (ICC) – this is a permanent International Court established to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

Nominalization – involves converting a process from a verb or adjective into a noun or a multi-noun compound.

ABBREVIATIONS AND ACRONYMS

CDA – Critical Discourse Analysis

CIPEV – Commission of Inquiry on Post-Election Violence

ECK – Electoral Commission of Kenya

FL – Forensic Linguistics

IAFL – International Association of Forensic Linguistics

ICC – International Criminal Court

ICTR - International Criminal Tribunal for Rwanda

ICTY - International Criminal Tribunal for the former Yugoslavia

KHRI – Kenya Human Rights Institute

KNCHR - Kenya National Commission on Human Rights

KNHRC – Kenya National Human Rights Commission

ODM – Orange Democratic Movement

OTP – Office of the Prosecutor

PEV – Post Election Violence

PNU – Party of National Unity

UN – United Nations

UNSC – United Nations Security Council

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CHAPTER ONE

INTRODUCTION AND BACKGROUND

1.1 Introduction

This study falls within Forensic Linguistics (FL), a field of linguistics that deals with 'the application of linguistics to legal issues' (Olsson, 2008 p.3). The study is situated within the courtroom discourse subfield of FL and it is an investigation of how the lawyers as well as the lay court participants used language during the Confirmation of Charges Hearing of the Kenya Case One at the International Criminal Court (ICC) to construct agency. Agency is 'the socio-culturally mediated capacity to act' (Ahearn, 2001 p.112) and this study considers agency construction to refer to the varied ways in which discourse participants manipulate language to fluctuate the events of a social practice in order to change the participants of the social practice in a direction desired by the speaker. Specifically, agency construction in this study refers to the ways in which the Prosecution and Defence teams manipulated words and phrases to make specific reference, general reference and self-reference variedly to represent given individuals and the events of the Kenya's 2007/2008 post-election violence (PEV) diversely and in turn, assign responsibility for the violence differently during the hearing.

This introductory chapter begins by introducing the researcher, the ICC and its involvement with the Kenyan defendants, as well as agency in language in the background information. The chapter proceeds to state the study's problem, presents the study's objectives and questions, highlights the significance of the study and sets the scope and limitations of the study. The second chapter presents the reviewed literature. It

underscores literature on courtroom discourse, lexical choices in the courtroom, followed by linguistic literature in the International Criminal Justice and finally literature on agency construction in legal settings. Chapter three presents the theoretical framework - Representing Social Actors - that informs the study. The fourth chapter presents the research methodology and design, discusses the sampling procedures as well as how the study's data was accessed, collected and analyzed. Chapter five is the first data analysis and discussion chapter and it presents a discussion of how the Prosecution and Defence teams manipulated words and phrases to make specific reference to varied individuals during the Confirmation of Charges Hearing to either foreground or background agency. The sixth chapter, which is the second analysis chapter, focuses on the varied ways in which the court interactants used generic terms at the hearing in agency construction. The seventh chapter presents discussion on how the suspects represented themselves to variedly manipulate agency. The final chapter presents the summary of the findings, conclusions and makes recommendations for further study.

1.2 Background to the Study

The background information begins with an overview of how the researcher's interest in Forensic Linguistics (FL) and in the subject matter was triggered. This is followed by information on how the Kenyan suspects of the 2007/2008 post-election violence got involved with the ICC in sub section 1.2.2. In sub section 1.2.3, the ICC is introduced and the background section ends with an overview of linguistic agency in sub section 1.2.4.

1.2.1 Interest in Forensic Linguistics

My working background as well as my training triggered my interest in the use of language in legal settings and in agency construction. I was pursuing a Master of Arts

degree in Linguistics when I got employed as a District Officer (D.O) in the Ministry of Internal Security, Office of the President (OoP) in March 2010. My responsibilities included coordinating government functions, disseminating and implementing government policies, maintaining law and order, supervising locational chiefs, organizing state functions and resolving conflicts within the division.

For the purposes of this study, I will expound on the conflict resolution function. Most of the conflict cases that I would handle were referrals from chiefs and on rare occasions, members of the public would seek audience with my office without having to go through their locational chiefs. If a conflict was referred by a chief, I would seek to get all the details of the case from the referring chief regarding the parties to the conflict, the cause of the conflict, how far the office of the chief had got into solving the conflict and reasons for the referral, which mostly would be a lack of a solution or capacity to deal with the matter. I would then set a date to listen to the case from the individuals. As I prepared for the set date, I would go through the details of the case as presented by the chief, as well as read through legal documents with regard to such a case and consult widely.

During conflict resolution sessions, I realized that there were linguistic factors at play that affected the on-goings of the cases or steered the cases in a certain direction and almost pointed to a certain outcome. For instance, whenever I dealt with domestic conflicts between matured couples (those who were 50 years and beyond), I realized that there is a way they used language to manipulate the direction of the case. An illustration of this is a case of a 75-year-old man who had come to my office to complain about his wife who he accused of having driven him out of their matrimonial home and denied him access to their rental properties. I listened to him and noted down significant points of his account

of the complaint before setting a date for the hearing when both parties to the case would be present. Meanwhile, I set out to carry out background information regarding the couple and the issues the man had complained about.

The couple came to the office for a hearing of their case on the set date. The lady was 70 years old and she said they had been married for 45 years before they separated 5 years back. As the case continued, I was intrigued by the lady's openness and her continuous use of the phrase; "I will tell you this even if you are like my child…." After this phrase she would unveil very personal details regarding their marriage, and details that depicted her estranged husband in a very negative light. For instance, she at one point said, "huyu hata ukimwona amezeeka hivi, amechukuana na malaya mwingine wa rika la bintiye na amemzalia" (This man, old as you see him, has an affair with a prostitute who is his daughter's age and has a child with her). "sasa mimi nimekataa mali ile tumetafuta kwa shida kuenda kununua nappy badala ya kutuchunga uzeeni" (This is why I have refused to allow him use our hard earned resources in buying napkins instead of taking care of us in our old age). "Kana! Kana hii maneno saa hii mbele ya madam kama nimesema uongo!" she shouted (deny! deny this information in front of madam if I have lied!). Such statements coupled with a raised voice would make the man very uncomfortable. In fact, I kept on reminding the lady to present her side of the story in a more calm manner. Furthermore, the man was not able to say much when his wife made such revelations using a raised voice. All he could say was; "Hayo siyo maneno yaliyotuleta hapa, na sioni umuhimu wa hayo kwa hii kesi. Nilikuja kutetea haki ya kumiliki mali yangu" (That is not what brought us here, and I do not see the relevance of such details to this case. I came here to claim a right to my property).

I interpreted the lady's use of the phrase "I will tell you this even if you are like my child…." as a means to authenticate beforehand what would otherwise be considered culturally inappropriate to say between individuals who belonged to different generations, say, parents and children. Secondly, I considered it an attempt to intimidate both her husband and my office in a bid to embarrass her husband, lay blame on him, as well as hopefully influence my decision in her favour. In addition, I realized that agency was fluctuating. As the lady continued to use language in the way she did, it appeared like she was the aggrieved, yet she was the accused because it was the man who had reported the case. Secondly, her adding details that may have been irrelevant to the issue at hand painted her husband in negative light. Thirdly, the use of a raised voice, much as it may have been due to annoyance, may also have been manipulative in a way that it might have had an effect on the general environment of the case. These three factors may have caused a shift of agency in the case.

Besides such domestic conflicts, I found an existing politically instigated conflict that I had to deal with. As I mentioned above, I got employed in the year 2010, a time when Kenya was recovering from 2007/2008 post-election violence, and I was posted to Nairobi Province, Westlands District, Kilimani Division. The division had one informal settlement called Waruku that neighbours Kangemi Division. This was one of the areas that had high tension before the elections and landlord-tenant conflicts emerged. The conflict resulted from an allegation that RO, the then leader of the main opposition party: The Orange Democratic Movement (ODM), had promised his followers that once he gained the presidency, those who lived in the slums and in the informal settlements would enjoy free housing. Consequently, some residents had taken advantage of the promise of

free housing and had stopped paying rent for the houses they were occupying. The landlords tried to give them notices to vacate their premises without success as these tenants were in most cases turning violent.

I found this peculiar as it amounted to a "language crime" where an alleged verbal promise would influence individuals into a conflict. This situation had also taken a tribal dimension as most landlords (land owners) in the area belonged to one ethnic community (Kikuyu) while the tenants belonged to another community (Luhya). The former community was perceived to be followers of the ruling party - Party of National Unity (PNU) that had allegedly rigged the 2007 general election, while the latter were perceived to be followers of the main opposition party ODM, whose victory was allegedly denied. My office was not able to resolve the landlord-tenant conflicts. Consequently, I referred the cases to my immediate supervisor, the District Commissioner (DC) who was also not able to resolve the conflicts and further referred them to the Provincial Commissioner (PC) who was at the time dealing with many more such landlord-tenant conflict cases from other areas within Nairobi. In this case, a politician had been accused of saying something that triggered a certain behavior in that society. Much as it is wrong for someone to abscond rent, who would bear the greatest responsibility for such a conflict if the details above were a fact? This is an agency issue and I kept on encountering such in diverse cases.

Enrolling for my PhD in Linguistics in the year 2013 in the course of my administration work gave me an opportunity to consider pursuing this field. The courses that were on offer included Forensic Linguistics, Critical Discourse Analysis (CDA) and Courtroom Discourse among others. I took the three courses and they greatly helped me to locate my

interest and find a nexus between my training in linguistics and my work experiences. These courses, coupled with the linguistics I had learnt in my undergraduate and Master's degree, nurtured my interest in interpreting linguistic phenomena in legal settings and I decided to explore the ICC – Kenya cases that were shaping the everyday discourses among Kenyans. The Confirmation of Charges Hearing presented me the opportunity to pursue my interest, as it was an already complete trial at that time. I therefore decided to investigate how the court interactants used language to represent the events of the PEV variedly, in order to attribute the responsibility for the violence in a diverse way.

1.2.2 Kenya's Involvement with the ICC

Kenya got involved with the ICC after the 2007 General Elections in which the presidential elections outcome was disputed. The then Electoral Commission of Kenya (ECK) declared MK, who was defending the Presidential seat, as the winner. Violence was ignited by allegations of election fraud. The main opposition party, The Orange Democratic Movement (ODM), had garnered the majority of the parliamentary seats with its presidential candidate, RO, showing a lead of about a million votes towards the end of the vote count. However, in the last few hours of vote counting, there was a sudden reversal of the trend resulting in MK's apparent victory. All the independent observers from the European Union (EU), the Commonwealth, the East African Community (EAC) and the International Republican Institute (IRI) questioned the integrity of the elections. Some members of the ECK also admitted that there were serious problems with the vote tallying and its chairman later claimed to have been subjected to intense pressure from political leaders (Nichols, 2015 p.49).

Chaos broke out in the streets after the announcement of the elections results as many ODM supporters launched violent protests. Mobs in Nairobi, Kisumu, Eldoret and Mombasa targeted members of the Kikuyu ethnic group because they were perceived to be loyal to MK. In less than 24 hours, hundreds of persons from these areas had been killed, property belonging to them had been burned, looted and vandalized and thousands of persons had been forced to flee their homes. This first wave of violence appeared to have been spontaneous and unplanned.

However, opportunistic politicians, businesspersons, religious leaders and tribal elders took advantage of the violence to mobilise their own ethnic community members into violence against other ethnic communities. The Rift Valley Province was the worst affected with Kalenjin community members loyal to RO's ODM targeting the non-Kalenjin communities in the Northern part of the Province including Eldoret town and its environs, while retaliatory violence against the ODM supporters by members of the Kikuyu ethnic group followed in Naivasha and Nakuru districts of the Central Rift. The result of this was over 1100 people dead, 300,000 injured, and about 600,000 forcibly displaced (Nichols, 2015: 50).

The escalation of violence prompted the international community's intervention. The African Union (AU) appointed Mr. Kofi Annan a former United Nations Secretary-General and the Panel of Eminent African Personalities to commence a mediation process that involved representatives from both MK's Party of National Unity (PNU) and RO's Orange Democratic Movement (ODM). During the negotiations, the leaders of the respective parties agreed to four agenda items that later formed the basis of the peace agreement. They agreed to: (1) take immediate steps to stop the violence; (2) take

immediate measures to address the humanitarian crisis; (3) negotiate a power-sharing agreement; and (4) address the long-term causes of the violence. On 28 February 2008, MK and RO signed a power-sharing agreement, signaling the end of the conflict. Kofi Annan and team therefore left the country but kept monitoring the coalition government's efforts to conduct a review of the post-election violence.

As part of the National Dialogue and Reconciliation process, the coalition government appointed a Commission of Inquiry into Post-Election Violence (CIPEV), known as the Waki Commission after its chair, Justice Philip Waki. Among its recommendations was that a special tribunal be constituted to try persons who were seen to bear the greatest responsibility. The Waki Commission did not publicly name the persons suspected of having been responsible for the violence. Instead, the names of the alleged perpetrators, together with the supporting evidence, were placed in a sealed envelope and handed to Mr. Kofi Annan. The Waki Commission recommended that an agreement to establish the special tribunal be concluded within 60 days of the publication of the report and that enabling legislation be enacted within a further 45 days. The Commission advised the government that should it fail to meet either of these deadlines, Kofi Annan would forward the envelope to the ICC Prosecutor who would be requested to analyse the seriousness of the information received with a view to proceeding with investigations and prosecutions of suspected persons (Government of Kenya, 2008).

The government neither initiated prosecutions in regular domestic courts nor formed a special tribunal. Instead, the government tried to rush legislation on the establishment of the tribunal in parliament a few days before the expiry of the Waki Commission's deadline. On 6th February 2009, one week after the deadline, the bill was defeated in

unexpected circumstances as members of parliament had expressed unanimous support for implementing the Waki recommendations. The ICC alternative seemed less threatening as any investigations and prosecutions would pursue only a few individuals in a process that would take many years. In fact, Brown & Sriram (2012: 246) posit that the threat of ICC intervention proved insufficient to prod Members of Parliament (MPs) to pass the enabling legislation for the tribunal, because the shadow of the ICC was too small. Mr. Kofi Annan therefore granted two more extensions, but the government did not reintroduce the legislation.

The Office of the Prosecutor (OTP) engaged in discussions with the government, trying to convince them to initiate domestic proceedings but this did not happen. This was because those in charge of establishing these processes were those who would be prosecuted or their close allies (Brown & Sriram, 2012: 244). Frustrated by the government's delaying tactics, Kofi Annan handed over the Waki envelope and the evidence to the OTP in July 2009.

In mid-January 2008, with the post-election violence still intense, some of the ODM party members had sent a communication to the OTP, advising that serious crimes had been committed within the territory of Kenya (Kenya Human Rights Commission, 2008). The OTP responded on 5 February 2008 by issuing a statement declaring it was 'carefully considering all information' on crimes that may have been committed in Kenya (Office of the Prosecutor, 2008). The OTP sent letters to the government, PNU, ODM, the Kenya National Human Rights Commission (KNHRC) and the Kenya National Commission on Human Rights (KNCHR) requesting for additional information. On 26 August 2008, the

OTP received a report from the KNCHR that publicly named 219 alleged perpetrators of the violence, including high profile and powerful political leaders.

In September 2009, the Prosecutor indicated that he would seek to pursue investigations and in March 2010 the ICC Pre-Trial Chamber II judges authorized the ICC Prosecutor to initiate investigations into the Kenya's post-election violence. In this respect, the ICC case against the Kenyan defendants is unique because it was the first time an ICC Prosecutor was charging perpetrators on his own volition ("proprio motu") as permitted under the Rome Statute of the International Criminal Court (Schabas 2011: 56). Until then, all cases had been referred to the court by the United Nations Security Council (UNSC) or the countries themselves.

The ICC Prosecutor in December 2010 revealed the names of the six suspects for whom he requested the Court to issue summonses to appear. The suspects included UK, who was serving as the deputy prime minister and finance minister, FM who was the Head of the Public Service, William Chacha and Henry Muita who were both serving as cabinet ministers, HA, a former Police Commissioner and Joshua arap Kerago a radio presenter at that time. From these six suspects, three (UK, FM and HA) were associated with Party of National Unity (PNU) political party and three (William, Henry and Joshua) with the Orange Democratic Movement (ODM) political party. The Kenyan government attempted to prevent a trial from ever taking place perhaps because of the personalities involved and the positions they held in government.

In an attempt to prevent an ICC trial, the MPs passed a legislation to withdraw from the Rome Statue. The legislation was non-binding because any formal withdrawal would only

take effect after a year and this would not remove the court's jurisdiction over the case. The government had hoped to embed in a wider pan-African movement to protest the ICC's focus on Africa but the African Union did not endorse the withdrawal at its January 2011 Summit, though it did support Kenya's attempt to have the ICC defer its proceedings (Brown & Sriram, 2012p. 256). The Kenyan government therefore tried, unsuccessfully, to convince the UNSC to request that the ICC suspend the case for one year, as it is empowered to do under Article 16 of the Rome Statute, based on a promise that it would set up a special local court as distinct from the earlier proposed hybrid one.

This did not stop the ICC Chief Prosecutor who grouped the six suspects into two cases. The suspects in the first case included the two cabinet ministers and the radio presenter who were each accused of three counts of crimes against humanity related to murder, forcible population transfers, and persecution. The second case involved the then Finance Minister, the then Secretary to the Cabinet and the former Police Commissioner who were each accused of five counts of crimes against humanity related to murder, forcible population transfers, rape, persecution and other in humane acts.

The Confirmation Hearing for the first case began on 1st September 2011 and the proceedings went on until 8th September the same year. The court, in its ruling on the 23rd January 2012, dismissed the charges against one individual while confirming charges against two. Throughout the court proceedings, the Prosecution lawyers used language in a certain way in order to attribute the responsibility for the violence to the three suspects. Particularly, the Prosecution alleged that the three suspects formed an association - a network - that facilitated the commission of the violent activities. The Defence teams, on the other hand, manipulated language to refute the Prosecution's allegations by altering

the participant roles in order to distance the suspects from the Prosecution's network and from the events of the PEV; while attributing the responsibility to other individuals, to social phenomena and to natural causes. This study examined the transcripts for this hearing to represent this state of affairs within Leeuwen's Representation of Social Actors' framework.

1.2.3 The International Criminal Court (ICC)

The International Criminal Court (ICC) became a household name for a majority of Kenyans, after the court named six individuals as suspects of the violence which had erupted in Kenya, after the announcement of the 2007 disputed General Elections results. The ICC got involved with Kenyan individuals after the government of Kenya failed to initiate domestic proceedings to hold to account persons who were considered to bear the greatest responsibility for the violence. Article 17 of the Rome statute requires the ICC to defer to national prosecutions, unless the 'State which has jurisdiction' over the offence in question is unwilling or unable genuinely to investigate and prosecute (Schabas, 2011 p.61). In the case of the Kenya's post-election violence, the government seemed unwilling to prosecute the perpetrators.

The need for an International Criminal Court (ICC) was first recognized in 1948 by the United Nations (UN) following the Nuremberg and Tokyo war crimes trials and after World War II (Lee, 2001; Schabas, 2011). However, Nuremberg and Tokyo were temporary tribunals created under unique circumstances just like the ad hoc tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) that were limited to the conflicts in these areas and could not deal with future crimes in other parts of the world (Struett 2008

p.4). However, the process of forming the International Criminal Court was “a long, somewhat frustrating, and sometimes dormant struggle” (Novak, 2015 p. 23).

In 1998, United Nations held a diplomatic conference in Rome where the Statute of the International Criminal Court was negotiated as the need for an international criminal court persisted. The diplomats present agreed that the court would not be an organ of the UN, nor would it be functionally a part of any other international organization, and the treaty, normally referred to as the Rome Statute for the International Criminal Court would only be binding on those states that have formally ratified it (Struett, 2008 p.8). As such, the court would be a strong, independent, and potentially effective institution that would ensure punishment for the worst crimes under international law including war crimes, crimes against humanity, crimes of aggression and genocide when national systems are either unwilling or unable to do so themselves (Novak, 2015 p.1; Schabas, 2011 p.ii; Wippman, 2004 p.162). Consequently, the ICC was established in order to bring to an end the culture of impunity that had historically protected the individuals responsible for the most atrocious mass violence in human history (Struett, 2008 p.3).

The ICC deals with grave crimes and high profile personalities in the society who are suspected to be responsible for such crimes get charged. Consequently, the ICC has previously tried prominent personalities including Thomas Lubanga Dyilo, a Congolese politician who was the first person to ever be convicted by the ICC for recruiting children soldiers. He was sentenced on 10 July 2012 to 14 years’ imprisonment and this verdict and sentence were confirmed by the Appeals Chamber two years later, in December 2014 (Yogendran, 2017 p. 67). On 3 March 2015, the Appeals Chamber issued a judgment that Lubanga was liable for reparations. The ICC’s Appeals Chamber on 18 July, 2019 ruled

that Lubanga's liability in relation to the 425 victims to be USD 3,400,000 and USD 6,600,000 in respect of other victims who may be identified.

Other prominent personalities who have previously been prosecuted include former Liberian President, Charles Taylor, and Jean-Pierre Bemba Gombo, a Congolese politician. While Charles Taylor was tried and sentenced to 50 years in prison, Jean-Pierre Bemba Gombo was suspected of atrocities in the Central African Republic and the charges were confirmed on 18 September 2009. The trial process began on 22 November 2010 and on 21 March 2016, Trial Chamber III declared, unanimously, Jean-Pierre Bemba Gombo guilty beyond any reasonable doubt of two counts of crimes against humanity (murder and rape) and three counts of war crimes (murder, rape, and pillaging) and sentenced him to 18 years of imprisonment. He was, however, acquitted on 8 June, 2018 by the Appeals Chamber from the charges of war crimes and crimes against humanity.

The ICC procedures combine aspects of the adversarial judicial system of the English Common Law and those of the inquisitorial system of the Napoleonic code (Schabas, 2011 p.249). In addition, the court requires that a confirmation-of-charges hearing or a Confirmation Hearing is conducted to ensure that "a Prosecution is not frivolous and that there is sufficient evidence for a finding of guilt" (Schabas, 2011 p. 288).

The Confirmation Hearing is a characteristic procedure that distinguishes the court from the ad hoc tribunals as well as the inquisitorial and adversarial judicial systems (Novak, 2015 p. 23). Being a pre-trial, it adds considerable length to the overall trial proceedings helping the court to determine the cases that should or not go to a full trial. The three

objectives of the Confirmation Hearing are: (1) to protect the defendant against abusive and unfolded accusations by the prosecution; (2) to help the court to establish that there is sufficient evidence for a finding of guilt; and (3) to provide the defendant with the opportunity to access the evidence in the possession of the prosecution as well as testing the value of such evidence superficially during judicial proceedings (Schabas, 2011 p. 288). The Confirmation Hearing of the ICC-Kenya Case One provides the data for this study.

As mentioned earlier, prominent personalities get charged with varied crimes at the ICC. In the ICC – Kenyan cases for instance, six prominent personalities including four cabinet ministers, a Police Commissioner and a journalist were charged with various crimes against humanity. These crimes were allegedly committed during the Kenya's 2007/2008 post-election violence as expounded in the previous section. The section that follows presents an overview of linguistic agency, showing the different perspectives from which the concept agency may be viewed and explaining how it was employed in this study.

1.2.4 Linguistic Agency

An exploration of linguistic agency in courtroom proceedings would show how different lexical and grammatical choices for character and event construction in the proceedings signal different perspectives in which court participants' position themselves and others in terms of more versus less agency. In this way, analysing the reconstruction of linguistic agency, which is this study's objective, would reveal how legal and lay participants in a trial can downplay or foreground characters' (as well as their own) involvement in narrated events and event sequences, and also create evaluations and positions with regard to who is innocent or guilty.

Linguistic agency is a concept that has attracted varied scholarly debates with various scholars offering varied definitions for the concept. It is noteworthy that most scholars use the term agency interchangeably with the terms “agentive” and “agentivity”. For instance, Fillmore (1968), in the discussions of syntax of English and other languages, refers to Agentive ‘A’ as “the case of typically animate perceived instigator of the action of the verb” (p. 24); Gruber (1967 p.943) on the other hand, uses the term agentive verb and defines it as “one whose subject refers to an animate object which is thought of as the willful source or agent of the activity described in the sentence”; while Halliday & Christian (2004) distinguish various features of the clause related to the notion of agency without explicitly using the terms agency, agentivity or agentive.

Other linguists who have engaged in the debate of agency include Mithun (1991 p.516) who employs the notion semantic agency to characterize the general category 'actor' as 'the participant which performs, effects, instigates, or controls the situation denoted by the predicate.’ In addition, Van Lier (2010) in Brown (2014 p.102) describes how agency encompasses: ‘the ways in which, and the extent to which, a person is compelled to, motivated to, allowed to, and coerced to, act,’ and equally, ‘the person deciding to, wanting to, insisting to, agreeing to, and negotiating to, act’. Downing & Locke (2006 p.130) add that the notion of agency includes features such as animacy, intention, motivation, responsibility and the use of one’s own energy to initiate or control a process.

From the definitions offered by the scholars in the paragraphs above, it is difficult to choose one definition over the other. There seems to be a lack of consensus on what the terms ‘agency’, ‘agentive’ and ‘agentivity’ should be based on, and which word categories (nouns, verbs, etc.) are to be considered agentive. For instance, some scholars

talk about agentive case while others agentive verbs. Case according to Fillmore, (1968, p.2) is ‘an examination of the variety of semantic relationships which can hold between nouns and other portions of sentences ....’ In addition, Blake (2001) in Kittilä, Västi, & Ylikoski (2011, p.4) observes that case marks the relationship of a noun to a verb at the clause level or of a noun to a preposition, postposition or another noun at the phrase level. A verb, on the other, hand according to the Macmillan Dictionary (2002) is a word that refers to an action, event or state. In addition to the lack of consensus on the concept agency, one scholar talks of control over a given action, another about will and/or intention, thereby introducing the notion of animacy. Animacy is defined as the ability of an entity’s to act or instigate events volitionally and manifestation of such acts formally in languages (Kittilä et al., 2011, p.9). The introduction of animacy makes it difficult to account for inanimate agents who may be responsible for given actions as in the sentence A below.

A: The floods swept the entire village.

This sentence may be compared with;

B: Wangari swept the entire village.

In the two sentences, *the floods* and *Wangari* are both agents, with *Wangari* being animate and *the floods* inanimate. The definitions above do not seem to account for such inanimate agents like *the floods* in A above. However, Fillmore, (1968 p.24) classifies inanimate ‘doers’ as instrumentals and therefore *the floods* may be understood to be the instrument that was responsible for the sweeping of the village in sentence A above. This however does not elaborate the notions of ‘will’ and ‘intention’ that the scholars introduce

in their definition. This is because it is difficult to ascribe ‘will’ or ‘intention’ to inanimate subjects (instrumentals) like in sentence A above.

Further, Fillmore talks about ‘perceived instigator’ while Van Lier talks about being ‘compelled to, motivated to, allowed to, and coerced to, act’, begging the question; who perceives, compels, motivates, or coerces? Furthermore, Mithun adds to the problematic of Fillmore’s perceived instigator by introducing the concept ‘actor’. This is because the term ‘actor’ that is synonymous with ‘performer’ does not disambiguate some actions denoted in some sentences like in sentence C below.

C: The head teacher frog-marched the naughty students.

This sentence contains two actions; the act of frog-marching that is performed by the naughty students themselves and the act of making the students frog-march that is performed by the head teacher. This means that the sentence contains two agents and there lacks a disambiguation between the two actors in Mithun’s definition.

Cruse (1973 p.12) addresses the inadequacies in the definition of agency, agentivity and agentive and points that inadequacies in defining linguistic terms stem from ‘the attempt to deal with linguistic meaning in referential terms.’ He therefore offers an alternative of appealing to extra linguistic and contextual aspects to meanings. Consequently, he defines agentive as ‘a feature that is present in any sentence referring to an action performed by an object (including living things, certain machines and natural agents) which is regarded as using its own energy in carrying out the action’ (Cruse, 1973 p. 21). Here, we find Cruse replacing the notion of ‘will’ with the notion of ‘use of own energy’ that encompasses actions of inanimate subjects like the action of *the floods* denoted in

sentence ‘A’ above. He also extends the notion of agency from being looked at from the lexical items level to being looked at from the sentence level, with a consideration of the context of the utterance. This addresses the lack of consensus on which word categories (nouns, verbs, etc.) the notions of agency, agentive or agentivity should belong to.

Other scholars in the debate of agency seem to conform to Cruse’s position and offer alternative definitions that include contextual elements. Among them is Duranti (2005 p.453), who contends that agency is understood as ‘the property of those entities (i) that have some degree of control over their own behaviors, (ii) whose actions in the world affect other entities and sometimes their own and (iii) whose actions are the object of evaluation in terms of their responsibility for a given outcome.’ In addition, O’Connor (2000 p.3) defines agent, agency, and agentive, as three concepts that detail how subjects are (or are not) engaged, personally and morally, in relation to the action depicted. O’Connor adds that personal agency is the positioning of the self in an act or in the reflection on an action indexed to that person as figured along a continuum of responsibility. Further, Silverstein (2004 p.623) claims that it is in ‘discursive interactions that agency plays a primordial role’ and different positionings can take place. Silverstein adds to his claim the following questions that he says are key when studying agency:

> ‘What type of person, with what social characteristics, deploys such knowledge by using the expressions that normatively and actually index (invoke) it in a particular configuration of co-text? With what degrees and kinds of authority do interactants use expressions (reflecting knowledgeable familiarity from the social structural position of the user with respect to ritual centers of authority that ‘warrant’ their use)? To whom is authoritative knowledge ascribed, and who can achieve at least a conversationally local state of authority with respect to it, if not authority stretching beyond the instance of interaction (p. 632)?’

Here Silverstein seems to suggest that the notion of agency should be extended beyond a sentence. He also introduces the notion of intertextuality and holds the opinion that the natural context in which the discussion of agency is being pursued should not be ignored either.

Consequently, this study adopted Ahearn's (2001 p.112) definition of agency that is clear and speaks to the purpose of the study. Ahearn therefore defines agency as 'the socio-culturally mediated capacity to act' and an agent as the semantic role of a person who is the doer of an action. Ahearn adds that any discussion of agency and language must consider how grammatical categories in different languages distinguish among types of subjects for such categories, asserting that all languages work in terms of three basic relations - S, A, and O - defining them as follows:

S - Subject of an intransitive verb (e.g., Henry comes from Tinderet constituency);

A - Agent, or subject, of a transitive verb (e.g., William loves humanity); and

O - Object of a transitive verb (e.g., The suspects formed a network) (Ahearn, 2001 p.112).

The study therefore adopted this definition to examine how interactants in the Confirmation Hearing employed language to relate different individuals or groups of individuals in the Kenyan society, their habits, traditions and beliefs with the commission of the post-election violence activities and the contestations thereof. The excerpt below exemplifies this.

Excerpt 1 (Transcript D_1)

146. Four, Mr. Chacha and Mr. Muita integrated some tribal elders into
147. their network. This is crucially important. By utilising tribal elders,
148. Mr. Chacha and Mr. Muita capitalised on the Kalenjin tradition of
149. demanding strict respect and obedience from their youth. This attitude
150. was critically important to ensure respect for the instructions and even
151. to maintain the confidentiality of the preparation.

The excerpt above is extracted from the Prosecution's opening statements – see appendices section Appendix 2. From the excerpt, the Prosecution identifies Mr. Chacha and Mr. Muita as the subject of the transitive verb 'integrate' in line 146 and as the subject of the intransitive verb 'capitalize' in line 148. By using specific reference to the two individuals in the initial sentence position, the prosecution leaves no doubt regarding the referent of the alleged actions including 'integrating tribal elders into the network' and 'capitalizing on the Kalenjin tradition of demanding strict respect and obedience from the youth.' In so doing, the Prosecution portrays these two suspects as the active dynamic forces in the named activities of 'incorporating tribal elders into the network' (line 146), as well as 'taking advantage of the Kalenjin traditions' (line 148 - 149). This is a way of foregrounding agency. In sharp contrast, the Prosecution makes general reference to other groups of individual in the excerpt. They include 'tribal elders' in lines 146 and 147 as well as 'youth' in line 149. The identities of these two groups of individuals remain anonymous in the excerpt and throughout the hearing. In addition, the Prosecution portrays the anonymized tribal elders and the youth as being on the receiving end of 'being incorporated into the network' (line 146) as well as 'the Kalenjin tradition of the youth obeying elders being taken advantage of' (line 148 – 149). By portraying these individuals in general terms, as groups of individuals and as being on the receiving end of the named activities, the Prosecution backgrounds their agency.

The Defence lawyers contested the Prosecution's allegations and the representations of the Kalenjin community. Excerpt 2 below exemplifies how the Defence lawyers employed language to refute the Prosecution's script.

Excerpt 2 (Transcript D_1)

828. William Chacha is absolutely innocent of these grave charges that
829. have been brought against him.
830. We will be urging the Court to look at the Kalenjin community and
831. the way they do things. The culture of the Kalenjin community has
832. grossly been misrepresented through the anonymous witnesses. In the
833. Kalenjin culture, an elderly man belonging to a different generation
834. would not be able to go to a house of a young man belonging to a younger
835. generation.

The Excerpt 2 above is extracted from the first suspect's Defence lawyer's opening statements (see Appendix 2). From this excerpt, the lawyer begins by mentioning the suspect in the subject position in line 828 – 829. However, the Defence lawyer uses a sentence that does not introduce an action (like the sentences adopted by the Prosecution in Excerpt 1 above), but one that shows a quality ascribed to the suspect. In this respect, the suspect is ascribed the quality of being 'innocent' and the lawyer qualifies the degree of the innocence using the adverb 'absolutely.' In the subsequent lines, the lawyer abandons the discussion of the suspect and takes times to explain the misrepresentation of the Kalenjin community's culture by the Prosecution in lines 830 – 835. It is noteworthy that this Defence lawyer, is Kenyan, though he is not a Kalenjin. It would therefore be assumed that he is in a better position to represent the culture of another Kenyan community than a European - the Prosecutor. This resonates with Eades (2009) observation that there are cultural and linguistic issues which need to be understood in order to accurately interpret given evidence (p. 29). It is also noteworthy that the representations are directed to a European judge. This indicates a fluctuation of agency

given that the cultural circumstances would make the Kenyan lawyer's account of another Kenyan culture more trustworthy than that of a European Prosecutor. The Defence lawyer may have been aware of this situation and thus he takes time to show the ways in which the Prosecutor had misrepresented the culture after indicating that his client was 'absolutely innocent.' Here, the focus on agency shifts from who is to blame for the PEV activities to the Prosecutor who is accused as the victim of the misrepresentations.

This section has shown how the researcher's training as a linguist and her working background in a legal setting inspired this research. The subsequent subsections have also introduced the ICC as an institution of the last resort when national justice systems fails and have shown the circumstances that led to the involvement of the court in the Kenya's 2007/2008 PEV. The section has ended with a discussion of agency, the focus of this study, and the section that follows states the study's problem.

1.3 Statement of the Problem

Naturally, there is a predictable way of resisting accusations when one is alleged to have done wrong. This is mostly by an outright denial of any wrongdoing. In the courtroom, the Defence teams mount a contest to refute the claims of the Prosecution by denying alleged accusations. At the Confirmation of Charges Hearing of the ICC Prosecutor against the first set of the Kenyan defendants, the bulk of the case was based on the Prosecution's allegation that three individuals had created 'a network' that was responsible for the post-election violence. However, one of the Defence teams did not categorically dispute the Prosecution's claims of the existence of 'the network,' but appeared to agree with the Prosecution to some extent.

In this regard therefore, the study sought to examine how the Prosecution and Defence lawyers as well as the lay court participants employed language to construct different versions of 'who did what to whom' during the hearing thereby representing the events of the post-election violence variedly. Particularly, the study examines the use of the transitivity structures, the terms of address, mass nouns, agentless constructions, nominalizations and self-representations; to apportion, deny, foreground or background agency. The study would then explain how the use of these linguistic strategies helped the professional and the lay court participants to assign agency to given actors, to discourse and supernatural forces.

1.4 Research Objectives

This study's specific objectives were:

i. To examine how the Prosecution and Defence lawyers employed transitivity structures and address terms to construct agency at the trial.

ii. To evaluate how the lawyers used agent deletion strategies, collective nouns and nouns denoting groups of people as well as nominalization to background agency at the trial.

iii. To examine how the suspects used the first person pronouns and nouns denoting kinship to distance themselves from criminal liability at the trial.

1.5 Research Questions

In an attempt to achieve the study's objectives, I answered the following question:

i. How did the Prosecution and the Defence teams employ specific reference expressions to attribute or deny responsibility during the ICC-Kenya Case One trial?

ii. How did the Prosecution and the Defence teams use generic terms to attribute or deny responsibility during the trial?

iii. How did the suspects employ referential expressions to downplay their involvement in the PEV at the trial?

1.6 Significance of the Study

This study is of significance to scholarship in general because it is located in the area of Forensic Linguistics (FL), a relatively new area in the African Continent. I call FL a new discipline in Africa because it has been in existence in other parts of the world including Asia, America, Europe and Australia. Its existence in these parts of the world is affirmed by the existence of a professional association called 'The International Association of Forensic Linguistics' (IAFL) which was founded in 1993, and a journal that is referred to as 'The International Journal of Speech, Language and Law,' that was founded in 1994 (Coulthard & Johnson, 2007 p.1). However, FL as a discipline lacks statistics of existence in Africa that is also characterized by a paucity of African authored materials in the area. The study therefore joins the upcoming FL debates that are gaining momentum in the African Continent. As such, the study contributes to the International Association of Forensic Linguistics' (IAFL) first objective, that 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). The study does so by carrying out a study of language in the ICC institution.

To the Kenyan society in particular, the study is of great importance in a number of ways. Firstly, the Constitution of Kenya 2010 in Article 33 of the Bill of Rights contains the freedom of expression. Sub article (1) of the article states that 'every person has the right to freedom of expression including freedom to seek, receive, or impart information; freedom of artistic creativity; and academic freedom and freedom of scientific research.' Sub article (2) on the other hand contains the limitations to the right to freedom of expression, stating that 'the right to freedom of expression does not extend to propaganda for war; incitement to violence; hate speech; or advocacy to hatred that constitutes ethnic incitement to cause harm.' This has occasioned a rise in hitherto nonexistent court cases on hate speech. While some cases have been executed and judgment passed, most have not been successfully prosecuted due to a lack of evidence. This is because of the relativity in the interpretation of utterances and most individuals who have been previously accused of propagating hate through their utterances and claim to be quoted out of context. Even with those cases that have been executed to judgment, they point to a lack of FL knowledge and expertise that would aid in establishing whether offending expressions in the form of words, phrases and clauses would or not amount to hate speech. This makes my study very relevant in our society.

For instance, in April 2013, Butere Girls High School was barred from presenting a play titled 'Shackles of Doom' in that year's National Drama Festivals in Mombasa because of a claim that its contents amounted to hate speech (www.kenyalaw.org). The ban was communicated to the school by the Executive Secretary of the Kenya National Drama Festivals, claiming that the play did not conform to the laid down rules and regulations governing the Kenya Schools and Colleges Drama Festivals; Rule 12.3 (Vii), 'hate

statements targeting communities, personalities……both on stage and in social media.' A public rights activist moved to the High Court in Nairobi claiming that the ban amounted to a violation of the freedom of expression. The case was heard and the court observed that 'reference to hate speech often stirs up emotional responses and may be used to limit what is otherwise legitimate expression of ideas and this may in turn result to a cover up to assail the freedom of expression protected under the Constitution' (www.kenyalaw.org). The court therefore ordered that the office of the Attorney General should show cause within 24 hours why the play should not be presented. The said office did not respond and the court therefore ruled that the play be presented.

This is an example of a case that was heard and judgment passed. However, the determination of the case would have been made richer by the incorporation of linguistic expertise. Had the court ordered for a linguistic analysis of the play, the expressions in the play could have been examined and a report on the extent to which the expressions would amount to hate speech presented in order to aid the determination of the case. With the Kenyan political and social history replete with instances where plays were banned for being subversive, a linguistic analysis would assist in language and meaning interpretations. This would be possible with the knowledge that plays are a medium of expression of ideas which are sometimes contrary to accepted ideas that literary plays challenge long held beliefs and conventional wisdom and that artistic expression is not merely intended to gratify the soul as it may stir our conscience to reflect on realities differently. The example above therefore points to a need for forensic linguists in the Kenyan courts.

The second reason that justifies the importance of this study to the Kenya society is that the study touches on the country's 2007/2008 PEV and the subsequent ICC process in the Confirmation of Charges Hearing stage. The post-election violence and the subsequent ICC process are events that shaped the Kenyan history in a different way. This study therefore helps in the documentation of some aspects of the events that would be used as relevant reference materials for future court cases. In addition, the insights from this study's findings provides not only an understanding of language use in the courtroom, but also an understanding of language use in international criminal justice systems as well as providing insights into the ICC institution.

Further, since this study is an evaluation of actual language use in the courtroom as opposed to most agency studies that are based on made-up examples and intuition, the study would specifically be significant to scholars interested in the area of agency as the findings will provide insights into agency construction. In this regard, the study will document how individuals deny agency, how they attribute it to other individuals, to fate, to natural causes, to discourse or to social factors. The study therefore will demonstrate how an embodiment or not of an 'agency' feature in utterances contributes to responsibility or innocence attribution.

1.7 Scope and Limitations of the Study

This study limits its scope to the study of courtroom discourse, specifically the International Criminal Court that is based at The Hague, Netherlands and not any other court, domestic or international. The case of the ICC Prosecutor against the Kenyan defendants comprised two sets involving three Kenyan individuals for each set. This study therefore focused on the first case that involved two cabinet ministers and a

journalist. The study also confined its scope to the Confirmation of Charges Hearing stage of the first case that began on September 1, 2011 to September 8, 2011. I anticipated that the results for the selected set of the cases would be representative of the other with regard to linguistic agency construction. This study explored the transcripts of the entire proceedings including the opening statements, evidence submission phase, witness interrogation phase as well as the closing statements.

In addition, the study was confined to the construction of linguistic agency and not any other aspect of language in the proceedings. To analyze the construction of agency, the study examined the language of the Judges, the Prosecution and Defence lawyers, the suspects, the witnesses and the Legal Representative of the victims. To do this, the study used the verbatim court transcripts as the data and not any other materials. The court transcripts were used as they had been received from the court records, with a few transformations as explained in the data section in order to make the transcripts usable for a research study. Data were analysed using document examination method adopting a critical discourse analysis approach and not any other method. The data were analysed with Leeuwen's (2008) Representation of Social Actors' framework as opposed to any other theoretical framework.

One of the limitations of the study was that a number of sessions of the proceedings were conducted in closed court sessions. This is a requirement of the court as guided by Article 68(2) of the Rome Statute that confidential evidence is presented in private sessions in a bid to protect victims, witnesses or an accused person (Schabas, 2011). The court transcripts for such closed sessions could not be accessed for analysis resulting in a loss of substantial amount of data. Specifically, this being an agency construction study, the

redacted materials may have had data that pointed to different individuals - besides those in the available data - being attributed variedly to the events of the PEV.

CHAPTER TWO

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1 Introduction

This chapter presents a review of literature under two main sections. The first section presents reviewed literature from empirical studies. The second section discusses 'Representation of Social Actors theory', the framework that informs this study.

2.2 Empirical Studies on Courtroom Discourse and Linguistic Agency Construction

This section constitutes three sub sections. Sub section 2.2.1 discusses literature on lexical choices in the courtroom, sub section, 2.2.2 presents reviewed literature on ICC trials, while the final sub section, 2.2.3, reviews literature on agency construction in legal settings.

2.2.1 Lexical Choices in the Courtroom

Courtroom sessions are interactive and Danet (1980 p.211) states that trials are literally 'war of words involving many issues that could be of interest to linguists.' Consequently, diverse linguists have explored courtroom discourse showing that language has a role in the attribution of responsibility for wrongdoing and thereby foregrounding the strong relationship that exists between language and the law. In support of the interactive nature of courtroom sessions and the connection between language and the law, Shuy (2008 p.4) posits that lawyers' expertise is primarily the law, not linguistics and that therefore they cannot be expected to understand all the phonological, morphological, syntactic, semantic, pragmatic, discourse, and lexicographic principles that lead to court battles over

language. Consequently, linguists interested in courtroom studies focus on specific linguistic aspects of varied proceedings.

Different linguists (Cotterill, 2003; Danet, 1980; Eades, 2008; Satia, 2014) have shown the significance of lexical choices in courtroom proceedings. To begin with, Danet (1980) examines the use of language in the construction of reality in a manslaughter trial in Massachusetts, where she shows the prosecution and defence lawyers' choice of different lexical items to refer to the object of abortion in a bid to advance their varied claims. This case involved a doctor who had been accused of manslaughter in connection with an illegal abortion. Danet notes the preoccupation with language in this trial. She observes that the defence counsel had submitted a motion for an order to prevent use of words 'suffocate', 'smother', 'murder', 'baby boy' and 'human being'. This had prompted the prosecution attorneys to negotiate with the judges on what words were allowed and the judges ruled that the terms 'human being', 'male human being', 'male child' and 'suffocate' may be used (Danet, 1980 p.189).

In this regard, the trial was a peculiar case study as it focused on the relation between language and reality; and was largely concerned with the negotiation of whether life begins at birth or at conception. To carry out the study, Danet tape-recorded and transcribed a dramatized version of the case from a public television channel's broadcast with a further analysis of portions of original transcripts. She therefore identified and analyzed the distribution of all terms used to refer to the result of pregnancy (RP) including 'subject', 'fetus', 'baby', 'child' and 'products of conception' during the direct and cross examination.

While I find her strategy to only focus on direct and cross examinations effective in the management of the enormous data that full court proceedings present, the strategy also helped her to give the studied portions of the proceedings a richer analysis. Danet (1980) therefore finds that the prosecution lawyers conceptualized their case around 'a baby', while the defence chose to use 'a fetus' with a contention that a foetus was incapable of independent life, and thus that no crime of manslaughter could have been committed against it. The jury agreed with the prosecution narrative and the doctor was convicted of manslaughter. In this respect, Danet demonstrates the importance of choice of words in talking about an act whose meaning is ambiguous and concludes that lexical choice is one aspect of strategic manipulation of language in lawyers' efforts to win cases (Danet, 1980 p.210). Danet's view of lexical choice being a strategic manipulation of language is affirmed by Eades (2008) in her book 'Courtroom Talk and Neocolonial Control'.

Eades' book focuses on the cross examination in the first stage trial process in a case (popularly called the Pinkenba case) involving three Aboriginal boys aged 12, 13 and 14 in an Australian court. The boys had alleged that six police officers had taken them against their will in three police cars and abandoned them on a wasteland, from where they had to find their way home. The prosecution case before the Brisbane Magistrate's court was therefore to establish that there was a case strong enough to put a jury in a District Court trial. Eades' book therefore examines the linguistic strategies used to discredit the evidence of the three boys. She posits that the cross examination of the boys was extreme in terms of linguistic manipulation and that an examination of these linguistic strategies shows how far the legal system can go in the delivery of justice or in the failure of it.

Eades notes the distinctiveness of the Aboriginals - the indigenous people in Australia - from the British settlers in most aspects of life including language from her interaction with them. She had understood their language and had previously published a handbook to guide legal practitioners on how to communicate with Aboriginal English speaking clients. In the Pinkenba case, the Aboriginal legal services had approached her and asked her to provide a report about aspects of the boys' language and communication patterns as well as recommendations for maximizing communication with the boys should they be required to give evidence in relation to the incidents involved in their alleged abduction. Upon researching in order to compose her report, Eades found that the boys' language and communication skills were inappropriate for use in formal legal interviews in police stations, lawyers' offices or in giving evidence to an inquiry or a courtroom hearing (Eades, 2008 p.19). She therefore advised that 'big words' needed to be avoided, recommended the use of questions with a simple structure, with a single proposition at a time and the avoidance of long strings of yes / no questions.

She handed over the report and attended the hearing as an audience. She however noted that at the hearing, significant differences between Aboriginal and non-Aboriginal ways of using English were exploited to distort the boys' testimony and to depict them as untrustworthy and unreliable witnesses in a number of ways.

With regard to lexical strategies that were used to distort the boys' evidence, Eades finds that there was use of 'big words' including legal jargons that were unfamiliar to the boys. Secondly, Eades noted instances of lexical struggle, whereby the Defence Counsel and the boys struggled over the choice of words to refer to the central issues in the hearing

including friends vs gang vs louts; walking vs wandering vs prowling; hop vs jump; told vs asked as exemplified by the excerpt below (Eades, 2008 p.126).

> DC1: and on this occasion the one I was talking to- to you about yesterday-what happened was this- that there was **a gang** walking down the street wasn't there? there was wasn't there?
> Barry: Just a group of **friends**.
> DC1: Beg your pardon?
> Barry: **No gang** just a group of **friends**.
> DC1: Just a group of **louts** is that the situation? well?
> Barry: Yes (Eades, 2008 p.126).

From this excerpt, Eades posits that the boy (Barry) starts this struggle over the labelling of his social group with a correction introduced by the relatively overt correction marker *just.* This changes to the most overt correction marker (the negative no) when he is asked to repeat the answer. The DC1 then takes Barry's corrected term *a group of friends* and keeps the frame a *group of* —, substituting the neutral term *friends* with the negative term *louts* a word that Eades observes was unfamiliar to the boy, as it appeared not to be used either in contemporary teenage talk or in Aboriginal English (Eades, 2008 p.129). Unlike Danet whose focus is on how legal experts (both Prosecution and Defence lawyers) strategically employed lexical items that were favorable in advancing their arguments, Eades focuses on the use of lexical items by lawyers against lay participants. She therefore observes that lawyers are of the habit of using 'big words' that present an understanding problem to lay participants (Eades, 2008 p.119).

Eades notes that the linguistic strategies used in the proceedings including the lexical choices were so successful that the magistrate not only dropped charges against the police officers, but also devoted a considerable part of his decision to delivering a negative evaluation of the characters of the boys. Eades therefore draws two conclusions. Firstly,

that courtroom talk with its related assumptions about how language works can serve to legitimize neocolonial control over indigenous people. Secondly, that an examination of linguistic strategies such as lexical choices shows how far the legal system can go in the delivery of justice or failure to deliver justice (Eades, 2008 p.3). This indicates that lexical choice is not only a strategy in the courtroom, but it can also be a disadvantage to some participants in court indicating the power imbalance between court interactants. Eades (2008) affirms this observation and posits that lexical struggle over labels, description or lexical items is part of the larger struggle over power between the state and the Aboriginal people in Australia (p. 124).

In addition to Danet and Eades view of lexical choices in the courtroom, Cotterill (2003) also notes the significance of strategic diction in trial proceedings. She examines the role of strategic lexical choices in constructing the lawyers' narrative frameworks during opening statements in an American murder trial. The trial involved O.J. Simpson, an ex-American footballer, who had been charged with two counts of first degree murder of his ex-wife, Nicole Brown Simpson and a male person. Cotterill's data comprised the trial transcripts, video-recorded data from a live TV broadcast, published post-verdict trial memoirs by some jurors as well as TV interview reports by some members of the jury from which she analysed the words that depicted Simpson as a wife-beater in the prosecution opening statement, and those that depicted him otherwise in the defence's response.

To carry out the analysis, Cotterill employed corpus linguistics, where she accessed the COBUILD Bank of English and focused on the notion of the semantic prosodies - the information about a word's associated connotational orientation (Cotterill, 2003 p. 65).

She therefore selected lexical items relating to references to domestic violence. She was deliberate in choosing subtle terms which were used by the prosecution to construct an image of Simpson as a violent man ultimately capable of murdering his wife instead of the more obvious representations of Simpson as a 'wife-beater', 'batterer' or 'abuser'. She also discussed the defence's response to this presentation of Simpson, and examined some of their attempts to minimize and neutralize the negative prosodies evoked by the prosecution by presenting an alternative version of events that Simpson's wife was manipulative and promiscuous.

For instance, in her findings, Cotterill noted that the prosecution used two terms - encounter and control - to construct the image of Simpson as a violent man. To begin with, the prosecution deconstructed the professional image of Simpson as a football icon and movie star and represented him as a potential double murderer using the verb encounter as exemplified by the excerpt below.

1. we've seen him play football for USC, we watched him thrash LA
2. playing the Rose Bowl … we watched him leap turnstiles and chairs
3. and run to airplanes in the Hertz commercials and we watched him
4. with a 15-inch Afro in Naked Gun 33 1/2 [*sic*] … and we came to
5. think that we know him, what we've been seeing ladies and gentlemen,
6. is the public face, the public persona, the face of the athlete, the face of
7. the actor. It is not the actor who is on trial here today.
8. That is the face we will expose to you in this trial, the other side of
9. O.J. Simpson, the side you never met before. We will expose in this
10. trial and who [*sic*] to you in this trial [*sic*] the other face … the one
11. that Nicole Brown *encountered* almost every day of her adult life, the
12. one she *encountered* during the last moments of her adult life; the
13. same face Ronald Goldman *encountered* during the last moments of
14. his life (Cotterill, 2003 p.68, 69).

From the excerpt above, Cotterill finds the word encounter significant because it is used to refer to a person (Simpson) as opposed to its more common usage where it refers to an

inanimate entity. She therefore subjects it to the semantic profile in the COBUILD corpus and finds that it collocates strongly with a set of negative phenomena including prejudice, new obstacles, problems, a glass ceiling radiation among others. Cotterill (2003) therefore observes that the prosecution were able to evoke both the negative prosody and the sense of unpredictable violence - conveyed by the verb and its collocates, by representing Simpson as the object of encounter (p. 70).

Secondly, Cotterill notes that the prosecution also used the word 'control'. She notes the use of the term in both nominalized and verbal forms, to construct an image of Simpson as an obsessed man who had an overwhelming desire to control his wife, to an extent of killing her in order to prevent her from having a life of her own after divorce as the excerpt below demonstrates.

1. And as the years went on and as they continued to date and as he
2. gained more and more *control* over her, the more *control* he gained, the
3. more abusive he became. As you listen to the evidence in this case,
4. you're going to be hearing evidence regarding domestic abuse, domestic
5. violence, stalking, intimidation, physical abuse, wife beating, public humiliation.
6. As you listen to the trial and you hear this evidence and see
7. this evidence, please keep in mind that all of these different kinds of
8. abuse were all different methods to *control* her.
9. He killed her because he couldn't have her; and if he couldn't have
10. her, he didn't want anybody else to have her. He killed her to *control*
11. her. *Control* is a continuing thing. It was a continuing thing, the
12. central focus of their entire relationship, by killing Nicole, this
13. defendant assumed total control over her. By killing her, he committed
14. the ultimate act of *control* (Cotterill, 2003 p. 72).

Evidence from the corpus showed that the word control is typically used with authority personalities, often representatives of official bodies of some kind including the police, army or government, whose control is legitimated by their official position and societal status. In addition, that the typical objects of control are things that represent a danger or a

negative influence of some kind. Cotterill therefore finds the term significant since its use by the prosecution to describe Simpson did not satisfy these two conditions. She however shows that the prosecution used this term to introduce an element of 'a cycle of violence' that had rocked their marriage, and this would consequently portray the events leading up to Nicole's murder as 'the natural conclusion or even an inevitability in the progression of violence' (Cotterill, 2003 p.79).

In sharp contrast, Cotterill shows the systematic rebuttal of each of the prosecution's contentions by the defence. She shows that the defence used 'carefully selected lexical choices of their own to indicate that the cycle of violence was not a cycle, but a verbal rather than a physical violence' (p. 80). For instance, she discusses the defence's use of the term 'incidents', alluding to un relatedness of the events outlined by the prosecution. This aimed at de-emphasizing the systematic nature of the abuse and thereby reducing the damage to Simpson's credibility. In addition, the defence discussion of incidents involved the removal of agency from a number of references to the attacks with the aim of de-emphasizing Simpson's role. The excerpt below exemplifies this.

1. Two *incidents* they talked about, the one *incident* involving the man
2. Joe Stellini was at Mezzaluna and the other *incident* was a restaurant
3. called Tryst and in both *incidents* there was no problem, no fight …
4. Mr Simpson went home with his wife that night, so that this was not
5. any *incident* where they were stalking or fighting, anything like that.
6. There was no obsessive behaviour. I hope to put those in some kind of
7. perspective. Mr Darden talked in his opening argument about the
8. April 1985 *incident* in which some damage was done to a vehicle, and
9. as I understand it, the testimony will be that there was not any *incident*
10. in 1985 because Miss Nicole was pregnant, had a c-section later in
11. that year and they didn't have any situation like that. They did have
12. some discussion apparently maybe in '86 or '84, some damage done
13. to a car and she was not in that car. She was not struck on that occasion,
14. so I think you will find that *incident*
15. of not great consequence (Cotterill, 2003 p.80).

By employing passive constructions in lines 8 and 13, the defence lawyer attempted to minimize Simpson's involvement in the violence, and to recast the domestic violence as occurring at a verbal level rather than a physical one. This he does by employing the terms discussion, dispute and conversation that denote verbal events. Besides the use of dispute that carries negative prosody in its association with violence and police involvement in the concordance listings, the terms discussion and conversation have positive prosody and they denote verbal rather than physical interaction. In this regard, Cotterill concludes that the defence's strategic use of lexical items coupled with the jurors' recognition of Simpson as a representative of a positive role model earned him an acquittal of all charges and in record time. She juxtaposes this with the prosecution's failure to reconstruct Simpson as a violent wife-beater and a murderer (Cotterill, 2003 p.89).

I find Cotterill's data rich and effective in the study in that it is multi-modal and multi-perspective allowing for cross-referencing. In addition, the video-recorded data allowed for verbal, non-verbal as well as intonational insights to the study, while verifying the integrity and accuracy of the trial transcripts. Further, her use of a corpus was invaluable as a resource since it permitted her to search for patterns of word behaviour in large-scale, and in turn she was able to describe the prosodies of words and phrases in a systematic manner. This is turn helped her to focus on the significant lexical items from a wide range of contexts and to exhaustively interpret them in relation to the O. J. Simpson's case.

The three studies that I have reviewed in this section are related to my work because they indicate the significance of strategic lexical choice in the attainment of different communicative goals in the courtroom. For instance, Danet (1980) shows that lexical

choices can reconstruct reality in a manner that suggests that life and death are not discrete dichotomous categories but are semantic labels which can be manipulated along a continuum. Eades (2008), on the other hand, shows that lexical manipulation in the courtroom does not only contribute to the failure of delivery of justice, but that it propagates neo-colonial control over indigenous populations. In addition, Cotterill (2003) shows that courtroom narratives can be framed and reframed through strategic lexicalization. The studies are related to my study because they have shown that strategic choice of lexical items is fundamental in establishing agency. My study, expands the discussion of strategic lexical choice and explores how professional and lay court participants employed strategic lexical items among other linguistic devices to construct agency in a mass violence case in the International Criminal Court setting. The section that follows presents literature on linguistic insights in the international criminal jurisdiction.

2.2.2 Linguistic analyses in ICC Trials

The significance of language in the courtroom has been affirmed by the studies reviewed in the section above. These studies discuss linguistic insights related to strategic lexical manipulation in domestic courts. It is important therefore to review literature on international criminal justice systems and explore the linguistic dynamics at play in such settings. This section presents a review of literature on ICC trials under two sub headings namely; linguistic issues in ICC trials taking a legal perspective in subsection 2.2.2.1 and linguistic perspective in ICC trials in subsection 2.2.2.2

2.2.2.1 Linguistic Issues in ICC Trials Taking a Legal Perspective

Swigart (2017) and Namakula (2013) are among the scholars that have explored the issue of language at the international criminal courts and tribunals from the legal perspective. To begin with, Swigart (2017) explored the varied linguistic and cultural challenges that arise in the process of international criminal justice. In her study, she noted that language ambiguity at the International Criminal Tribunal for the Former Yugoslavia (Henceforth ICTY) often constituted grounds for appealing a conviction. In addition, she noted that some judgments in the International Criminal Tribunal for Rwanda (ICTR) referenced particular Kinyarwanda lexical items and language practices as powerful drivers of the violent behavior of the perpetrators (Swigart, 2017 p.5).

These are significant linguistic insights observed by Swigart although they do not narrow down to specifics because her approach was legal rather than linguistic. Hers is a documentation of the difficulties that inevitably accompany the exercise of justice at the international level. She therefore concluded that a breadth of linguistic and cultural knowledge should be at the center of consideration when filling judicial positions in international criminal courts and tribunals. Further, that judges in the international criminal courts and tribunals should demonstrate their ability to think outside their native linguistic and cultural frame (Swigart, 2017 p.5). Swigart's study resonates with that of Namakula (2013) which examined the impact of language diversity on the right to fair trial in international criminal proceedings with a particular reference to the International Criminal Division (ICD) of the High Court of Uganda.

Namakula documented the language difficulties that hinder the ability to ensure fair trial at the ICD of the High Court of Uganda stemming from its uniqueness – a domestic court

of international character – though not detached from the realities of its context (Namakula, 2013 p.196). Firstly, she notes that interpretation was only done in situations where it was strictly required and secondly that the court ignored appearances of bias and permitted the services of police officers as interpreters so long as impartiality could be guaranteed in reality. Thirdly, that judicial officers undertook interpreting tasks and lastly, that a trial could proceed even before the accused person could be made to understand the proceedings, as the physical presence of the accused, if represented sufficed (Namakula, 2013 p.197).

In contrast, Namakula notes the good practices in Uganda's criminal procedure that advanced language fair trial rights. Firstly, statements recorded through interpretation were subjected to independent judicial verification before they could be read in open court. Secondly, the involvement of local persons as advisors to the court (assessors) on the accuracy of interpretation minimized cost and time which would be needed to involve expert linguists and finally, that a translation was of secondary evidential value as documentary evidence was proved by the original. These observations of negative and positive aspects of language on fair trial rights leads her to conclude that there is need to foster a professional standard of judicial interpreting, allocate adequate resources to all courts of law, and to tackle national language reform (Namakula, 2013 p.198).

These two studies offer linguistic insights in international criminal courts from a legal perspective, demonstrating the great significance of language in trial proceedings. My study therefore evaluates language use with a specific focus on agency construction in the ICC, from a linguistic perspective. This is a similar perspective to Satia's (2014) study that is an exploration of language use in the construction of identity in legal contexts

including the ICC. The discussion on the review of his study are presented in the subsequent subsection.

2.2.2.2 Linguistic Perspective in ICC Trials

Satia (2014) in his Language and the construction of identity in legal settings, set out to investigate the linguistic resources that are used to construct identity in the courtroom setting. Satia's data were in form of audio – recordings from the ICC proceedings. The data consisted of Confirmation Hearing proceedings of the second case drawn from 10 days proceedings lasting 30 hours and proceedings of the 1st four days of the Hague trial of the Kenyan Case One. To collect the data he placed an audio recorder in front of the TV as the proceedings streamed live, switching off during adjournments for health breaks or when a day's proceedings ended.

Among Satia's findings were that first, the professional and lay court interactants used three main linguistic resources including lexical, grammatical and stylistic choices to construct identities. At the lexical level for instance, they constructed identities through selection of adjectives with positive or negative connotations, selection of words and expressions with contrasting meanings, euphemisms and overwording. The following excerpt from Satia's data demonstrates his view that the court interactants constructed identities through lexical struggle.

> 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 (Satia, 2014 p .126-7).

Satia observes that during the ICC Confirmation Hearings, one of the allegations made by the prosecution against one of the suspects, and by extension all police officers was that during the PEV, the suspect (and other police officers) had failed to contain the marauding gangs of attackers because they had been partisan. The DFL (the Defence Lawyer) therefore hoped to counter these allegations and represent the police as having been professional while investigating the cases. The excerpt above therefore shows the DFL's attempts to relexicalize the witness's choice of 'general enquiries' as 'investigations', while leading one of the defence witnesses during examination-in-chief (Satia, 2014 p.125).

Satia observes that though 'enquiries' is used in reference to seeking information, its concordance listings from the BNC corpus showed that such requests are not necessarily of the investigative kind. The lawyer's attempt to reformulate his question by suggesting 'investigations' (line 77) would have most likely conveyed a more professional meaning. However, the witness appears to rebut that version as he insists that they carried out 'enquiries'. The DFL therefore reformulates 'enquiries' as 'investigations,' to index a professional identity of the witness. The witness, on the other hand, misses the point by resisting the word in line 79 by insisting that they carried out enquiries, inadvertently portraying himself as having acted unprofessionally (Satia, 2014 p.127).

In addition to lexical choices, Satia found that the interactants constructed contrasting identities in a manner that ensured that they maximized benefits to themselves. He finds that the professional interactants including the prosecution and the defence lawyers constructed professional, authoritative as well as victim identities. In addition, he found that the professional interactants also constructed the lay interactants' identities as liars, unreliable, reliable, trustworthy, criminal as well as innocent depending of the desired end. For instance, with regard to honorifics, Satia found that the professional interactants constructed contrasting identities in the following manner. To begin with, that each of the three suspects was addressed with at least two different honorifics. For example, while the Prosecution lawyers, the judges and the victims' lawyers addressed the suspect as 'Mr.' or without any honorifics, the Defence lawyers addressed the first suspect as 'Ambassador', the second as 'Commissioner' or 'General' and the third suspect as 'honourable' or 'Cabinet Minister'. Satia therefore notes that the honorifics 'Mr.' or failure to use any honorification was an attempt by the Prosecution and the victims' lawyers to indicate ordinariness and by extension, culpability. Contrastingly, he notes that the Defence lawyers' choice of honorifics of deference was a way of constructing an innocent identity. Satia therefore reaches the conclusions that besides meeting the communication needs of interactants, language is critical in the construction of identity.

I find Satia's use of corpus linguistics methods supported by a software in his data analysis effective. In this respect, he was able to reap the benefits of using corpus methods including the fact that corpus presents statistically proven evidence of the language actually used (Almutairi, 2016 p.108). In addition, Almutairi contends that the frequency data combined with lines of concordances expose the verbal environment, thus

allowing great opportunities for linguistic research including assisting researchers to discover the behavior of various lexical and grammatical features used (Almutairi, 2016 p.108). For instance, it was easier for him to offer interpretations of the words that reflected lexical struggle like ‘enquiries’ and ‘investigations’ in the proceedings as collocations from the concordance listings pointed at the commonest usage of these words, allowing him to offer insightful discussions on the same. Satia was able to overcome the limitation of corpora not reflecting the spoken language correctly due to the fact that corpora is compiled from written language (Almutairi, 2016 p.109), by deducing and exploring authentic language use in the ICC as above exemplified.

Satia’s study is related to my study in a number of ways. To begin with, part of his data is from the ICC Confirmation Hearing of the Kenyan cases with the bulk of his data being from the second case and some data from the first four days of the first case. In addition, the data were in form of audio recordings. My study’s data on the other hand, is entirely from the first case and in form of transcripts from the court records.

However, Satia’s work differs from this study in two ways. Firstly, while Satia’s study was analyzing identity construction, my study analyses agency construction. Secondly, Satia’s methodology differs from my study’s methodology. While Satia employed corpus linguistics methods, this study employed Leeuwen’s (2008) perspective to critical discourse analysis methods which offered insights to the analysis of data.

These are two very close concepts, as they are social constructs that can be used to denote both human and non-human entities. To begin with, identity is about *being* without necessarily *doing* anything, with Blommaert (2005) in Eades (2008 p.148) terming

identity as "who and what you are….." In addition, a being has potential for doing, and may involve themselves in certain social behavior (including doing something or saying something) to bring out varied portrayals of themselves (the being). For instance, individual A can be portrayed or can portray themselves as B, C, D and so on depending on the intended communication ends. Agency on the other hand, is about relating (or not relating) animate and inanimate entities to actions denoted by the verb in an utterance. For instance, event A was done. B claims that C did A, while D refutes the claims (claims that C did not do A). Agency construction therefore is an exploration of the varied ways of claiming and refuting claims of responsibility in a given event.

While these two concepts are close but distinct as explained in the above paragraph, they intersect in that one concept can be used among other linguistic resources to explain or construct the other. For instance, Satia (2014) finds that court participants used varied linguistic resources including agency manipulation in order to construct desired identities. He exemplifies by indicating that police officers were assigned the medium role by a senior police officer (SPO) who was addressing journalists concerning a shoot-out. The SPO portrayed the police officers as victims by describing them as recipients of 'fire' from criminals. He did this by claiming that criminals opened fire on police officers after being ordered to stop, portraying the suspected criminals as being culpable. These contrasting roles, that is, criminals as agents and police officers as patients, constructed a criminal identity and a victim identity for the suspects and police officers respectively.

My study, on the other hand, explores the varied ways of claiming or refuting claims of responsibility for the Kenya's 2007/2008 post-election violence during the ICC Confirmation Hearing. One of the aspects of agency manipulation that the study

documents is the use of lexical items like address terms with positive or negative connotations to construct a certain identity of the suspects questioning the agency of the alleged actions. This however, does not change the way the event had happened. For example, the Prosecutor alleges that the suspects were criminally liable for the crimes against humanity in his charges. He therefore in most instances uses the informal and the semiformal address terms (one name or two names only without honorifics) when relating the criminal activities to the suspects. The use of these terms of address helps him to construct an identity of ordinary beings capable of committing the crimes. In sharp contrast, the defence lawyers use formal address terms when refuting claims of responsibility. They employ the standard title 'honourable' with one or two names of the suspects. Although such use of the title is peculiar in a courtroom setting, it is significant because he is able to construct the identity of a noble individual. This in turn puts to question the involvement of the said individuals in the crimes, thereby indicating a shift on agency.

Besides the points of intersection between identity and agency that I have discussed in the two paragraphs above, these two are distinct concepts that are variedly constructed. Therefore, as Satia documented the different ways of constructing identity with manipulating agency being one way, my study departs from his, as it documents the varied other ways of constructing agency in the courtroom besides identity construction. The section that follows demonstrates other varied ways of agency construction as it presents review of literature about agency construction in legal settings.

2.2.3 Linguistic Agency Construction in Legal Settings

Agency in language has been studied by many scholars as demonstrated in Chapter One subsection 1.2.4. This section reviews literature on agency from empirical studies in legal settings. Among these studies include O'Connor's (2000) study about narratives of prisoners speaking of crimes and Satia's (2014) study on identity construction in legal settings.

To begin with, Satia (2014) besides examining the ICC with regard to identity construction, explored three other legal settings namely police interviews, the prison and local courtrooms where he found that agency shifting contributed to identity construction. To reach the findings, he collected three sets of data. The first set of data was police statements' data in the form of statements made at the police stations by complainants, suspects, witnesses, police officers or investigating officers in cases in question, and were generally recorded and used as materials for examination-in-chief and cross-examination in court. In addition, he collected press statements made by senior police officers to journalists at scenes of crime. These were generally used as materials for TV news bulletin and were available as You Tube videos. The second set of data was from the local courts consisting of trial proceedings from the Resident Magistrates courts. Finally, there was the prison data that constituted thirty-four letters written by inmates in various jails in Nairobi to a religious leader seeking his assistance or thanking him for the assistance already accorded to them.

To collect the police statements, Satia approached some lawyers with a request to allow him to access the statements under their custody and these lawyers allowed him to access their files. Data from the local courts were collected after he sought permission from the

registrar of the High Court to record proceedings. The permission was granted on condition that he did so incognito. He therefore recorded twenty-six hours of proceedings of varied cases. In addition, Satia carried out seven interviews with; two magistrates, two prosecutors and three lawyers in order to clarify issues on courtroom proceedings that were not clear. The letters from inmates were photocopied from a Non-Governmental Organization's (NGO) file upon being allowed access. Thirteen letters were from female inmates, twenty from male inmates and one was a letter that had been written to a government minister through the religious leader. The letters covered an eight-year period from January 2002 to 2009.

Among his findings was that in police interviews, suspected criminals were positioned in agentive roles while police officers presented themselves in the patient/medium or goal participant role as the example, below demonstrates.

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) (Satia, 2014 p.148).

In this excerpt a Senior Police Officer (SPO) was reporting a robbery that had taken place at a supermarket with the police officers having shot and killed the suspected criminals. The journalist covering the incident reported that police officers had ordered the suspects to identify themselves but instead of identifying themselves as ordered, a shootout ensued. In this excerpt, the SPO portrays the suspected criminals as the agents in the shooting by reporting 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.

With regard to the prison setting, Satia notes that only few inmates provided details of the criminal incidents that had led to their incarceration. He finds that the few assumed a non-agentive role as they described their role in crime as the following example demonstrates.

> 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] (Satia, 2014 p.152)

From this narrative, Satia finds the robbers and the inmates assume contrasting roles. While the robbers are positioned in an agentive role, 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), 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 but she is eventually arrested, charged and jailed 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, Satia contends that it would seem surprising that she ended up in jail.

Drawing from these findings among others, Satia concludes that constructing identity is largely dependent on the specific contexts of interaction and that the legal system in place affects how identities are constructed.

I find Satia's methodology effective in a number of ways. First, he approached the NGO office with a focus on what he was seeking. Although the religious leader in charge of the NGO does not find the materials he was looking for, Satia was given the files to search for the materials himself, which he does not find. However, he found the inmates' letters that turned out to be invaluable for his research. This kind of flexibility worked in his favour. Secondly, he states that the inmates whose letters formed part of his data were from four different countries: Kenya, Uganda, the Democratic Republic of Congo and the United States of America. Though Satia does not state whether the choice of the inmates from diverse backgrounds was by design or it was a coincidence, the combination goes a long way in increasing the reliability of his findings about identity construction in prison. Thirdly, besides his main data (police statements, recorded courtroom proceedings and letters from inmates), he goes further and carries out interviews with court officers to corroborate the information that he gets from the proceedings and the police statements. This also increase the reliability of his data and findings.

The section that follows demonstrates other varied ways of agency construction as it presents review of literature about agency construction in a prison set up.

Satia's study is related to O'Connor's (2000) study with regard to his prison setting. O'Connor, also carried out a study in a prison setting where she looked at how inmates speak of their lives, particularly how they speak of crimes in a maximum-security prison in the USA. The objective of her study was to use the tools of discourse analysis to connect the acts of crime with the acts of telling, by examining the words, structures and agentive positionings used in the narratives by prisoners. To achieve this objective, she conducted 19 audio taped in-depth interviews with prisoners in a maximum security institution where she had taught for 6 years. She also used data from two spoken narratives elicited during small group-work in class. She had designed her open ended interview schedule in a way to elicit narratives than to get any specific answers and she analysed the narratives by looking at units as small as the pronoun, and as large as whole stories embedded within other stories in an effort to gain more understanding of how prisoners viewed their acts and ultimately themselves.

It is in this study that she reaches a definition of agent, agency, and agentive, as concepts that are used to detail how subjects are (or are not) engaged, personally and morally, in relation to the action depicted (O'Connor, 2000 p.3). Further, O'Connor observes that agency is realized along a three-line continuum that includes claiming agency, deflecting agency and problematizing agency. She contends 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 (O'Connor, 2000 p.50).

Among O'Connor's findings is that prisoners create a distancing when speaking of crimes. She adds that distancing in evaluative speech is present where agency is being recognized or deflected by the speaker (p. 7). The following are two examples of distancing from her data; "I caught a murder charge" and "I was picked up for robbery". She contends that most prisoners used such sentences to deflect themselves as the actors from the acts and she posits that this kind of distancing distinguishes the inmates' language from the ordinary way of speaking. This is because ordinarily speaking one would yield such utterances as; "I murdered someone" and "I robbed a store".

In addition, O'Connor posits that agency is not simply active versus passive relationships between human agents or patients/experiencers and the verbs humans use to recount their action, but that agency goes deeper into the issue of a moral stance on one's actions. She therefore postulates that speakers grammatically present their personal agency and position themselves as responsible (or not) by using personal pronouns "I", "we" and "you". Further, she adds that speakers use active, passive, or passivizing verb phrases that signal their desired positioning in relation to their actions, their commentaries on the information state and their evaluation of the past acts.

To be able to conduct a successful study in such an institution with prisoners as the main respondents, I found O'Connor's methodology to be effective for the following reasons: Firstly, she was able to use her teaching in the maximum security prison to collect data from the prisoners as a quasi-insider. This might have helped her to get detailed and frank accounts of inmates' lives because she was known to them (either personally from the classroom or by reputation as a teacher and not an employee of the prison) during sessions facilitation. Secondly, she used a former inmate who was working inside the

prison as an educational aide to the literary programs at the time of the study. The former inmate knew all the inmates quartered in his cellblock and he helped the researcher to be less invasive on the inmates by assisting in contacting the inmates. Finally, the researcher made the prisoners sign a form, which she had written to assure them of confidentiality and to indicate that the interviews were solely for a linguistic research. This might have helped the inmates to gain confidence and divulge information about their lives.

O'Connor's study is related to my study in a number of ways. First, both are studies within specific legal contexts with O'Connor's being within the prison setting and my study the courtroom setting. Secondly, while the two studies examine the notion of agency, O'Connor's respondents were already convicted criminals while in my study; a legal case was ongoing and the court was conducting a Confirmation-of-Charges Hearing to establish whether the suspects' case should or not go to a full trial. In connection with this, O'Connor's study was examining agency from individual prisoner's point of view, while my study examines agency manipulation both from the individual suspect's point of view as they give their personal accounts in the opening statements, and also from the lawyers perspective. It will be significant therefore to examine whether agency construction by convicted criminals happens in the same way as with suspects of a crime.

2.3 Theoretical Framework

This section presents Leeuwen's (2008) Representation of Social Actors theoretical framework that informs the study. The framework provides a clear tool for the analysis of a range of issues in Critical Discourse Analysis (CDA) and shows the diverse ways in which humans can be represented in Language. In this study, it was used to show how the legal and lay court participants employed language to assign innocence or guilt to

particular individuals in a courtroom proceeding. The section discusses the framework and offers a diagrammatic representation of the theory in sub section 2.3.1. The section ends with an account of how the framework was operationalized in the study in sub section 2.3.2.

2.3.1 Representing Social Actors

Leeuwen (2008) documents the varied ways in which participants (actors) of social practices can be represented in Language. His account of the representation of social actors is grounded in linguistics. He therefore draws up a discourse-semantic inventory of the ways in which social actors can be represented and establishes the sociological and critical relevance of his categories before presenting the linguistic realizations of the categories. He focuses on sociological categories such as "nomination" rather than on linguistic categories like "nominalization" (Leeuwen, 2008 p.25). He justifies his course in two ways: first, he cites a paucity of bi-uniqueness in language where he observes a lack of a neat fit between sociological and linguistic categories (Leeuwen, 2008 p.24). Secondly, he believes that meanings belong to culture rather than to language and cannot be tied to any specific semiotic.

In order to discuss the framework, Leeuwen uses two texts. The first is "Our Race Odyssey," a text that had been published as the leading feature article in "Spectrum," the Saturday supplement of an Australian newspaper, on 12th May 1990. This text draws on a representation of the social practice of immigration itself, as institutionalized in Australia, as well as on the representation of other social practices (like writing government-commissioned reports on immigration, or conducting public opinion surveys) which serve to legitimize (or delegitimize) it. The second text is a corpus drawn from my "First Day at

School" where he studies the representation of schooling. Leeuwen (2008) contends that the framework is premised on two main tenets: inclusion and exclusion. They are discussed in the sub sections that follow.

2.3.1.1 Exclusion

Exclusion is the leaving out or the non-representation of some social actors who are in reality part of an action or event or practice (Leeuwen, 2008, 2009). Representations leave out social actors to match with the interests and purposes of the intended readers. In addition, exclusions may be innocent details the reader is assumed to already know or which are deemed irrelevant in the context or problematic, preventing a full understanding of what happens or has happened (Leeuwen, 2008 p.28, 2009 p.282). Exclusion sometimes sees to it that both the social actors and the activities are left out, leaving no traces in the representation. For instance, while studying the representation of schooling, Leeuwen finds that male parents were radically excluded from texts written for teachers, but are present in many children's stories, even if only briefly. They were included during the breakfast preceding the first school day, or as givers of schoolbags, pencil cases, and other school necessities while children's stories aimed at a mass market sometimes included school support staff, but excluded the principal. With such examples of exclusions, Leeuwen observes that systematic exclusions are always of interest as they can play a role in a critical comparison of different representations of the same social practice (Leeuwen, 2008 p.29). The subcategories of exclusion that Leeuwen identifies are suppression and backgrounding as discussed in the subsections below.

Suppression

Suppression is the complete leaving out of social actors, in a way that they cannot be inferred in the text (Leeuwen, 2008). Suppression is realized through passive agent deletion, through nonfinite clauses functioning as grammatical participants, through nominalizations and process nouns (Leeuwen, 2008 p.29).

In the case of passive agent deletion, Leeuwen in the sentence; 'In Japan similar concerns are being expressed about a mere trickle of Third World immigrants', posits that the reader is only told that "concerns are being expressed," but not who expresses them. This sentence is therefore in the passive voice and the agent excluded. In addition, Leeuwen exemplifies a nonfinite clause functioning as a grammatical participant as in, 'to maintain this policy is hard'. Leeuwen contends that the infinitival clause "to maintain this policy" functions as the carrier of an attributive clause, allowing those responsible for the "maintenance" of the policy to be left out.

With regard to nominalization as a form of suppression, actions are made into nouns, represented as things. For instance, in 'the level of support for stopping immigration altogether was at a post-war high', 'Support' and 'stopping' function as nominals, allowing for the exclusions of the social actors responsible for the 'support' and for 'stopping.' Processes, on the other, hand may be realized as adjectives, as in, 'Australians feel they cannot voice legitimate fears about immigration.' In this sentence, the social actors responsible for 'legitimizing' the 'fear' are left out.

Backgrounding

Backgrounding is a less radical form of exclusion because the social actors who may not be mentioned in relation to a particular action, may be pointed out elsewhere in the text, enabling the reader to infer the referent (Leeuwen, 2008 p.29). In this case, the social actors are pushed into the background as opposed to being totally excluded. For instance, 'the rioting in Salisbury townships on Sunday, and the shooting by police, were typical of dozens of such incidents.' In this sentence, the actions 'rioting' and 'shooting' are nominalized. With regard to the nominalization of the action 'rioting,' there is no reference to the social actors responsible in the sentence, but the larger text provides the referent. In the action 'shooting,' on the hand, those responsible – the police – are mentioned using the –by phrase.

In addition, backgrounding can be realized using passive clauses where the agent may be included as a circumstance, as in, 'thirteen demonstrators were killed by the police,' or may be deleted as in, 'thirteen demonstrators were killed.' In this second instance, the deleted element can be inferred from the text, that the action of killing the demonstrators was executed by the police.

2.3.1.2 Inclusion

Inclusion is the representation of social actors as performing certain roles (Leeuwen, 2008 p. 32) that may be active or passive with respect to a given action. The categories identified for the representation of active and passive roles include grammatical participant roles (transitivity structures), genericization vis-à-vis specification, indetermination vis-à-vis differentiation, nomination vis-à-vis categorization,

functionalization vis-à-vis identification, personalization vis-à-vis impersonalization and over determination as discussed in the following sub sections.

Participation

This is an aspect of varying the grammatical participant roles to either activate or passivate social actors. Leeuwen (2008) contends that activation occurs when social actors are represented as 'the active, dynamic forces in an activity,' while passivation is said to occur when they are represented as 'undergoing the activity, or as being at the receiving end of it.' On the one hand, activated social actors are coded as 'actors in material processes' for example, children seek out aspects of commercial television as a consolidation and confirmation of their everyday lives.' In this sentence, 'children' are the actors in the material process of 'seeking out'. In addition, they are 'assigners in relational processes,' as in 'the immigrants are the suspects' and sensers in mental processes as in, 'they felt besieged by immigration.' Here, the Australians are activated as "sensers" in the mental process of 'feeling' (p.33).

On the other hand, passivated social actors are realized as 'goal in a material process', 'phenomenon in a mental process', carrier or circumstance in a relational process. In the cited examples in the above paragraph, 'aspects of commercial television', 'besieged' and 'the suspects' are the goal, the phenomenon and the carrier in material, mental and relational processes, respectively. Participation is realized through transitivity structures.

Genericization vis-à-vis Specification

This is the choice between generic and specific reference whereby social actors can be represented as classes or as specific identifiable individuals. In English, generic reference

is usually realized by the plural without an article thereby playing a large role in establishing “us” and “them” groups (Leeuwen, 2009 p. 282). For instance, in ‘non-European immigrants make up 6.5 per cent of the population’, the distinction of “us, Europeans,” and “them, non-European immigrants” is made. Generic reference may also be realized by the singular with the definite article as in ‘the child’ in ‘allow *the child* to cling to something familiar during times of distress’ or indefinite article as in ‘a child’ in ‘maybe a child senses that from her mother’ (Leeuwen, 2008:36). Leeuwen adds that both the generic and specific reference may be realized through mass nouns with or without the article.

Leeuwen identifies aggregation, collectivization, association and dissociation as four kinds of generic reference. Aggregation is the quantification of groups of participants, treating them as numbers using definite or indefinite quantifiers, while collectivization does not, as with ‘a number of critics’ in “A number of critics want to see our intake halved to 70,000” and ‘forty percent of Australians’ in “forty percent of Australians were born overseas” (Leeuwen, 2008 p.38).

Leeuwen posits that association refers to groups formed by social actors (either generically or specifically referred to) which are never labelled in the text and identifies parataxis as the commonest realization of association. He cites an example, ‘they believed that the immigration program existed for the benefit of politicians, bureaucrats, and the ethnic minorities, not for Australians as a whole’ where “politicians, bureaucrats, and ethnic minorities” are allied to form a group opposed to the wellbeing of the Australians (Leeuwen, 2008 p.38).

Indetermination vis-à-vis Differentiation

According to Leeuwen (2008), indetermination is the representation of social actors as unspecified anonymous individuals or groups, realized by indefinite pronouns (somebody, someone, some, some people) used in nominal function as well as generalized exophoric reference. In the case of the latter, Leeuwen contends that it endows social actors with 'a kind of impersonal authority, a sense of unseen, yet powerfully felt coercive force' (p. 40).

Differentiation on the other hand explicitly distinguishes an individual or groups of social actors from the actor or group, creating the difference between the "self" and the "others" or between "us" and "them". Leeuwen cites an example from a middle class Australian daily:

'And though many of the new migrants are educated high achievers from places like Singapore and Hong Kong — uptown people in American terminology — others are downtown people from places like Vietnam, the Philippines and Lebanon'(Leeuwen, 2008 p.40).

From this example, the readers of this newspaper are addressed as 'uptown' people who do not want any 'downtown' people to settle in their neighborhood.

Nomination vis-à-vis Categorization

Leeuwen (2008) refers to nomination as the representation of social actors in terms of their unique identity while categorization refers to their representation in terms of identities and functions they share with others. Leeuwen underscores the importance of

investigating the social actors who are, in a particular text, categorized and who are nominated. He notes that proper nouns, which can be formal (surname only, with or without honorifics), semiformal (given name and surname, or informal (given name only) (Leeuwen, 2008 p. 41) realize nomination. In addition, when a single social actor occupies a given rank, honorifics are added to the standard titles or ranks. For instance, in "in 50 years, Dr. Price says, 26 percent of the Australian population will be Asian", 'Dr.' is an honorific added to the name 'Price'. Further, personal or kinship relation terms are added to proper names to indicate affiliations, like 'Auntie', or 'sister'.

With regard to categorization, Leeuwen identifies two types of representations including functionalization and identification. Reference to social actors in terms of an activity for instance an occupation or role, is functionalization is realized in three ways. To begin with, by a noun made from a verb, through suffixes such as -er, -ant, -ent, -ian, -ee, as in, 'employer,' 'congregant,' 'establishment,' 'electrician,' or 'absentee.' Secondly, a noun, which designates a place or tool closely associated with an activity, realizes functionalization through suffixes such as –ist or -eer, for instance, 'novelist' or 'auctioneer.' Thirdly, the compounding of nouns denoting places or tools closely associated with an activity, such as 'man,' 'woman,' 'person,' 'people' as in businessman, realizes functionalization (Leeuwen, 2008 p.42).

With regard to identification, social actors are defined in connection with what they are and not what they do. For instance, in connection with gender, background, age, affluence, race, ethnicity, class, religion, sexual orientation, or with respect to personal, kinship, or work relations and finally, regarding their unique physical features which can

be realized by nouns denoting physical characteristics like ‘brown-eyed,’ ‘redhead,’ ‘handicapped,’ or by adjectives like ‘bald’ or ‘short’ (Leeuwen, 2008 p.44).

Personalization vis-à-vis Impersonalisation

The categories discussed above – participation through transitivity structures, genericization and specification, indetermination and differentiation, nomination and categorization - personalize individuals, representing them as humans, and their realization through personal or possessive pronouns, proper names, or nouns (and sometimes adjectives) include the feature ‘human’. However, Leeuwen (2008) observes that social actors can also be impersonalized and can be depicted through other means, like abstract nouns or by concrete nouns whose meanings exclude the semantic feature ‘human’ (p.46). Impersonalization facilitates the backgrounding of an individual’s identity, their role, apportions impersonal authority to an action as well as positively or negatively depicting a person’s action or utterance (Leeuwen, 2008 p.47).

The two types of impersonalization that Leeuwen identifies are abstraction and objectivation. He posits that abstraction occurs when social actors are represented by means of a quality assigned to them by and in the representation (Leeuwen, 2008 p. 46). For instance, in the sentence, ‘Australia is in danger of saddling itself up with a lot of unwanted problems,’ the term ‘problems’ is used to refer to ‘the poor, black, unskilled, Muslim, or illegal immigrants’ assigning the quality of being problematic to them as well as using the this quality to denote them. Leeuwen contends that abstractions are not innocent as they enhance the interpretation and evaluation of the qualities abstracted from their bearers.

With regard to objectivation, social actors are represented with reference to a place or thing closely associated either with their person or with the action in which they are represented as being engaged and it is realized by metonymical reference (Leeuwen, 2008 p.46). In this regard, three types of objectivation including spatialization, utterance autonomization, and instrumentalization are identified. As far as spatialization is concerned, social actors are represented by means of mention of a place with which they are, in the particular context, closely related, for instance, the substitution of "Australians" by "Australia" in "Australia" was bringing in about 70,000 migrants a year" (Leeuwen, 2008).

Regarding utterance autonomization, social actors' representation is through reference to their utterances, where a type of impersonal authority is conferred on the utterances. For instance, one would say, 'the report noted that the level of support for stopping immigration was at a post-war high".

Finally, instrumentalization is a form of objectivation in which social actors are represented by means of reference to the instrument with which they carry out the action in which they are represented as being engaged. For instance in "A 120 mm mortar shell slammed into Sarajevo's marketplace" (Leeuwen, 2008 p.46). The varied aspects of this framework can be represented as shown in figure 1 below.

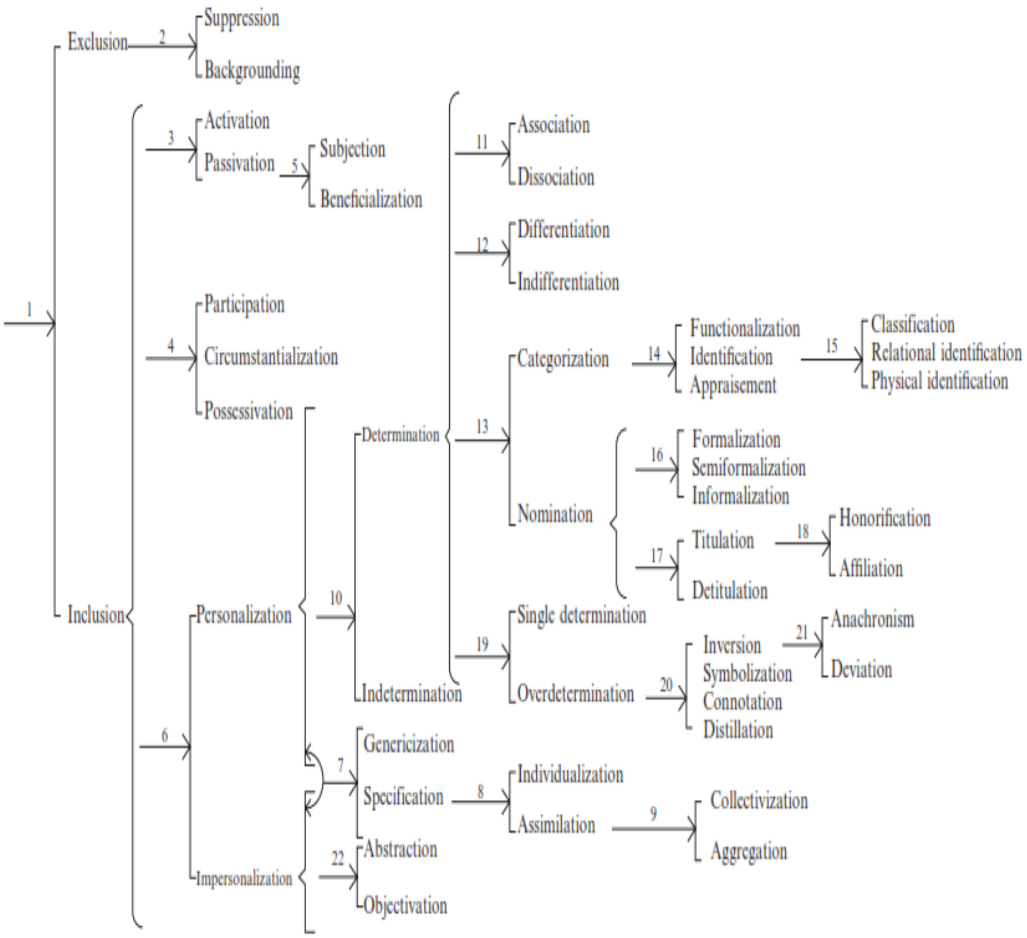

Figure 1: Social Actors Network (Adapted from Leeuwen (2008 p.52).

The study adopts Van Leeuwen's framework because the study's focus, agency construction, relates directly to how individuals are represented in texts and talk. The framework was therefore appropriate for the study as it stresses the need to highlight systematic exclusions and inclusions, which can and do play roles in a critical comparison of different representations of the same social practice (Van Leeuwen, 2008:29). In this regard, the use of the theory in this study helps to show how one event, the PEV, was representaed significantly differently by the different court interactants to achieve desired

communicative needs. In addition, the framework helps to demonstrate how the representation of social actors and their actions are intrinsically constructed through the power of choice – the choice of how to creatively use words to portray one reality over another. In the case of this study, choices in construction of agency that in turn indicates the construction and deconstruction of culpability during evidence in a courtroom.

2.3.2 The Operationalization of the Theory

In the explication of the framework, Leeuwen seeks to answer two complementary questions: 'who is depicted as 'agent' ('actor') who as 'patient' ('goal') with respect to a particular action?' He underplays the need for equivalence between the roles that social actors can essentially play in social practices and the grammatical roles they are given in discourses because representations can reallocate roles as well as the social relations between participants (Leeuwen, 2008 p.32). This underscores the relevance of the framework in showing how language is used to construct the culpability or innocence of individuals in Confirmation-of-Charges trials where the sufficiency of evidence for a finding of guilt is evaluated. I therefore used the framework to guide me in the selection of the linguistic categories that enabled the Prosecution and Defence lawyers as well as the suspects to represent different actors and events of the PEV variedly during the Confirmation of Charges Hearing in the construction of agency. The theory was also helpful in guiding how these categories were explained.

In the operationalization of the theory. I therefore compartmentalized the study into two main sections – specific reference, general reference and the theory informed how I selected specific linguistic items for discussion in the three major categories. With regard to specific reference, I selected pieces of utterances from my data that organized the

grammatical participant roles and nomination strategies variedly. Regarding grammatical participant roles, I selected pieces of utterances that enabled Prosecution and Defence lawyers to assign varied actors in the PEV discourses such roles as agents, patients, carriers of certain attributes, sayers and sensers in the diverse material, relational, mental and verbal processes. With regard to the nomination strategies, I extracted from the data excerpts showing different variations of the terms of address chosen by the Prosecution and Defence lawyers for discussions.

With regard to general reference, I selected excerpts that enabled the Prosecution and the Defence lawyers to delete human agents and nominalize actions thereby excluding given actors while coding others as being on the receiving end of the PEV. In addition, I examined how the lawyers coded events of the PEV generally impervious to human agency.

I examined and discussed every choice of the linguistic item identified in the above-mentioned process from varied perspectives including linguistic, sociological, legal and cultural.

One of the weaknesses of the theory was that it centres on how individuals are represented by others, while in the study, there was an aspect of how individuals represented themselves in court that the theory could not address. I therefore endevoured to select excerpts from the data where suspects were giving subjective accounts of the PEV. From the excerpts, I isolated linguistic items that were prominent in the suspects' spechees to represent themselves variedly in a bid to background agency. They were first

person pronoun and nouns denoting kinship relations. I then endevoured to discuss the motivations for the various choices and the implications of the choices at the hearing.

For instance, from the data, one of the suspects represented himself using the kinship term ‘arap’. I evaluated the meaning of ‘Arap’ from the cultural perspective, and examined the implications of such a choice in the courtroom setting, examining whether or not it may have been effective. As in, ‘Arap’ is a patronymic title, meaning ‘son of’ in Kalenjin (Hollis, 1909; Okal, 2018). Its use in Kalenjin community helps to praise one’s ancestry. The choice of this address term by the third suspect, who was a Kalenjin, was therefore to increase his self-worth in the eyes of the court by communicating that he was well bred. This was in turn a way of decreasing his blameworthy. However, the study questioned the effectiveness of this strategy at the hearing. This is because it was used in an international courtroom setting that had a European for a presiding judge. Therefore, the judges may not have had access to the culture and the language of the Kalenjins and may not have interpreted the use of the kinship term ‘Arap’ as intended by the suspect.

By addressing the theory’s weakness in the way explained above, the study contributes to the extension of the theory.

2.4 Summary

This chapter has presented the literature that was reviewed in the course of this study. The chapter begins with empirical literature. This constitutes literature on lexical choices in the courtroom. The reviewed empirical literature on lexical choices show that the legal participants carefully and deliberately choose strategic lexical items in order to advance their claims, sometimes to the disadvantage of the lay people involved. Consequently,

reviewed empirical literature on ICC trials is presented where the studies that take a legal perspective show that linguistic and cultural diversity present an array of insights that affect the justice process. Those that take a linguistic perspective on the other hand demonstrate that both legal and lay court participants have access to a number of linguistic resources that enable them to construct desired identities. Further, reviewed literature on agency in legal settings show that the inmates position themselves in a medium/patient role, in a bid to obfuscate agency. The second section of the chapter has presented the theoretical framework that informs the study, titled, 'Representing Social Actors.' The framework is premised on an analysis of inclusion and exclusion of social actors in discourse and the underlying socio-political motivation for such in(ex)clusions. The framework was appropriate for this study as it stresses the need to highlight systematic exclusions and inclusions which can and do play roles in a critical comparison of different representations of the same social practice. The chapter that follows discusses the research design and the methodology employed to carry out the study.

CHAPTER THREE

RESEARCH DESIGN AND METHODOLOGY

3.1 Introduction

This study sought to examine the varied ways in which the professional and lay court participants employed language to construct agency during the Confirmation of Charges Hearing involving the first three ICC suspects of the Kenya's 2007/2008 post-election violence. In this endeavor, the study was was guided by the following specific objectives:

i. To examine how the Prosecution lawyers employed transitivity structures and address terms to foreground agency at the trial.

ii. To evaluate how the Defence lawyers used agent deletion strategies, collective nouns and nouns denoting groups of people as well as nominalization to background agency at the trial.

iii. To examine how the suspects used the first person pronouns and nouns denoting kinship to distance themselves from criminal liability at the trial.

This chapter presents the design of the study and outlines a systematic methodology that was employed under four headings. Section 3.2 follows this introduction and discusses the research design. It is followed by section 3.3 that presents the study's population, and section 3.4 that discusses the sampling procedures. The chapter ends with section 3.5 that discusses how the data for the study were accessed, collected, analysed and presented.

3.2 Research Design

This is a qualitative study that adopted a case study design. A qualitative study is that which is focused on describing, understanding and clarifying a human experience (Dornyei, 2007 p.126). A case study on the other hand is a comprehensive research strategy that studies an issue explored through one or more cases within a bounded system, that is, setting and context (Creswell, Hanson, Clark Plano, & Morales, 2007 p.245). This view of a case study is supported by Hancock & Algozzine (2006 p.9) when they contend that case studies are intensive analyses and descriptions of a unit or system within a specific space and time constrains. In addition, Dornyei (2007) sees a case study as a study of the 'particularity and complexity' of a single case and defines cases as people, a programme, an institution, an organization, a community or anything that constitutes a single entity with clearly defined boundaries (p.151). The case study design was ideal for this study because the ICC - Kenya Case One Confirmation of Charges Hearing represented a single event that happened within a specific timeframe (1st September 2011 to 8th September 2011) in the confines of the ICC's Pre-Trial Chamber III. In addition, this study's questions are 'how' questions and Gray (2004) contends that the case study is used when a 'how' or 'why' question is being asked about a contemporary set of events over which the researcher has no control (p. 124).

Dornyei (2007) contends that there are three types of case studies. The intrinsic case study, the instrumental and the multiple/collective case study. The intrinsic case study is undertaken to understand the intriguing nature of a particular case. That is, the case is of interest not because it illustrates something or represents other cases but because of its own value or speciality (Dornyei, 2007 p.152). He adds that the instrumental case study is

intended to provide insight into a wider issue while the actual case is of secondary interest as it facilitates our understanding of something else. Finally, Dörnyei regards multiple case studies as instrumental case studies extended to several cases.

This study adopted the instrumental case study design because an examination of the ICC case against the Kenyan suspects would contribute not only to an understanding of language use in the courtroom, but also to an understanding of language use in international criminal justice systems as well as provide insights into the ICC institution. Secondly, a linguistic analysis of the case would facilitate a better understanding of Kenya's socio-politics. This is because the ICC case (s) shaped the Kenya's social and political environment differently as attested by Gachigua (2015); Kagwanja (2015); Wolf (2015) in Njogu & Wekesa (2015) making it a case of socio-political importance to the African continent and beyond as it was a first time Kenyans were subjected to an international criminal justice system.

3.3 Study Population

The study's population was the transcripts of the ICC cases against the Kenyan defendants. There were two cases involving Kenyan suspects at the ICC and therefore the transcripts for the sampled case - first case - formed the population of the study. The transcripts were seven in total but only five were used in this study as will be explained later in this chapter. The section that follows outlines the sampling procedures that were employed to select the case for analysis.

3.4 Sampling Procedures

The study adopted two sampling procedures: the purposive sampling procedure and the intensity sampling procedure.

3.4.1 The Purposive Sampling Procedure

I purposively sampled Case One from the two sets of cases at the International Criminal Court involving Kenyan suspects regarding the Kenya's 2007/2008 post-election violence. The case involved two cabinet ministers and a radio presenter who had each been accused of three counts of crimes against humanity related to murder, forcible population transfers, and persecution. The second case, on the other hand, involved the then finance minister, the then secretary to the cabinet and the former police commissioner who had each been accused of five counts of crimes against humanity related to murder, forcible population transfers, rape, persecution and other inhumane acts.

The reason for purposively selecting Case One was that I envisioned that the narratives from the case would present significant insights with regard to agency as contrasted with the second case. This is because the nature of the case directly correlated with the study's focus. That is, in Case One, the prosecutor had claimed that the alleged perpetrators had planned for the violence before the elections were held as opposed to Case Two where the Prosecution had accused the alleged perpetrators of carrying out retaliatory attacks.

3.4.2 The Intensity Sampling Procedure

This form of sampling was employed to select specific excerpts for discussion from the purposively selected Case One. Intensity Sampling Procedure is a form of a

nonprobability sampling that involves looking for information-rich cases, and ones that are more typical than those at the extremes (Gray, 2004: 325). This sampling procedure was employed during the selection of segments of the data to form the units of analysis, that were subsequently used for discussion and interpretation at the data analysis stage as will be discussed in the data analysis subsections. For instance, with regard to general reference, I selected pieces of excerpts where the court participants were referring to either people or events during the PEV in general terms from which I discussed the linguistic strategies that facilitated the general reference. Such are the cases that I considered 'information-rich' in the study.

3.5 The Data

The data for this study were in form of verbatim transcripts of the Confirmation of Charges Hearing of the Kenya Case One that took place between the 1st of September 2011 to the 8th of September 2011. The audio-recordings for the entire hearing were not accessible to the researcher making the verbatim transcripts the only form of the data for the study. I found the transcripts sufficient and appropriate to address my research questions. This resonates with Eades' (2010) observation that failure to record some paralinguistic aspects such as pauses, and overlapping talk does not render court transcripts useless for linguistic research, adding that it all depends on the research questions being addressed (p.36). In addition to this, I found the data to be appropriate because court transcripts are reliable official verbatim records that can easily be verified.

3.5.1 Access to Data

The ICC Trial Chamber V made a decision concerning the publicity of its materials on 24thSeptember 2013. The Decision, ICC-01/09-01/11-981, dated 24 September 2013 and

the instructions contained in the email dated 24 April 2014, stated that the version of the transcripts with its reductions become public.

With this information, I searched for the materials on the ICC's website but I did not find them. I therefore wrote to the ICC's Public Affairs Unit requesting for the transcripts. I wrote five subsequent emails following up and reminding the Public Affairs Unit of my request and on my fifth email, the ICC's Public Affairs Unit wrote back and attached the transcripts of the entire Confirmation Hearing and audio recordings of the opening statements for the same. The emails are attached as Appendix 1. The next subsection discusses how the study's raw data was extracted from the email attachments.

3.5.2 Data Collection Procedures

Document examination method was used to gather relevant data to answer the study's research questions. This is a method that involves a review of existing documents, in this case, the court's transcripts. Document examination, according to Hesse-biber & Leavy (2010), is an 'integrated method, procedure and technique for locating, identifying, retrieving and analyzing documents for their relevance, significance and meaning' (p.128). These scholars add that document examination method enables the researcher to interactively explore an 'initial body of documents to simultaneously check out any broad ideas or concepts, as well as to begin an immersion into both explicit and subtle symbolic representation, messages and images that are relevant for the task at hand' (p.148).

There are four strengths and two weaknesses that are associated with document examination as a method of data collection. The first strength is associated with documents being stable. As such, they can be reviewed and reviewed repeatedly.

Secondly, documents are unobtrusive since they are not created because of the case study. The third strength is that documents are exact as they contain precise details of names, positions as well as events and finally, they are characterized by broad coverage - long span of time, events and settings (Cohen, Manion, & Morrison, 2007 p.475; Gray, 2004 p.135).

The weaknesses associated with documents include access, that is, problems of confidentiality in many organizations. In this study, access to the court transcripts was not a weakness as the ICC operates on the principle of publicity except for some sessions that are held in private as explained in subsection 4.5.1. The second weakness associated with document examination stems from documents reflecting the author bias (Gray 2004 p.135). This may have been a weakness during the transcription of the verbatim transcripts as the proceedings were ongoing. However, the transcripts became the official court records and this study used the materials as received from the court. The study endevoured to accurately represent the information in the transcripts by extracting precise passages and using them for the discussion of varied linguistic aspects in the different analysis sections.

To be able to carry out document examination of the ICC-Kenya Case One transcripts, I downloaded the verbatim court transcripts from the ICC's Public Affairs Unit email attachment (see section 3.5.1 on Access to Data). Ten documents in the PDF Format were downloaded. From the ten, three did not contain any useful information for the study as they contained introductory information as below.

Text 1
1 International Criminal Court
2 Pre-Trial Chamber II - Courtroom I
3 Presiding Judge Ekaterina Trendafilova, Judge Hans-Peter Kaul and
4 Judge Cuno Tarfusser
5 Situation in the Republic of Kenya - ICC-01/09-01/11
6 In the case of the Prosecutor versus William Chacha,
7 Henry Muita, and Joshua Kerago
8 Ex Parte Hearing - Prosecution, Chacha Defence, and Registry only
9 Thursday, 8 September 2011
10 The hearing starts at 6.30 p.m.
11 (Closed session)
12 (Expunged)

The table below shows the distribution of the transcripts and the nature of the proceedings in the various days.

Table 1*: The Distribution of the Court Transcripts across the Seven-Day Hearing*

Transcript date	**Nature of the proceedings**	**Transcript size (pages)**
1st Sept 2011	Opening statements from all the parties	116
2ndSept 2011	Evidence submission by Prosecution lawyers and Defence lawyers for the first suspect	162
3rdSept 2011	Questioning of two witnesses representing the first suspect by all the parties	104
5th Sept 2011	Evidence submission by the Defence lawyers for the second suspect and that of the third suspect	81
6thSept 2011	Continuation of evidence submission by the Defence team for the third suspect. Questioning of the first witness representing the third suspect by all the parties	90
7thSept 2011	Questioning of the second witness representing the third suspect by all the parties	91
8thSept 2011	Closing statements from all the parties	78
	Total number of pages	**722**

Table 1 above shows the date of each transcript, the stage of the proceedings in each day and the number of pages that made up each transcript. The table also shows that the combination of the seven transcripts created a 722- page document. The number of transcripts represented the number of sessions that were held on each day. The court did not sit on the 4th of September 2011 as it was a Sunday. On five days (1st, 2nd, 3rd, 6th and 7th), the court held one open session on each day while on two days (5th and 8th September), the sessions were more than one. On the 5th of September 2011 two sessions were held with the first being a closed session and the second open, and on the 8th of September 2011 three sessions were held with the first and third being closed sessions while the second an open one. The content from the closed sessions only contained the preliminary information as explained earlier.

I opened and skimmed through each transcript and made a number of observations. The first was a realization that I was dealing with massive data. Secondly, that numbering of lines in each transcript had been done repetitively per page with each page starting from number one. The third observation was that there were procedural matters of the court including such preliminary information as the one in the text above that appeared repetitively at the beginning of each session. Fourthly, that the questioning of witnesses' sessions did not have significant content with regard to agency construction, and I therefore discarded the transcripts for the third and the sixth days as well as a part of the fifth day's transcript. The final realization was that I needed to transform some aspects of the remaining transcripts to be able to extract useful data for the study. This involved the process of data coding as described in the subsection that follows.

The relationships between data collection, data coding, data analysis, the drawing of conclusions and the verifying of data are illustrated in Figure 2 below.

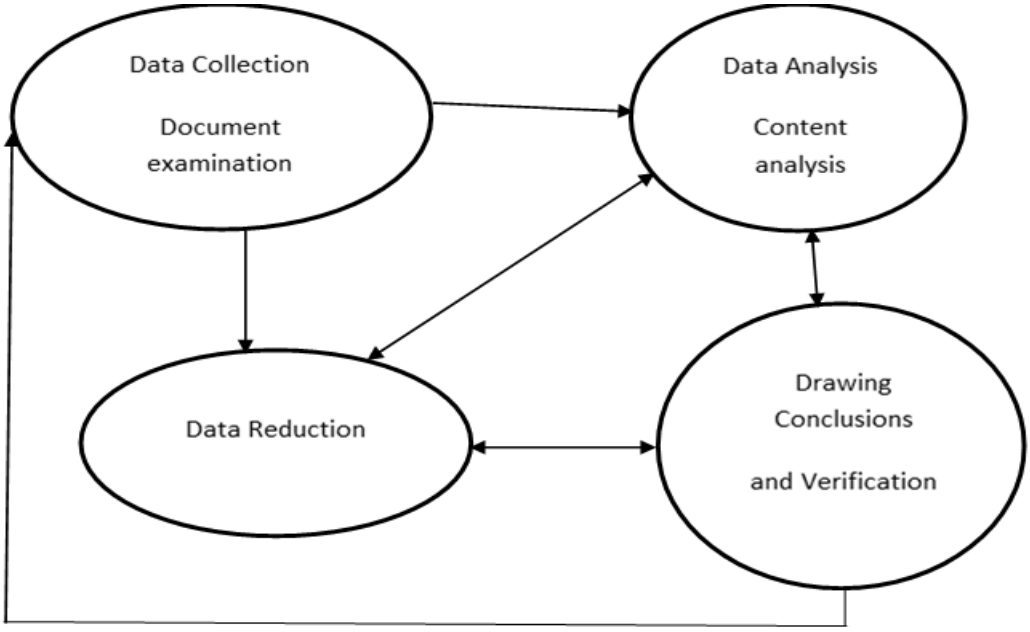

Figure 2: An interactive model of qualitative analysis (Adapted from Gray, 2004 p.321).

Figure 2 above shows that data collection is the initial interaction with the data and that data reduction takes place at all the stages involving data, from collection to analysis and to the drawing of the conclusions. My interaction with the study's data confirms this state of affairs. For instance, at the data collection stage, I had downloaded ten transcripts. However, I discovered that three lacked relevant content for coding and analysis. I discarded them resulting in seven transcripts whose content was reduced further during data coding as the subsequent section demonstrates.

3.5.3 Data Coding

Coding is the process of transforming raw data into a standardized form (Babbie, 2009 p. 361) and a code, according to Dornyei (2007 p.250), is 'a label attached to a chunk of

texts intended to make the particular piece of information manageable and malleable.' Further, Cohen et al. (2007) define coding as 'the ascription of a category label to a piece of data; which is either decided in advance or in response to the data that have been collected' (p. 480). In this study, I began the coding process by numbering the lines of each independent transcript starting from one (1) on every first line of each day's transcript to the last line. In addition, I assigned a notational "D" (from the word 'Day') with a subscript number running from number one to seven. Therefore, the 1st September 2011's transcript was transcript D_1, 2nd September 2011's transcript D_2, 3rd September 2011's transcript D_3 (discarded), 5th September 2011's transcript D_4, 6thSeptember's D_5 (half of this was also discarded), 7th September's D_6 (discarded), while the transcript for 8th September 2011 was D_7 for ease of reference. The final product that I worked with as my study data is as presented in the table below.

Table 2*: The Distribution of the Study Data after the Transformation*

Date	**Notational Reference**	**Nature of the proceedings**	**Size (pages)**
1/11/2011	D_1	Opening statements from all the parties	58
2/11/2011	D_2	Evidence submission by the Prosecution lawyers and the Defence lawyers for the first suspect	86
5/11/2011	D_3	Evidence submission by the Defence lawyers for the second and the third suspects	63
6/11/2011	D_4	Continuation of evidence submission by the Defence team for the third suspect	36
8/11/2011	D_5	Closing statements from all the parties	57
		Total number of pages	**300**

Table 2 above shows that a 300-page document was the final product of the various transformations and it constituted five individual transcripts. The transformations resulted in data reduction that made the transcripts more manageable and coherent. The reduction

of the volume of my data resonates with Dornyei (2007) observation that qualitative coding techniques are aimed at reducing or simplifying the data while highlighting special data segments in order to link them to broader topics or concepts (p. 250). The section that follows discusses how the data were analysed and presented.

3.5.4 Data Analysis and Presentation

As this is a qualitative study, I carried out a qualitative data analysis. This is a process of examining and interpreting data in order to elicit meaning, gain understanding and develop empirical knowledge (Corbin & Strauss, 2008 p.1). In addition, Gray (2004) considers qualitative analysis to be a rigorous and logical process through which data are given meaning (p. 319). I specifically employed the document analysis method of qualitative analysis that is also called content analysis. This is 'a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use' (Cohen et al., 2007 p.475). Content analysis also involves the making of inferences about data (usually text) by identifying, systematically and objectively, special characteristics (classes or categories) within them (Gray, 2004 p.328).

Other definitions of qualitative content analysis include 'a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns' (Hsieh & Shannon, 2005 p. 1278). Further, Mayring (2000 p. 2) considers it 'an approach of empirical, methodological controlled analysis of texts within their context of communication, following content analytic rules and step by step models, without rash quantification'. Furthermore, Patton (2002 p. 453) defines qualitative content analysis as 'any qualitative data reduction and

sense-making effort that takes a volume of qualitative material and attempts to identify core consistencies and meanings.'

The definitions above underscore a quality of systematicity in the process of data analysis, which was characteristic in the study. In this regard, the study systematically discussed varied linguistic strategies that enabled the Prosecution and the Defence teams to make specific reference, general reference as well as self-reference in selected assertions. Assertions are 'declarations characterized by content feature that include predication of facts, reference to undeniable and/or historically accepted ideological ground works, expression of common ground uniting the speaker and the addressee with the expression of beliefs (implying actions) in line with the addressee's predisposition' (Cap, 2013 p.53). The reduced data therefore yielded three main themes. They were specific reference, general reference and self-reference/self-representations, choices that the Prosecution and the Defence teams strategically manipulated in order to assign the responsibility for the PEV variedly. In order to be systematic in the study, I carried out my data analysis in a three-step fashion.

The first step was to group data sections into the three categories above mentioned – specific reference, general and self-reference/self-representations - that formed the main units of analysis. To do this, I grouped data segments that referred to the PEV events and individuals in specific terms separately from those that referred to them in general terms as well as grouping those that made self-reference distinctly as I read through the reduced versions of the transcripts.

The second step involved grouping similar units from these overarching themes together. This yielded varied subcategories from each theme. For instance, in the specific reference category, subcategories that emerged and were grouped together included transitivity structures and terms of address. In this step, I was keen to group the subcategories distinctly depending on whether the data sets were from the Prosecution, the Defence or the suspects themselves. This was aimed at helping me answer the study's questions that sought to examine the use of specific, general or self-reference by the Prosecution, the Defence teams or the suspects. This was also helpful in making comparisons and contrasts regarding the use of language by the Prosecution or the Defence teams as well as between the suspects, in the interpretation and the discussion of the data in step three.

For instance, from the specific reference category, transitivity structures sub category, I grouped the Prosecution's varied passages expressing material processes, relational, verbal and mental processes distinctly from those of the Defence teams expressing the same. I therefore reinstated the automatic black colour on all the chunks of data grouped together, and I highlighted the desired linguistic item (s) under discussion in bold type as exemplified in text 2, an excerpt from the Prosecution's relational processes subcategory. The words in bold type formed the focus of the discussions because they are the relational processes.

Text 2

208. Now, by 2007, William Chacha **was** the head of a multifaceted
209. network. He **was** a prominent politician and referred to as a Kalenjin
210. leader. He alone **was** the recognised leader in the Rift Valley and
211. responsible for overseeing the attacks in that area. However, he did not
212. act alone but instead acted together with Henry Muita and Joshua Kerago.
213. This network **had** five components, each of which we will address
214. in turn……

229. Likewise, Henry Muita in 2007 **was** a prominent politician. He
230. **was** an elected Member of Parliament representing Tinderet constituency in
231.the Nandi District for four separate terms. On the ground, Muita′s
232. authority **was** subordinate to Chacha, and Muita himself **remained**
233. responsible for the attacks executed in the Nandi District.

The third step involved the evaluation of meanings of individual linguistic strategies – the process types, the terms of address, the first person pronouns, the modifiers, as well as those expressing agent deletion/obscurity and delegitimation of the investigations. I firstly explained the use of a particular linguistic unit of analysis in context. Then I offered theoretical meanings from Leeuwen's theory that informs this study and from related literature. Finally, I explained the possible motivations and implications of using a particular linguistic unit in the proceedings with regard to agency construction. Discussions were from varied perspectives including linguistic, sociological, legal and cultural. The excerpt below from the specific references major category, terms of address sub category exemplifies the application the third step. It is from the Defence teams' grouping.

Text 3
836. Before Madam President and your Honours are three Kalenjin
837. personalities. **Mr. William Chacha** happens to be a much younger person than
838. **Henry Muita**. We will demonstrate through evidence, firstly, that the
839. **Honourable Henry Muita** has never been to **Mr. Chacha′s** home, never been.
840. And culturally, unless there are exceptional circumstances, it will be
841. for **Honourable Chacha** to go to the home of **Henry Muita** if there was need
842. to have a meeting to discuss anything. The Prosecution case is these
843. meetings were happening at the home of **William Chacha**.
844. During this confirmation hearing, Madam President and
845. your Honours, we will demonstrate that the so-called commanders have
846. never been to the home of **Honourable Chacha**, and we will be demonstrating

847. that this fiction which has been put together by the Prosecution cannot
848. form a basis to show sufficient evidence for Madam President and your
849. Honours to be satisfied that the substantial grounds to believe test has
850. been met. This case does not meet that test and we will be demonstrating
851. so.

From the above excerpt, the Defence lawyer for the first suspect makes specific reference by manipulating the terms of address in the form of proper nouns. The lawyer specifically refers to the first and second suspects in lines 837, 838, 839, 841, 843 and 846. Specific reference is a way of representing social actors as identifiable individuals (Leeuwen, 2008 p.35). The terms of address that were used to identify the specific suspects in the excerpt above were in three forms and they brought out varied agency dynamics. The first is Title Last Name (TLN) as in Mr. Chacha in line 839 and Honourable Chacha in line 846. The second is Title First Name Last Name (TFNLN) as in Mr. William Chacha and Honourable Henry Muita in lines 837 and 839 respectively. The third form of address terms used is First Name Last Name (FNLN) as in William Chacha in line 843 and Henry Muita in lines 838 and 841.

Leeuwen (2008) considers the use of surname only, with or without honorifics (as inTLN in Text 3) as formal, the use of given name and surname (as in, FNLN in the text) as semiformal and the use of given name only (not present in the data) as informal (p. 41). This therefore means that the use of TFNLN in lines 837 and 839, TLN in line 839 and 841 are all formal uses of the address terms. However, only TLN and TFNLN with the variety ‘Mr.’ are the expected choices in a courtroom set up making the use of TLN and TFNLN with the variety ‘honourable’ peculiar. This observation is in line with Danet (1980) postulations that while two or more forms may be referentially equivalent, they may communicate different things about speakers or about their attitudes towards the

topic (p. 191). This proposition is further supported by O'Barr (1982 p.6) who posits that 'whether consciously planned or merely the result of native intuition, form communicates and as form varies, the message communicated varies as well.'

The study finds three reasons for considering the use of the title 'Mr.' as ordinary while the use of the title 'honourable' as unusual in the courtroom. To begin with, Leeuwen (2008 p.41) refers to the title 'Mr.' as a 'standard title' and this confirms its ordinariness when used in court. Secondly, in the full transcripts, all parties except the Legal Representatives of the Victims chose this variety indicating its typicality in court. Thirdly, the variety 'Mr.' was the judges' sole choice of the address terms throughout the hearing. The use of this address term during the Confirmation Hearing therefore did not manipulate agency in anyway as it was an expected choice.

Contrastingly, two court participants - the first suspect's lawyer and the third suspect himself – chose the peculiar variety of the title 'honourable'. While the lawyer for the first suspect used the honorific 'honourable' eleven times in the opening statements, the third suspect used it once. The excerpt above exemplifies the use of this title by the lawyer for the first suspect in lines 839, 843 and 846. The study finds the degree of markedness of the use of the variety 'honourable' by the two varying with the term being more peculiar when used by the lawyer as in lines 839, 843 and 846 of the excerpt above, than when used by the third suspect, who was a lay court participant. To begin with, the third suspect, being a Kenyan, may have felt obliged to address the other suspect(s) as he ordinarily would irrespective of the setting. Secondly, the suspect may have been in the business of observing formality (in the best way he knew how) in court, without necessarily being deliberate about the variety of the formal title. The study observes these

from the fact that the lay court participant, besides being part of his own Defence team, used the term of address once, which was also the only time he used a term of address with any of the suspects.

The use of the title 'honorouble' by the first suspect's lawyer on the other hand is significant as mentioned above for the following reasons. Lawyers, unlike lay participants in court are familiar with courtroom procedures by virtual of their training and practice and are therefore expected to adhere to them. This resonates with Satia (2014) who cites a local representative of the ICC's observation that 'the court treats everybody with respect and thus addresses all parties using the honorific 'Mr.'' (p. 121). Secondly, the frequency of use of the address term by the lawyer – eleven times - during the hearing demonstrates that it was not a random choice but a deliberate one.

The title 'honourable' is common in the Kenyan context when referring to elected leaders in the National Assembly. It is however atypical in a courtroom setting where political titles are inappropriate. The title could be more appropriate in parliament or in formal political meetings and campaign rallies. This research interprets the lawyer's choice of this title as an indication that the persons in question are decent and cannot be associated with such evils as alleged by the Prosecution. This is the lawyer's style of bolstering the suspects' image in a bid to discredit the Prosecution's charges against the suspects thereby backgrounding the suspcet's agency in the violence.

3.6 Summary

This chapter has spelled out the design of the study and the methodology that was adopted to conduct the research. This was a qualitative study that adopted the instrumental case

study design because the examination of agency at the ICC – Kenya Case One did not only show the contribution of a linguistic analysis in the understanding of judicial processes, but also facilitated a better understanding of the Kenya's socio-political environment. The chapter has also presented document examination as the main method of data collection. This method involved reading through the ICC-Kenya's Confirmation of Charges Hearing transcripts and making the necessary transformations to enhance their usability in the study. For instance, converting the transcripts from PDF documents to Microsoft word documents, deleting less useful content and assigning continuous numbers to them for ease of coding. The coding process involved categorizing content distinctly. Here, passages from the Prosecution containing transitivity process types (material, relational, verbal and mental processes), terms of address, first person pronouns, modifiers as well as those indicating agent deletion / obscurity and delegitimation of the investigations) with regard to specific and general reference and as guided by Leeuwen's theory were grouped separately from those of the Defence for ease of analysis. Content analysis was employed as the main method of data analysis. Here, the study examined the use of a specific linguistic item like an address term by specific court participants from varied perspectives and offered interpretations inferred from such use. The chapters that follow will present the discussions of the analyses of data.

CHAPTER FOUR

SPECIFIC REFERENCE IN AGENCY CONSTRUCTION

4.1 Introduction

This chapter presents discussions from the data regarding how the Prosecution and the Defence teams employed specific reference expressions to reconstruct agency during the Confirmation of Charges Hearing. Specific reference is the representation of social actors as identifiable individuals, characterized by singularity (Leeuwen, 2008 p.35). The study found specific reference to be a significant category because of the value that individuality is given in the courtroom. For instance, during the Confirmation of Charges Hearing, the prosecutor had charged three suspects in Case One separately as opposed to lumping them together. He had accused each suspect of three counts of crimes against humanity related to murder, forcible population transfers, and persecution. Each suspect therefore had a team of Defence lawyers who contested the accusations. In this regard, the study's data demonstrated that both the Prosecution and the Defence lawyers constructed agency by making specific reference to varied individuals using transitivity structures and terms of address.

This chapter discusses the two above mentioned strategies under two headings. The section that follows this introduction discusses the Prosecution and the Defence teams' use of the transitivity structures to make specific reference. The next section presents discussions regarding use of the terms of address that the teams employed to make specific reference. In each section, the discussions will show how each of the discussed strategy contributed to agency construction.

4.2 Use of Transitivity Structures

The study's data showed that the Prosecution and the Defence teams made specific reference to diverse individuals, natural causes and to supernatural phenomena by manipulating the transitivity structures. Transitivity is the grammatical system by which the clause is depicted as 'a mode of reflection, imposing order on the endless variation and flow of events' (Halliday & Matthiensen, 2004 p.168). In addition, transitivity is seen as the agent-patient relations in a sentence or how the main action of a sentence is encoded by answering the question, who is doing what to whom (Huckin, 2002 p.8)?

In this regard, this section examines how the Prosecution and the Defence teams configured the processes, the participants and the circumstances of the PEV during the Confirmation of Charges Hearing to make specific reference to varied actors in order to achieve varied communicative goals that pointed to who did what to whom. While examining the configuration of the processes, participants and the circumstances of the PEV, the study follows Leeuwen (2008) position that social actors are coded either as 'actors in material processes, behavers in behavioral processes, sensers in mental processes, sayers in verbal processes or assigner in relational processes. This resonates with Halliday & Matthiensen (2004 p.168) who observe that transitivity construes the world of experience into a manageable set of process types including Material Processes, Relational, Mental and Verbal processes which form the subsections that constitute this section.

The table below shows the distribution of the varied processes in the opening statements of the varied teams.

Table 3*: The Distribution of the Transitivity Process Types in the Opening Statements*

	Material Processes	**Relational Processes**	**Mental Processes**	**Totals**
Prosecution	91	33	18	143
DFL 1	56	36	10	110
DFL 2	11	23	2	36
DFL 3	26	23	12	65
Totals	184	115	42	354

In Table 3 above, DFL refers to Defence lawyer. The table shows that both the Prosecution and the Defence teams used three hundred and fifty four processes to make their opening statements, out of which one hundred and eighty four were material, one hundred and fifteen relational as well as forty-two mental processes. This section presents discussions of each of the processes in separate subsections.

4.2.1 Material Processes

Material processes enhance the inclusion or exclusion of social actors in doing and happening processes. Leeuwen (2008 p.33) considers the material processes as enabling the representation of specific social actors as active or passive participants in an activity, adding that activation occurs when specific social actors are coded as ‘actors’, while passivation occurs through subjection or beneficialization. Leeuwen adds that subjection occurs when a passivated individual is depicted as goal in a material process, while beneficialized participant is client or recipient in relation to a material process (Leeuwen, 2008 p.34). The ‘doing’ material processes are unfolded in clauses that make specific reference to a given actor who is the ‘logical Subject’ and ‘the one that does the deed’ (Halliday, 1994; Halliday & Matthiensen, 2004).

In this study's data, material processes were the most prominent in the sentences employed by the various Prosecution and Defence lawyers to make varied assertions at the hearing. For instance, in the opening statements, more than half of the clauses used by both the Prosecution and the Defence were material process-type clauses as shown in Table 3. Table 4 that follows shows the distribution of the material processes that the Prosecution and the Defence teams used to make the opening statements.

Table 4: *The Material Processes Distribution in the Opening Statements*

	Transitive			**Intransitive**
	Active Voice	**Passive voice with 'by' phrase**	**Passive Voice without 'by' phrase**	
Prosecution	65	1	12	13
DFL 1	29	6	17	4
DFL 2	9	2	0	0
DFL3	23	0	3	0

Table 4 above shows that the commonest choice of the material processes by both the Prosecution and the Defence lawyers was the transitive material processes. Transitive material clauses involve an Actor, a Process and a Goal and represent 'a doing' meaning that the process is directed at or extended to another entity (Halliday & Matthiensen, 2004 p.180; Huckin, 2002 p.8). The table also shows that the Prosecution and the Defence lawyer for the first suspect were the only teams that used the intransitive material processes. Intransitive clauses involve an Actor and a Process in a `doing' material process type, or the Affected and a Process in a `happening' clause meaning that the process is confined to the actor (Halliday & Matthiensen, 2004; Huckin, 2002). In addition, the table shows that all teams used the active voice transitive material processes while only three teams used the passive voice material processes. Halliday & Matthiensen

(2004) posit that in active transitive clauses, the Actor is mapped on to the Subject and the Goal on to the Complement while in the passive voice, the Goal is mapped on to the Subject and the Actor adopts the status of an Adjunct.

In the study's data, the Prosecution and the varied Defence teams made specific reference to different Actors by mapping them onto the Subject positions while making their presentations at the hearing. For instance, the Prosecution mapped the three suspects, individually and/or collectively, onto the subject position of the majority of the sentences, thereby framing them as the Doers of the mentioned PEV actions. However, the Defence teams did not relate the PEV activities to specific individuals, but they framed their sentences in two ways. Firstly, they mapped themselves onto the subject positions, framing themselves as responsible for tabling evidence that would counter the Prosecutor's narrative. Secondly, they mapped the Prosecution lawyers onto the Subject position, framing them as having done or not the investigations in the right manner. Selected excerpts from the data facilitates this discussion under two sub headings. The first presents discussions on the Prosecution and the use of the material processes and the second presents discussions about the Defence teams' use of the material processes.

4.2.1.1 The Use of the Material Processes by the Prosecution

The prosecution began the presentation of their case by making specific reference to the three suspects – Mr. Chacha, Mr. Muita and Mr. Kerago – in the opening statements as having formed an organization that the prosecutor called a network that was responsible for instigating and facilitating the PEV. To make this assertion, the prosecutor identified the specific suspects using their names in the sentence initial position while employing the two types of material processes - the creative and the transformative material process

types. A creative material process gives rise to a creative clause, where 'the Actor or Goal is construed as being brought into existence as the process unfolds; and the outcome being the coming into existence of the actor (intransitive) or the goal (transitive)' (Halliday & Matthiensen, 2004 p.184). A transformative process involves 'a pre-existing Actor or Goal being construed as being transformed as the process unfolds, meaning that the Actor (intransitive) or Goal (transitive) exists prior to the onset of the unfolding of the process; with the outcome being an elaboration, extension or enhancement of the Actor or Goal' (Halliday & Matthiensen, 2004 p.184). In the study's data, the Prosecution employed the Creative Material Processes to indicate that the suspects – the Actors -, formed 'the network' - the Goal. Subsequently, the Prosecution, continuously made specific reference to the suspects, using transformative material processes indicating how the suspects facilitated the network to enhance and spread the violence. The excerpt below exemplifies the Prosecution's use of the material processes.

Excerpt 3 (Transcript D_1)

117. Since at least December 2006, William Chacha and Henry Muita
118. **prepare** a criminal plan to gain political power. They decided that if
119. the PNU rigged the elections or even if the ODM lost, there would be war.
120. They planned to -- what [is]the meaning of war? They planned to attack
121. supporters of the PNU and expel them from their homes in Rift Valley.
122. They were aiming to gain power and create a uniform ODM voting bloc in
123. Rift Valley. That was the goal.
124. To achieve this goal, they **created** and **conducted** an organisation
125. based on a network of individuals and pre-existing entities in their
126. communities. This organisation, this network, have had five components
127. political, media, financial, elders, and military.
128. First, there was a political component led by Mr. Chacha and
129. Mr. Muita that included other politicians who participated in the
130. preparatory meetings and assisted in the organisation of attacks that
131. were to follow.
132. Second, Chacha and Muita **relied on** the media to disseminate their
133. messages. Specifically Joshua Kerago **played** a key role to broadcast their
134. message. The media **was used to indoctrinate** the network members by

broadcasting propaganda against PNU supporters, to broadcast a speech of designated network members who indicated ideas or ways to co-ordinate the attacks.
Third, Mr. Chacha and Mr. Muita **collected** financial support from - from businessmen in order to, A, compensate attendees at preparatory meetings which pertains the evidence how attendees would receive money; second, purchase weapons including guns and gasoline (* indiscernible); third, purchase material to make traditional weapons; four, to provide transport for the attacks.
All of these are part of the organisation they conducted and they - they organised, they created.
Four, Mr. Chacha and Mr. Muita **integrated** some tribal elders into their network. This is crucially important. By utilising tribal elders, Mr. Chacha and Mr. Muita **capitalised** on the Kalenjin tradition of demanding strict respect and obedience from their youth. This attitude was critically important to ensure respect for the instructions and even to maintain the confidentiality of the preparation.
Finally, the network had a military component integrating former members of the Kenyan military and police that included three commanders or generals. At the top of the organisation was Mr. Chacha. He was the overall head of the military component. Reporting to Mr. Chacha, commanders **led** a hierarchical organisation whose different jurisdiction in different geographic areas including the north - the one in the North Rift, and, second, the centre Rift area, including Nandi Hills, that in this area they also reported to Muita who was also one of the authorities of the network.
The military component **advise** Chacha on logistical issues, **obtain** weapons, **identify** financial resources, and **mobilise** direct perpetrators. They **ensure** the implementation of the plan.
Below them, there were subordinates playing a variety of roles, identifying PNU supporters homes and business for future attacks. So the targets **were identified** before the elections, before the attacks. They **obtained** weapons and these subordinates were clearly important because they **were leading** the direct perpetrators during the attacks. The direct perpetrators **were trained** in advance and **received** weapons, and also they **were designated** - there were also some of them designated to lead attacks.
In addition to plan, Mr. Chacha and Mr. Muita had an important role in the coordination and preparation. Mr. Chacha and Mr. Muita **encourage** the attacks, by referring to the targets that is PNU supporters, using derogative terms, they also **elected** commander and **assigned** them a specific geographical areas to control, and they also identify - **identified** the areas populated by PNU supporters for attack. So they weren't just planning. Their essential contribution, we submit, was much beyond the plan. They were involved in the preparation, including - Mr. Chacha **organise** the storage and personally **distribute** weapons,

181. **co-ordinate** transportation for attacker - and co-ordination
182. transportation for attacks. Both Mr. Chacha and Mr. Muita promised
183. awards, money, or land for the participation in the attacks.
184. Additionally, Mr. Chacha and Mr. Muita **designated** network perpetrators who
185. will call Kass FM to spread the network message. They - Mr. Chacha and
186. Mr. Muita also **ensure** information on the plan to attack other areas and
187. the progress through Kass FM.
188. On 27 December 2007, Kenyan voters **went** to the polls to exercise
189. the democratic right and elect a president. On 30 December 2007, the
190. incumbent president and leader of the ruling PNU, MK, **was**
191. **announced** as the winner of the election by a small margin over his
192. opponent from the ODM. The election results announcement **triggered**
193. Mr. Chacha and Mr. Muita′s network to act in accordance with the plan.
194. Madam President, your Honours, perpetrators in the network **follow**
195. the plan and **began attacking** targeted locations in the Rift Valley
196. immediately after the election result were announced. Violent attacks
197. against persons and property - and property **were carried out** in a
198. systematic and uniform fashion in the greater Eldoret area, Turbo town,
199. Kapsabet town and Nandi Hills. The evidence that the Prosecutor will
200. present will show a consistent pattern in the implementation of the
201. attacks. One, perpetrators - perpetrators **gathered** at designated
202. meeting points outside the location selected for attack. Second, they
203. were under the supervision of those subordinates especially chosen
204. commanders. Third, they **established** roadblocks at all major roads around
205. the targeted locations. Four, they **proceed to loot** and **burn down** houses
206. and business that had been previously identify as belonging to PNU
207. supporters. As a consequence, they **were** systematically **displacing**
208. hundreds of thousands of persons away from their homes. Thousands of PNU
209. supporters **fled** to nearby police station and churches for refuge.
210. Perpetrators **kill** or **maim** people as they attempted to free. In the
211. roadblocks, people from the groups perceived to support PNU **were attacked**
212. and in many instances **killed** on the spot.

I extracted this excerpt from the Prosecution's opening statements in the first day of the Confirmation of Charges Hearing – see Appendix 2. In the excerpt above, the words in bold type are the material processes that this subsection focuses on. In order to employ the material processes as shown in the excerpt, the Prosecution foregrounds the subject – the first two suspects. The prosecutor makes specific reference to the suspects by mentioning their names constantly and replacing the names with the personal pronoun

'they' appropriately. For instance, the Prosecution mentions the first two suspects by name in the subject position in lines 117, 138, 146, 148, 174, 184 and 186, then replaces their names with the plural personal pronoun 'they' in lines 124, 176, 177, 179 and 185. This depicts the first two suspects as 'the actors' (Leeuwen, 2008 p.33) or as the 'doers' (Halliday, 1994 p.109; Halliday & Matthiensen, 2004 p.179) of the mentioned alleged actions. The Prosecution is therefore able to code the suspects as the 'active dynamic forces' (Leeuwen, 2008 p.33) behind the alleged activities. The alleged activities include 'preparing' a criminal plan (line 118), 'creating and conducting' an organization (line 124), 'collecting' financial support (line 138), 'integrating' tribal elders into the network (line 146), 'capitalizing' on the Kalenjin tradition (line 148), 'encouraging' the attacks (line 174), 'identifying'the areas populated by PNU supporters (line 177), 'designating' network perpetrators (184) and 'ensuring' information dissemination through Kass FM.

It is noteworthy that all the alleged activities mentioned above are presented in transitive active voice material clauses involving an Actor, a Process, a Goal and Circumstance (s) as exemplified in the sentence below (lines 117 and 118).

Since at least December 2006,	William Chacha and Henry Muita
CIRCUMSTANCE 1	DOERS/ACTORS

Prepare[d]	a criminal plan	to gain political power
PROCESS: MATERIAL	GOAL	CIRCUMSTANCE 2

The sentence begins with an adjunct - since at least December 2006 - in the form of a prepositional phrase, acting as a 'Circumstance' (Halliday, 1994; Halliday & Matthiensen, 2004) that in turn indicates an element of time. The adjunct is not an obligatory element in the sentence, and occupy different positions in a sentence like the

initial, medial or the final position. In the sentence above, it occupies the sentence initial position. The study finds the Prosecution's positioning of the adjunct initially in the sentence as deliberate. This is because it highlights a specific timeframe 'December 2006' which is a year before the actual happening of the violence that was the subject of the Confirmation of Charges Hearing. This therefore helped the Prosecution to justify the script that the violence had been planned, ruling out any aspect of spontaneity. In addition, the Circumstance sets the basis for the prosecution to introduce the other parts of the sentence - the Actor(s), the Process, the Goal and another Circumstance.

The second part of the sentence that constitutes the main clause is a transitive material clause that is in the active voice. It therefore begins with the 'Actor (s)' - William Chacha and Henry Muita - occupying the initial position and acting as the subject of the entire sentence. The Prosecution therefore codes William Chacha and Henry Muita as the 'doers' of the action in the sentence and as the 'active dynamic forces behind the subsequent activity' (Leeuwen, 2008: 33). The activity is that of 'preparing' and it is a creative material process. A creative material process as mentioned earlier, gives rise to a creative clause, where 'the Actor or Goal is construed as being brought into existence as the process unfolds; and the outcome being the coming into existence of the actor (intransitive) or the goal (transitive)' (Halliday & Matthiensen, 2004 p.184). In the sentence above, the Goal - a criminal plan - that is in the form of a noun phrase is the outcome of the material process 'prepare'.

The sentence ends with an infinitive clause 'to gain political power' that is attached to the main clause and acts as another Circumstance in the form of an adverbial of reason. Like the initial adverbial of time, the Prosecution uses the second Circumstance to further

justify that the violence had been prior planned. This Circumatance therefore supplies the reason for the Prosecution's claims of a prior plan to the violence, which is the basis of the charges.

The sentence above resembles the sentence in lines 124 – 126 'to achieve this goal, they **created** and **conducted** an organization based on a network of individuals and pre-existing entities in the communities' of the excerpt in form. However, the sentence in lines 124 – 126 combines a creative process – created- and a transformative one – conducted. Like the sentence in lines 117 -118 discussed earlier, the creative process – created – is said to bring into existence a Goal – an organization- that was hitherto nonexistent. The second process in the sentence is 'conducted' that is a transformative transitive material process. In a transformative process, 'a pre-existing Actor or Goal is construed as being transformed as the process unfolds, meaning that the Actor (intransitive) or Goal (transitive) exists prior to the onset of the unfolding of the process; with the outcome being an elaboration, extension or enhancement of the Actor or Goal' (Halliday & Matthiensen, 2004 p.184). In the sentence in lines 124 -126 of Excerpt 3, the transformative process – conducted – indicates an elaboration of the Goal – organization.

This transformative process is a semblance of all of the other material processes highlighted in bold type in Excerpt 3 in lines 133, 134,156, 161-163, 167 – 169, 192 - 212. Although the processes do not only involve the first two suspects as the doers of the alleged actions, they indicate an enhancement, elaboration or extension of the 'organisation' that the Prosecution also refers to as 'a network'. The Prosecution therefore alternates the subject of the material processes among William Chacha and Henry Muita, the subordinates, the perpetrators, Joshua Kerago/the media, the military/the commanders.

The alternation of the subject matter in the utterances does not in turn exonerate William Chacha and Henry Muita from being the active participants in the activities. This is because the Prosecution is keen to allege that the subordinates, the perpetrators, Joshua Kerago/the media and the military component/the commanders were acting on behalf of the first two suspects.

In contrast with the tribal elders, the commanders/the military component, the subordinates and the perpetrators who remain anonymized in all the material processes used in the opening statements, the Prosecution identifies the media. In line 133, the Prosecution specifies that the Joshua Kerago was key in broadcasting the fisrt two suspects' messages. To do so, the Prosecution employes a material process verb **'played'** foregrounding the actor, Joshua Kerago. Later in the opening statemnets, the Prosecution lawyers take time to expound on Joshua Kerago's role in the network, as demonstrated by Excerpt 4.

Excerpt 4 (Transcript D_1)

316. Last, Joshua Kerago is liable for the crimes charged under
317. different theory of liability, as you well know. The Prosecution′s case
318. is based on his contribution to the network′s crimes pursuant to the
319. common plan. As indicated in the document containing the charges, he
320. **used** his platform, his radio platform, to indoctrinate his listeners, to
321. pressure them, and **broadcasted** calls of predesigned -- predesignated,
322. excuse me, network members to spread this message.
323. The Prosecution′s evidence as to Joshua Kerago **establishes** that his
324. contributions as well were not accidental but instead that he
325. purposefully **contributed to** Chacha and Muita's common plan.

In Excerpt 4 above, the material processes are in bold type in lines 320, 321, 323 and 325. All these are transitive, active voice material processes. The actor in the sentences containing these processes is' Joshua Kerago', the third suspect, as identified in line 316

and through the third person pronoun ‘he’ in lines 319 and 324. The actor in the sentence in lines 323-324, on the other hand, is ‘the Prosecution evidence’. The first two material processes in the excerpt can be represented as below.

He	used	his radio platform,	to indoctrinate	his listeners,
ACTOR	PROCESS: MATERIAL	INSTRUMENT	CIRCUMSTANCE 1	RECIPIENT

to pressure	Them	and (he)	broadcasted	calls of predesigned…..
CIRCUMSTANCE 2	RECIPIENT	COORDINATING CONJUNCTION	PROCESS: MATERIAL	GOAL

The study observes that the Prosecution structured this sentence in the manner displayed above as a strategy for three reasons. First, to include and highlight the Actor and the Instrument in the sentence. Here, the Prosecution accentuates that the media which he had earlier alluded to was represented by Joshua Kerago - the Actor in the Material processes who employed the radio as a medium (Instrument) in order to achieve a desired goal. Secondly, The Prosecution underscores the two Circumstances that are in the form of the to-infinitive, that is, ‘to indoctrinate’ and ‘to pressure.’ The Prosecution used these to-infinitive verbs to qualify the main verb, using (which is also the material process) to express purpose(s), which the study interprets as the desired goal mentioned above. The two Circumstances carry negative connotations. For instance, to indoctrinate according to the Oxford Dictionary is ‘to force somebody to accept a particular belief or set of beliefs and not to allow them to consider any other’ (p. 777), while to pressure is ‘to try to persuade or to force somebody to do something’ (p. 1176). The use of such Circumstances therefore paint Joshua Kerago – the Actor – in negative light implying that he was guilty. Thirdly, the Prosecution structures the sentence in the manner displayed in order to de-emphasize the Recipient(s) (the listener/them). Here, the Recipient (the listener/them) is de-emphasized by the fact that they are not referred to as specific

identifiable individuals. Secondly, while the message implied in the sentence is that they were directly involved in committing PEV activities, the structuring of the sentence in the manner displayed above enabled the Prosecution to passivize them and code them as being on the receiving end of Joshua Kerago's act(s) of (mis)using the radio. This resonates with Leeuwen's (2008 p.34) position that beneficialized participants are clients or recipients in relation to material processes. The beneficialization of the listeners therefore downplays their responsibility in the PEV while it underscores that of Joshua Kerago.

In summary, the discussions have shown that the Prosecution utilized the material processes more than any other processes in the opening statements to include the suspects in the Confirmation Hearing discourses by coding them as the outright doers of the PEV activities. Opening statements carry a 'primacy effect' and play a significant role in influencing the decision-making process (Cotterill, 2003 p.65). The study therefore sees the use of the material processes by the Prosecution in the opening statements as strategic and as a way of trying to convince the court that despite the possibility of other individuals having been involved in the violence, 'the Doers' of the main actions regarding the PEV were the suspects.

4.2.1.2 The Use of the Material Processes by the Defence Teams

The Defence teams contested the Prosecution's allegations that the three suspect, individually and collectively were responsible for the PEV. They also employed material process clauses but the study notes that unlike the prosecution that categorically stated that Chacha, Muita and Kerago did this and that, the Actors in their clauses were other individuals besides the suspects. Each suspect had a team of lawyers that contested the

Prosecution's narrative. They employed the material processes among other linguistic strategies to do so and the excerpt below facilitates the discussion of how they employed the material processes.

Excerpt 5 (Transcript D_1)

(a)
813. In the case **presented** by the Prosecution, they **created** an animal
814. they are calling ″the network.″ What was the name of this network? What
815. was the purpose of this network?
816. In the opening speech, it was said that the goal was to gain
817. power. At the end tail of that speech, they said the organisation was
818. efficient and it **achieved** its goal which was stated as moving people out
819. of the Rift Valley. Which goal **is** the Prosecution **pursuing**?
820. By the time Honourable Chacha was returning to Nairobi on the 28th
821. of December, 2007, he **had won** the only seat he was contesting in the 2007
822. elections. What other power **would** he **be seeking**? He **had been**
823. overwhelmingly **elected** for the only seat he contested that year.
824. It is, and we **will be demonstrating** during the confirmation
825. hearing that the Prosecution case lacks logic.
(b)
1005 ……..Madam President, our
1006. Defence will have two aspects: One, the whole of the Prosecution case **is**
1007. **based** on the existence of a body known as ″the network.″ The allegation
1008. is that Mr. Muita is a member and one of the prominent members of the
1009. network. The evidence disclosed **does not show** this. Therefore, our
1010. first principal issue **will be** in analysing the evidence **to show** this
1011. Court that the Prosecution has not produced any evidence showing or
1012. indicating that Mr. Muita was a member of the network, if at all it
1013. existed.
1014. Two, we **will show** that there is no sufficient evidence to suggest
1015. that Mr. Muita was involved in either planning or assistance of what
1016. they call network, and all that has been done is the Prosecution has
1017. proceeded on a voyage of lumping together Mr. Muita and Mr. Chacha and
1018. showing that whatever evidence they have adduced in respect of any aspect
1019. of their case Mr. Muita was involved.

Excerpt 5 above is from the Defence teams' opening statements. It constitutes two parts with (a) being from the first suspect's Defence lawyer and (b) from the second suspect's lawyer. The Defence teams employed material processes as those highlighted in Excerpt 5 to counter the Prosecution's narrative that the three suspects' individual and collective

liability was through their creation and enhancement of ‘a network.’ The Defence teams therefore manipulated the material processes in different strategic ways to contest the Prosecution’s allegations concerning the ‘network’.

With regard to the first suspect’s Defence team, lines 813 and 814 show that the lawyer assigned the agency of creating ‘the network’ to the Prosecution. In these lines, the lawyers says, ‘in the case presented by the Prosecution, they **created** an animal they are calling ″the network″’. This is a transitive, material process clause in the active voice. Below is a display of the clause showing the Participants, Process and Circumstance structure.

In the case presented by the Prosecution,	they	created	an animal they are calling a network
CIRCUMSTANCE	ACTOR	PROCESS: MATERIAL	GOAL

From this sentence, the Actor is ‘they’, a third person pronoun used in place of the noun ‘Prosecution’. The Actor is preceded by a Circumstance that introduces the context of the utterance, which the study understands as the courtroom during the hearing of the case. This sentence resembles the Prosecution’s utterance in Excerpt 3, sub section 4.2.1.1 where the Prosecution alleges that the first two suspects created an organization called the network. However, the two utterances differ in two ways. Firstly, the Actors are different. In Excerpt 3, the Actor/Doer(s) were the three suspects while in Exceprt 5, the Actor/Doers(s) are the Prosecution lawyers. Secondly, the two teams of lawyers referred to different contexts in which the said ‘the network’ was created. The Prosecution referred to the Kenya’s 2007/8 PEV context while the Defence lawyer for the first suspect in the sentence above, referred to the court context, including pre-court context of

gathering evidence. The change of the context from the PEV to the court process context was a strategy by the Defence lawyer for the first suspect to indicate that 'the netwok' in the Prosecution's charges (and as alluded to in Excerpt 3) was a non-existent entity in the material world and that it was an imaginary creation by the Prosecution. This in turn was a way of exonerating the suspects.

With regard to the second suspect's Defence lawyer's contestation of the network theory, Excerpt 5 part (b) shows that the lawyer employed a different strategy from that of the fisrt suspect's Defence lawyer. In lines 1006 and 1007, the Defence lawyer for the second suspect seemed to agree with the Prosecution that there might have been 'a network'. However, in lines 1009 – 1013, he distances his client from the network saying that their case would be to show that the second suspect was not a member of the network. He says, 'therefore, our first principal issue will be in analysing the evidence to show this Court that the Prosecution has not produced any evidence showing or indicating that Mr. Muita was a member of the network, if at all it existed'. This is a material clause in the active voice.

In the clause, the Defence team for the second suspect assumes the role of the Agent, with the material process (the Action) being 'will be to show'. The Process is therefore split by a Circumstance, 'in analysing the evidence'. The Circumstance aims at emphasizing the method that the team hoped to adopt in performing the action of achieving the Goal, which is, 'to show that the Prosecution has not produced any evidence showing or indicating that Mr. Muita was a member of the network'. The utterance is a conditional clause (if-clause) of the epistemic type. Hesabi, Dehaghi, & Shahnazari-dorcheh (2013 p.187) opine that in epistemic conditionals, 'knowledge of the truth of the hypothetical

premise expressed in the protasis is a sufficient condition for concluding the truth of the proposition expressed in the apodosis.' In the sentence therefore, the Defence lawyer for the second suspect sets up an epistemic space. That is, the reasoning (if at all 'the network' existed) leads to the conclusion (showing the Court that the Prosecution has not produced any evidence showing or indicating that Mr. Muita was a member of the network). The study finds the use of this conditional by the lawyer significant because it shows agreement – to a certain extent – with the Prosecution, which is unusual for a Defence team. That is, if the Defence team was convinced that 'the network' did not exist, then they would not commit to spend their whole time trying to prove that their client, the second suspect, was not a member of a non-existent entity. Therefore, if the Defence team for the second suspect was convinced of the nonexistence of 'the network', like the Defence team for the first suspect as earlier mentioned, they would have endevoured to challenge the Prosecution's allusion to there being one as opposed to challenging the membership of their client.

As earlier mentioned, in the use of the material processes, the Defence teams mapped different Actors on to the Subject positions from those that were mapped by the Prosecution. For instance, in lines 813-814, the Prosecution is the Actor in the sentence,

they (Prosecution)	created	an animal they are calling the 'network.'
ACTOR	PROCESS: MATERIAL	GOAL

Conversely, the Prosecution mapped the three suspects, individually and/or collectively, onto the subject position of the majority of the sentences, thereby placing them as the Doers of the mentioned PEV actions. for instance,

William Chacha and Henry Muita	prepare[d]	a criminal plan
DOERS/ACTORS	PROCESS: MATERIAL	GOAL

By mapping varied Actors on the subject position besides the three suspects, the Defence teams did not relate the PEV activities to specific individuals, but they structured their sentences in two ways. Firstly, they mapped the Prosecution lawyers on to the Subject position, blaming them for not having presented evidence that directly linked the suspects to the PEV activities as shown in lines 813-4 and 1006 of Excerpt 5. Secondly, the Defence teams mapped themselves on to the subject positions, coding themselves as responsible for tabling evidence that would counter the Prosecutor's narrative as shown in lines 824, 1010 and 1014 of Excerpt 5.

By using the material processes in the manner discussed in this subsection and structuring them in the ways described in the above paragraph, the Defence teams were able to passivize their clients (the suspects) and represent them as being on the receiving end (Leeuwen, 2008 p.33) of the Prosecution's investigations. For instance, in Excerpt 5 line 822, the Defence lawyer for the first suspect uses a rhetorical question, '[w]hat other power would he (Chacha) be seeking?' to indicate that his client was not seeking the power alluded to by the Prosecution as he had legitimately gained power upon his election in the National Assembly. Besides constructing agency using the material processes that described actions in the external world, the Prosecution and the Defence teams also employed relational processes as discussed in the subsection that follows.

4.2.2 Relational Processes

Relational processes were the second most preferred processes after the material processes. However, unlike the material processes that were more frequently used by the

Prosecution than the Defence teams, relational processes seemed to be the Defence teams' preference. Like the material processes, relational processes apportion active and passive roles to social actors. In relational processes, social actors are assigned active roles by being represented as 'assigners' while they are endowed with passive roles when they are denoted as 'carriers' (Leeuwen, 2008 p.33&34). Halliday (1994 p.119) posits that relational processes are the processes of 'being' and that something is said to 'be' something else. This resonates with Thompson's (2014 p.101) observation that these processes are concerned with being in the world of abstract relations whereby a relationship between two concepts is set up. Halliday & Matthiensen (2004 p.210) add that relational processes serve to characterize and identify.

In the study's data, the two types of relational processes (intensive and possessive), were evident and occurred in both the attributive and the identifying modes. Intensive relational processes imply that 'x is a', possessive ones indicate that 'x has a' while circumstantial relational processes denote that 'x is at a' – with 'at' standing for 'is at, in, on, for, with, about or along' (Halliday, 1994 p.119; Halliday & Matthiensen, 2004 p.216). In addition, while in an attributive mode, an entity has some quality ascribed or attributed to it, in identifying mode something has an identity assigned to it. The subsections that follow present discussions on the use of the relational processes by the prosecution and the Defence teams, respectively.

4.2.2.1 The Prosecution and the Use of Relational Processes

The Prosecution lawyers employed the relational processes during the hearing to relate the events of the PEV variedly, as well as to characterize and identify specific individuals.

Excerpt 6 exemplifies the use of the relational processes by the prosecution. It is extracted from the second day of the hearing as the Prosecution submitted their evidence.

Excerpt 6 (Transcript D_2)

(a)
208. Now, by 2007, William Chacha **was** the head of a multifaceted
209. network. He **was** a prominent politician and referred to as a Kalenjin
210. leader. He alone **was** the recognised leader in the Rift Valley and
211. responsible for overseeing the attacks in that area. However, he did not
212. act alone but instead acted together with Henry Muita and Joshua Kerago.
213. This network **had** five components, each of which we will address
214. in turn…
229. Likewise, Henry Muita in 2007 **was** a prominent politician. He
230. **was** an elected Member of Parliament representing Tinderet constituency in
231.the Nandi District for four separate terms. On the ground, Muita′s
232. authority **was** subordinate to Chacha, and Muita himself **remained**
233. responsible for the attacks executed in the Nandi District…
1712. why them? We answer that question first by looking at who they **are**.
1713. William Chacha and Henry Muita used their position and stature in
1714. the Kenyan context to commit these crimes alleged. Each **are** in their own
1715. right, influential members of the Kalenjin community. Chacha himself was
1716. regarded as the most influential Kalenjin figure and, similarly, Muita
1717. **was** an old-time Kalenjin politician. Together they had held great
1718. authority, influence and power over their supporters.

The excerpt contains eleven relational processes that are highlighted in bold type. Eight are attributive relational processes out of which seven are intensive in nature while one is possessive. Three are identifying relational processes of the intensive type. It is notable from Excerpt 6 that the majority of the relational processes were in the form of the verb 'be' and this was characteristic in the entire proceedings. Table 5 shows the distribution of the relational processes in Excerpt 6.

Table 5:*The Distribution of the Relational Processes in Excerpt 6*

Mode Type	**Attributive**	**Identifying**
Intensive	He **was** a prominent politician and referred to as a Kalenjin leader (Lines 209 – 210).	William Chacha **was** the head of a multifaceted network (208 – 209).
	Henry Muita in 2007 **was** a prominent politician (229)	He alone **was** the recognised leader in the Rift Valley and responsible for overseeing the attacks in that area (210 - 211).
	He **was** an elected Member of Parliament representing Tinderet constituency in the Nandi District for four separate terms (229 -231).	Who they **are** (1712).
	On the ground, Muita′s authority **was** subordinate to Chacha (231 – 232).	
	Muita himself **remained** responsible for the attacks executed in the Nandi District (232 – 233).	
	Each **are** in their own right, influential members of the Kalenjin community (1714 -1715).	
	Muita **was** an old-time Kalenjin politician (1716 – 1717).	
Possessive	This network **had** five components, each of which we will address in turn (213 – 214)	

As earlier mentioned, the relational processes depicted in Excerpt 6 and set out in Table 5 show that the attributive relational processes were prominently used to indicate that an entity had some quality ascribed to it. Table 5 shows that Excerpt 6 contains eight attributive relational processes of two types – intensive and possessive.

To begin with, the intensive attributive relational clauses contain two participants including the Attribute and the Carrier - the entity to which the attribute is ascribed (Halliday & Matthiensen, 2004 p.219). From Excerpt 6, the intensive relational processes are seven. For instance, lines 209 – 210, contains the clause that has the first intensive attributive relational process. In this clause, the Carrier is 'Chacha' and the Attributes ascribed to him are 'a prominent politician' and 'a Kalenjin leader'.

The other six intensive attributive relational processes in the excerpt are in clauses found in lines 229, 229 – 231, 231 – 232, 232 – 233, 1714 – 1715 and 1716 – 1717. In these clauses, the Carrier is 'Muita', except for lines 231 – 232 where the Carrier is 'his (Muita's) authority' and lines 1714 -1715 where the carrier is 'each' representing Chacha and Muita. In the four clauses where Muita is the Carrier, he is ascribed the attributes 'a prominent politician' in line 229, 'an elected Member of Parliament representing Tinderet constituency in the Nandi District for four separate terms' (lines 229 -231), 'responsible for the attacks executed in the Nandi District' (lines 232 – 233) and 'an old-time Kalenjin politician' (lines 1716 - 1717). 'His authority' as the Carrier, is qualified as 'subordinate to Chacha' (lines 231 – 232) and 'each (Chacha and Muita)' as the carrier is ascribed the attributes of being 'influential members of the Kalenjin community' (lines 1714 – 1715).

The study identifies the five clauses identified in Excerpt 6 as intensive attributive relational clauses because they fit Halliday & Matthiensen's (2004) criteria for intensive attributive relational clauses. To begin with, the processes are realized by the ascriptive verbs 'be' in lines 209, 229, 230 and 232 as well as the verb 'remain' in line 232. The Prosecution uses these two forms of the verb in the simple past tense to indicate that by the specified past time in the excerpt (2007), the attributes assigned to Chacha and Muita

represented the generalizations about them at that time. The second criterion is that the nominal groups representing the Attributes are indefinite where they take the indefinite article ‘a’ or an adjective. For example, ‘a prominent politician’ in lines 209 and 229, ‘a Kalenjin leader’ in lines 209 – 210, ‘an elected Member of Parliament representing Tinderet constituency in the Nandi District for four separate terms’ (lines 229 -231), ‘responsible for the attacks executed in the Nandi District’ (lines 232 – 233), ‘subordinate to Chacha’ in lines 231 – 232, ‘influential members of the Kalenjin community’ (lines 1714 – 1715) and ‘an old-time Kalenjin politician’ (1716-1717). The indefinite nominal groups helped to rule our singularity in the ascribed attributes such that in ‘a prominent politician,’ the Prosecution indicated that among other prominent politicians, Chacha’s prominence had an impact in the subject of the PEV.

Excerpt 6 demonstrates that the Prosecution used social status to define the first two suspects. The Prosecution projected the suspects’ social status in negative light as the attributes outlined in the above paragraphs indicate. For instance, viewed separately, the first suspect in line 1716 is said to have been regarded as ‘the most influential Kalenjin figure.’ This meant that he had power over the other members of his community and would therefore manipulate them. The second suspect is described as an ‘old-time Kalenjin politician’ in line 1717. The attribute ‘an old-time Kalenjin politician’ is interpreted in two ways. Firstly, it indicates a prolonged duration of time as is elaborated in lines 229 – 230 that he had been elected for four separate terms of five years each and therefore he may have won the trust of the electorate. Secondly, that regarding the culture of the Kalenjin community’s ‘pecking orders,’ his age and experience in politics gave him a social standing that enabled him to give orders that would be obeyed without a question.

The study interprets the use of the attribute by the Prosecution as carrying negative connotations. These two attributes that the Prosecution ascribes to the first two suspects foreground agency as they suggest that the two suspects employed their social status negatively to influence the masses into engaging in violent activities.

Viewed collectively, the first and the second suspects are described as 'influential members of the Kalenjin community' in lines 1714 – 1715. In this noun phrase, the attributive adjective 'influential' pre-modifies the noun 'members' to signify the first two suspects. The adjective 'influential' according to the Macmillan Dictionary of English, refers to a person who 'has an effect on the way other people think or behave.' The Prosecution couples this negative adjective with a post-modifying prepositional phrase 'of the Kalenjin community.' to indicate that the two suspects were tribal leaders. By using these negative attributes, the prosecution frames the two suspects negatively conferring on them a criminal identity and in turn foregrounding agency.

The final type of the attributive relational processes found in Excerpt 6 is the Possessive Attributive Relational Process. In possessive relational process clauses, the relationship between two terms is one of ownership where an entity is said to possess another (Halliday 1994:132). In Excerpt 6, the possessive relational process clause is in lines 213 (the network had five components, each of which we will address in turns). In this clause, the relationship of possession between the participants - 'the network' and 'five components' - is encoded as a composition. A relationship of composition shows what something is made of, setting up a part-whole relationship called meronymy (Griffiths, 2006, p.58; Khorina, 2018, p.65). Here, the Prosecution indicates that 'the network' is made of 'five components,' which in the course of the proceedings are enlisted as the

political component, the media, the financial, the elders component and the military component. The study noted that among the enlisted parts of the network, only the political and the media are defined in terms of identifiable human agents. That is, the political component that is identified as Mr. Chacha and Mr. Muita and the media that is identified as Mr. Kerago, who is also said to have played a key role in broadcasting Chacha and Muita's message. The financial component was identified as consisting of Chacha and Muita who were defined as the biggest financiers of the network while other financiers were referred to as 'business people.' With regard to the remaining two components, the elders remained anonymized while three commanders were identified as General Koech, General Cheruiyot and Cheramboss. In addition, these commanders were said to be at the receiving end of Chacha and Muita who were allegedly the ultimate network leaders. The study finds the failure to reveal the identities of certain individuals in the named components (such as the business people and the elders) or the mention of the commanders using only one name (General Koech, General Cheruiyot and Cheramboss) as a way of downplaying their responsibility in the violence while highlighting that of the suspects who are consistently and frequently specified.

With regard to the identifying relational processes, Excerpt 6 contains three. Like the attributive clauses, identifying clauses have two Participants – the Identified and the Identifier - occurring in a form and function relationship that is generally labelled as Token and Value. From Excerpt 6, the identifying relational clauses are in lines 208 – 209, 210 – 211 and 1712. In the first two clauses, William Chacha is the Identified/Token and the one to which the Identifier/Value is assigned. In lines 208 – 209 for instance, William Chacha (Identified/Token) is assigned the Value 'the head of a multifaceted

network' while in line 210 – 211, he is assigned the Value 'the lone recognised leader in the Rift Valley and the one responsible for overseeing the attacks in that area.' In the clause in line 1721, the Identified/Token is 'them' referring to the first two suspects.

In these three clauses, either the Token or the Value can be used to identify the other. That is, 'William Chacha'- the Token – can take the place of 'the head of a multifaceted network' – the Value - so that the sentence reads, 'The head of a multifaceted network was William Chacha' without changing the meaning of the clause and without interfering with the grammatical correctness of it. This reversability is a characteristic of identifying relational clauses, and in the study, it serves to highlight Chacha's role in the network that allegedly instigated the violence, as Value is said to define the identity of the Token and vice versa (Nguyen, 2012, p.87). This role is therefore emphasized using the equative verb 'be' in the excerpt.

Excerpt 6 has shown that the Prosecution lawyers used the intensive attributive relational processes to characterize the first two suspects and the network. This conforms to Halliday & Matthiensen (2004, p.219) view that attributive relational clauses are 'a resource for characterizing entities serving as the Carrier; and are also a central grammatical strategy for assessing by assigning an evaluative Attribute to the Carrier.' The Prosecution also used the identifying relational clauses to uniquely define the first suspect. In this regard, the first two suspects' descriptions and definitions using the intensive attributive and identifying relational processes enhanced their portrayal in negative light. The Prosecution lawyers created a picture of influential personalities who were capable of manipulating ordinary people. The Prosecution therefore depicted the suspects as the active dynamic forces (Leeuwen, 2008, p.33) in the PEV activities. This

enhances the foregrounding of agency. Having discussed the relational processes that the Prosecution used to characterize and to identify the suspects, I now turn to the relational processes that the Defence teams used in the subsection that follows.

4.2.2.2 The Defence Teams and the Use of the Relational Processes

The Defence teams used the relational processes to transpose the criminal image that the Prosecution had painted on the first two suspects. As Table 3 in Section 5.2 demonstrates, the Defence teams used the relational processes more frequently than they used any other process type in the opening statements. The Defence teams used the relational clauses to make specific reference to the individual suspects, characterizing and defining each one of them in terms of religious inclinations, social status and family orientations. Excerpt 7 below that is extracted from the Defence teams opening statements demonstrates this. Part (a) is from the first suspects' Defence team while part (b) is from the Defence team for the second suspect.

Excerpt 7 (Transcript D_1)

a)

719. Listening to the opening speech of the Prosecutor, reading
720. through the documents that have been presented before this
721. Pre-Trial Chamber, the William Chacha depicted in those documents and in
722. that speech **is** dramatically different from the William Chacha seated to my
723. right. The William Chacha seated to my right **is** a God-fearing man. He **is**
724. a man who one of his co-values is sanctity of human life. He **is** a family
725. man. He cannot start contemplating sitting in any meeting to plan
726. killing and forceful transfer of other human beings. He **is** a man who
727. loves humanity in all its forms. He could hardly contemplate committing
728. a crime against humanity.

(b)

1038. Now, it is important to know who Mr. Muita **is.** Mr. Muita **is** 64
1039. years old, a very respected member of the Kenyan parliament and of his
1040. community. He **has been** a politician and served as a member of Tinderet
1041. constituency from 1979 until the present day. He **is** a family man and a
1042. well-respected Christian in his church.

From Excerpt 7 above, the highlighted verbs in lines 723, 724, 726, 1038, 1040 and 1041 are the relational process verbs that this subsection focuses on. While the study notes that there are many different verbs that realize the relational process, all the highlighted relational process verbs are in the form of the verb 'be' in the present simple tense and the verb in line 1040 is in the past perfect continuous tense as in, 'has been'. It is also noteworthy that all the relational processes in Excerpt 7 are attributive intensive relational processes. The clauses containing the processes are therefore denoting class membership attribution. Where the suspects are said to belong to varied classes, namely, the class of the God-fearing men, that of Christians, of the family men, the general class of men, that of members of the Kenyan parliament and of politicians.

With regard to the attribution to the class of God-fearing men and that of Christians, the Defence attorney for the first suspect in line 723 ascribes the 'God-fearing' attributes to the first suspect while the Defence lawyer for the second suspect ascribes to his client the attributes 'Christian' in line 1042. It is notable that the Defence lawyer is keen to qualify the attribute 'Christian' using the phrase 'well-respected' to indicate that in the class of 'Christians,' there are various other sub-classifications but the second suspect belonged to that of 'the well-respected.' Additionally, the Defence lawyer for the second suspect outlines the context in which his client is 'a well-respected Christian,' which he identifies as 'his church.' These two attributes may be slightly different in that God-fearing is a general class without specificity to religious affiliation, while Christian is specific. However, both point to godliness. While God is to be feared and venerated by all people regardless of religion, Christians follow Biblical teachings that explicitly oppose evil doing. Therefore, 'God fearing people' and 'well respected Christians' are guided by

divine principles like the ten commandments and this helps the Defence teams to falsify the Prosecution's allegations.

With regard to the attribution to the class of family men, the Defence lawyers used the relational clauses to ascribe the first two suspects the quality of being 'family man' in lines 724-5 and 1041, respectively. A family man according to the Macmillan Dictionary is a man who likes spending time at home with wife or partner and children. In addition to this definition, it is instinctive that family men safeguard their dependents' welfare. This is affirmed by Meyer (2017) who evaluated narratives of adolescent male orphans in a study titled 'Dominant Discourses on What it means to be a 'Real' Man in South Africa,' where most respondents related 'real' men with fatherhood. This is a concept that in turn relates closely to 'family man' and which Meyer (2017 p.5) opines as viewed in the lens of 'supporting one's family, safeguarding one's family and running the household.' Further, in the African society, it is the responsibility of families to model good behavior to children. Going by this view, the Macmillan definition of 'family man' and the views from Meyer's research, this study finds the representation of the suspects by the Defence lawyers as 'family men' strategic in implying that the suspects loved spending their time constructively at home with their partners and children and that they were responsible parents who would not spend time engaging in planning violent activities as alleged by the Prosecution.

Besides using the relational processes to assign the suspects positive religion and family attributes, each Defence lawyer employed the relational clauses variedly to further characterize their clients. To begin with, in lines 724 and 726-7 of Excerpt 7, the Defence lawyer for the first suspect attributes his client to the general class of 'man' to mean

'human being.' While this is a very general classification, the lawyer specifies in line 724 by relating the suspect to the men 'whose co-values are sanctity of human life,' while in line 726-7, the lawyer describes the suspect as man who 'loves humanity in all its forms.' These classifications depict the first suspect in positive light painting a picture of a person who cannot interfere with humanity in the manner outlined in the Prosecution's charges like killing, maiming, destroying properties among others.

Further, the Defence lawyer for the second suspect attributes his client to the class of 'members of the Kenyan Parliament' and that of 'his community' in lines 1039 – 1040. His affiliation to the membership of the Kenyan Parliament and of his community is qualified by an adjective phrase 'very respected,' portraying him as admired and highly regarded in the society. That he is a member of the Kenyan parliament is to denote him as a 'national' personality, who, together with other legislators makes laws for the benefit of the nation at large, in addition to being a member of his community where he performs the representational role to his constituents. This representational role is also depicted in lines 1040 – 41 where he is attributed to the class of 'politicians.' Here, a coordinating clause supplies additional information that he had been a member of 'the Kenyan parliament and 'of his constituency from 1979 until the present day,' to emphasize on the aspect of time. He therefore hoped to communicate that the second suspect who had been a law-maker for thirty-one consecutive years could not break the law.

The study has shown that the Defence lawyers used the relational processes to assign the suspects positive attributes by associating them with the class of 'family men' and inclining them positively to religion as well as to men who value humanity. This according to Leeuwen (2008 p.42), is a form of 'identification' that happens when

individuals are defined, ‘not in terms of what they do, but in terms of what they, more or less permanently, or unavoidably, are.’ In addition, the relational processes were used to represent the second suspect positively as a law maker. This form of representation is referred to as functionalization that Leeuwen (2008, p.42) posits it defines social actors ‘in terms of what they do. The study found the use of such interpersonal attribution by the Defence teams as a strategy to appeal to the court to view the specific suspects differently from the way the Prosecution had framed them. This resonates with Leeuwen’s (2008) view that participants of a social practice can be represented in interpersonal, rather than experiential terms that evaluate them, appraising them as admired or pitied, good or bad as well as loved or hated. In this regard, the use of the relational process clauses appraised the suspects portraying them as admired. This in turn was a way of backgrounding the suspects’ agency in the PEV.

Having looked at the use of the relational processes by both the Prosecution and the Defence, I now turn to the mental processes in the section that follows.

4.2.3 Mental Processes

Mental processes enhance the reference to specific social actors as Sensers in the active transitive clauses (Leeuwen, 2008 p.33). Thompson (2014, p.97) considers mental processes as bringing out ‘what goes on in the internal world of the mind,’ marked by processes of thinking, imagining, liking, wanting, seeing and hearing. This resonates with Halliday & Matthiensen's (2004, p.197) position that mental clauses are concerned with our experience of the world of our own consciousness. Further, Nguyen (2012, p.87) adds that mental processes encode mental reactions such as perception, thoughts and feelings giving insight into people’s consciousness and how they sense the experience of the

reality. There are mental processes of perception, mental processes of cognition and mental processes of emotion (Halliday & Matthiensen, 2004; Leeuwen, 2008; Thompson, 2014).

Unlike material processes that have up to four participants, namely, the Actor, the Process, the Goal and /or Circumstance (s), mental processes have two participants: the Senser and the Phenomenon. The Senser is the conscious being who is involved in a mental process while the Phenomenon is that which is felt, thought, wanted or perceived by the conscious Senser (Halliday & Matthiensen, 2004, p.203; Nguyen, 2012, p.87). These scholars add that the Phenomenon can be a thing, an act or a fact. In the study, the Prosecution and the Defence lawyers employed mental processes differently to advance their claims during the Confirmation of Charges Hearing and the subsections that follow present the discussions.

4.2.3.1 The Prosecution and the Use of the Mental Processes

The Prosecution lawyers maintained that the PEV was a phenomenon that had been conceived in the minds of the suspects before it happened and that the announcement of results of the disputed elections was the trigger to actualize what had been preconceived. The excerpt below that is an extract from Excerpt 3 in section 5.2 and of the Prosecution's opening statements shows the Prosecution's use of the mental processes at the hearing.

Excerpt 8 (Transcript D_1)

118. prepare a criminal plan to gain political power. They **decided** that if
119. the PNU rigged the elections or even if the ODM lost, there would be war.
120. They **planned to** -- what [is] the meaning of war? They **planned** to attack
121. supporters of the PNU and expel them from their homes in Rift Valley.
122. They **were aiming** to gain power and create a uniform ODM voting bloc in
123. Rift Valley. That was the goal.

The excerpt above contains three mental processes that are in bold type, namely; **had decided**, **had planned** and **were aiming**. To begin with, the Senser in the three mental processes is a plural personal pronoun 'they'. The referent, which can be deduced from the larger text, is the first two suspects - William Chacha and Henry Muita. They are therefore the conscious beings that the Prosecution claimed were behind the mental processes of deciding, planning and aiming. The use of these Sensers in the mental processes enabled the Prosecution to endow the first two suspects with active roles (Leeuwen, 2008: 33) in the violence.

The first mental process that is in the simple past tense – decided - is a cognitive process. Cognitive mental processes are among the four mental processes including perceptive, desiderative and emotive, differing with respect to phenomenality, directionality, gradability, potentiality and ability to serve as metaphors of modality (Halliday, 1994 p.118; Halliday & Matthiensen, 2004 p.208; Thompson, 2014 p.99). Cognitive mental processes are the processes of deciding, knowing and understanding; while perceptive describe processes of perceptions such as seeing and hearing; emotive describe reactive processes of feeling and desiderative processes denote 'wanting' (Thompson, 2014 p.99).

The study interprets the Prosecution's use of the cognitive mental process 'decide' early into the opening statements as deliberate and manipulative. According to MacMillan Dictionary, decide means 'to come or bring a resolution in the mind as a result of consideration.' The Prosecution therefore used this verb to persuade the court into viewing the suspects' alleged actions in the PEV as well thought out contrary to opposing views that the violence was spontaneous.

Consequently, the Prosecution used two desiderative mental processes –'planned' and 'were aiming' in lines 120 and 122, respectively. Besides being desiderative mental processes, the two are similar in type and usage. Both are catenative verbs. Catenative verbs are used to introduce other verbs and chain them to the complements (Mindt, 1995). The MacMillan Dictionary considers 'plan' and 'aim' synonyms with their meaning being 'to intend to do something'. However, the meaning of 'aim' extends to 'to hope to achieve something.' While these two verbs imply mental activities, the study sees their use as the Prosecution's way of justifying the use and the intended meaning of the first mental process 'decided' that is cognitive in nature. This observation is supported by the Prosecution's introduction of the two desiderative mental processes with a rhetorical question in line 120 – 'What [is] the meaning of war?' The Prosecution therefore hoped to convince the court that the first two suspects had a motive in their desire to propagate violence.

Each mental process discussed above is followed by a Phenomenon. As mentioned earlier, a Phenomenon is that which is felt, thought, wanted or perceived by the conscious Senser (Halliday & Matthiensen, 2004, p.203; Nguyen, 2012, p.87). After the mental process 'decided,' the Phenomenon is 'that if the PNU rigged the elections or even if the ODM lost, there would be war' in lines 118 – 119. This Phenomenon introduces a conditional – a content conditional. In a content conditional clause, a condition is conveyed which, 'if fulfilled, ensures the truth of the proposition in the main clause' (Hesabi et al., 2013, p.187). In the Phenomenon in lines 118 – 119 therefore, the Prosecution alleged that the suspects had set up a space of mental content, this is a space which is about a possible state of affairs in their world, namely the situation where the

PNU rigged the elections or the ODM losing. Within this space, the Prosecution alleged that the suspects predicted an added aspect of the content of this mental space: the presence of war. In so doing, the Prosecution hoped to highlight the suspects' responsibility in ensuring the inevitability of war as the Phenomenon communicated that the war was contingent on the PNU rigging the elections or ODM losing in the elections. Further, the second Phenomenon in lines 120 – 121 is 'to attack supporters of the PNU and expel them from their homes in Rift Valley' the study finds this Phenomenon as an exposition of the war that is the previous Phenomenn represents as inexorable. Lastly, the Phenomenon in lines 122 – 123 is 'to gain power and create a uniform ODM voting bloc in Rift Valley,' which the Prosecution represented as the suspects' motivation for the war.

Using these two mental process clauses, the Prosecution foregrounds the suspects' roles in the planning of the post-election violence. This is despite the fact that the roles in this section are not physical, as those portrayed in the discussions of Material Processes in section 5.2, but are abstract and said to occur in the minds of the suspects. Contrastingly, the Defence teams contested the allegations that the three suspects were responsible for planning the violence through counter mental processes as the subsequent sub section demonstrates.

4.2.3.2 The Defence Teams and the Use of the Mental Processes

The Defence teams' use of the mental processes is distinct from that of the Prosecution. The three Defence lawyers did not attribute the mental processes to the suspects but they attributed the mental processes to themselves and to the Prosecution as they accused the Prosecution of not conducting the investigations, as they would have expected. Excerpt 9 below demonstrates the use of the mental processes by the Defence teams.

Except 9 (Transcript D_1)

(a)
877. This is a case largely motivated in terms of choosing who to
878. charge and who not to charge by political considerations. The evidence
879. that has been gathered by the Prosecutor will show very well-drawn
880. hierarchical system. And at the top of that system, you will find the
881. name repeatedly of RO. You **will** repeatedly **see** that in the
882. enormous statements that he provided finances.
883. To take the most charitable view of it, the Prosecutor **did not**
884. **believe** that part of the evidence, because if he did, then the person who
885. would bear the greatest responsibility would be the ultimate person to
886. whom all this was being reported to. If he **did not believe** that portion,
887. why did he **believe** the other portion? These are the issues that we'll be
888. raising during this confirmation hearing.

(b)
1087. Finally, I **would like** to humbly submit that in order to create
1088. their case, the Prosecution has prejudicially exaggerated the case
1089. against Mr. Muita by citing large amount of irrelevant evidence which
1090. does not implicate Mr. Muita. And, in that evidence, they have further
1091. aggravated matters by confusing between Henry Muita, Sally Kosgei, and
1092. Reverend Kosgei, so that at the end of the analysis it will be clear that
1093. they're not talking about the same person.

(c)
1133. Madam President, we **will desire** in the course of presenting our
1134. case to show that the Prosecutor's case is founded mainly on what is
1135. alleged that my client said by way of broadcast. That broadcast material
1136. is recorded. Madam President, we **will want** to maintain the shock that we
1137. have as we speak now that after the Prosecutor was given an opportunity
1138. to investigate and bring incriminating evidence, the only thing he
1139. brought was actually exculpatory material in respect to my client.
1140. Madam President and your Honours, I **want** to repeat and emphasize that,
1141. that every single item that the Prosecutor brought is exculpatory of my
1142. client. There is nothing incriminating in it.

Excerpt 9 contains three parts. Part (a) is extracted from the first suspect's Defence team's opening statements; (b) from the second suspect's and (c) from the third suspect's Defence team's opening statements. In the excerpt, there are five mental processes highlighted in bold type. They are, 'see' in line 881, 'believe' in lines 884, 886 and 887, 'like' in line 1087, 'desire' in line 1133 as well as 'want' in lines 1136 and 1140.

To begin with, ‘see’ in line 881 is a perception mental process. However, in the excerpt, it does not only refer to a literal sensory experience, but its meaning is extended in the context to mean ‘deduce,’ or ‘discover.’ This echoes Roque, Kendrick, Norcliffe, & Majid (2018, p.375-376) who argue that perception verbs are employed to express notions of comprehension and knowledge across languages. In the excerpt therefore, a literal visual meaning is also potentially active for the mental process ‘see’ along with the cognitive related meaning, as the lawyer was referring to existing physical documents (statements) in court. The Senser in the mental process ‘see’ is ‘you’ whose referent is ‘the court’/‘the judges’ while the Phenomenon is ‘that in the enormous statements that he provided finances.’ In this mental process, the Defence lawyer for the first suspect is pleading with the court to look at the statements provided by the Prosecution and deduce that they were not incriminating the first suspect but other individuals who the Prosecution had chosen not to charge in court. This included the ‘he’ mentioned in the Phenomenon and that refers to RO who the Defenec lawyer claimed had played a significant role in fomenting the violence through his provision of finances. However, the Defence lawyer does not pursue this line of argument to develop his claim further and perhaps show RO’s agency in the violence. Instead, the lawyer shifts blame to the Prosecution using a subsequent mental process ‘believe’ in lines 884, 886 and 887.

‘Believe’ is a mental process of cognition. In the excerpt, the Senser is ‘the Prosecutor’ in lines 883-884, and ‘he’ in lines 886 and 887 that refers to the Prosecutor. The Phenomenon in lines 883-884 is ‘that part of the evidence,’ ‘that portion’ in line 886 and ‘the other portion’ in line 887. The mental processes in these lines is in the negative and the part/portion of evidence that the Defence lawyer claimed the Prosecutor did not

believe in is that RO had provided finances for the post-election violence. In addition, the mental process in line 887 is in a form of a question and 'the other portion' that the Defence lawyer refers to can be inferred to mean the allegations levelled against the first suspect by the Prosecution regarding the suspect's involvement in the violence. To mystify agency in this part of Excerpt 9, the Defence lawyer introduces a presupposition. That if the Prosecutor had not believed RO's participation in the violence, which depicts him as an 'active dynamic force' (Leeuwen, 2008, p.33) in the PEV, then he should not have believed his client's alleged contribution in the same either, as it portrays him as a passive actor. Here, the study finds the Defence lawyer as shifting blame to the Prosecution, accusing them of being inconsistent in the way they viewed the PEV actions.

In addition to the Defence lawyer for the first suspect's use of the mental process 'see' to lay blame on the Prosecution regarding the charged individuals, the Defence lawyers for the second and third suspects also employed mental processes to apportion blame on the Prosecution variedly as shown in parts (b) and (c) of Excerpt 9. In these parts, the Senser in the mental process in lines 1087 is the Defence team for the second suspect, while the Senser in lines 1133, 1136 and 1140 is the third suspect's Defence team. The three mental processes are 'like,' 'desire' and 'want.' While 'like' is an emotive mental process, 'desire' and 'want' are desiderative processes. In the excerpt however, the mental process 'like' was not used in its affective sense, but as a desiderative verb, like 'desire' and 'want' and the three were used to express expectation. The expectation of each of the three processes was expressed in the respective Phenomenon. For instance, in line 1133, the Defence lawyer for the third suspect hoped to express the expectation of showing the court what the Prosecutor's case against his client was all about. The study noted that the

expections expressed by the defence lawyers for the second and the third suspects in the Phenomena of the three mental processes, laid blame on the Prosecution in one way or another. This was a similar strategy by the Defence lawyer for the fisrt suspect in the previous paragraph to shift the focus of the hearing from the suspects to the Prosecution.

The discussions in this section have shown that speakers, like the Prosecution and the Defence lawyers in the study's data, construct agency by making specific reference to varied individuals in various transitivity clauses. The discussions have revealed that social actors are included in texts using the process types including the Material Processes of doing and happening, Relational Processes of being and possession as well as the Mental Processes that reveal the internal world of the mind. On the one hand, the Prosecution consistently and explicitly made specific reference to the three suspects by identifying them by their names and coding them as Doers in material processes, Carriers in relational processes and Sensers in mental processes. The specific reference to the suspects therefore left no question about the subject of the various processes that the Prosecution employed and this was a way of foregrounding agency. On the other hand, the Defence teams made specific reference to other individuals including the Prosecution and coded them as the Doers in material processes, Carriers in relational processes and Sensers in mental processes while coding the suspects as being on the receiving end of the PEV. This was a way of downplaying the suspects' involvement in the PEV. The section that follows discusses how the lawyers constucted agency by making specific reference to given individuals through diverse address terms.

4.3 Terms of Address

Terms of address were manipulated by different court participants to make specific reference to the suspects, portraying them either as potential criminals capable of committing crimes as charged or as honourable, and therefore not capable of committing the crimes. This section examines the varied words, phrases, names or titles (or some combinations of these) that the diverse teams used in address and in reference to the specific individuals, examining the motivations behind the varied choices with regard to agency. This resonates with the observation that an individual will receive an array of addresses depending on the speaker, and that there is a possibility of the same address having different implications when used by different people (Dickey, 1997:259).

Address denotes a speaker's linguistic reference to his/her collocutor (s) while address terms are words and phrases that designate the collocutor (s) with an element of deixis (Braun, 1988 p.7). In addition, Schiffrin (2006) refers to terms of address as referrals and defines them as 'Communicative attempts by a speaker to evoke a referent (the idea a speaker has of something in the world) through a referring expression (a linguistics expression that can represent and evoke an entity) …. As first mentions, we can think of the speaker as accessing the referent; as next mentions, as maintaining the referent' (p.36).

In the study's data, court participants including the judges, the Prosecution and the Defence teams addressed or referred to the suspects using proper nouns, with and without titles. These were in the form of Title Last Name (TLN), Title First Name Last Name (TFNLN), First Name Last Name (FNLN), First Name Kinship Last Name (FN KLN), Kinship Last Name (KLN) and Last Name only (LN) to show their involvement or

noninvolvement in the PEV. For example, the first suspect was addressed or referred to as Mr. Chacha or Honourable Chacha (TLN), Mr. William Chacha (TFNLN), William Chacha (FNLN) or as Chacha (LN). In addition, the third suspect was referred to as Joshua arap Kerago (FNKLN) and as arap Kerago (KLN) besides the other above identified forms of address. Table 6 illustrates the use of the terms of address in the opening statements of the Confirmation of the Charges Hearing by the judges, the Prosecution, the Legal Representative of the Victims and the Defence teams.

Table 6: *Distribution of the Address Terms Used in the Opening Statements*

	Judges	Prosecution	The Legal Rep. of the Victims	DT1	DT2	DT3
Suspect 1:						
LN (Chacha)	0	6	0	0	0	1
FNLN (William Chacha)	0	11	0	10	0	0
T^1FL LN (Mr. William Chacha)	0	0	0	6	0	0
T^1LN (Mr. Chacha)	7	24	0	5	3	0
T^2LN (HonourableChacha)	0	0	0	10	0	1
Suspect 2:						
LN (Muita)	0	5	0	0	0	0
FNLN (Henry Muita)	0	11	0	2	1	0
T^1LN (Mr. Muita)	4	20	0	1	22	0
T^2FLLN(HonourableHenry Muita)	0	0	0	1	0	0
Suspect 3:						
LN (Kerago)	0	0	0	0	0	0
FNLN (Joshua Kerago)	0	9	0	0	0	1
FN KLN (Joshua arap Kerago)	0	0	0	0	0	1
KLN (arap Kerago)	0	0	0	0	0	2
T^1LN (Mr. Kerago)	8	6	0	0	0	1

In Table 6 above, DT refers to Defence team. The table shows that the judges only used T^1LN – the suspect's last name with the title 'Mr.' whenever they used a term of address with any of the three suspects. The Defence team for the second suspect (DT2), like the judges, is shown to have used T^1LN whenever they used a term of address with the

suspects, except for one occasion when they used the FNLN to refer to the second suspect. The Prosecution lawyers used three variants of the terms of address including T^1LN, FNLN and LN to refer to the suspects.

In marked contrast, the table shows that the Defence team for the first suspect (DT1) employed the standard title of deference (honourable) with the first suspect's last name (T^2LN) and the second suspect's first and the last name (T^2FNLN). In addition, DT1 employed T^1FL LN as in, Mr. William Chacha and FNLN as in William Chacha. Besides this, the Defence team for the third suspect (DT3) also employed the standard title of deference (honourable) with first suspect's last name (T^2LN) and was the only team that chose the Kinship title (Arap) in the form of FN KLN and KLN when referring to the third suspect. In addition, DT3 also usedT^1LN, FNLN and LN choices with all the suspects.

It is noteworthy from the table that the legal representatives of the victims were the only court interactants who did not use any address terms with any of the suspects. Although the victims' lawyers would benefit more if the Prosecution delivered a conviction in the end, their not addressing the suspects in any way indicated neutrality and a need to abide by their mandate of representing the victims without overtly supporting either the Prosecution or the Defence. One of the victims' lawyers confirms this assertion in the closing statements as illustrated in the excerpt below.

Excerpt 12 (Transcript D_7)

364. It is my function pursuant to paragraph (3) of Article 68 of the
365. Statute to present the views and concerns of the victims. I do not seek
366. to stray into territory that is the function of the Prosecution or
367. Defence.

In this excerpt, one of the legal representatives of the victims outlines his team's mandate of representing the victims of the PEV and quotes the Rome Statute (line 364) that enforces this mandate. In lines 366 and 367, the victims' lawyer articulates their desire to remain neutral and not to take sides with either the Prosecution or the Defence.

The subsections that follow present discussions regarding the use of the terms of address by the Prosecution and the Defence teams. These teams constituted lawyers from different cultural backgrounds. Sommer & Lupapula (2012, p.270) posit that understanding the suitability of a certain form or expression in a particular context is an indication of communicative skill and that in the analysis of address behavior, such knowledge or lack of it is central, particularly when individuals from different cultures perform the communicative act. In this regard, subsections 4.3.1 and 4.3.2 that follow, discuss the use of the address terms by the Prosecution and the Defence teams, respectively. The discussions show the range of the address terms used by the individual team of lawyers and their implications.

4.3.1 The Prosecution and the Use of Terms of Address

The Prosecution used three varieties of the address terms (see Table 6 in section 4.3) to refer to or address the three suspects representing them in negative light and as potential criminals. They used the last names only (LN), the first name and the Last name (FNLN) and the title 'Mr.' with the last name (T^1LN). According to Leeuwen (2008:41), LN and T^1LN are formal while FNLN is semiformal. Dickey (1997, p. 256) asserts that there are countless choices for referring to or addressing someone (for instance, Jane, Jane Smith, Mrs. Smith), but the choice among the many options is based on social meaning. In line

with these postulations, the study examines the use of these three address terms by the Prosecution using Excerpt 13.

Excerpt 13 (Transcript D_1)

117. Since at least December 2006, **William Chacha** and **Henry Muita**
118. prepare a criminal plan to gain political power. They decided that if
119. the PNU rigged the elections or even if the ODM lost, there would be war.
120. They planned to -- what the meaning of war? They planned to attack
121. supporters of the PNU and expel them from their homes in Rift Valley.
122. They were aiming to gain power and create a uniform ODM voting bloc in
123. Rift Valley. That was the goal.
124. To achieve this goal, they created and conducted an organisation
125. based on a network of individuals and pre-existing entities in their
126. communities. This organisation, this network, have had five components
127. political, media, financial, elders, and military.
128. First, there was a political component led by **Mr. Chacha** and
129. **Mr. Muita** that included other politicians who participated in the
130. preparatory meetings and assisted in the organisation of attacks that
131. were to follow.
132. Second, **Chacha** and **Muita** relied on the media to disseminate their
133. messages. Specifically **Joshua Kerago** played a key role to broadcast their
134. message. The media was used to indoctrinate the network members by
135. broadcasting propaganda against PNU supporters, to broadcast a speech of
136. designated network members who indicated ideas or ways to co-ordinate the
137. attacks.

The excerpt above shows that the Prosecution used FNLN in lines 117 and 133, T^1LN in lines 128 and 129 as well as LN in line 132. T^1LN and LN are formal address terms while FNLN is a semiformal address term. In this excerpt, the ICC Prosecutor himself was addressing the court. He therefore uses the address terms outlined above to individualize the suspects by making specific reference to each of them.

In his address, it would be expected that he would exclusively use the formal address terms, for three reasons. Firstly, the courtroom is a formal setting where formal address systems are the norm. Secondly, the prosecutor was a member of the ICC that according to Satia (2014 p.121) treats everybody with respect and thus addresses all parties using

the honorific ‘Mr.’ This can also be observed in table 6 that shows ‘Mr.’ as the only honorific that the judges chose while addressing the three suspects. It is noteworthy, that the Prosecution used two formal address types - T^1LN (as in Mr. Chacha) and LN (as in William Chacha) – interchangeably. The study finds the frequent choice of LN variety by the Prosecution at the hearing deliberate and peculiar. This is because it does not conform to the judges’ choice (T^1LN) as mentioned above. The use of these two varieties interchangeably resonates with Danet's (1980, p.191) proposition that while two or more forms may be referentially equivalent, they may communicate different things about speakers or about their attitudes towards the topic. Thirdly, the ICC prosecutor was of the European origin where the formal address is generally used as the default address to strangers and between interlocutors who are not family or close friends as it is construed to be a polite or neutral form of address (Norrby & Wide, 2015 p. 2).

The discussion above about the typicality of formal address system by the Prosecution notwithstanding, the ICC Prosecutor used the unusual semiformal address form FNLN as in lines 117 and 133 of Excerpt 13. The study finds the use of the semiformal address by the Prosecutor as a peculiar and deliberate way of depicting the suspects as possible criminals. This is in line with Santaemilia Ruiz & Maruenda Bataller, (2013, p.175) observation that ‘naming is far from innocent, and is usually allied to power, as it can confer strengths and limitations and, more importantly, an (im)mutable identity’. We therefore found the Prosecution’s use of semiformal address terms at the trial as a strategy to lessen the respect he afforded to the suspects, who held prominent positions in the country. That is, the first two suspects were at the time of the hearing cabinet ministers while the third suspect among the top radio presenters broadcasting in the Kalenjin

language. The Prosecutor's use of the semiformal address helped him to background the suspects' statuses foregrounding their commonness which spoke to their ability to commit crimes. This resonates with Rosulek (2015, p.61) who observes that the use of semiformal address terms is a way of lessening one's respect in court.

The Defence lawyers were determined to deconstruct the criminal image that the Prosecution had painted on the suspects. The subsection that follows discusses how the Defence teams used the address terms.

4.3.2. The Defence Teams and the Use of the Terms of Address

The Defence teams used all the eight varieties of the address terms identified in Table 6 to individualize the specific suspects representing them as honourable people incapable of committing the charged crimes. This subsection therefore delves into a discussion of the use of the address terms by the Defence teams and Excerpt 14 below exemplifies the use.

Excerpt 14 (Transcript D_1)

836. Before Madam President and your Honours are three Kalenjin
837. personalities. **Mr. William Chacha** happens to be a much younger person than
838. **Henry Muita**. We will demonstrate through evidence, firstly, that the
839. **Honourable Henry Muita** has never been to **Mr. Chacha's** home, never been.
840. And culturally, unless there are exceptional circumstances, it will be
841. for **Honourable Chacha** to go to the home of **Henry Muita** if there was need
842. to have a meeting to discuss anything. The Prosecution case is these
843. meetings were happening at the home of **William Chacha**.
844. During this confirmation hearing, Madam President and
845. your Honours, we will demonstrate that the so-called commanders have
846. never been to the home of **Honourable Chacha**, and we will be demonstrating
847. that this fiction which has been put together by the Prosecution cannot
848. form a basis to show sufficient evidence for Madam President and your
849. Honours to be satisfied that the substantial grounds to believe test has

850. been met. This case does not meet that test and we will be demonstrating
851. so.

Excerpt 14 above is an extract of the Defence teams' opening statements. Specifically, it is from the first suspect's Defence lawyer and it contains five address terms namely, T^1LN, T^2LN, T^1FNLN, T^2FNLN and FNLN.

To begin with, the first four address terms in Excerpt 14 as in T^1FNLN - Mr. William Chacha - in line 837, T^2FNLN – Honourable Henry Muita - in line 839, T^1LN – Mr. Chacha - in line 839 and T^2LN – Honourable Chacha - in lines 841 and 846 are formal address terms. While their formal status makes them referentially equivalent, they vary in form, where two have the title, 'Mr.'while the other two have the honorific 'honourable' thereby relaying different messages. This resonates with O'Barr (1982 p.6) who observes that 'whether consciously planned or merely the result of native intuition, form communicates and as form varies, the message communicated varies as well.' The formal address with the title 'Mr.' is the ordinary form in court for three reasons. Firstly, 'Mr.' is a 'standard title' according to Leeuwen (2008 p.41). Secondly, it is the choice of address with the highest frequency for all the parties - except the Legal Representative of the Victims as earlier explained – as they referred to or addressed the suspects indicating its typicality in court (see Table 6). Thirdly, as mentioned earlier, it is the judges' only choice of the address terms who must stick to the 'formality rules of the courtroom' (Cecconi, 2008 p. 207) as a cue to other court participants to do so.

The choice of the formal address with the honorific 'honourable' (T^2FNLN and T^2LN) in Excerpt 14 as in, Honourable Henry Muita in line 839 and Honourable Chacha in lines 843 and 846 was atypical and therefore significant. 'Honourable' is a common title in the

Kenyan context used when referring to or addressing elected leaders Senate, National and County Assemblies. As earlier mentioned, the first two suspects were at the time of the hearing, serving members of the National Assembly. In addition, while Defence teams comprised lawyers from different parts of the world, Kenyan lawyers presented the opening statements for the three Defence teams. Therefore, it would be expected that the three lawyers referred to the first two suspects in a similar manner but this was not the case as the formal address with the honorific of deference 'honourable' was most preferred by the first suspect's lawyer. The frequency of use of the address term by the lawyer in the opening statements as shown in Table 6 indicated that it was not a random choice but a deliberate one.

Compared with the other two Defence lawyers who were also Kenyans, the third suspect's lawyer used the honorific 'honourable' only once when referring to the first suspect while the second suspect's lawyer did not use the honorific at all but consistently used the title 'Mr.' to formally refer to the two suspects during the opening statements. The study therefore interpreted the first suspect's choice of the formal address with the honorific of deference 'honourabe' in two ways. Firstly, as an endearment term towards his client. This showed their closeness and solidarity. Secondly, as a way of expressing his respect for the suspect's position in the Kenyan society. This was aimed at bolstering the suspects' image by suggesting to the court that the suspect in question has a noble standing in the Kenyan society and cannot therefore be associated with such evils as alleged by the Prosecution.

The other term of address in Excerpt 14 is FNLN as in Henry Muita in lines 838 and 841 as well as William Chacha in line 843. FNLN is a semiformal address term (Leeuwen,

2008 p.41). Besides the use of the FNLN in Excerpt 14, it is noteworthy that all the Defence lawyers used this term of address in the opening statements. The study found the use of the semiformal address terms by the first suspect's Defence lawyer in the excerpt and the other Defence lawyers in the opening statements as a way of expressing familiarity and horizontal cordial relations between the Defence lawyers and the suspects. This therefore was a way of endearing the suspects to the court just as Rosulek (2015 p.61) posits that the defence uses the semiformal terms to minimize the social distance between the defendant and the jurors.

4.3.3 Summary

This chapter has presented discussions on the two major ways in which the Prosecution and the Defence lawyers made specific reference to the suspects through transitivity structures and the terms of address to represent the suspects either as the active participants in the PEV or downplay their involvement in the PEV. To do this, the Prosecution consistently and explicitly identified the suspects by their names, coding them negatively as Doers in material processes, Carriers in relational processes and Sensers in mental processes. The specific reference to the suspects therefore left no question about the subject of the various processes that the Prosecution employed and this was a way of foregrounding agency. The Defence teams made specific reference to other individuals including the Prosecution and coded them as the Doers in material processes, Carriers in relational processes and Sensers in mental processes while coding the suspects as being on the receiving end of the PEV.

With regard to terms of address, while both the Prosecution and the Defence teams used formal and semiformal address terms to refer to the suspects, the discussions have shown that the two contrasting teams had different motivations for their choices. With regard to the formal address terms, the two teams chose the typical TLN and TFNLN using the title 'Mr.' to refer to the suspects as a way of showing respect to them. However, the Defence teams additionally used the TLN with the honorific of deference 'honourable' to refer to the first two suspects. As a way of fronting a positive perception of the suspects while backgrounding a criminal one. In addition, Defence lawyers used the semiformal address terms such as FNLN to express familiarity and horizontal cordial relations between them and the suspects, as a way of endearing the suspects to the court and minimizing the social distance between the suspects and the court. The prosecution, on the other hand, used the FNLN as a strategy to diminish the respect he afforded to the suspects, indicating their ability in committing the crimes as charged. This was a way of foregrounding agency. The chapter that follows presents discussions on how the court interactants made general reference to include or exclude actors in their discourses.

CHAPTER FIVE

GENERAL REFERENCE IN AGENCY CONSTRUCTION

5.1 Introduction

This chapter discusses the diverse ways in which the court interactants used generic expressions during the Confirmation of Charges Hearing to relate or not, given individuals with the PEV. General reference is the representation of social actors as classes of people (Leeuwen, 2008:35). Leeuwen adds that the singular with the definite or indefinite article, mass nouns and nouns denoting groups of people or parataxis realize general reference. General reference enhances the inclusion of social actors in discourses while facilitating the exclusion of others. This chapter's discussions focus on the varied strategies employed by the Prosecution and the Defence lawyers during the Confirmation of Charges Hearing to make general reference and the implications the strategies had with regard to agency.

The discussions on general reference in this chapter are in three sections. The section that follows this introduction is 5.2 and it is titled 'Collective Nouns.' This section discusses the numerous generic words and phrases in the form of mass nouns and noun representing groups of people, which the Prosecution employed in the document containing the charges (DCC) and whose use the Defence contested decrying that they rendered the document vague and difficult to understand. The next section is 5.3 on Agent Deletion, which discusses the different ways in which the Defence lawyers structured their sentences in order to represent the PEV events as self-instigated devoid of human agency. The chapter ends with section 5.4 that is titled, 'Nominalization.' In this section, the

discussions show that the Defence lawyers structured the PEV happenings in terms of abstractions in order to background the human agents in the actions.

5.2 Use of Collective Nouns

Collective nouns (and collective noun phrases) were used by the Prosecution to make general reference to unspecified groups of individuals during the Confirmation of Charges Hearing as a way of backgrounding their involvement in the PEV. The groups of individuals referred to remained anonymized throughout the proceedings and the Defence teams categorically pointed out that they were finding it difficult to interpret documents from the Prosecution because they contained numerous generic expressions. Excerpt 15 below is used to discuss the use of such expressions.

Excerpt 15 (Transcript D_2)

2822. ″To execute their plan, Chacha and Muita, together with **Kerago and**
2823. **others**″ - ″**others**″ is a very common word throughout this document, it
2824. doesn′t help us at all - ″created **a network of perpetrators**.″ That′s
2825. another phrase that appears fairly regularly throughout the document.
2826. And again, we are not greatly assisted by that.
2827. So we have various words or euphemisms throughout this document,
2828. **″Network,″ ″others**,″ ″**perpetrators**″ **of the direct and non-direct kind**,
2829. ″**attackers**,″ **″network perpetrators,″ ″supporters**.″ There′s various
2830. others. ″**Subordinates**.″ None of these words help the Defence, and none
2831. of them, we submit, help you the Judges, and more importantly, all of it
2832. creates an intrinsic vagueness in respect of the notion of plan…
2837. At 24, for example, from at least 2006, ″from at least,″ what
2838. assistance is given to anyone with that phrase? ″Until January of 2008,
2839. Chacha and Muita, along with **Kerago and others**,″who are those others? Who
2840. are the people that these suspects are meant to have directly worked
2841. together with and planned with from as early a stage as that? ″Planned
2842. to expel individuals, namely, **members of the Kikuyu, Kamba and Kisii**
2843. **ethnic groups**,″ and then in brackets it has ″later referred to as **PNU**
2844. **supporters**.″…
2864. ...″To execute their plan,″ 25, ″Chacha, Muita, **Kerago and others**
2865. created a network of perpetrators,″ ″**the network**,″ as it′s defined here,
2866. ″by capitalising on existing entities in the Kalenjin community. By

2867. December 2006, the network consisted of **pro-ODM political figures**.″ Who
2868. are they? **Media representatives**. Who are they? Mr. Kerago. He′s the
2869. media representative. Well, it′s the only one we′ve ever heard of being
2870. alleged. **Financiers**. Who are the financiers? **Tribal elders**? Who are
2871. they? Is it that document that we just saw that came on the screens, the
2872. two names on it? Is that it? **Local leaders**. Who are the local leaders?
2873. **Former members of the Kenyan police and army**. Is that the two or three
2874. people that we hear about in witness statements, or is it more than that?
2875. And all this is very important, because plan leads to structure,
2876. which leads to organisation, which leads, of course, to eventually the
2877. issue of jurisprudence as well.
2878. So we submit that this is a fairly inadequate document, and I′ve
2879. only gone to the very early paragraphs. I could spend the week going
2880. through this document with uncontrived criticism of it in its lack of
2881. specificity. And we′ll see it again and again in the course of Defence
2882. submissions.

This excerpt is extracted from the second day of the hearing from the Defence teams' joint submissions. In this excerpt, the Defence lawyer representing the three Defence teams is contesting the Prosecution's use of general expressions in the document containing the charges (DCC). The general expressions that are in the form of collective nouns and nouns denoting groups of people are in lines 2822-2823, 2824, 2828, 2829, 2830, 2839, 2842, 2843-2844, 2864, 2867, 2868, 2870, 2872 and 2873.

To begin with, in lines 2822-2823, the Defence lawyer cites the expression 'others' in the phrase 'Chacha, Muita, together with Kerago and others' and repeats it in lines 2839 and 2864 in the phrases 'Chacha, Muita, along with Kerago and others' and 'Chacha, Muita, Kerago and others,' respectively. 'Others' according to the Macmillan Dictionary is a pronoun used at the end of a list or group of examples to generally refer to people or things like the ones just mentioned. In the context of the study therefore, the Defence lawyer contested the use of the expression 'others' by the Prosecution because, like the dictionary definition, it generally referred to people like Chacha, Muita and Kerago. The

lawyer therefore challenged its use as an indication that, if the Prosecution believed that Chacha, Muita and Kerago were responsible for the PEV, then like them, the 'others' with whom they worked also made a contribution in the PEV and in this way, their identities mattered. His emphasis on the need for the revelation of the 'others' identities is also implied in lines 2839-2841 when he posses the rhetorical questions, 'who are those others?' who are the people that these suspects are meant to have directly worked with and planned with from as early a stage as that? Laucci (2014) posits that the notion of plan should be 'a matrix that is clear, definable, recognizable and which demonstrates clearly to the accused those with whom he is participating directly and indirectly.' The Defence lawyer therefore contested the use of the generic expressions by the Prosecution as the use of such unclear terms was incongruent with the ICC regulations.

In addition, in line 2824, the lawyer identifies the noun phrase 'a network of perpetrators' saying that it was a fairly regular phrase throughout the document. 'Network' according to the Macmillan Dictionary of English is a collective noun denoting a group of people, organizations, or places that are connected or that work together. The use of the noun 'network' therefore implied that the suspects had worked with a group of people, who in Excerpt 15 are identified using another generic expression, 'perpetrators' and in line 2828, they are called 'perpetrators of direct and indirect kind.' A perpetrator is one who does something that is harmful, illegal, or dishonest according to the Macmillan Dictionary. The Defence lawyer's contention that the 'network perpetrators' needed to be identified in specific terms therefore pointed to their involvement in the PEV just as Laucci (2014) contends as earlier mentioned.

Similarly, the Defence lawyer challenges the Prosecution's attempt to specify those included in the 'network' decrying that it gave rise to more generic expressions. These are, 'Pro-ODM political figures' in line 2867, 'media representatives' in line 2868, 'financiers' and 'tribal leaders' in line 2870, 'local leaders' in line 2872 as well as 'former members of the Kenyan police and army' in line 2873. The Defence lawyer poses the question 'who are they?' after each expression stating the need for the Prosecution to disambiguate. Additionaly, in lines 2830 – 2835 the lawyer argues that none of the outlined words could be of any help to the Defence or to the Judges. I found this contention valid because specificity is fundamental in pinning down the agency of a happening. Going through the transcripts, I found that the Prosecution consistently used general expressions like the ones in Excerpt 15 whenever they referred to other individuals besides the suspects and interpreted the use of such expressions by the Prosecution in two ways.

Firstly, identifying individuals using general expressions like the ones outlined in this section helped the Prosecution to differentiate the specified suspects and the anonymized individuals. Differentiation, according to Leeuwen (2008 p.40), overtly distinguishes a specific person or group of persons from a similar person or group, creating the variance between the 'self' and the 'other.' In Excerpt 15 for instance, the Prosecution, as cited by the Defence lawyer makes a clear distinction between the suspects – who are identified by their names, and the unspecified 'others' in lines 2822-3 and 2864. The Prosecution distinguishes between the suspects and the anonymized 'network,' 'perpetrators of direct and indirect kind,' 'subordinates,' 'Pro-ODM political figures,' 'media representatives,' 'financiers,' 'tribal leaders,' 'local leaders' and 'former members of the Kenyan police

and army.' In doing so, the Prosecution shows a graded degree of responsibility between the specified suspects and the unnamed people, implicitly implying that the suspects bore the significant reponsibility to the crimes and thereby downplaying the contribution of the unspecified individuals.

Secondly, the use of the general expressions facilitates their exclusion from the Confirmation of Charges Hearing discourses. Exclusion is the leaving out or the non-representation of some social actors who are in reality part of an action or event or practice (Leeuwen, 2008, 2009). The exclusion of the unspecified groups of people in Excerpt 15 is a form of suppression as reading through the transcripts, I realised that it was not possible to trace the referents of the expressions. The study finds this suppression significant and as a Prosecution strategy of deeming the identities of the anonymized groups of individuals as irrelevant in the context of the proceedings, and as a device to try to connect these generalized/unspecified acts with the suspects. As discussed earlier, the prosecution emphasises the suspects' influential and powerful social positions, thus suggesting that they would have influence over or control of the actions of these unspecified others. The Prosecution tries to make the suspects responsible for more than can be individually pinned down on them. Hence, talking about these events and the actions of unspecified others could be seen as a strategy to exaggerate or over-emphasise the suspects' responsibility for events, while at the same time (as the Defence argues) being too vague to effectively defend.

The differentiation and the exclusion of the anonymized groups of people by the Prosecution were ways of underplaying the anonymized individuals' responsibility in the violence. It was also a way of passivizing their roles and involvement in the PEV

indicating that the only responsible individulas for the attacks were the specified suspects. However, the study notes that this strategy by the Prosecution may not have realized the desired effects because as seen in Excerpt 15 and in the discussions in this section, making general reference using collective nouns and nouns that denoted groups of people became the focus of the Defence. It is also the requirement of the Rome Statute of the ICC Article 61(3) (United Nations, 1998) and Regulation 52(b) of the Article (Laucci, 2014) that during the Confirmation-of-Charges trials, the DCC is specific enough and contains sufficient information regarding the Prosecutor's evidence to enable accused person(s) prepare their Defence. The Defence lawyer therefore focused on the general expressions used by the Prosecution in the DCC to indicate that the Defence's endevour to effectively contest the involvement of their clients in the PEV was being hampered by such expressions, and that the judges duty to establish the sufficiency of evidence for a finding of guilt would equally be hindered.

5.3 Agent Deletion by the Defence Teams

This section examines how the Defence lawyers made general reference to events and individuals by omitting human agents in situations that would otherwise require one facilitating the coding of the PEV events as self-instigated. The discussions focus on the Defence lawyers because the study found that they were the only ones who utilized this strategy in order to refute the Prosecution's charges, as the Prosecution was keen on identifying the suspects as the agents in their discourses.

The three Defence lawyers in their opening statements acknowledged three things. That there was violence, that properties were destroyed, and that people lost lives. The three lawyers were however silent on who instigated the violence, who destroyed the properties

and who the killers were. They also talked about 'the violence' and 'victims' in very general terms without an attempt to expound on the concepts. The study therefore finds the three acknowledgements, the omitted human agents and the reference to important concepts to the case like violence and victims in general terms peculiar. This is because the core of the case was the unraveling of the responsible individuals for the PEV and the possible reparation of those affected, but not the determination of whether or not there was violence. Excerpt 16 exemplifies the Defence teams' use of agentless constructions to make general reference to events.

Excerpt 16 (Transcript D_1)

687. presidential elections were announced. On the announcement of those
688. results, **fire was all over the Republic of Kenya**. Six out of the eight
689. provinces of Kenya, **there were spontaneous violence and reactions to the**
690. **announcement of the presidential results**. **People died**. It's an
691. acknowledged fact. **Properties were destroyed**. It is an acknowledged
692. fact. **Victims went through difficult times**.**They went through**
693. **dehumanising conditions during this period**, and our sympathies, including
694. that of my client, Mr. Chacha, goes to all these people. Not today, but
695. Mr. Chacha has expressed this before and assisted the victims of this
696. violence.
697. The case before your Honours is centred only in the Rift Valley
698. province, and the question that arises is: What about the other five
699. provinces? Is it Mr. William Chacha who organised this violence? What is
700. critical about the other provinces is **the violence occurred**
701. **spontaneously**. **It was a concurrent and an instantaneous reaction to the**
702. **announcement of these results**, and it is our case that Prosecution must
703. have done an objective, thorough, and impartial investigations to find
704. out what caused the violence in Kenya and to find out the perpetrators…

This excerpt is extracted from the first suspect's Defence team's opening statements. The clauses in bold type are the focus of the discussions in this section. In this excerpt, the first suspect's Defence lawyer employed three different types of clauses to make general reference to events through agent deletion: existential, intransitive and passive clauses.

To begin with, existential clauses are found in lines 688 and 689-90. In these lines, the Defence team argued that, *'fire was all over the republic of Kenya'* and that *'there was spontaneous violence and reactions to the announcement of the presidential results.'* Existential clauses serve a 'presentative function of introducing entities newly into the discourse' (Collins, 2001: 1), however, the role of the existential clauses in Excerpt 16 is not a presentative one because all the parties in the court were aware that there was violence. In fact, the case existed because of the violence that had been witnessed in Kenya. I interpreted the use of the existential clauses by the Defence teams as a strategy to facilitate reference to the violence in general terms without zeroing in on the specific responsible individuals.

The Defence lawyer was not specific on the form of the violence they were referring to. The only attempt to refer to the violence in specific terms was its representation as 'fire.' However, the study posits that there were other elements of the violence such as killing, expulsions, looting and raping; that could have facilitated the revelation of the agentive humans responsible, but were not evaluated in specific terms. In addition, the lawyer equates the 'violence' with 'reactions' in line 689. 'Reaction' is an abstract noun that in the Macmillan Dictionary, means 'what you do, say or think as a result of something that has happened.' In this regard, the Defence lawyer represents the violence as an abstraction indicating that it was an abrupt response to the announcement of the presidential elections result, and not a planned activity as the Prosecution had alleged. He qualifies it as 'spontaneous' to affirm his position. 'Spontaneous' according to the Oxford Dictionary is an adjective, meaning 'performed or occurring as a result of a sudden impulse or inclination and without premeditation or external stimulus.' This abstraction of

the violence as ‘a spontaneous reaction’ therefore helped the lawyer to impersonalize it depicting it as an impulsive happening. This in turn facilitated the backgrounding of the identities and roles of the responsible individuals. It also ‘lent an impersonal force’ (Leeuwen, 2008, p.47) to the specific acts of the violence such as the ones outlined above.

The second way in which the Defence team in Excerpt 16 made general reference to events and people, is through the use of intransitive clauses. Intransitive clauses are in lines 690, 692, 692-3 and lines 700-1. In line 690, the Defence team said that ‘*people died*.’ This sentence contains a subject ‘people.’ However, people is a very general term and does not in any way reveal the identities of the individuals who are said to have died. The sentence also contains an intransitive verb ‘die’ in the past tense. However, with the way the sentence is constructed, it is not possible to infer the cause of the deaths. This sentence can be contrasted with, ““A” killed the people” where the transitive verb “kill” takes the subject “A” and this subject is deciphered as the agent of the deaths of the people. While it is not peculiar for people to die out of natural causes, the context of use of the intransitive verb “die” makes it atypical. This is because the hearing was centered on the violence that involved humans who were responsible for the deaths among other forms of violence. Therefore, the study finds the Defence team’s strategy of coding the subject of the sentence (people) in general terms and the deaths as an event or as something that just happened rather than as an action done by someone or something, as an art of obscuring agency.

Further, the Defence lawyer used the intransitive verb ‘occur’ in line 700. Here the Defence team represents the violence as ‘having happened’ and this ‘happening’ is represented as self-engendering rather than being represented as engendered by a human

agent. This is affirmed by the Defence team's addition of the clause, 'It was a concurrent and an instantaneous reaction to the announcement of these results,' in line 701. With the use of the intransitive verb 'occur,' the focus therefore shifts from 'who caused the situation' to 'what the situation was.'

Furthermore, the Defence team for the first suspect in Excerpt 16 used a passive construction to make general reference to the PEV and in turn omitted human agents. He says, 'properties were destroyed.' This construction embodies the feature of agency and one can therefore ask the question 'who by?' However, the Defence suppresses the agent using a passive construction and it is not possible to infer from the excerpt the omitted agent.

Ideally, the actions implied in the existential, intransitive and passive clauses discussed above should involve a human actor responsible. In the excerpt however, the use of the generic terms discussed hide the agents. The study interprets this as coding the actions in middle voice that Halliday (1994: 150) contends as necessitating the exclusion of the agentive participant. The agentive participants responsible for the PEV were individuals the court needed to identify by ruling whether or not the prosecution's case against the three suspects go to full trial. Therefore, making general reference to the violence was significant.

In addition to the Defence team for the first suspect making general reference using existential, intransitive and passive clauses, the team also used a noun phrase 'the perpetrators' in lines 704 – 707 that is an additional generic phrase that hides specific identifiable agents.

Contrastingly, the Defence mentioned an agentive participant in the excerpt lines 693 – 696 and 697 - 699 where the lawyer makes reference to 'Mr. Chacha.' By mentioning 'Mr. Chacha,' the Defence was not imputing criminality on him. On the contrary, he was exonerating him from any blame. He also notably used transitive verbs '*expressed*' and '*assisted*' in '*Mr. Chacha has expressed this before and assisted the victims of this violence*.' The explicit mention of an agentive participant using specific means as proper names in this sentence and the use of transitive verbs, painted Chacha as a good person - one who sympathized with the victims and as a philanthropist . This contrasts the way the defence lawyer had used generic terms and intransitive verbs as those discussed in this section.

Besides the use of the existential, intransitive and the pasiive constructions discussed in this section, the lawyer employs generic terms '*victims'/'they*,' *'difficult times'* and *'dehumanising conditions*' in lines 692-693. To begin with, the noun '*victims*' does not point to specific individuals, though it connotes persons who are harmed, injured or killed. An attempt to refer to the specific individuals who were harmed, injured, killed or whose property was destroyed in the PEV, would have been an avenue towards unearthing the responsible persons for the acts. However, the Defence lawyer circumvents such an endevour and opts to use a generic term '*victims*' that obscures agency. In addition, the acts that befell '*the victims*' are themselves coded in generic terms '*difficult times*' and '*dehumanising conditions*.' '*Difficult times*' can be defined variedly and so is '*dehumanising conditions*.' As mentioned earlier, coding situations in such generic terms does not point to or attempt to reveal the perpetrators of the acts. The lawyer codes individuals and events of the PEV in the general terms, making it impossible to infer from

lines 692-693, the persons who caused 'the difficult times' and 'the dehumanising conditions' referred to. The Defence lawyer is therefore not saying much in these lines that could have pointed to 'who did what to whom' but instead, leaves the audience with such questions as, 'who are the victims?' and 'what are these difficult times and dehumanizing conditions that the victims went through?' Coding individuals and the PEV events this way, made the focus of the utterances in these lines to shift from the initiator(s) of the processes - 'the who caused all these' -, to the unspecified victims.

In summary, this section has shown that the Defence team for the first suspect in Excerpt 16 used the existential clauses, intransitive and passive clauses with noun phrases such as *'violence,' 'people,'* '*victims'/'they*,' *'difficult times,' 'dehumanising conditions*' as well as *'perpetrators.'* The use of these linguistic devices enabled the team to make general reference to persons and to events of the PEV thereby backgrounding agency.

5.4 Nominalization

In the study's data, the Defence lawyers employed nominalization to discredit and delegitimize the Prosecution's investigations and the process of the investigations. Nominalization is a way of excluding social actors by using actions as nominals (Leeuwen, 2008, p. 30) and restructuring a practice in terms of an abstraction instead of persons as agents (Downing & Locke, 2006, p.572). A discussion of how the Defence teams used nominalization follows using Excerpt 17 to exemplify.

Excerpt 17 (Transcript D_1)

701. It was a concurrent and an instantaneous reaction to the
702. announcement of these results, and it is our case that Prosecution must
703. have done an objective, thorough, and impartial investigations to find
704. out what caused the violence in Kenya and to find out the perpetrators

705. who were behind this violence. They must be brought to book. They must
706. be punished. But the process of identifying the perpetrators of this
707. violence must be done in a professional way. **Gathering of gossip**,
708. **putting together innuendos and rumours is not the way to handle the**
709. **violence that occurred in the Republic of Kenya.** One needs to see
710. professional investigations being carried out.
711. In the course of this confirmation hearing, we will demonstrate
712. before this Chamber that no professional, no impartial, no objective
713. investigations were carried out. If they were indeed carried out, there
714. would be an explanation as to why there was violence in the other
715. provinces.
716. The violence that broke out in Kenya had never been witnessed
717. before. We think the devil must have made a short journey to the
718. republic but not at the invitation of William Chacha.

This excerpt is extracted from the First suspect's Defence team's opening statements. The Defence team seemed conscious about the importance of opening statements in shaping the trial process and they employed nominalized phrases in lines 707 – 709 of Excerpt 17 above to disparage the investigations. The phrases are 'gathering of gossip' and **'putting together innuendos and rumours'** where generalization is achieved through the verbs **'put'** and **'gather.'** These are transitive verbs that require a subject and an object, both of which are conspicuously missing in the two phrases. With a subject and an object, the phrases would read in the following manner:

1a. The Prosecution gathered gossip. Instead of,

1b. Gathering of gossip

and

2a. The Prosecution put together innuendos and rumours. Instead of,

2b. Putting together innuendos and rumours

In addition, the Defence lawyer could have included the human agent responsible for the '**gathering** of gossip' and '**putting** together innuendos and rumours' using post modifying phrases with 'by' but did not. So, the question remains, why did the Defence lawyer construct the sentences as shown in 1b. and 2b. which is a marked way of constructing a sentence? The study presupposes that the Defence lawyer did so to generalize the verbal processes 'gathering' and 'putting' and avoid mentioning the agent of these processes.

Further, in these two phrases, generalization is achieved by abstracting investigations as 'gossip' 'innuendos' and 'rumours.' The Macmillan Dictionary of English identifies the term 'gossip' as 'a conversation about unimportant subjects, especially people's private lives' or 'informal conversation about other people or unimportant things.' The words 'conversation' and 'chat' are the synonyms to the noun 'gossip.' In addition, the Macmillan Dictionary of English deifines the word 'innuendo' as 'the use of insulting or negative comments about someone that are suggested rather than stated directly.' The synonyms to the word 'innuendo' include 'jokes' and 'puns.' Further, the word 'rumours' means 'unofficial information that may or may not be true' the dictionary did not supply any synonym to the word but the study found the word closely related to the first two.

The study found the use of the two nominalized phrases constituting the above-defined three words by the Defence team significant. In this regard, the words possess similar characteristics. First, as their synonyms indicate, the three lexical items possess an element of 'lack of seriousness' in the information they relay. Second, the information the nominalized phrases convey using the three words denotes 'unofficiality' or 'informality' and third, there is an element of uncertainty in the truth-value of the

information involved. Conversely, the Defence lawyer describes the kind of investigations they would have expected from the Prosecution. For instance, in lines 703 and 712, he wished that the investigations were 'objective,' 'thorough,' 'professional' and 'impartial'. An exploration of the word 'investigations' in the Macmillan Dictionary yields the definition, '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.' The Dictionary supplies the synonym for the word investigation as 'elicitation'. From the definition of the term 'investigation,' it is clear that the process should be systematic as opposed to 'gossip,' 'innuendos' and 'rumours.'

From the foregoing discussions, the study gleans the observation that the Defence lawyer avoids declaring the 'Agent' responsible for '**gathering** gossip' and '**putting** together innuendos and rumours' because it would be considered impolite in the courtroom to say that a Prosecution did so. Therefore, by using nominalized phrases with words that carry negative and opposite connotations to investigations, the lawyer communicates that somebody has failed to do an objective, thorough, and impartial investigations and wishes to leave it to the judges to decide who it is. This form of generalization through nominalization impersonalizes the processes of 'gathering' and 'putting.' The impersonalization therefore backgrounds the identity of the social actor responsible (Leeuwen, 2008, p.47) who in this case is the Prosecution. The role of the Prosecution in the Confirmation of Charges Hearing is to prove that there exists substantial grounds to believe the charges (Novak, 2015, p. 66). The Defence team therefore hoped to punch holes into the prosecution's investigations in an attempt to show that there lacked sufficient grounds to believe the charges against the suspects.

5.5 Summary

This chapter has discussed the varied ways in which the Prosecution and the Defence teams employed generic expressions to represent events of the PEV variedly. They employed the generic expressions using mass nouns and nouns denoting groups of people, through agent deletion and through nominalized phrases. To begin with, the use of the mass nouns and nouns denoting groups of people was a Prosecution strategy of differentiating the anonymized groups of people from the specified suspects. This would downplay the anonymized individuals' responsibility in the violence while highlighting the suspects' responsibility. However, the study notes the failure of the strategy by the Prosecution as the Defence highlighted the underplayed anonymized individuals, demanding the revealing of their identities. The second way in which generic expressions were used in the hearing was through agent deletion. This was a Defence strategy of deleting human agents when describing the PEV events and representing them as self-engendered happenings in a bid to background agency. Finally, the Defence teams also utilized generic expressions through nominalized phrases to discredit the Prosecution's investigations thereby backgrounding agency.

The chapter that follows presents discussions on how self-representation was employed in the hearing and how the use of the self-representation manipulated agency.

CHAPTER SIX

FIRST PERSON PRONOUNS AND NOUNS DENOTING KINSHIP IN AGENCY CONSTRUCTION

6.1 Introduction

First person pronouns were employed by two suspect in self-representation. Self-representation is the art of acting on one's own behalf before a court (Akebe, 2011) or outside the courtroom. In a court setting, the right to self-representation is 'the privilege and opportunity an accused person may enjoy, to varying degrees, at different times, and under case specific conditions, of addressing a court, or through the court, by examining or cross-examining witnesses or engaging with the prosecutor's counsel in court' (Akebe, 2011 p.5). In the international criminal justice, the right to self-representation is guaranteed in Article 14 (3) (d) of the International Covenant on Civil and Political Rights (ICCPR) (Akebe, 2011; Hajdin, 2015) and it is aimed at assuring an accused individual the right to contribute in their defence in given situations (Akebe, 2011 p.7; Scharf, 2006 p.35). In the ICC, the right to self-representation is enshrined in Article 67 (1) (d) of the ICC Statute and the right is not absolute but is dependent on the best interest of justice.

In the study's data, the first and the third suspects exercised self-representation during the opening statements and to do so they largely employed first person pronouns. Each took ten minutes of the thirty minutes allocated to their teams' opening statements to present individualized accounts of the PEV, enabling them to strategically position themselves with regard to PEV and reflect different types of relationships they had with others. This resonates with Johnstone (2007) who posits that 'the selves we present to others are

changeable and strategic.' The sections that follow present discussions on how each of the suspects manipulated the self-representations with regard to agency. Section 6.2 presents the discussions on the first suspect and use of the first person pronouns while section 6.3 presents discussions on how the third suspect used the first person pronoun.

6.2 The First Suspect and the Use of the First Person Pronoun

The first suspect requested to be allocated the last ten minutes of his team's opening statements to give his personalized account of the PEV. During his speech, he utilized two linguistic resources as strategies to position himself variedly and to show the different groups he belonged to and was affiliated with. These strategic representations of the self, had implications with regard to agency. The two linguistic resources that the first suspect employed included personal pronouns and noun phrases denoting kinship relations. The discussions on how the first suspect utilized these strategies follow under two subsections. Subsection 6.2.1 discusses the first suspect's use of the first person pronouns while subsection 6.2.2 contains discussions regarding the first suspect's use of nouns denoting kinship relations.

6.2.1 The First Person Pronouns

The first suspect utilized the first person pronoun 'I' and its variants 'we' and 'me' in his speech to affirm his Defence lawyers' view of his non-participation in the PEV. The first person pronoun 'I' is seen as a term of self-reference and not a substitute for a noun or name as is the case with third person pronouns (Bramley, 2001: 27). In addition, pronouns in general, are neutral referents of an unproblematic world and their use opens up questions about language, power and representation (Pennycook, 1994 p.178), as well as expressing different social relations (Bramley, 2001 p.14). In this regard, the first

suspect used the first person pronoun ‘I’ not only in self-reference but also to represent his different selves fronting a favorable image of himself to the court. Excerpt 18 below shows the ways in which the first suspect used the first person pronoun.

EXCERPT 18 (Transcript D_1)

917. Madam President, **I** listened very carefully to both the Prosecutor
918. and the advocate for the attorney for the victims, and **I** want to say that
919. in my constituency where **I** represent and which has been ably said by my
920. lawyer, there are many communities. Across the country people live in my
921. constituency who have come from almost every part of - of Kenya, and
922. what happened in 2007 was a blow to many Kenyans but a bigger blow to **me**.
923. **We** buried in my constituency many people who had actually voted
924. for **me**, many people who died in this violence who were my personal
925. supporters.
926. **I** remember a case in point. A young man, 13 years old, Kevin.
927. Kevin Kimutai (* phon), who was buried in Kisiyebor (* phon) which is
928. just near Turbo, who died from a stray bullet shot by the police. His
929. father, a very great supporter and a person who had voted for **me**. **I**
930. remember Daisy, a young girl who lives in Baharini in my constituency.
931. She now lives without another leg. A very promising young girl.
932. **I** remember in the nearest shopping centre to my house, Jokali (* phon),
933. a deaf and dumb person who was named Bubu because nobody knew
934. his name, who died and **we** had to bury him as a result of this violence.
935. Many people, many of them people **I** knew directly, many of them
936. people who were my supporters, many people who had voted for **me** died in
937. this violence.
938. And here **I** am in this court to suffer another giobati (* phon)
939. after what **I** went through. Maybe to bring you closer. Two hundred
940. metres from my house, **I** mean 200 metres from my house, one house after my
941. home is Paul Kavingi (* phon), a Kikuyu. The next home is, Samlanun
942. (* phon), a Kikuyu. The home to the south of my house is Mr. Matthew
943. Nguani (* phon), a Kisii, and Mr. Mokaia (* phon), another Kisii. These
944. are the people **I** found when **I** moved to Sugoi about 12 years ago. They′ve
945. been my neighbours. **We**′ve lived together irrespective of their tribe. XX
946. These are people **we** have lived with. These are people who have made
947. statements that have been presented to this Court. They know **me**. They
948. know what kind of person **I** am. **I** have lived with them.

From Excerpt 18, the first suspect uses the first person pronoun ‘I’ and its related forms ‘me’ and ‘we’ in lines 917, 918, 919, 922, 923, 924, 926, 929, 932, 934, 935, 936,938, 939, 940, 944, 945, 946, 947 and 948. The use of the first person pronoun in these lines provides the first suspect with subjectivity that helps him to state his position regarding the PEV activities and its effects to him. Here the pronoun is serving a self-reference role. This enables him to identify himself to the court in his own way, giving the court his self-evaluation and implicitly implying to the court to adapt a similar evaluation of him. Besides self-reference, the pronoun helps the first suspect to achieve other communicative ends.

To begin with, he represents himself as a politician in charge of a constituency. This is in line 919, where he says, ‘my constituency where **I** represent.’ In addition, he represents himself as a good politician who was in touch with his electorate. He represents this using the first person pronoun **I** and the cognitive verb ‘remember’ to indicate that he knew his voters by name, age and the specific areas of his constituency they hailed from. This is witnessed in lines 926 – 937. In addition, in line 935, he explicitly said that he knew many of his supporters directly. This representation of ‘the self’ portrays him in positive light showing that he had a close relationship with his supporters.

Secondly, he uses the first person pronoun to represent himself as a good neighbour who was accommodative of all individuals irrespective of their ethnic background. He indicated this quality of himself in lines 939 – 943, when he showed that he knew his neighbours personally. He showed this by explicitly mentioning these individuals’ supposed names and tribes, giving the proximity of their homes to his home by their

names, tribes and the proximity of their homes to his. He also represented himself as accommodative when he indicated, using the first person pronoun 'I,' that he had lived in harmony with these people, who were his neighbours in lines 945, 946 and 948. In addition, he claimed that the neighbours knew him as well, and the kind of person he was in lines 947 and 948 (They know **me**. They know what kind of person **I** am).

The third way in which the first suspect used the first person pronoun is employing the inclusive '**we**' to portray himself as an 'in-group' member of a 'cohesive' society. He uses 'we' in lines 923, 934, 945 and 946. He demonstrates his solidarity with the other members of his society in performing societal obligations of burying the dead (victims of the PEV) in lines 923 and 934. By using the inclusive 'we' in these lines, he evokes a sense of commonality, rapport and unity between him and the community members. In addition, he shows a sense of togetherness with his neighbours when he says, '**we**'ve lived together' (line 945), 'these are the people **we** have lived with' (line 946).

The fourth way in which the first suspect used the first person pronoun was to represent himself as a victim of the PEV. In Excerpt 18 above, he states in line 922, 'what happened in 2007 was a blow to many Kenyans but a bigger blow to **me**'. This meant that as much as other Kenyans had felt the effect of the PEV, he had felt it in a bigger way and represented himself as a victim of the PEV in three ways.

Firstly, as a politician, he decried the loss of his many supporters to the violence. Between lines 923 and 937, he described at length how many of his voters had died in the violence. For instance, in lines 935 – 937, he says, 'many of them, people **I** knew directly, many of them people who were my supporters, many people who had voted for **me** died in the

violence.' This showed the detriment of the violence to his career indicating that he could not have had anything to do with it.

Secondly, he used the first person pronoun to show how the violence had robbed him off his loved ones. As mentioned earlier, he had represented himself as a good neighbour who knew fellow neighbours by their names, ages and specific villages they supposedly came from, indicating that he had enjoyed good rapport with them and that the effect of the PEV on them was an effect to him. For instance, in lines 929 – 931 he said, 'I remember Daisy, a young girl who lives in Baharini in my constituency. She now lives without another leg. A very promising young girl.' His reminiscence of the effect of the PEV to people he could identify portrayed him as a victim of the PEV. Here, he regretted the way the violence had dimmed an otherwise promising future of a loved one by rendering her physically disabled.

In addition to depicting himself as a victim of the PEV, the first suspect uses the first person pronoun to indicate that his being charged at the ICC and the subsequent court process was a revictimization on his part as an individual. This is seen in lines 938 and 939 of Excerpt 18 when he says, 'and here **I** am in this court to suffer another giobati (* phon) after what **I** went through.' He shows that besides the suffering he went through during the violence as explained in the above paragraphs, the suffering persisted with the continuation of the court process. The first suspect hoped that his self-representation as a victim of the PEV would discreetly indicate his innocence, as he could not possibly cause his own suffering. This resonates with Gray & Wegner (2011: 517) who posit that 'casting the perpetrator of a transgression as a victim tends to have the effect of making them seem less blameworthy.'

The use of the first person pronoun by the first suspect to portray himself positively and as a victim of the PEV is manipulative and an agency backgrounding strategy. This is in line with Ho (2013: 54) who posits that pronouns are manipulative and that politicians use them for such purposes as indicating, accepting, denying or distancing themselves from political responsibility. The use of the pronouns by the first suspect as discussed in this subsection was to distance himself from the political responsibility of the PEV. Having discussed how the first suspect represented himself using the first person pronoun, the subsection that follows presents discussion on how the suspect used nouns denoting kinship relations in self-representation, and how the representations affected agency.

6.2.2 Use of Nouns Denoting Kinship Relations

The first suspect also utilized nouns denoting kinship relations to distance himself from the PEV responsibility. This is a form of identification where individuals are identified in terms of what they inevitably are (Leeuwen, 2008 p.42). Leeuwen adds that relational identification is realized by a closed set of nouns denoting the relations. In this subsection, the social actor is the first suspect and he identifies himself with his kinship relatives as Excerpt 19 exemplifies.

Excerpt 19 (Transcript D_1)

949. I remember and bring to the attention of this Court **my own blood**
950**. sister Theresa** married to a Kikuyu. **My own blood sister** who comes after
951. **my brother** who follows me. **My own sister Tekla** (* phon) married to
952. another Kikuyu. These are the people, the Kikuyus, the one I am supposed
953. to have sat down and planned on how they were going to be killed, **my own**
954. **brothers in law**, according to the script of Mr. Ocampo.

This excerpt is an extract of the first suspect's speech in the opening statements. The highlighted phrases contain the nouns denoting kinship relations in lines 949, 950, 951

and 953-4. The nouns include ‘sister,’ ‘brother’ and ‘brothers-in-law.’ With these nouns, the first suspect invokes blood and marital relations.

To begin with, the first suspect invokes blood relations in lines 949, 950 and 951 when he talks about ‘sister’ and ‘brother.’ He even supplies the names of the sisters ‘Theresa’ in line 950 and ‘Tekla’ in line 951, who he says follows the ‘brother’ that comes after him. To emphasize on the bond between him and the said siblings, the suspect modifies the nouns using the premodifiers ‘my,’ ‘own’ and ‘blood.’ ‘My’ and ‘own’ are words that indicate possession. It is therefore peculiar that the suspect would use the possessive words in apposition. The study finds this as a way of accentuating the kinship relations. In addition to these possessive words, the suspect further highlights the relations by adding another pre modifying noun ‘blood’ to leave no doubt about the closeness of the relations he was talking about.

In talking about the blood relations with his sisters and brother, the first suspect invokes marital relations when he talks about where the sisters are married. He thus refers to Kikuyus –who have married the two sisters – as ‘brothers-in-law’ in line 954. In doing so, he again pre modifies the noun ‘brothers-in-law’ with two possessive words ‘my’ and ‘own’ in apposition. This served to emphasize the level of closeness with the supposed Kikuyus and in turn implicitly implying that Kikuyus were not his enemies as the court had been made to believe by the Prosecution.

With the foregoing, the study sees the choice of the pre modified nouns denoting kinship relations by the first suspect as discussed in the paragraphs above as deliberate and manipulative for two reasons. Firstly, the suspect introduces them by calling for the

court's attention in line 949 through a recollection process. Secondly, marital and blood relations are highly regarded, valued and respected in the African context, and specifically in the Kalenjin community set up as expounded by Hollis (1909 p.60). The suspect seems conscious of the importance of such relations and he therefore invokes them, with the hope of communicating to the court that he was not capable of going against the social norm by planning and executing the violent activities as alleged by the Prosecution. This was an agency backgrounding strategy.

Having looked at the way the first suspect employed self-representation in agency manipulation, the section that follows discusses how the third suspect used the self-representation strategy at the hearing.

6.3 The Third Suspect and the Use of the First Person Pronouns

Like the first suspect, the third suspect utilized utilized the first person pronoun to front a positive image of himself. This was during ten minutes allocated to him during his team's opening statements session. However, unlike the first suspect who was a prominent politician, the third suspect was a journalist. The study found that the third suspect largely employed the first person pronoun with a sharp contrast with the way the first suspect used the pronoun. The third suspect adopted a hero strategy unlike the first suspect who used the pronoun to adopt a victim strategy. The third suspect used the first person pronoun 'I' to portray himself as a hero in his professional life, in his relations with members of his multiethnic society and in his peacemaking efforts.

The subsections that follow present discussions on how the third suspect used the first person pronoun to present the three different heroic portrayals of himself. Subsection

6.3.1 presents discussions on the use of 'I' as a professional journalist with a staunch Christian grounding. Subsection 6.3.2 presents discussion on 'I' as good son of a cohesive cosmopolitan society while subsection 6.3.3 presents discussion about 'I' as a peace ambassador.

6.3.1 'I' as a Professional Journalist with a Firm Christian Grounding

The third suspect employed the first person pronoun 'I' not only to perform a self – referencing role, but also to achieve varied communicative goals. One such goal was to categorize himself in terms of his occupation, what Leeuwen (2008 p.42) calls 'functionalization.' In doing so, he presents a more positive and favourable account of his professional profile in an attempt to contest the polemical profile that the Prosecution had previously recorded of him. Excerpt 20 below exemplifies the third suspect's use of 'I' to portray himself as a professional journalist with a firm Christian background.

Excerpt 20 (Transcript D_1)

1333. …….. **I** have been a broadcaster for the last 12 years. My
1334. first experience in broadcasting did happen in the year 1999 where **I**
1335. started having strong values in the Christianity. **I** worked in a
1336. Christian radio station for six years and later moved to another
1337. Christian station for three years before Kass came into being in the year
1338. 2005. And, as everyone would wish to move on, especially when you get
1339. greener pastures, **I** moved to Kass FM, which broadcast in Kalenjin to ten
1340. sub-tribes and that they understand each other, but sometimes would miss
1341. in some words.
1342. **I** do my programmes, and **I** reach all the Kalenjins. In fact,
1343. Kass International, being online, **I** reach all the Kalenjins, even here in
1344. the Netherlands. And not only Kalenjin in terms of tribe but people who
1345. listen to Kalenjin language. ……
1371. ……..As **I** said, **I**′m professional journalist. **I**′ve done my diploma and
1372. **I**′ve just completed my degree in communication and journalism. **I** know
1373. all the ethics of media and furthermore the values of Christianity that
1374. is in **me**. **I** would never even think in a minute to kill anybody because **I**
1375. respect sanctity of life. Those are my values.

1376. **I** would not at any time join a network or work with people who
1377. are anticipating to kill, to maim, to destroy or to move people from any
1378. area in this world, because **I** was not made to be a broadcaster in the
1379. Kalenjin. **I** would like to move to another station, maybe a national
1380. station with broadcast in Kiswahili or in English. So would **I** be a hero
1381. in the Kalenjin and end my ambition of being a broadcaster? Definitely,
1382. **I** wouldn′t, as young man who would like one day to be one of the greatest
1383. broadcasters on earth.
1384. **I** hosted several people in my programmes, both from different
1385. tribes and different parties. **I** gave them an opportunity to argue out
1386. their issues in terms of a debate from both parties for the benefit of my
1387. listeners. If surely **I** did that, would **I** be linked to one party, ODM,
1388. while **I** hosted people from different parties? What was my interest in
1389. ODM? **I**′m a journalist. **I** do not belong to any party.

Excerpt 20 is an extract of the third suspect's Defence team's opening statements. The excerpt shows that the third suspect prominently used the first person pronoun 'I' to represent himself as a heroic journalist in lines 1333,1334,1335,1339, 1342, 1343, 1371, 1372, 1374, 1376, 1378, 1379, 1380, 1382, 1384, 1385, 1387, 1388 and 1389. In the excerpt, the suspect portrays himself as a heroic journalist by highlighting his professional experience in Christian radio stations, his academic qualifications as well as underscoring his wide range of listeners and visitors that he hosted.

To begin with, he underscores his vast experience as a journalist using the first person pronoun between lines 1333 and 1341. Here, he explicitly states the number of years he had worked – twelve – in line 1333. Next, he states when he started his career (1999) mentioning categorically that that was a Christian station where his Christian values were founded in line 1334-5. He then tracks his movement from one Christian radio station to the other until he settles at Kass FM where he allegedly broadcasted information that landed him at the ICC. Here, he is keen to state the motivation behind his moving to Kass

FM - personal growth - which he calls ‘greener pastures’ in line 1339 and in line 1338, he shows that it was natural to desire growth and development.

Stating the number of years he had worked as a journalist was a way of communicating that he had acquired the principles and ethics associated with journalism through practice. Secondly, his tracking his professional journey in Christian radio stations where he says he acquired ‘strong’ Christian values (line 1335) was manipulative. Implying that his Christian values were robust, therefore he clearly knew and practiced Biblical teachings with regard to the commandments regarding human life and care for other people’s properties. Thirdly, his mentioning the motivation behind his moving to Kass FM was a way of making it clear that it was not in any way connected to the 2007 general elections. These three framings of himself in positive light portrayed him as less culpable and this in turn was an agency backgrounding strategy.

The second was in which the third suspect used the first person pronoun to emphasize on his heroism in journalism was highlighting his range of listeners. To begin with, in lines 1342 – 1345, he categorically stated that he audience included all Kalenjins both in Kenyan, and in international contexts like the Hague through technological advancement. In addition, he is keen to state that his broadcast not only reached those who belonged to Kalenjin tribe but also to those from other tribes who understood the Kalenjin language. This was an important point for him to make in order to communicate to the court that if he had indeed broadcasted undesirable material like what the Prosecution had alleged, then members of other tribes who understood the Kalenjin language would have perhaps taken steps to avert any danger including reporting him to the authorities beforehand.

In addition to his expounding on his then audience, he was categorical about his future aspirations. In line 1380, he stated his aspirations locally, where he said that he wished to move to a station that broadcasted in Kiswahili or English. In lines 1382-3 he stated that he had wider interests of being one of the greatest journalist on earth. He does so by identifying himself through the age classification (Leeuwen, 2008), where he calls himself 'a young man' in line 1382. He says, **'I** wouldn′t, as young man who would like one day to be one of the greatest broadcasters on earth.' He invokes this categorization to indicate his potential tactfully and this would go a long way into making his future aspirations claims more convincing. He in turn was implicitly communicating that he could not have involved himself in activities that could jeopardize his future.

The third way in which the third suspect accentuated his professionalism using the first person pronoun 'I' was underscoring his academic qualification. This is in lines 1371 – 1373. He says,**'I**′m professional journalist. **I**′ve done my diploma and **I**′ve just completed my degree in communication and journalism. **I** know all the ethics of media….' Here, the third suspect adds that besides his experiential knowledge on journalism as explained above, he had acquired theoretical knowledge in his diploma and degree courses in journalism and this, together with is Christianity grounding improved his ethical practice in media.

Further, the third suspect demonstrated how he practiced his journalistic expertise in lines 1384 – 1389 when he explained the range of visitors he hosted in his show. He says, '**I** hosted several people in my programmes, both from different tribes and different parties. **I** gave them an opportunity to argue out their issues in terms of a debate from both parties for the benefit of my listeners.' He shows that he ensured diversity in terms of tribal

balance, the political parties the visitors belonged to and that he facilitated balanced range of debates.

The discussions in this subsection have shown that the third suspect used the first person pronoun 'I' to categorize (Leeuwen, 2008 p.42) himself as a heroic journalist in four ways. He tracked and emphasized on his career path of twelve years in Christian radio stations, explained the range of his listeners and his future aspirations, accentuated his academic qualifications as well as demonstrating how he practiced all these through a wide range of visitors that he hosted. In doing these, the third suspect seems aware of the ubiquity of media in the society as a primary source in understanding the world, as a means of constituting people's realities as well as exerting power and influence on individuals and institutions (Talbot, 2007 p.3). He therefore wished to foreground his positive influence his radio broadcast had on all the people who understood the Kalenjin language locally and internationally as well as those he hosted during his shows. He thus emphasized that he did so while observing acquired and learned professional ethics. This was a way of fronting a favourable image of himself as a journalist that had otherwise been presented unfavourably by the Prosecution. This was a way of backgrounding agency.

6.3.2 'I' as Good Son of a Cohesive Cosmopolitan Society

Besides representing himself as a heroic journalist, the third suspect used the first person pronoun 'I' to portray himself as a well-bred son of a cohesive multiethnic society. To do so, he identifies himself in the class of young people (Leeuwen, 2008: 42), describes how he blended into his diverse society since he was born and shows the continuous

harmonious relations he and the members of the society enjoy together. Excerpt 21 below exemplifies the use of 'I' by the third suspect to depict himself favourably in a cosmopolitan society.

Excerpt 21 (Transcript D_1)

1346. As many have said, Rift Valley where **we** made our broadcast
1347. contains people of all the tribes in Kenya. **Myself** being 36 years, **we**
1348. have neighbours in which **I** got them when **I** was born, both Kisiis, Kambas
1349. Kikuyus, Luhyas and the rest, and **we** have lived with them all that time.
1350. **I** listen - or, **I** understand some of the Kikuyu and Kisii language and
1351. the Luhya. They do the same. **I** speak on radio. They listen to **me** as
1352. their son. They understand Kalenjin and they are Kikuyus. They even
1353. sometimes contribute in my programme. So if the Prosecution alleges that
1354. **I** used Kass to co-ordinate the attacks because **I** was speaking to the
1355. Kalenjins, what of these Kikuyus, Kisiis, Kambas, Luhyas, and the rest
1356. who are getting what **I** talk? **I** do not understand what coded language is
1357. **I**′ve never used any coded language. And so definitely they understood
1358. all **I** would say on that. So you wonder how would a few people located in
1359. two districts, Nandi and Uasin Gishu, who′d only get my messages and
1360. implement the same messages while people who listened to **me** at any time
1361. are people who are living wherever they are and they listen to Kalenjin?
1362. Rift Valley is the largest province in Kenya. Kalenjins are spread across
1363. the whole Rift Valley. So **I** wonder, the Kalenjins in Tungun (* phon),
1364. the Kalenjins in Nakuru, Naivasha, Kericho, Kisii, Kisumu, Nairobi,
1365. Ukambani, Mombasa, if **I** was to say words, if **I** had to direct them to
1366. attack as part of the Prosecution that those who listened to **me** and acted
1367. are from Nandi and Uasin Gishu, what of the other areas? Is there
1368. another Arap Kerago who was inciting people and directing and coordinating,
1369. that all the violence that happened in Kenya was because of **me**? And if
1370. not, then why is it in that a small area?.....
1389……Most of the
1390. witnesses have said things that **I** wonder sometimes if really the
1391. Joshua Arap Kerago they are talking about is **me** if the occasions and events
1392. they are saying that **I** did surely did happen.
1393. For instance, this is one who said that **I** attended funeral,
1394. burial of one renowned athlete, Luka Kerago on the 14th of January, 2008.
1395. For God′s sake, **I** wasn′t there. And, again, the burial happened on the
1396. 10th of January and not 14th of January. So the Kerago who attended the
1397. funeral on 14 of January is not **me**. **I** didn′t attend. The same burial

1398. which is the original one, which is the real one that happened for
1399. Luka Kerago was on 10th of January, **I** didn′t attend. And my Defence would
1400. be able to give evidence towards that light. So are these witnesses
1401. people to be trusted who concorded things against **me** and my tribesmen?
1402. **I** want again to say one of the witness said about **me**, talking on
1403. air --……...
1413. ……..On the 30th December 2007, immediately after
1414. the announcement of the presidential election, the government of Kenya
1415. gave a notice banning or suspending all live coverage from 30th December,
1416. and **me**, Arap Kerago, being a loyal abiding citizen, **I** wasn′t on air on
1417. 31st, 1st, 2nd, 3rd, all through, as the days mentioned that **I** was……

Excerpt 21 above shows that the third suspect used the first person pronoun ‘I’ and its variants ‘me’ and ‘we’ in lines 1346, 1347, 1348, 1349, 1350, 1351, 1354,1356, 1357, 1358, 1360, 1363, 1365, 1366, 1369, 1390,1391, 1392,1393, 1395, 1397,1399, 1401, 1402, 1416 and 1417. In these excerpt, he uses the first person pronoun ‘I’ to represent himself variedly as a member of the society.

To begin with, he identifies himself as one of the many broadcasters within the Rift valley by using the inclusive ‘we.’ Here, he perhaps hoped to suggest that he was not the only broadcaster in that station, yet he was the only one who had been taken to the ICC. Secondly, he brings out classification identification (Leeuwen, 2008 p.42) when he states his age categorically in line 1367 identifying himself as a young man, and introduces his multiethnic neighbours in lines 1348 and 1349. He then states that he had lived with these diverse members of his society for the 36 years of his life in line 1349. By stating his age, and corresponding it with the period of time he had lived with his neighbours, he shows that his association with them was deep-rooted. He therefore enlists different means of affirming the entrenched relations with the neighbours.

Firstly, in lines 1350 and 1351, he explains that they had learnt one another's languages when he says, '**I** understand some of the Kikuyu and Kisii language and the Luhya. They do the same.' Secondly, he explains that when he spoke on radio, the neighbours listened to his programmes in line 1351 and 1352. Here, he adds a reason why he thinks the neighbours listened to his radio programmes, 'they listen to **me** as their son.' He calls himself the son of the multiethnic neighbours, saying that they listened to him as their son in order to show that the neighbours supported him and his work because they considered him their child. In these lines, he invokes a very close kinship relation, that of a child and a parent, in a bid to demonstrate the closeness of their bond. He therefore adds that one of the ways in which they supported what he did, as a parent would support a child's work, was by contributing in his radio program in lines 1352 and 1353. By highlighting these aspects, he implied that he was one of them, he broadcasted in a language that they understood and contributed to, and he could therefore not have instigated their eviction.

In addition, the third suspect portrays himself as a good son of a cohesive society using the first person pronoun by referring to himself using a kinship title 'Arap Kerago.' For instance in lines 1390 and 1391 he says, '**I** wonder sometimes if really the Joshua Arap Kerago they are talking about is **me**,' while in line 1416 he says, 'and **me**, Arap Kerago…' The title 'Arap' is a patronymic title meaning 'son of' in Kalenjin (Hollis, 1909; Okal, 2018). The third suspect therefore refers to himself as 'son of Kerago' when he refers to himself as 'Arap Kerago' and as 'Joshua son of Kerago' when he refers to himself as 'Joshua Arap Kerago' in these lines. By using the title 'arap' with his name, he was laying emphasis on the referent who was the self in a bid to increase his self-worth in the eyes of the court, communicating that he was well bred. He therefore shows that he is

not only a son of a cohesive cosmopolitan society as discussed in the paragraphs above, but also specifically, comes from a son of a good ancestry. This resonates with Okal (2018, p.12) who observes that such terms as ‘arap’ are used for ‘self-exaltation.’

The study sees his use of the pronoun ‘me’ with the emphasizing title ‘arap Kerago’ as an attempt to convince the court that having been of a good ancestry, he was incapable of committing the alleged crimes. This observation is emphasized in line 1416 when he said that he was ‘a loyal abiding citizen’ and this in turn, was a way of backgrounding agency. However, the study doubts the effectiveness of the strategic use the first person pronoun in the objective case ‘me’ by the third suspect to refer himself with the kinship name ‘Arap Kerago.’ This is because members of the Kalenjin community could have understood the meaning of the kinship name more effectively than the audience at the court did. For instance, the presiding judge was of the European origin and the use of the strategic kinship title for self-exaltation may not have registered any special meaning.

6.3.3 ‘I’ as a Peace Ambassador

The other way in which the third suspect used the first person pronoun ‘I’ was to represent himself as a peace ambassador. Excerpt 22 below shows that he listed all the peace-building initiatives that he had involved himself in during the PEV hoping that this would portray him in positive light and as one who was anti-violence contrary to what the Prosecution had alleged.

Excerpt 22 (Transcript D_1)

1417. 31st, 1st, 2nd, 3rd, all through, as the days mentioned that **I** was
1418. coordinating and telling people where to attack. **I** was not on air. The
1419. only thing that **I** did on that time being a human being who felt for the
1420. people and the issues that were happening in Kenya, **I** recorded messages
1421. appealing for peace. **I** looked for people, including Honourable Chacha to
1422. record messages appealing for peace because **I** am a peaceful person.
1423. Last, **I** have never in my lifetime stepped in any court either
1424. accused in a civil or criminal case. This is my first one. Thank you.

Excerpt 22 above begins with lines 1417 and 1418, where the third suspect explains that he was not on air. This was very crucial for him to mention because the days he outlines in line 1417, that is, 31st, 1st, 2nd and 3rd were the days that the PEV was at the peak and the period that the Prosecution had alleged that Joshua Kerago was broadcasting information directing the perpetrators where to attack. He therefore hoped to categorically refute the Prosecution's allegation and thereby background agency. Then, using the first person pronoun 'I' in lines 1419, 1420, 1421 and 1422, he enlists the activities that he engaged in, off air, to facilitate peace efforts and categorically says, '**I** am a peaceful peace.'

To begin with, in line 1419, he represents himself as an empathetic human being who felt pity on the victims of the PEV and on the country. This representation is a form of categorization that Leeuwen (2008) calls identification - defining social actors, not in terms of what they do, but in terms of what they are (p.42). The third suspect therefore wished to frame himself as empathetic in order to deconstruct the propagandist image that the Prosecution had painted on him.

In addition, in line 1420, he states that he recorded messages appealing for peace and in lines 1421 and 1422 he states that he looked for people who recorded peaceful messages.

Among the people, he mentions ‘honourable Chacha,’ the first suspect. This was strategic trying to not exonerate himself alone, but also to vindicate the first suspect. This was because, much as each suspect had been charged separately, the Prosecution had alleged that they were co-perpetrators. This was a way of backgrounding wrong doing while foregrounding good deeds like peace-building.

Besides reporting his peace building initiatives, he finishes his speech with a rider in line 1423 and 1424. He says, ‘**I** have never in my lifetime stepped in any court either accused in a civil or criminal case. This is my first one.’ This was important because in any society, one’s past record is very fundamental in determining present and future decisions. He therefore wished that the court remembered his past record, part of which he had outlined in his speech, in determining whether the Prosecution’s case against him should go to full trial.

All these self-portrayals by the third suspect – as a professional journalist with deep-rooted Christian values, as a well-bred son and as a peace ambassador - depicted himself as a hero in the professional world and in the society. This echoes Gray & Wegner's (2011) position that an individual represents himself as a hero by highlighting previous good deeds to offset blame. He therefore hopes to shape a positive way that the court should view him as O’Connor (2000 p.21) adds that a speaker presents himself in various roles as if in a theatrical performance in which he ‘guides and controls the impressions others form of him.’ The varied portrayals of the third suspect depicting himself as a hero was therefore an agency backgrounding strategy.

6.4 Summary

This section has discussed the varied ways in which the first and the third suspects employed the first person pronoun to represented themselves in different ways. The discussions have shown that the two suspects used the first person pronouns 'I' and nouns denoting kinship relations to frame themselves favourably before the court. To begin with, the discussions have shown that the first suspect utilized nouns denoting blood and marital relations indicating the close bond that existed between him and individuals from the tribes that the Prosecution had alleged he had planned their attack.

With regard to the use of the first person pronoun 'I,' the two suspects employed it differently to depict themselves variedly. Regarding the first suspect, he used the first person pronoun 'I' to portray himself in four different ways. First, he represented himself as a good politician who was in touch with his electorate. Second, he portrayed himself as a good neighbour who accommodated all individuals irrespective of their ethnic background or age. Third, he depicted himself as an in-group member of a cohesive and harmonious society and finally, he represented himself as a victim of the PEV and represented the ICC process as a revictimization on his part.

With regard to the third suspect, he used the first person pronoun 'I' in three different ways to represent himself as a hero during the Confirmation of Charges Hearing. Firstly, he represented himself as a professional journalist recording his past experience in Christian radio stations, his academic qualification and his wide range of listeners as well as visitors he hosted in his broadcast. Secondly, he represented himself as a son of a cohesive society, who was well bred and who enjoyed harmonious relations with

neighbours from diverse ethnic backgrounds and finally, he represented himself as a peace ambassador who carried out varied activities to foster peace during the PEV.

The discussions have shown that while the first suspect represented himself as a victim of the PEV, the third suspect represented himself as a hero during the PEV. There are implications that the study gleans for the different use of the first person pronoun by the two suspects. Firstly, the two suspects were of different statuses in the Kenyan society at the time of the hearing. While the first suspect was a prominent politician who was known widely both locally and internationally, the third was a journalist who was not widely known. The first suspect on the one hand used the first person pronoun to depict himself in positive light during the PEV and as a victim of the PEV, to set a record of himself that would have otherwise been taken for granted and his political position mistaken owing to his prominence. On the other hand, the third suspect used the first person pronoun to depict himself as a hero during the PEV in order to build his less known self and image. This way, the two suspects hoped to deconstruct a criminal image that the Prosecution had painted on them and construct a more favorable one thereby backgrounding agency.

The chapter that follows summarizes the finding of the study, draws conclusions and makes recommendations for further studies.

CHAPTER SEVEN

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF THE STUDY

7.1 Introduction

The purpose of this study was to examine the court participants' use of language in the construction of agency during the Confirmation of Charges Hearing of the ICC – Kenya Case One. The study answered the following questions in an attempt to achieve the study's objective.

i. How did the Prosecution and the Defence teams employ specific reference expressions to attribute or deny responsibility during the ICC – Kenya Case One trial?
ii. How did the Prosecution and the Defence teams use general terms to attribute or deny responsibility during the trial?
iii. How did the suspects employ referential expressions to downplay their involvement in the PEV at the trial?

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.

7.2 Summary of the Findings

The first research question sought to evaluate how the Prosecution and the Defence teams employed the specific reference expressions to attribute or deny responsibility during the ICC – Kenya Case One trial. Accordingly, this study found that the Prosecution and the

Defence teams used transitivity structures and terms of address to refer to varied individuals and events of the PEV differently.

With regard to the transitivity structures, the study found that social actors are included in texts using the process types including the material processes of doing and happening, relational processes of being and possession, mental processes that reveal the internal world of the mind.

On the one hand, the study found that the Prosecution consistently and explicitly made specific reference to the three suspects by identifying them by their names and coding them as Doers in material processes, Carriers in relational processes, Sensers in mental processes and Sayers in verbal processes. The specific reference to the suspects therefore left no question about the subject matter of the various processes that the Prosecution employed which was a way of foregrounding agency.

On the other hand, the study found that the Defence teams made specific reference to other individuals including the Prosecution and coded them as the Doers in material processes, Carriers in relational processes, Sensers in mental processes and Sayers in verbal processes while coding the suspects as being on the receiving end of the PEV. This was a way of downplaying the suspects' involvement in the PEV.

Regarding the use of the terms of address to make specific reference, the study found that both the Prosecution and the Defence teams used formal and semiformal address terms to refer to the suspects with contrasting implications for the choices. With regard to the formal address terms, the study found that both the Prosecution and the Defence teams chose the typical Title Last Name (TLN) and Title First Name Last Name (TFNLN) using

the title ‘Mr.’ to refer to the suspects as way of showing respect to them. Further, the study noted that the Defence teams additionally used the TLN with the honorific of deference ‘honourable’ to refer to the first two suspects as a way of fronting a positive perception of the suspects while backgrounding a criminal one. The study found this to be a Defence strategy of backgrounding agency.

Regarding the semiformal address terms, the study found that the Prosecution lawyers used the First Name Last Name (FNLN) as a strategy to diminish the respect they afforded to the suspects, indicating that regardless of the suspects’ status in the Kenyan society, they were ordinary people capable of committing the crimes as charged. The study found this a way of foregrounding agency. In addition, the study found that the Defence lawyers also used the FNLN. However, the study found the Defence teams’ choice of the FNLN as a way of expressing familiarity and horizontal cordial relations between them and the suspects, in a bid to endear the suspects to the court and minimize the social distance between the suspects and the court.

With regard to this study’s second question that sought to establish the varied ways in which the Prosecution and the Defence teams used generic terms to attribute or deny responsibility during the trial, the study found that the teams made general reference to varied individuals and events of the PEV using three linguistic resources. They included mass nouns and nouns denoting groups of people, agent deletion and nominalized phrases.

To begin with, the study found that the use of the mass nouns and nouns denoting groups of people was a Prosecution strategy of differentiating the anonymized groups of people

from the specified suspects. The study therefore found that the Prosecution made general reference to groups of unidentified persons using such phrases as referred to 'others,' 'network,' 'perpetrators of direct and indirect kind,' 'subordinates,' 'Pro-ODM political figures,' 'media representatives,' 'financiers,' 'tribal leaders,' 'local leaders' and 'former members of the Kenyan police and army.' In this regard, the study found that the use of these expressions was to facilitate the anonymized individuals' exclusion from the Confirmation of Charges Hearing discourses by the Prosecution. This would downplay the anonymized individuals' responsibility in the violence while highlighting the suspects' responsibility. However, the study noted the failure of the strategy by the Prosecution as the Defence highlighted the underplayed anonymized individuals, demanding the revealing of their identities.

The second way in which generic expressions were used in the hearing was through agent deletion. The study found this as a Defence strategy of deleting human agents when describing the PEV events and representing them as self-engendered happenings. The study found that the Defence teams employed existential clauses, intransitive clauses and passive constructions to delete human agents from their utterances thereby making general reference to the PEV events. The study found the representation of events as self-engendered as a Defence strategy of backgrounding agency.

Finally, the study also found that the Defence teams utilized generic expressions through nominalized phrases. To do this, the Defence teams phrased actions as nominals and this facilitated the restructuring of the Prosecution investigations and the process of the investigations in terms of abstractions. The study found this as a Defence strategy of discrediting the Prosecution's investigations thereby backgrounding agency.

The final research question sought to establish how the suspects' self-representations at the trial contributed to agency construction. The study therefore found that the first and the third suspects choose to represent themselves in addition to being represented by their lawyers. In this regard, the study found that the two suspects used the first person pronoun 'I' differently to frame themselves favourably before the court. In addition, the study found that the first suspect also employed nouns denoting kinship relations. With regard to the use of nouns denoting kinship relations, the study found that the first suspect utilized nouns 'sister,' 'brother' and 'brothers-in-law' to indicate the close blood and marital bond that existed between him and the individuals from the tribes that the Prosecution had alleged he had planned their attack. The study found this as a way of underplaying his involvement in the PEV.

With regard to the use of the first person pronoun 'I,' the study found that the two suspects employed it differently to depict themselves variedly. Regarding the first suspect, he used the first person pronoun 'I' to portray himself in four different ways. Firstly, he represented himself as a good politician who was in touch with his electorate. Secondly, he portrayed himself as a good neighbour who accommodated all individuals irrespective of their ethnic background or age. Thirdly, he depicted himself as an in-group member of a cohesive and harmonious society and finally, he represented himself as a victim of the PEV and represented the ICC process as a revictimization on his part. These four portrayals of the 'self' using the first person pronoun 'I' were attempts to background agency.

With regard to the third suspect, he used the first person pronoun 'I' in three different ways to represent himself as a hero during the Confirmation of Charges Hearing. Firstly,

he represented himself as a professional journalist recording his past experience in Christian radio stations, his academic qualification and his wide range of listeners as well as visitors that he hosted in his broadcast. Secondly, he represented himself as a son of a cohesive society, who was well bred and enjoyed harmonious relations with neighbours from diverse ethnic backgrounds and finally, he depicted himself as a peace ambassador who carried out varied activities to foster peace during the PEV. The study found the three portrays of the 'self' by the third suspect as a way of building his less known profile positively and this in turn was a way of backgrounding agency.

7.3 Conclusions

From the discussions and the findings outlined in the study, a number of conclusions may be drawn. To begin with, the study has shown that individuals in any social practice (as the suspects of the PEV) can be represented variedly through linguistic mechanisms like they were represented by their lawyers in order to variedly construct agency. In addition, the study has shown that different individuals can strategically employ similar linguistic resources to represent themselves differently in order to achieve different goals. For instance, the first and the third suspects represented themselves using the first person pronoun 'I' but the two brought out different portrayals of themselves. While the first suspect represented himself as a victim of the PEV, the third suspect represented himself as a hero during the PEV. In this regard, the study finds that the first suspect wished to clarify an allegedly mistaken identity of himself, while the third suspect was attempting to build a not-known identity. Through these different goals of self-representations, the two suspects hoped to deconstruct a criminal image that the Prosecution had painted on them and construct a more favorable one thereby backgrounding agency.

Secondly, the study has also shown that both professional (such as Prosecution and Defence lawyers in this study) and lay (such as the suspects) interactants can variedly manipulate language in the courtroom in order to construct agency.

Finally, this study has shown that agency was foregrounded or back grounded through linguistic means such as transitivity structures, terms of address, mass nouns and nouns denoting groups of people, agent deletion, nominalization, the first person pronoun and nouns denoting kinship relations. This shows that a single social event such as the Kenya's 2007/2008 post-election violence, can be and was presented significantly differently to represent given individuals such as the suspects as being guilty or innocent depending on the positioning of the speaker. The study therefore concludes that in addition to meeting communicative needs of discourse participants, language is fundamental in the construction of agency.

7.4 Recommendations

From the discussions in this study, three recommendations are made. Firstly, the study found that court interactants manipulated transitivity structures and strategic terms of address, mass nouns and nouns denoting groups of people, agent deletion, nominalization, the first person pronoun and nouns denoting kinship relations lexical items in order to manipulate agency. Interested scholars may therefore explore the contribution of other linguistic mechanisms like questioning and the question types in the construction of agency.

Secondly, this study delved in the construction of linguistic agency using a CDA approach as informed by Leeuwen's representation of social actors' theoretical

framework. Other approaches, linguistics methods and theoretical frameworks may be utilized to find out if agency is constructed in the same way or there are variations.

Finally, this study limited its scope to the use of language in agency construction using the ICC-Kenya Case One hearing transcripts as the data for the study. The study therefore recommends that the same transcripts may be used as data in other studies to investigate other ways in which language was used during the hearing to depict other aspects such as power relations, identity construction and language as advantage/disadvantage among others.

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APPENDICES

APPENDIX I – ICC CORRESPONDENCES

Correspondence 1

Request for Access of ICC Kenya- materials

Esther Kimani <kimaniesther.w@gmail.com>

29/05/2014

The Public Affairs Unit <PublicAffairs.Unit@icc-cpi.int>

My name is Esther Kimani a PhD Linguistics (forensic linguistics) candidate at the Moi University, Kenya. I am interested in writing my thesis on a Linguistic analysis of the ICC-Kenyan Case. I would wish to find out how I can access the transcripts or either the video/audio recordings (whichever is available) of:

a) the Confirmation hearing of the Kenyan cases,
b) the hearing challenging the admissibility and jurisdiction of the Kenyan cases in the ICC, and
c) the hearings on the excusal from continuous presence at the trial of the Kenyan defendants at the ICC.

I look forward to hearing from you soon.

Best regards,

Esther Kimani

Correspondence 2

13/06/2014

to Public Affairs,

I had written to you earlier requesting for the transcripts of the Kenyan Case Confirmation-of-charges hearing.

This is a follow up on the same. Please let me know if the materials are available so I progress with the proposal writing and how I can access them.

Best Regards,

Esther Kimani

Response to Correspondence 2

Public Affairs Unit <PublicAffairs.Unit@icc-cpi.int>

13/06/2014

to me

Dear Esther Kimani.

Thank you for your message. We are pleased to hear of your interest in researching the Court.

The transcripts you have requested are not currently available. As soon as they are, they will be posted on the website.

Please let us know if we can be of further assistance.

Best regards,

Public Affairs Unit

International Criminal Court

Correspondence 3

Esther Kimani <kimaniesther.w@gmail.com>

13/06/2014

to Public Affairs Unit <PublicAffairs.Unit@icc-cpi.int>

Thank you very much for your prompt response. I would like to know if you may be able to predict by when you could have them posted on the internet for purposes of planning.

Regards

Esther Kimani kimaniesther.w@gmail.com

Correspondence 4

16/06/2014

to Public Affairs Unit <PublicAffairs.Unit@icc-cpi.int>

Dear ICC Public Affairs Unit,

I am Esther Kimani and I thank you very much for your response to my earlier correspondence to you.

As I had indicated in my first email to you, I am very interested in carrying out a linguistic analysis of the ICC's Confirmation Hearing of the Kenyan case.

You wrote back that once the materials are ready, I will see them posted on your website. My question to you now is whether you are able to predict on when you hope to have them posted. This is because I am developing my proposal now and I will be defending it later next month and such are the questions I hope to be able to answer in order for my desired research topic to be passed.

I hope to hear from you soon and I hope that you understand my concerns.

Best Regards

Esther Kimani kimaniesther.w@gmail.com

Correspondence 5

Educational materials

Esther Kimani <kimaniesther.w@gmail.com>

07/08/2014

to Public Affairs Unit <PublicAffairs.Unit@icc-cpi.int>

Dear ICC Public Affairs Office,

I thank you for your continued effort to keep the public updated on ICC Matters and especially on materials of scholarly interest.

I am Esther Kimani and I had earlier communicated with you regarding my interest to linguistically analyse the Confirmation hearing of the Kenya Cases for my PhD Thesis.

You promised to post the materials on your website once they are ready.

To date however, I have not yet seen the materials. Please advise me on the timelines that I should expect to find them because I need to know the position so that if on your side you are not able to predict, I abandon the interest and pursue another area due to University deadlines.

Please reply to me I am desperate.

Best regards,

Esther

Response to correspondence 5

Public Affairs Unit <PublicAffairs.Unit@icc-cpi.int>

07/08/2014

to me

Dear Ms Kimani,

I am not sure which documents you are referring to but regarding the ICC Confirmation of Charges Hearings in the Kenyan cases, please find below links to audio-visual materials and transcripts of the hearings which may be useful in you research.

If you would need additional materials could you please specify what they are? Thanks in advance

ICC Public Affairs Unit

[1] TRANSCRIPTS:

Best regards

The Prosecutor v. Name1 Samoei Name1, Name2 Kiprono Name2 and Name3 Arap Name3

Situation in the Republic of Kenya

Transcripts - Pre-Trial Chamber II

Publishing Date	Reference Number	Source	Title
08/09/2011	ICC-01/09-01/11-T-13-RED	Pre-Trial Chamber II	ICC-01/09-01/11-T-13-Red-ENGWT 08-09-2011 1-1 NB PT
08/09/2011	ICC-01/09-01/11-T-12	Pre-Trial Chamber II	ICC-01/09-01/11-T-12 ENG ET WT 08-09-2011 1-78 SZ PT
07/09/2011	ICC-01/09-01/11-T-11-RED	Pre-Trial Chamber II	ICC-01/09-01/11-T-11-Red-ENG WT 07-09-2011 1-92 NB PT
08/09/2011	ICC-01/09-01/11-T-11BIS-RED	Pre-Trial Chamber II	ICC-01/09-01/11-T-11Bis-Red-ENGWT 08-09-2011 1-1 NB PT

06/09/2011	ICC-01/09-01/11-T-10-RED	Pre-Trial Chamber II	ICC-01/09-01/11-T-10 -Red-ENG WT 06-09-2011 1-90 NB PT
05/09/2011	ICC-01/09-01/11-T-9-RED	Pre-Trial Chamber II	ICC-01/09-01/11-T-9 -Red-ENG WT 05-09 -2011 1-81 NB PT
05/09/2011	ICC-01/09-01/11-T-8-RED	Pre-Trial Chamber II	ICC-01/09-01/11-T-8 -Red-ENG WT 05-09-2011 1-1 NB PT
03/09/2011	ICC-01/09-01/11-T-7-RED	Pre-Trial Chamber II	ICC-01/09-01/11-T-7-Red-ENG WT 03-09 -2011 1-104 NB PT
02/09/2011	ICC-01/09-01/11-T-6-RED	Pre-Trial Chamber II	ICC-01/09-01/11-T-6 -Red-ENG WT 02-09 -2011 1-162 NB PT
01/09/2011	ICC-01/09-01/11-T-5	Pre-Trial Chamber II	ICC-01/09-01/11-T-5-ENG NET WT 01-09 -2011 1-116 NB PT

2] AUDIOVISUAL MATERIALS:

Opening of the Confirmation of Charges Hearing in the case of The Prosecutor v. William Samoei Chacha, Henry Kiprono Muita and Joshua Arap Kerago (September 2011)

- Opening: http://www.youtube.com/watch?v=_piZIq-mv7A

-Opening statements of the Office of the Prosecutor: http://www.youtube.com/watch?v=VS081U738zI

-Opening statements of the Legal Representative of Victims:

http://www.youtube.com/watch?v=9TGICj3gImk

- Opening statements of the Defence: http://www.youtube.com/watch?v=kE6ggdZFaFo

-'In the Courtroom' programme:

https://www.youtube.com/watch?v=jLpwMft4qTM&list=PL28AC8847D9BB23AA&index=8

From: Esther Kimani [mailto:kimaniesther.w@gmail.com]

Sent: 07 August 2014 10:04

To: Public Affairs Unit

Subject: Educational materials

"This message contains information that may be privileged or confidential and is the property of the International Criminal Court. It is intended only for the person to whom it is addressed. If you are not the intended recipient, you are not authorized by the owner of the information to read, print, retain copy, disseminate, distribute, or use this message or any part hereof. If you receive this message in error, please notify the sender immediately and delete this message and all copies hereof"

Attachments area

Preview YouTube video Chacha, Muita&Kerago case: Opening of the Confirmation of Charges Hearing, 1 September 2011

Preview YouTube video Chacha, Muita&Kerago case: Office of the Prosecutor opening statements, Confirmation of charges

Preview YouTube video Chacha, Muita&Kerago case: Legal Representative Victims opening statements, Confirmation of charges

Preview YouTube video Chacha, Muita&Keragocase: Defence opening statements, Confirmation of charges

Preview YouTube video Chacha, Muita&Keragocase: In the Courtroom programme - Confirmation of Charges Hearing

Response to the ICC's Response to correspondence 5

Esther Kimani <kimaniesther.w@gmail.com>

08/08/2014

to Public Affairs Unit <PublicAffairs.Unit@icc-cpi.int>

Dear Public Affairs Unit

I am Esther Kimani and I am very grateful to you for your prompt response and in turn sending me the materials that I required on the Confirmation of Charges Hearing that will make my PhD data. I will not hesitate to get to you for further assistance in future. God bless you.

Best regards

Esther Kimani

APPENDIX II - OPENING STATEMENTS

TRANSCRIPT D_1: 1st Sept 2011

(Opening Statement by the Prosecution)
MR. MORENO OCAMPO: Thank you, Madam President. We will make a few comments in our opening on the organisational aspect so we will answer on this aspect during the opening, and we will take advantage of your proposal to submit a written brief on 16 of September and we provide our submission there.
PRESIDING JUDGE TRENDAFILOVA: Thank you very much. With regard to the procedural issues, you′re not taking the floor?
MR. MORENO-OCAMPO: I don′t think it′s necessary to answer now.
PRESIDING JUDGE TRENDAFILOVA: Thank you.
Now we came to the point when we maybe have to follow paragraph 9 of the decision establishing the schedule for the Confirmation of Charges Hearing where it was clearly stated that as far as we finish with items on the agenda for the day, we automatically ″move to the next presentation, even if it is schedule for the following day.″
And on our schedule, we have to start with the opening statement of the Prosecutor to be followed by the opening statement of Ms. Chana, the legal representative for the victims participants, and, thereafter, in the order identified in the beginning: The Defence team of Mr. Chacha, the Defence team of Mr. Muita, and the Defence team of Mr. Kerago.
You would like to make some observations on this proposal? No.
So the floor is over to you again, Mr. Ocampo.
MR. MORENO-OCAMPO: We would like to show some visual aide. I′m not sure if the Court is prepared. If may take a few seconds, I hope, to be prepared.
PRESIDING JUDGE TRENDAFILOVA: Mr. Prosecutor, in the same decision I was referring to, there is a section C, technical issues, where in paragraph 15 it was clarified when the parties would like to use some video material how they′re supposed to proceed, so we --
MR. MORENO-OCAMPO: We did.
PRESIDING JUDGE TRENDAFILOVA: Thank you very much. I see the presence of Mr. Dubuisson, the director of the court services. Mr. Dubuisson, everything is ready for the video material to be displayed?
MR. DUBUISSON: (Interpretation) Yes, indeed, Madam President. This is planned for, indeed.
PRESIDING JUDGE TRENDAFILOVA: Thank you. Thank you

Mr. Dubuisson.
COURT OFFICER: Your Honour, if I can just very quickly
intervene. I was informed by the technicians that a slight amendment
would need to be made to the Prosecution bench in terms of the visual
aide that needs to be shown. So if your Honours would be kind enough to
give the technicians some minutes to make the ...(* overlapping speakers)
PRESIDING JUDGE TRENDAFILOVA: How much time do the technicians
need?
COURT OFFICER: I believe 10 to 15 minutes would be enough for
that.
PRESIDING JUDGE TRENDAFILOVA: And they do it more expeditiously?
COURT OFFICER: I will notify them, your Honour, of the need for
that to happen expeditiously. Thank you.
MR. MORENO-OCAMPO: Your Honour, we have proceed without th
graph. We show the graph in any case tomorrow in the -- in the case.
PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Prosecutor. I
would very much ask the Court Officer and Mr. Dubuisson so the
arrangements are made that we do not lose much of the very valuable time
given to the Chamber.
MR. MORENO-OCAMPO: Yes, Madam President. We planned tomorrow so
there′s a little change in the schedule. It′s okay. I think the graph
that we planned to present would be shown to your Honours and to the
suspects tomorrow, so I don′t think it would be a big change. So I
can -- I can present to Madam President, your Honours, our case, some of
our case.
Let me start saying that today the Prosecution is representing
117 State Parties of the Rome Statute, including the government of Kenya
who in their sovereign decision signed the treaty, but in particular
there is valid victims of crimes against humanity. And it is in their
name that the Prosecution requests that the Pre-Trial Chamber confirm the
charges against William Chacha, Henry Muita, and Joshua Kerago and commit
them for trial.
The Prosecution submits that the evidence presented establishes
substantial grounds to believe that Mr. Chacha, Mr. Muita, and Mr. Kerago
are individually responsible for widespread and systematic, both, and
systematic attack against civilians in Kenya Rift Valley province. The
crimes charged affected thousands of Kenyan citizens. These massive
crimes are, as the Defence say, a Kenyan problem, but they are not just a
Kenyan problem. These are some of the most serious crimes of concern to
the international community as a whole, and for that reason the

International Criminal Court intervene.
As the result of the crimes committed by Mr. Chacha and Mr. Muita
and Mr. Kerago, violence was unleashed in Rift Valley. At least 700
persons die, and approximately 400.000 persons were displaced between the
end of December 2007 and January 2008.
The evidence, the Prosecution evidence, shows that the violence
in the Rift Valley was the result of the planned crimes. Crimes were not
spontaneous. Perpetrators were not opportunistic. They were following
the suspects′ plans.
The evidence will show that the crimes were carefully planned and
organised by William Chacha and Henry Muita with the goal to gain
political power. Mr. Chacha and Mr. Muita were leaders of the
Orange Movement, later called Orange Democratic Movement, ODM, an
opposition political party. Mr. Chacha, Mr. Muita supported by Mr. Kerago
planned to attack people perceived to support the ruling party of
national unity, the -- or PNU. The suspect wanted to expel PNU
supporters from the Rift Valley to create a uniform ODM voting bloc to
create a platform for their political careers.
How the crimes were committed? To commit the crimes, they
created an organisation that included Joshua Kerago, politicians,
businessmen, some elders, former army and police officers and had
hundreds, at least, of followers. The crimes were planned and prepared
well before the elections happened.
During 2007, Mr. Chacha, Mr. Muita, and Mr. Kerago held at least
eight meetings specifically dedicated to plan and co-ordinate the
attacks. They provided -- they provided weapons, funds, and promised
money and land to those who participate in the attacks. They offer money
to those who will kill and those who will burn. The question is how
could Mr. Chacha and Mr. Muita collect such support for their goals? The
Prosecution evidence show that Mr. Chacha and Mr. Muita took advantage of
a distribution of land dispute in the Rift Valley to galvanise support
for their plans. During the 1960s and 1970s, Kenya first president
granted land in the Rift Valley to his community. Chacha and Muita
community in the Rift Valley believe that these decisions usurp their
ancestral land, and instead of leading their community to a proper
solution of the land problem, Mr. Chacha and Mr. Muita capitalise on the
existing tensions and animosity caused by the redistribution of land and
using their usage the election as an excuse to trigger the attacks.
Let me summarise the events in accordance with the evidence.
Since at least December 2006, William Chacha and Henry Muita

prepared a criminal plan to gain political power. They decided that if the PNU rigged the elections or even if the ODM lost, there would be war. They planned to -- what the meaning of war? They planned to attack supporters of the PNU and expel them from their homes in Rift Valley. They were aiming to gain power and create a uniform ODM voting bloc in Rift Valley. That was the goal.

To achieve this goal, they created and conducted an organisation based on a network of individuals and pre-existing entities in their communities. This organisation, this network, have had five components: political, media, financial, elders, and military.

First, there was a political component led by Mr. Chacha and Mr. Muita that included other politicians who participated in the preparatory meetings and assisted in the organisation of attacks that were to follow.

Second, Chacha and Muita relied on the media to disseminate their messages, specifically Joshua Kerago played a key role to broadcast their message. The media was used to indoctrinate the network members by broadcasting propaganda against PNU supporters, to broadcast a speech of designated network members who indicated ideas or ways to co-ordinate the attacks.

Third, Mr. Chacha and Mr. Muita collected financial support from -- from businessmen in order to, A, compensate attendees at preparatory meetings which pertains the evidence how attendees would receive money; second, purchase weapons including guns and gasoline (* indiscernible); third, purchase material to make traditional weapons; four, to provide transport for the attacks.

All of these are part of the organisation they conducted and they -- they organised, they created.

Four, Mr. Chacha and Mr. Muita integrated some tribal elders into their network. This is crucially important. By utilising tribal elders, Mr. Chacha and Mr. Muita capitalised on the Kalenjin tradition of demanding strict respect and obedience from their youth. This attitude was critically important to ensure respect for the instructions and even to maintain the confidentiality of the preparation.

Finally, the network had a military component integrating former members of the Kenyan military and police that included three commander or generals. At the top of the organisation was Mr. Chacha. He was the overall head of the military component. Reporting to Mr. Chacha, commanders led a hierarchical organisation whose different jurisdiction in different geographic areas including the north -- the one in the

North Rift, and, second, the centre Rift area, including Nandi Hills, that in this area they also reported to Muita who was also one of the authorities of the network. The military component advise Chacha on logistical issues, obtain weapons, identify financial resources, and mobilise direct perpetrators. They ensure the implementation of the plan. Below them, there were subordinates playing a variety of roles, identifying PNU supporters homes and business for future attacks. So the targets were identified before the elections, before the attacks. They obtained weapons and these subordinates were clearly important because they were leading the direct perpetrators during the attacks. The direct perpetrators were trained in advance and received weapons, and also they were designated - there were also some of them designated to lead attacks. In addition to plan, Mr. Chacha and Mr. Muita had an important role in the co-ordination and preparation. Mr. Chacha and Mr. Muita encourage the attacks, but referring to the targets that PNU supported, using derogative terms, they also elected commander and assigned them a specific geographical areas to control, and they also identify -- identified the areas populated by PNU supporters for attack. So they weren't just planning. Their essential contribution, we submit, was much beyond the plan. They were involved in the preparation, including -- Mr. Chacha organise the storage and personally distribute weapons, co-ordinate transportation for attacker - and co-ordination transportation for attacks. Both Mr. Chacha and Mr. Muita promised awards, money, or land for the participation in the attacks. Additionally, Mr. Chacha and Mr. Muita designated network perpetrators who will call Kass FM to spread the network message. They - Mr. Chacha and Mr. Muita also ensure information on the plan to attack other areas and the progress through Kass FM. On 27 December 2007, Kenyan voters went to the polls to exercise the democratic right and elect a president. On 30 December 2007, the incumbent president and leader of the ruling PNU, MK, was announced as the winner of the election by a small margin over his opponent from the ODM. The election results announcement triggered Mr. Chacha and Mr. Muita's network to act in accordance with the plan. Madam President, your Honours, perpetrators in the network follow the plan and began attacking targeted locations in the Rift Valley immediately after the election result were announced. Violent attacks against persons and property - and property were carried out in a

systematic and uniform fashion in the greater Eldoret area, Turbo town, Kapsabet town and Nandi Hills. The evidence that the Prosecutor will present will show a consistent pattern in the implementation of the attacks. One, perpetrators - perpetrators gathered at designated meeting points outside the location selected for attack. Second, they had commanders. Third, they established roadblocks at all major roads around the targeted locations. Four, they proceed to loot and burn down houses and business that had been previously identify as belonging to PNU supporters. As a consequence, they were systematically displacing hundreds of thousands of persons away from their homes. Thousands of PNU supporters fled to nearby police station and churches for refuge. Perpetrators kill or maim people as they attempted to free. In the roadblocks, people from the groups perceived to be support PNU were attacked and in many instances killed on the spot.

Madam President, your Honours, before I conclude my presentation in this hearing, I'd like to emphasise and highlight that the organisation created and supervised by Mr. Chacha and Mr. Muita and supported by Mr. Kerago was highly efficient. We will develop this line properly, but it was an organisation who has a clear goal integrated by hundred people. They have clear hierarchies. They have roles, finances, media, politicians, and they have clear co-ordination capacity. They organise roadblocks. They organise transport. They work as an efficient organisation. They were able to co-ordinate at least hundreds of perpetrators to ensure transport, logistics and weapons to all of them to co-ordinate roadblocks in the whole area and to identify the houses targeted. It was an efficient organisation used to the crime. And in that way you believe is no problem to prove the element of the crime required by the Rome Statute, but we will elaborate on that in our written submission.

The issue is that it is in the outcome that in a little less than a month, the organisation created by Mr. Chacha, Mr. Muita and Mr. Kerago executed at least eight different attacks and achieved its goal. More than 400.000 civilians associated with the PNU were expelled from Rift Valley. In fact, many of them are still displaced, still homeless. This is serious concern for the Prosecutor office. And this is the case of the Prosecutor, the murder, displacement, and persecution of thousands of Kenyan victims.

Ms. Cynthia Tai will provide further details of the attacks to conclude the Prosecution opening. Thank you, your Honours.

PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Ocampo. Would you

like to take the floor, Ms. Tai?
MS. TAI: Thank you.
Thank you, Madam President, your Honours. On behalf of the
Prosecution, I would like to provide some details on the attacks on the
civilians which constitute the crimes against humanity against the three
suspects, William Chacha, Henry Muita, and Joshua Kerago.
First, I would like to address the attacks.
PRESIDING JUDGE TRENDAFILOVA: Ms. Tai, I'm just - I would like
to make just one point. I hope that you're not going to start developing
the case as you're expected to do so tomorrow, just to the extent
necessary for the purposes of opening statements. That is something that
I constantly have been advising the Defence teams, so the equality
requires that I address the same concern to you as well.
MS. TAI: Understood.
Briefly, I would first like to address the attacks.
Perpetrators who attended the preparatory meetings and events
that were led by William Chacha, Henry Muita, and Joshua Kerago participated
in these attacks in the greater Eldoret area, Turbo town, Kapsabet town,
and Nandi Hills. I will not go into the details of those attacks as they
will be addressed during the course of the Prosecutor's presentation.
However, I would like to highlight some of the significant factors that
can be attributed to each of those attacks.
Each of them involved local commanders, subordinates, specific
tasking of individuals to identify targets, organised transportation,
erected roadblocks, and involved the deployment and reinforcement of
direct perpetrators.
During the course of our presentations, we will describe to the
Chamber how most subordinates and perpetrators were transported to and
from these areas in groups where they attacked towns or districts. The
consistent pattern that we see in the attacks shows that they were
centrally planned and organised.
From on or about the 30th of December of 2007, network
perpetrators committed no fewer than these eight attacks in different
locations targeting PNU supporters. These direct perpetrators
implemented the network's policy of attacking these supporters to
permanently expel them from the Rift Valley. They systematically
inflicted fear, killing, looted, burned, or otherwise destroyed their
property.
The result was devastating. Uasin Gishu and Nandi Districts
suffered the largest share of the victims during this period of time. It

resulted in approximately 230 deaths, injuries to over 1.000 people in these two districts alone. Again, significantly, these areas bore the same trademark. They used similar means and they used a similar strategy to attack. In these areas of attack, direct perpetrators approached densely populated PNU areas and converged on these locations simultaneously from all directions. Once there, they looted and burned and destroyed businesses, and as a result, hundreds to thousands of PNU supporters fled for shelter. They fled to nearby police stations and churches for refuge. Briefly, Madam President, your Honours, I would like to address the point of individual criminal responsibility. Viewed collectively, the Prosecution′s evidence will show that William Chacha, Henry Muita, and Joshua Kerago are individually responsible for these attacks. Their responsibility is rooted in their common plan, their network, and their policy to expel these PNU supporters. They are responsible by virtue of their participation as indirect co-perpetrators, that being William Chacha and Henry Muita. Joshua Kerago is liable for the crimes based on his contribution for -- to the crimes committed by the network. William Chacha and Henry Muita made essential contributions, and they co-ordinated them to ensure their success. They used their authority as top leaders and as members of parliament to mobilise their supporters, and they provided direct perpetrators with weapons and a range for their logistical success. Within this network, subordinates were assigned particular duties to further their common plan. These subordinates acted as the link between William Chacha and Henry Muita and the direct perpetrators, and they acted as conduits to deliver the plans, the funds, the weapons, and transportation for these attacks to occur, but William Chacha and Henry Muita alone controlled this network, and they operated as hubs of the organisation. They were the ones that were responsible for gathering supporters and establishing the roles of subordinates in particular areas, and they used these people to ensure participation. Last, William Chacha and Henry Muita intended to commit these crimes. They were the leaders of this network and the authors of the common plan. So clearly the Prosecution′s evidence will show they had full knowledge that their actions would cause the crimes to occur as they did. Last, Joshua Kerago is liable for the crimes charged under a different theory of liability, as you well know. The Prosecution′s case is based on his contribution to the network′s crimes pursuant to the common plan. As indicated in the document containing the charges, he

used his platform, his radio platform, to indoctrinate his listeners, to pressure them, and broadcasted calls of predesigned - predesignated, excuse me, network members to spread this message. The Prosecution′s evidence as to Joshua Kerago establishes that his contributions as well were not accidental but instead that he purposefully contributed to Chacha and Muita′s common plan. Madam President, your Honours, the Prosecution concludes it′s opening statement. We thank you for its time and have nothing further at this time.

PRESIDING JUDGE TRENDAFILOVA: Thank you, Ms. Tai.

Now we have 13 minutes left.

Ms. Chana, how do you feel about starting with your opening statement and finalising them after the break?

MS. CHANA: I′m ready to start now, Madam President.

PRESIDING JUDGE TRENDAFILOVA: Thank you. Thank you. Thank you, madam.

(Opening Statement by the Legal Representative of Victims)

MS. CHANA: Madam President, members of the Chamber, I am the common representative of 327 victims who have been admitted as participants at this Confirmation of Charges Hearing and the related proceedings. I would like to say something by way of introduction of the people I represent. Given that there are 327 individual people, it is unfortunately not possible in the limited time available to introduce each of them individually, but they are - but they are, all 327 of them, individual people. People with their own individual lives, families, hopes, and aspirations which all have been turned upside down by the brutal events in the post-election violence of 2007 and 2008.

They are all from the Rift Valley province of Kenya. They are mostly members of the Kikuyu tribe, but they also include individuals from the Luhya, Kiambaa, and Kisii communities. They range from the age of 20 to 80. A hundred and forty-six of them are female, and 181 of them are male.

Virtually every one of them had their homes or property destroyed, burnt, looted, and destroyed in these events. Virtually every one of them had to flee their homes at the time of the events. Many subsequently returned and have faced the heart-breaking prospect of seeking to rebuild all that was lost. Others have not been able to return to this day, both because their properties have been occupied by others and they have been unable to reclaim them or because of continuing climate of menace makes them afraid to return.

Of those who did return after the violence, they found themselves living in the same area as the people who were direct perpetrators of the violence. They live in fear with particular trepidation that they may be recognised as participants in proceedings before the International Criminal Court. They are from -- the community as a whole appears not to see or to understand any distinction between a witness and a victim. This is one of the things which I tried to do when I went on my mission to Kenya, to explain and hopefully the message gets around as to that very important distinction.

As I cannot introduce all the victims, I will give a few examples.

In that time he has forged relations with his neighbours, and they have gone together through ups and downs as a community. A farmer by trade, he has brought up and provided for a family of which he was the sole breadwinner. He has striven to ensure that his children have been able to go to school. His life was reversed on 18 January 2008. As the victim himself narrates:

"It all started with a cry for help and I attended just to find that, in fact, it was a plan to draw us close. Upon realising this, I took to my heels running for my life, but unfortunately I was unable to outrun the youth coming against me. I was shot down by an arrow to the leg. They caught up with me and stoned me, leaving me for dead."

As a result of this attack, this particular victim suffered spinal injuries and was sentenced to spend the remaining days of his life paralysed and at the care of his wife, unable to work, to earn the funds for his own medication, let alone to provide for his wife and children. He has been transformed from a provider for his family to a burden to his family in an a country where social security, invalidity benefits, state-provided health care and compensation for victims of crimes are virtually unknown.

Another story relates to a lady who has been completely changed both emotionally and physically by the events, and she has a child's grave which serves as a constant reminder of what happened to her in the 2007 and 2008 post-election violence.

On 1st January 2008, she told me that she remembers vividly that as the violence grew worse, she and her child sought refuge at the one place that is considered by most people as sacrosanct and consequently most secure: the church. As they -- she sat inside the church with her child, she was amongst about a hundred others, women, children, elderly, disabled. They all sat in that church thinking that they were safe.

What happened? They burnt the church. A crowd of riotous youths viciously shouting slogans and brandishing crude weapons surrounded the church. She carries on to describe:

"The youths closed the doors and sealed the windows to ensure that no one escapes. They then set the church ablaze and in minutes the whole of the Kiambaa church was on fire."

The lady, in a bid to save her child, threw the child out of the window while she burned in the fire. She defied death but sustained burns to 80 per cent of her body, and now she is scarred for life. Her child died despite all her efforts to save him.

Other victims lost family members. One victim says:

"I lost a son who has just finished his secondly school examinations." A matter of great pride for this - this particular victim. "I had great hopes and expectations of my son. Since his death during the violence I feel lost."

Another victim said:

"They chased my son down - they chased down my son and brutally cut him up. My son used to take care of me, and since his death I have been destitute."

Yet another victim records:

"Among the victims, young girls are forced into prostitution, sometimes by their parents, as they seek to secure food and money for themselves."

Such is the desperation of the people who are now living in the aftermath of this violence.

Now, for these victims and others who have not been able to recount, these are not merely tragic events in history or something to read about in the newspapers but real experiences in their own lives. Each victim personally felt the brutality and the heartlessness of the group attacks, the heartbreak of the deprivation of property obtained from years of thankless toil, the indignity of being rendered incapable to fend for one's family, the horror of losing family members and being left alone without support or the terror of fearing for one's life continuously.

Beyond the initial impact of the violence, victims then had to endure the consequences of these callous crimes with little or no assistance - to no assistance from the government. The majority of the displaced victims continue to live in deplorable conditions without adequate shelter, livelihoods, and means of securing food, medical care and education for their families.

438. For the parent within the Kenyan society, nothing is more
439. important than being able to provide for one′s family, educate one′s
440. children, and leave an inheritance for one′s descendants. In most cases,
441. the victims have been deprived of all three of these capabilities. One
442. victim said:
443. ″I find it difficult obtaining basic needs such as food and
444. shelter and need a lot of assistance.″
445. Another victim said, who was in charge of at least 60 of the
446. IDIs - IDP:
447. ″I have had great trouble dealing with IDPs. Victims are dying
448. almost every day from stress, poverty, inability to access basic health
449. care or sufficient medicines.″
450. All this is tied to this situation of powerlessness and poverty.
451. It is particularly enormously difficult for victims of these
452. events to come to terms with what has happened, not merely because the
453. turn of fate was the result of wanton criminality but even more
454. particularly because until now victims perceived no resolve on the part
455. of authorities in Kenya to do anything to pursue the perpetrators. As
456. one victim said:
457. ″The government has no interest in protecting little - the
458. little person. Instead, they use all their might to protect the big
459. people in government.″
460. From the perspective of those I represent, victims watched as
461. their land was resettled by the very people that evicted them, as those
462. who carried out these grave criminal acts continued to live normal lives,
463. and as those they perceived to have instigated the violence received
464. offices in the government.
465. One victim said:
466. ″After they dispossessed me, those who took away my land
467. continued to keep it. Now I live in constant desperation for basic needs
468. such as food, medical care and paying for my children′s education.″
469. Another victim said:
470. ″We lost our home. We have no place to stay. We live inside
471. makeshift shops.″
472. In this respect, it is noted that the Chamber in a decision of
473. 30 May 2011 rejected an admissibility challenge by the government of
474. Kenya and said at paragraph 70 of that decision that it considered in the
475. absence of contrary evidence that there remains a situation of inactivity
476. on the part of the Kenyan authorities. The defence appealed against this
477. decision, and the Appeals Chamber has upheld it, which is exactly what

the perception of the victims is: There has been inactivity on the part of the government. Indeed, victims of these events who have received no financial support from their government and who have not seen any willingness on the part of their government to devote resources to bring even the lowest level perpetrator to account have had to watch as the government has without difficulty found enough immense resources to devote to seeking to prevent these proceedings from taking place before the International Criminal Court.

As a victim appeal to the International Criminal Court --

PRESIDING JUDGE TRENDAFILOVA: Slow down, Counsel Chana. And let me just ask our interpreters -- how much do you have from your speech? How much time more do you need?

MS. CHANA: About another 15 minutes.

PRESIDING JUDGE TRENDAFILOVA: So shall we make now the break --

MS. CHANA: All right.

PRESIDING JUDGE TRENDAFILOVA: and proceed after 6.30 with the third session.

MS. CHANA: Thank you.

PRESIDING JUDGE TRENDAFILOVA: We will proceed with the third section at 6.30. For the moment, we adjourn the hearing.

Recess taken at 6.01 p.m.

On resuming at 6.30 p.m.

(Open session)

COURT USHER: All rise.

PRESIDING JUDGE TRENDAFILOVA: Please be seated. We resume our session with the presentation of Counsel Chana. Please, Madam Chana, you have the floor.

MS. CHANA: Most obliged, Madam President.

I left off before the break to tell you what one victim asked of the International Criminal Court. He asked the Court to direct the government to help the victims as they had lost their homes and had no settlements. They have such hope in this Court, Madam President.

Now, this is a matter of particular concern for those I represent for three reasons:

Firstly, they obviously have a natural longing to see justice done in relation to what happened to them and to obtain reparation for their losses. The desire for reparation is not merely to address financial losses but also to further the restoration of stolen dignity.

They also perceive that without reparations, they will not be able to

bring their lives back to where they were before the election violence. The impact of that violence four years ago is continuing to this day. Secondly, as I've already mentioned, they continue to feel vulnerable and threatened now and will continue to do so for the indefinite future if those who were responsible know that it is possible to act within impunity. Thirdly, however and more importantly, their fear that if there is no justice in relation to the events of 2007/2008, similar events will be repeated in the future, for this is not the first time that the Rift Valley has had the experience of ethnic violence around the time of elections. It had happened at the time of the 1992 and 1997 elections and on those previous occasions, the crimes went largely unpunished by the authorities in Kenya. The fact that disturbances during the previous 2002 elections had been relatively mild then gave hope of a more stable future. In the years prior to the events of 2007/2008, the inhabitants of the region had lived in relative harmony with their neighbours in an area of tribal, cultural and political diversity. Kikuyu, Kisii, Luo, Kalenjin, and Luhya lived side by side sharing common human aspirations as each sought to provide for their families, educate their children and improve their livelihoods. Such common aspirations far outweighed any differences until they were stoked up during the campaigns leading up to the 2007 general elections. Ethnic violence was used by politicians to advance their own political ambitions. The campaigns again saw political parties mobilising around tribal alliances with the ODM bringing together the Ostenstabo (* phon) tribal leaders from the Luo, Kalenjin and large sections of the Luo tribes. A strategy of ODM mobilisers was the demonisation of the tribes and the communities that supported the opposing party, with the intention of polarising communities in a bid to consolidate ethnic support. So the harmony which was had existed was broken. Communities suffered. So this is not only at the individual level, it's at the level of community. Whole communities have broken down. The violence targeted specific communities believed to be supporters of the opposing party, and these included various crimes as charged by the Prosecutor and the most important being the destruction of property. As one of the victims explained, "They forced me out of my home because I was of a certain tribe." The failure to prosecute these crimes in the past has cemented in Kenyan community an atmosphere of impunity that has enabled the cycle to be repeated. I quote from the

2008 report of the commission of inquiry into post-election violence, and I do this because this is the perception most of the victims have, so I think it′s - it′s an important quote because it really brings together the - the perception of the victims. Elections-related violence occurred not just in 1992 but also in 1997. In spite of the death and destruction that these methods caused and the reports from the NGOs, such as the Kenyan Human Rights Commission, Human Rights Watch and two government inquiries, the Kikuyu - the Kiliku Parliamentary Committee and the Akuembe (* phon) Commission, no one was ever punished for this wanton killing and destruction even though the names of the perpetrators to be investigated and those adversely mentioned were contained in the reports of both commissions. The Akuembe report was not made public until 2002, even though it was published in 1999. This led to a culture of impunity whereby those who maimed and killed for political ends were never brought to justice. This changed Kenya′s political landscape with regard to elections, a point noted by the Human Rights Watch.

Each of these reports implicated politicians as the organisers of the violence and killing for political ends and noted that the warriors and gangs of youths who took action were both paid and pressed into service. Aside from this, youths were sometimes promised land and jobs after evicting upcountry dwellers. However, from the testimony in the Akuembe report, it is not clear if they got either:

″A pattern has been established of forming groups and using extra strength violence to obtain political power and of not being punished for it.″ Should this kind of violence go unpunished yet again, those I represent fear that the culture of impunity will be yet further cemented with the fear that the cycle will continue to be repeated. So deep is the culture of impunity in Kenya that for the majority of victims, there is a sense of complete disbelief at all that it is actually possible to arrest and charge powerful or rich people for crimes. They all expressed it to me. They can′t believe it. ″Is it really happening?″ was a lot of comments.

In Kenya there is a perception amongst many that if a rich or powerful person is charged in a criminal court, this signals a loss of political power on the part of the person charged rather than any manifestation of the rule of law.

Against this background, the exercise of jurisdiction by this international court is seen by the victims I represent as finally a basis for hoping that some measure of justice for the crimes visited upon them may realistically be achievable. Thus these proceedings directly affect

the personal interests of those I represent, both at the very individual level and also at the family community level. It affects the future of their country and their succeeding generations who will live in it. This is a very serious matter.
The victims I represent are very mature. They understand that justice being done means a fair trial before an independent and impartial tribunal in accordance with the law. They all knew the concept of a person is innocent until proven guilty. What is important to them, however, now, is that the criminal justice process has now engaged seriously, professionally and rigorously with what has occurred.
The provisions in the Statute and Rules of this Court provide for victim participation, and this is a very significant feature that sets this Court apart from ad hoc international criminal courts and, indeed, from criminal courts in many national jurisdictions. There is a movement now for what is called parallel justice even in national jurisdictions.
So this is a very important feature. The right to participate is to enable my clients to present their views and concerns.
To that end, the victims have already expressed a concern in these proceedings in a filing of 15th August 2011. The concern was expressed in that filing - was that the destruction and/or burning of property has not clearly been included in the charges supposedly brought by the Prosecutor. It was explained that this was of utmost concern to the victims. In circumstances where virtually the entirety of such a large number of victims in a case have suffered loss as a result of destruction, burning of property, and have specifically indicated to me their intention to seek reparations for such loss and in circumstances where the evidence relied on in support of the charges clearly includes evidence of destruction and of burning of properties.
Ms. Tai in her opening remarks also said that there was a lot of destruction and - of property. So the Prosecution recognises that this is one indicia which could be included in the - under the umbrella of persecution.
Now, it was further explained in a that filing that these concerns are not necessarily confined to the failure clearly to include destruction but extended, for instance, to the fact that the document annex of the Prosecution charges also refer to evidence of infliction of injuries and looting, yet these acts are also not clearly included in the proposed charges. The victims are extremely concerned that their reparations might be compromised if any conviction does not include such conduct. This is a new feature. It is untested, so therefore I lay it

638. before this Honourable Court these concerns.
639. In a decision, Madam President, you found that this request was
640. premature given that the confirmation hearing in this case was at that
641. time not taken place. You went on to conclude that it was without
642. prejudice for the Chamber to consider at the appropriate stage the
643. arguments advanced by the legal representative of victims. It is noted
644. that in the 5th August decision, you set out the procedural rights of the
645. victims participating in these proceedings. Should it therefore prove
646. necessary, appropriate applications will be made for authorisation in
647. accordance with that decision in the appropriate way at the appropriate
648. time. This is one matter that the victims wish me to pursue. I,
649. however, do reassure the Chamber that the interests of those I represent
650. is that the efficient and expeditious conduct of these proceedings not be
651. hindered.
652. Madam President, Honourable Members, unless there is at this
653. stage any specific matters on which the Chamber might require my
654. assistance, I would like to show appreciation for this opportunity to
655. making an opening statement and for your kind attention.
656. Madam President, your Honours, I thank you.
657. PRESIDING JUDGE TRENDAFILOVA: Thank you, Counsel Chana.
658. You have been concise and it took you exactly 30 minutes as provided in the
659. schedule to make your opening statement.
660. I would like now to turn to the Defence teams and to ask them to
661. proceed with the opening statements. We know that with regard to
662. Mr. Chacha, he has expressed his desire pursuant to Article 67(1) (h) to
663. make an unsworn statement in his defence. So, Mr. Chacha, you with your
664. counsels will decide how much time you need in the opening statements to
665. make your points. Of course, the time allotted to your team will remain
666. unchanged. Maybe the Defence could trace the issue that following the
667. timing that the Prosecutor′s team took in order to make the opening
668. statement was 40 minutes instead of 30 minutes, but I have to make it
669. clear that if some of the teams, the Prosecutor, the Defence team, or the
670. legal representative for victims does not exhaust all the time allotted
671. to a specific item in our agenda, it will be added to - to the time for
672. the other items in the agenda and will be used by the party.
673. So without further ado, I give the floor to the Defence team of
674. Mr. Chacha, to be followed by the Defence team and Mr. Muita, himself, if
675. he would like to join in the opening statements. And today I was
676. informed that it is the desire of Mr. Kerago, himself, together with his
677. counsel, to make opening statements within the time allotted to your

678. team.
679. It is Counsel Musau. Are you going to go ahead?
680. (Opening statement by Chacha Defence)
681. MR. MUSAU: Yes. Thank you, Madam President and your Honours.
682. Your Honour, I will take 20 minutes of the allocated time. My
683. client will take the last ten minutes.
684. Your Honour, on the 27th of December 2007, the Kenyan nation went
685. into a general election. The elections were largely carried out
686. peaceably. On the 30th of December, 2007, the outcome of the
687. presidential elections were announced. On the announcement of those
688. results, fire was all over the Republic of Kenya. Six out of the eight
689. provinces of Kenya, there were spontaneous violence and reactions to the
690. announcement of the presidential results. People died. It′s an
691. acknowledged fact. Properties were destroyed. It is an acknowledged
692. fact. Victims went through difficult times. They went through
693. dehumanising conditions during this period, and our sympathies, including
694. that of my client, Mr. Chacha, goes to all these people. Not today, but
695. Mr. Chacha has expressed this before and assisted the victims of this
696. violence.
697. The case before your Honours is centred only in the Rift Valley
698. province, and the question that arises is: What about the other five
699. provinces? Is it Mr. William Chacha who organised this violence? What is
700. critical about the other provinces is the violence occurred
701. spontaneously. It was a concurrent and an instantaneous reaction to the
702. announcement of these results, and it is our case that Prosecution must
703. have done an objective, thorough, and impartial investigations to find
704. out what caused the violence in Kenya and to find out the perpetrators
705. who were behind this violence. They must be brought to book. They must
706. be punished. But the process of identifying the perpetrators of this
707. violence must be done in a professional way. Gathering of gossip,
708. putting together innuendos and rumours is not the way to handle the
709. violence that occurred in the Republic of Kenya. One needs to see
710. professional investigations being carried out.
711. In the course of this confirmation hearing, we will demonstrate
712. before this Chamber that no professional, no impartial, no objective
713. investigations were carried out. If they were indeed carried out, there
714. would be an explanation as to why there was violence in the other
715. provinces.
716. The violence that broke out in Kenya had never been witnessed
717. before. We think the devil must have made a short journey to the

republic but not at the invitation of William Chacha.
Listening to the opening speech of the Prosecutor, reading
through the documents that have been presented before this
Pre-Trial Chamber, the William Chacha depicted in those documents and in
that speech is dramatically different from the William Chacha seated to my
right. The William Chacha seated to my right is a God-fearing man. He is
a man who one of his co-values is sanctity of human life. He is a family
man. He cannot start contemplating sitting in any meeting to plan
killing and forceful transfer of other human beings. He is a man who
loves humanity in all its forms. He could hardly contemplate committing
a crime against humanity.
In the course of this confirmation hearing, we will demonstrate
that Mr. William Chacha did not attend any preparatory meeting to plan
violence, but Mr. William Chacha did attend many, many meetings from the
year 2005 through to 2007. These were legitimate meetings where he was
campaigning.
The first series of meetings, Madam President and your Honours,
were in the year 2005. In the year 2005, your Honours, Kenya was
deciding whether or not to have a new constitution, and there was a
referendum to be conducted to determine that. Those who were opposed to
the proposed constitution had been given the orange as a sign of that
particular movement, and that is how Orange Democratic Movement got to be
born. In this particular movement, Orange Democratic Movement, there was
the Honourable Uhuru Kenyatta who was part of the ODM for the campaign
purposes of the constitution. The honourable Uhuru Kenyatta is a
recognised leader among the Kikuyu community, the community which
principally William Chacha will be sitting to plan on how to attack.
Your Honour, we will be demonstrating that that is illogical. That is
unreasonable. It is most unlikely that the recognised leader of the
Kikuyu community will be sitting with William Chacha and the
Orange Democratic Movement to plan on how to kill the Kikuyus.
It is important, Madam President and your Honours, to point out
that Mr. William Chacha represents Eldoret North constituency. This is a
cosmopolitan constituency largely populated by the Kalenjins, but among
these Kalenjins there are the Kamba community, there are the Luhya
community, there are the Luo community and many others. And since 1997,
this constituency has been overwhelmingly electing William Chacha to
represent them in parliament. Those who elect him are not just
Kalenjins. They are all the inhabitants of Eldoret North constituency.
In 1997, that is the first time he was elected for a five-year term. In

the year 2002, he was again elected for another five-year term. But more importantly, in the 2002 election, Mr. William Chacha supported the presidential candidacy of the honourable Uhuru Kenyatta a Kikuyu. The point we are making, your Honours, is that Honourable Chacha has no dislike for the Kikuyu community. He has friends in the Kikuyu community whom he has supported politically, financially, and in many other ways.
William Chacha has friends throughout the eight provinces of Kenya. He harbours no ill will. He harbours no grudge against the Kikuyu community. Among his workers both in the domestic, in his farm, who include the Kikuyu. And he has no dislike for this particular community.
In the year 2007, he was once again elected a Member of Parliament for a five-year term. It is noteworthy he garnered the largest number of any single parliamentary candidate and these results were announced on the 28th of December, 2007. Immediately, the results were announced, the Honourable Chacha left Eldoret North constituency and went to Nairobi, the capital city, where he stayed throughout the month of January 2008.
It is our case that it would not have been possible for Honourable Chacha to co-ordinate any attacks when he was actually in Nairobi, and what was it that he was doing in Nairobi? He had been nominated by his political party to join the team known as Kenya National Dialogue and Reconciliation Monitoring Unit which was chaired by Mr. Kofi Annan, former Secretary-General of the United Nations. Mr. Chacha spent one and a half months from the early part of January trying to restore peace in the Republic of Kenya. That is a man who you′d not associate with planning violence. He took time, one and a half months, to bring the country together and to ensure normalcy is restored in the republic.
Your Honour, the evidence gathered by the Prosecution is from anonymous witnesses. Apart from these statements from anonymous witnesses, there is no independent evidence which would link the Honourable Chacha with any crime committed between 2007 and 2008 as charged.
Honourable Chacha was a member of pentagon, an organ in the Orange Democratic Movement, and he was supporting the presidential candidate for the Orange Democratic Movement, the Honourable RO, who doesn′t come from his community. He comes from the Luo community. And this is a cosmopolitan man that I would wish your Honours to look at from that perspective. In these meetings in the pentagon, in his meetings campaigning with the Honourable RO as a presidential candidate, were extensively covered by both the domestic and

the international media, electronic and print. If there were inciting words falling from the mouth of Mr. Chacha, they would independently have been captured by both the international and the local media. When we get down to reviewing the entire evidence, we will be able to demonstrate to this Chamber that that evidence does not exist. We will be demonstrating that the Prosecution has tried to pre-empt this particular aspect by -- by anonymous witnesses suggesting this materia cannot be available.

Why is it not available? Your Honours, the Rift Valley is part of the Republic of Kenya. That territory was under the firm control of the Republic of Kenya, the government of the Republic of Kenya. There were from the village level a village elder, a locational chief, a divisional officer, a district commissioner, and at the top a provincial commissioner. This territory was not under the command and control of Honourable Chacha.

In the case presented by the Prosecution, they created an animal they are calling "the network." What was the name of this network? What was the purpose of this network?

In the opening speech, it was said that the goal was to gain power. At the end tail of that speech, they said the organisation was efficient and it achieved its goal which was stated as moving people out of the Rift Valley. Which goal is the Prosecution pursuing?

By the time Honourable Chacha was returning to Nairobi on the 28th of December, 2007, he had won the only seat he was contesting in the 2007 elections. What other power would he be seeking? He had been overwhelmingly elected for the only seat he contested that year.

It is, and we will be demonstrating during the confirmation hearing that the Prosecution case lacks logic. It is unreasonable, it is half baked, and instead of professionally investigating their case, they got to chasing the wind and the shadows.

William Chacha is absolutely innocent of these grave charges that have been brought against him.

We will be urging the Court to look at the Kalenjin community and the way they do things. The culture of the Kalenjin community has grossly been misrepresented through the anonymous witnesses. In the Kalenjin culture, an elderly man belonging to a different generation would not be able to go to a house of a young man belonging to a younger generation.

Before Madam President and your Honours are three Kalenjin personalities. Mr. William Chacha happens to be a much younger person than

Henry Muita. We will demonstrate through evidence, firstly, that the Honourable Henry Muita has never been to Mr. Chacha′s home, never been. And culturally, unless there are exceptional circumstances, it will be for Honourable Chacha to go to the home of Henry Muita if there was need to have a meeting to discuss anything. The Prosecution case is these meetings were happening at the home of William Chacha.

During this confirmation hearing, Madam President and your Honours, we will demonstrate that the so-called commanders have never been to the home of Honourable Chacha, and we will be demonstrating that this fiction which has been put together by the Prosecution cannot form a basis to show sufficient evidence for Madam President and your Honours to be satisfied that the substantial grounds to believe test has been met. This case does not meet that test and we will be demonstrating so.

The other aspects of the Kalenjin community is initiation, people being initiated from childhood to adulthood, and photographs and many things have been supplied to this Chamber. This has always traditionally been done by the community in the month of December, and it coincided with the election. In the course of this hearing, we will table evidence that traditionally if the Kalenjin people were preparing for any war, they will not circumcise their young men. They will not undergo that ritual for the obvious reason that you would be disenabling your youth wing which is supposed to be in the forefront. And all we will be trying to show this Chamber is that the Kalenjin people never prepared for any war, and if they did so, it would not have been possible to have initiates go through this process in the month of December 2007.

The calabash, a very important and significant item of the Kalenjin people has been misrepresented here. This will be put in houses so that there will be a passover, so to speak, during the attacks. We will through evidence demonstrate that that is a misrepresentation of the culture of the Kalenjin people.

The network that the Prosecutor wants you to believe was in existence, he says in this case they were using pre-existing Kalenjin institutions. We will demonstrate through evidence that Emo foundation was registered long after the general election. We will demonstrate that it is so easy to get financial statements of all these organisation from the banks to demonstrate how much money they had, how it was dispersed during that month. All this evidence you will not see because there was no professional investigations.

This is a case largely motivated in terms of choosing who to

charge and who not to charge by political considerations. The evidence that has been gathered by the Prosecutor will show very well-drawn hierarchical system. And at the top of that system, you will find the name repeatedly of RO. You will repeatedly see that in the enormous statements that he provided finances

To take the most charitable view of it, the Prosecutor did not believe that part of the evidence, because if he did, then the person who would bear the greatest responsibility would be the ultimate person to whom all this was being reported to. If he did not believe that portion, why did he believe the other portion? These are the issues that we'll be raising during this confirmation hearing.

Madam President and your Honours, we acknowledge that the process of a confirmation hearing is for a limited purpose and for you to do a filtering so that only cases that are fit to go to trial ultimately go to trial, but in so doing, this filtering mechanism is a judicial mechanism and we fully trust that Madam President and your Honours will apply their own judicial mind in evaluating the evidence presented before you. My client is fully confident that this will not be a conveyer belt to the next stage. Your Honours will clearly look and analyse each and every piece of evidence before you can conclude whether this is a fit case to go to the next stage.

Your Honours, I have taken about 20 minutes --

PRESIDING JUDGE TRENDAFILOVA: A little bit more.

MR. MUSAU: Sorry, your Honour.

PRESIDING JUDGE TRENDAFILOVA: Counsel Kilukmi --

MR. MUSAU: Yes, Your Honour.

PRESIDING JUDGE TRENDAFILOVA: -- in order for your client to have time to make an unsworn statement in the defence, are you going to end soon?

MR. MUSAU: Yes, and in fact, I am concluding, Madam President, your Honours, so that I can give my client time.

PRESIDING JUDGE TRENDAFILOVA: Thank you, Counsel Kilukumi.

MR. MUSAU: Yes, may I thank you. May I thank you, Madam President and you Honours for patiently listening to me.

PRESIDING JUDGE TRENDAFILOVA: It is our duty.

So, Mr. Chacha, the floor is over to you, please.

MR. CHACHA: Thank you very much, Madam President, and thank you for accommodating me to make very limited remarks on -- on the issues before this Court.

Madam President, I listened very carefully to both the Prosecutor

and the advocate for the attorney for the victims, and I want to say that in my constituency where I represent and which has been ably said by my lawyer, there are many communities. Across the country people live in my constituency who have come from almost every part of -- of Kenya, and what happened in 2007 was a blow to many Kenyans but a bigger blow to me. We buried in my constituency many people who had actually voted for me, many people who died in this violence who were my personal supporters.

I remember a case in point. A young man, 13 years old, Kevin. Kevin Kimutai (* phon), who was buried in Kisiyebor (* phon) which is just near Turbo, who died from a stray bullet shot by the police. His father, a very great supporter and a person who had voted for me. I remember Daisy, a young girl who lives in Baharini in my constituency. She now lives without another leg. A very promising young girl.

I remember in the nearest shopping centre to my house, Jokali (* phon), a deaf and dumb person who was named Bubu because nobody knew his name, who died and we had to bury him as a result of this violence. Many people, many of them people I knew directly, many of them people who were my supporters, many people who had voted for me died in this violence.

And here I am in this court to suffer another giobati (* phon) after what I went through. Maybe to bring you closer. Two hundred metres from my house, I mean 200 metres from my house, one house after my home is Paul Kavingi (* phon), a Kikuyu. The next home is, Samlanun (* phon), a Kikuyu. The home to the south of my house is Mr. Matthew Nguani (* phon), a Kisii, and Mr. Mokaia (* phon), another Kisii. These are the people I found when I moved to Sugoi about 12 years ago. They′ve been my neighbours. We′ve lived together irrespective of their tribe. These are people we have lived with. These are people who have made statements that have been presented to this Court. They know me. They know what kind of person I am. I have lived with them.

I remember and bring to the attention of this Court my own blood sister Theresa married to a Kikuyu. My own blood sister who comes after my brother who follows me. My own sister Tekla (* phon) married to another Kikuyu. These are the people, the Kikuyus, the one I am supposed to have sat down and planned on how they were going to be killed, my own brothers-in-law, according to the script of Mr. Ocampo.

Madam President, the William Chacha that is under investigation or was under investigation by Mr. Ocampo must be a very different person from the one that is standing before you in this court.

It is alleged that preparatory meetings were carried out in my house in Sugoi. Let me tell you, my house in Sugoi is exactly 2 kilometres from the district officer's house and office complete with policemen. The district officer for Turbo division, 2 kilometres from my house, Rebeca Muturi is, herself, a Kikuyu; the officer commanding the police division, the chief police officer, Mr. Karuru (* phon), himself a Kikuyu; the district commissioner for Uasin Gishu District, himself a Kikuyu. How on earth would all these people be in office, responsible for security, running the security agencies of where I live and allow me to hold these meetings on how to plan to kill their people? Surely, how on earth could that have happened?

The district criminal investigation officer, the most senior officer in the district, a gentleman called Henry, I don't remember his other name, a Kisii. You want to tell me he was sitting in office, and an opposition member of parliament called William Chacha would gather meetings of thousands of people to plan on how to kill other Kenyans and get away with it? That is that is stretching logic to incredible extent.

The Orange Democratic Movement -

PRESIDING JUDGE TRENDAFILOVA: Mr. Chacha, sorry --

MR. CHACHA: I will be brief, Madam President. It is alleged that as a member of the Orange Democratic Movement we started to plan from 2005/2006. I wanted to tell you, Madam President, that I was with Chacha Kenyatta, who is a Kikuyu; Ungari Uezikesi (* phon); Kalonzo Musyoka, who is the current vice-president of Kenya. We were all in ODM up to and including September 2007, just four months or three months before the election. We were all in the Orange Democratic Movement. And you want to tell me that I would sit with Uhuru Kenyatta and Kalonzo Musyoka in Orange Democratic Movement conspire on how to kill Kikuyus and how to kill Kambas and how to kill Kisiis, together with their own leaders in my house?

Lastly, the so-called generals, Mr. Koech, Mr. Cheramboss, Mr. Cheruiyot, have never been to my house. They have never stepped in my house. They do know how my house looks like. They do not know where the door faces in my house, and yet, according to Mr. Ocampo, we -- they were in my house. Apparently I gave them guns, and we had several meetings and all manner of shenanigans that I want to tell you, Madam President. It is -- it's really tragic, because what happened in Kenya in 2007/2008, was wrong, but let me say two wrongs never add up to a right.

Thank you very much.

998. PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Chacha.
999. Now, the Defence team of Mr. Muita and Mr. Muita, himself,
1000. although you didn't ask, Mr. Muita, to -- to make an opening statement,
1001. but if you wish, you can share the time with your legal -- with your
1002. counsel.
1003. You have the floor, Mr. Oraro.
1004. (Opening statement by Muita Defence)
1005. MR. ORARO: Thank you, Madam President. Madam President, our
1006. Defence will have two aspects: One, the whole of the Prosecution case is
1007. based on the existence of a body known as "the network." The allegation
1008. is that Mr. Muita is a member and one of the prominent members of the
1009. network. The evidence disclosed does not show this. Therefore, our
1010. first principal issue will be in analysing the evidence to show this
1011. Court that the Prosecution has not produced any evidence showing or
1012. indicating that Mr. Muita was a member of the network, if at all it
1013. existed.
1014. Two, we will show that there is no sufficient evidence to suggest
1015. that Mr. Muita was involved in either planning or assistance of what
1016. they call network, and all that has been done is the Prosecution has
1017. proceeded on a voyage of lumping together Mr. Muita and Mr. Chacha and
1018. showing that whatever evidence they have adduced in respect of any aspect
1019. of their case Mr. Muita was involved.
1020. I would like to begin by sadly conceding that there is no dispute
1021. that there was horrible violence which occurred in Kenya following the
1022. announcement of presidential results in the election of 2007. There is a
1023. difference of opinion as to whether this violence was occasioned as a
1024. result of the palpable outrage in the manner the electoral commission
1025. conducted the announcement and compilation of results or if it was
1026. organised in respect of the two districts referred to in the Prosecution
1027. evidence.
1028. What is also acknowledged is that violence was throughout Kenya
1029. except in two provinces, and the manner in which it was occasioned in
1030. other areas in Kenya was similar.
1031. Now, in this case we will be concerned only with the violence in
1032. Uasin Gishu and Nandi District, and we will be concerned with whether
1033. that evidence was spontaneous or it was organised; and if it was
1034. organised, whether it was organised by a network. And most importantly,
1035. and that is the only thing which concerns us, is whether Mr. Muita was a
1036. member of that network which is alleged to have occasioned violence in
1037. those two places.

Now, it is important to know who Mr. Muita is. Mr. Muita is 64 years old, a very respected member of the Kenyan parliament and of his community. He has been a politician and served as a member of Tinderet constituency from 1979 until the present day. He is a family man and a well-respected Christian in his church.

We will be able in the course of our evidence to show that his constituency is in an area where there are large plantations of tea, and the workers -- the people there were not settlers but workers.

He was chairman of ODM and did not belong to the apex of ODM, which was the pentagon. In the course of analysis of evidence, we shall be able to show that Mr. Muita has always been satisfied to be a constituency representative, and he has at no time endeavoured to be a Kalenjin leader and, therefore, the allegation that he was competing with Mr. Chacha or supporting Mr. Chacha in Kalenjin leadership can only be without any support in evidence.

Now, let me come back to the issue of the network which is the basis of the Prosecution case. It is alleged in the disclosed evidence that the network had eight meetings. The meeting where the Prosecution conceived the creation of the network was the meeting of 30th December 2006. What is strange is that Mr. Muita was not, by the evidence of the Prosecution, at this meeting. This is meeting where it is alleged the hierarchy was conceived, the generals were appointed, and the various parts of the network was constituted. There were thereafter meetings in the follow year, 2007, in September. Strange again, the Prosecution are unable to show that Mr. Muita was at these meetings. There was a meeting in November. Mr. Muita was not at this meeting. Now, Mr. Muita is brought in in alleged meetings in Nandi in December 2007 by one undisclosed, heavily redacted statement of a witness. And the Prosecution goes further to ensure that contrary even to the Statues they ask for redaction of the dates when Mr. Muita is alleged to have attended these meetings. The result is that Mr. Muita has been left in a position where he is very heavily prejudiced. He has no means of defending himself because he doesn′t even know the dates when he′s alleged to have attended these meetings.

Again, strange other issue which will be brought out in the course of analysis of the evidence, that the hierarchical structure created for Mr. Muita is completely different from the hierarchical structure of the network as presented. It is my humble submission that at the end of the day, we shall be able to show that Mr. Muita is an innocent men against whom a prosecution has been conceived without him

being given an opportunity to defend himself fully and that on analysis of that evidence there will be no substantial grounds to believe that Mr. Muita was either involved in the network or that he was involved in any violence during this period.

The other issues we will be able to show you is that in accordance with the Prosecution′s own evidence, the nature of the events in Nandi in comparison to what happened in Rift Valley clearly show that if the Prosecution are right on what they allege, then the consequences would have been different.

Finally, I would like to humbly submit that in order to create their case, the Prosecution has prejudicially exaggerated the case against Mr. Muita by citing large amount of irrelevant evidence which does not implicate Mr. Muita. And, in that evidence, they have further aggravated matters by confusing between Henry Muita, Sally Kosgei, and Reverend Kosgei, so that at the end of the analysis it will be clear that they′re not talking about the same person. It will be our humble submission that the case against Mr. Muita is contrived and that even by the Prosecution′s own evidence there is no sufficient evidence to establish a substantial case to believe that Mr. Muita was in any way involved in any evidence, let alone evidence in Nandi, which he has now been restricted to.

That′s my humble submission.

PRESIDING JUDGE TRENDAFILOVA: Thank you very much indeed, Counsel Oraro. Now you can be seated.

Now the Defence team of Mr. Kerago, and Mr. Kerago, himself.

MR. KIGEN-KATWA: Madam President --

PRESIDING JUDGE TRENDAFILOVA: If you would like to make an opening statement, just decide with the counsel how much time you will take yourself and leave for your client.

MR. KIGEN-KATWA: It is propose that my client will spend ten minutes of the time allocated.

PRESIDING JUDGE TRENDAFILOVA: Thank you. The floor is over to you.

(Opening statement by Kerago Defence)

MR. KIGEN-KATWA: I am obliged to you, Madam President and your Honours. Madam President, on our part, we want to, first of all, to knowledge that in fact it is true that there were violence in Kenya in the period 2007 and 2008. We, however, wish to qualify that the atrocities that attended to that violence and anybody who is responsible, any perpetrators should face the justice. We, however, would like that

the determination of who is responsible and who are the perpetrators should be founded on sound process, and it will be evidence that in fact the Prosecutor, himself, has not been a player as required of him under Article 54 to seek justice and the truth in the course of this issue.
Mr. Kerago, whom I represent, as he did when he was introducing himself, is 36 years old. Probably the youngest and probably double -- twice younger than the second -- the second defendant.
He has relatives who are Kikuyus, some of his relatives are married to Kikuyus. He comes from a constituency and a neighbourhood that is cosmopolitan. He has friends and members in his church congregations who come from Kikuyu, Kamba and Kisii tribes. It is inconceivable that against the background of all those circumstances and ingredients that he could design, plan and plot to attack people who are his relatives, his friends, and, in all senses, people whom he has associated with in the last 36 years.
Madam President, we will desire in the course of presenting our case to show that the Prosecutor′s case is founded mainly on what is alleged that my client said by way of broadcast. That broadcast material is recorded. Madam President, we will want to maintain the shock that we have as we speak now that after the Prosecutor was given an opportunity to investigate and bring incriminating evidence, the only thing he brought was actually exculpatory material in respect to my client.
Madam President and your Honours, I want to repeat and emphasise that, that every single item that the Prosecutor brought is exculpatory of my client. There is nothing incriminating in it. And we were very surprised when the Prosecution were making their opening address, an opportunity we thought would have been used to apologise to our client that he has been subjected to this process when, in fact, the substance of the inquiry into his functioning is such as to suggest that he is in fact innocent in every single detail.
Madam President, we will on our part be able to demonstrate that even relying on the Prosecution evidence alone, even without ours which we have supplied, we would still be able to demonstrate that not only is he innocent but the question of sufficiency of ground to confirm -- grounds to confirm -- sufficiently of grounds to confirm the charges do not exist.
Madam President, we will seek in the source of our presentation to pray that the moment before the Court does confirm the charges, it does apply its mind to the fact that other than the fact that the Prosecutor has come and purported there do exist grounds to suggest that

my client and the others are culpable, such grounds should be reasonable, sensible, and logical. Madam President, we will seek to show that, for instance, the allegation by the Prosecution, because they have made two allegations as justifying the reason why there was a common plan. The first reason for the common plan was allegedly to create a Kalenjin voting bloc. The second allegation is that they wanted to punish PNU members if they were to succeed in the -- in the course of the elections. Madam President, you will notice that the violence as held out by the Prosecution was in the period of only 30th December, 31st December and 1st of December (* sic) from the document containing charges. That is the scope of the days of the alleged violence.

Madam President, of significance to us at this moment is to point out that each of -- each one of those days was after the people allegedly targeted already cast their votes, and so the logic alleging that it was intended to create a bloc is untenable. It is -- it just doesn't stand logic.

Madam President, it is alleged way back in the year 2006 the aggressors, in part, were an outfit called ODM, Orange Democratic Movement, as a political party. In the same period of the year 2006, the target was a party called PNU as a political party. Madam President, we will demonstrate and exhibit documents showing that these two political parties came into existence in the period of September 2007, and so by the year 2006, there did not exist on the ground the outfit that constitutes the aggressor, nor the outfit that constitute the victims of this violence as the Prosecutor has purported.

Madam President, without seeming to mention the witnesses, it is a fact also that part of what is alleged by the Prosecution is that it was intended that this violence was intended to create a circumstance that would give power to the first accused and that the third accused was assisting him to achieve that. Madam President, if that power was intended to be as high an office as presidency, it is a fact that the previous constitution of Kenya before August 2010 and the constitution that was enacted in the August 2010 both require a presidential candidate to get at least 25 per cent votes from at least more than half of the provinces in Kenya. Madam President, Kalenjin community alone could not constitute that kind of percentage, and so the allegation that this violence was intended to acquire and confer authority and power on the first accused is untenable even on a matter of logic.

Madam President, without being -- without repeating myself, I have already said that the violence was only on three days. We will want

to highlight and emphasise on the spontaneity of this violence and the briefness of the period of how this violence was over three days and that it was very specifically spontaneously at the moment of the announcement of the presidential election results.

Madam President, we will also pray that it be considered that there is no -- my -- as the counsel for the victims has said, and we wish to thank the counsel for victims for in part supporting our case. She has said on our part that in fact a number of her clients, the victims, have gone back home. Madam President, you will notice that the Prosecutor's case is that the intention was to permanently evict a certain set of people. The victims themselves have confirmed that some of them have gone back, and we wish to pray that the benefit of that detail of the facts should be given to the suspects. But other than that, Madam President, the -- counsel for the victims has also acknowledged that violence was there in the year 1992. She has said there was violence in the year 1997.

Madam President, in the year 1992, my client was born in 1975, was 17 years old. There is no conceivable way that he could possibly have been involved in the violence of 1992, nor in the year 1997, assuming at all there was any reason to hold that he was in fact responsible in the year 2007, which we do not agree. In the year 1992, when he was 17 years old, he was in school, and 17 years for that matter.

Madam President, at paragraph 50 -- at paragraph -- at paragraph 79 of the document containing charges, the Prosecutor is very -- the Prosecutor has very explicitly said that my client, the third accused, together with the first and the second accused between 31st December and 1st January attacked -- attacked by direct perpetrators people in Langas -- in Langas part of Eldoret town. Madam President, in the same breath the Prosecutor has supplied as exhibits including a commission of inquiry into post-election violence which details the particulars of the violence on the same date that the 1st of December 2007 and in the same place, and it states, Madam President, and I'm going to say it verbatim what it says, that in fact the violence was between the Kikuyus and the Luhyas, Madam President. We will pray that the Court takes into account the variance in that detail. That whereas it is alleged that Chacha's instrument -- or rather, the instrument of the three suspects was Kalenjin, the violence in Langas was of different ethnicity. It was Luhyas versus Kikuyus, from the exhibits produced by the Prosecutor. And the logic and even the allegations against my clients and the others is really a figment of imagination or at least it's not

rationalised between the violences of 1992, the violence of 1997, the violence in Langas and even the violence that arose in six out of the eight provinces in Kenya.
Madam President, we will pray in the course of making our submissions that it be noticed that the witnesses themselves in the first instance contradict each other between the two of them, and, on the other hand, in the course their interviews actually contradicted their own selves to a point where they take away every conceivable credibility about what they say.
Madam President, we will pray that the Court does not assume that the witnesses of the Prosecutor are honest. We will pray that their evidence and what they allege be treated with circumspection.
Madam President, by extension of the same issue, we will in the course of our submission and our presentation show that in the course of the interview of these witnesses, the Prosecutor did not act in good faith because there are very explicit instances when either the investigators or, generally, the Office of the Prosecutor, put words in the mouths of the witnesses, suggesting either the names of my client or the other clients, and even suggesting dates.
Madam President, we will want to highlight that to show that there′s a certain question about the credibility of these witnesses.
Madam President, my client is said to have been clearly functioning for purposes of assisting a political outfit called ODM. The Prosecutor′s produced nothing to show my client′s preference for ODM or his membership to ODM. However, on our part, we will show through the exhibits we have already filed that, in fact, my client hosted people in his radio station′s programme from all shapes of opinion in terms of tribe, in terms of political party, in terms of religion and that the nature of his dealings at his -- at the radio station was to relate with everybody of every shade and he was not biased in favour of one party or another.
Madam President, as I said, we have already produced a document to that effect. We will have witnesses also who will confirm that they were hosted and treated with courtesy that was given and accorded to all people who visited the station for purposes of -- of selling their wears, provided they were legitimate.
Madam President, in the course of evidence, we will also demonstrate that Joshua Kerago, who allegedly attended meetings at the first accused′s home for purposes of planning this violence, had neve visited the first accused′s home until December 2009. That is the first

time he stepped in the homestead of the first accused. And so the plans way back to the year 2006, 2007, are -- did not actually occur.
Madam President, we will also demonstrate that the co-attendees, Cheramboss, Koech, and Cheruiyot, the alleged commanders, met for the first time the suspect Macletta (* phon) later in the year 2007 he met - 2008 he met Koech, 2010 he met Cheramboss, and has never met Cheruiyot.
Madam President, I wish to lastly say that we will also demonstrate that the Prosecutor -- that the -- that the third accused was always available for an interview with the Prosecutor. The Prosecutor avoided inviting him or inviting his comments on the later crimes. Seven days before the Prosecutor went to the media to say that my client is one of the suspects, they had been together, they had taken tea together, and we have supplied material to that effect. And it doesn′t make sense why he could not avail himself that opportunity to hear the other side of the story under Article 54, which warrants that he seeks to have the truth and use that truth to assess the veracity of the information he has from the other side.
Madam President, we will be contending that the Prosecutor′s not acted in good faith. Count in the document containing charges paragraph 24, paragraph 25, paragraph 43, 44, 57 to 64, and 126, everywhere he′s saying Kalenjin elders, Kalenjin youth, Kalenjin invest -- businessmen, Kalenjin elders, Kalenjin -- Madam President, we will be contending that there′s a certain way in which the Prosecutor took offence at a certain outfit constituted in terms of Kalenjin and that his target in these proceedings is not the interest of justice but the styling of this community. And, Madam President, the emphasis I wish to put on that is that in each of those paragraphs he says that the structures that exist in the Kalenjin community were triggered for purposes of violence.
Madam President, these Kalenjin community′s the only one in Kenya that has all tribe within its confines, and, Madam President, it doesn′t -- what the Prosecutor is saying is not true and we will adduce evidence to that effect.
Madam President, the Prosecution -- the Office of the Prosecutor --
PRESIDING JUDGE TRENDAFILOVA: Mr. Katwa --
MR. KIGEN-KATWA: -- lastly.
PRESIDING JUDGE TRENDAFILOVA: -- I′m sorry to interrupt you, but you′re exhausting the time for your client: Point number one. And point number two: On several occasions, you were referring to your client and to the other two suspects as accused. They are not. In this stage in

the proceedings they are suspects.
MR. KIGEN-KATWA: I apologise, Madam President.
Madam President, I wish to rest my presentation on that, and I
kindly request for two minutes for my client. Two minutes -- ten
minutes, sorry.
PRESIDING JUDGE TRENDAFILOVA: Ten minutes, of course. I would
ask the interpreters because actually we have eight minutes. Would you
kindly give us the two minutes so that Mr. Kerago could talk to us, make
his opening statements for ten minutes.
THE INTERPRETER: Indeed, your Honour. It goes without saying.
PRESIDING JUDGE TRENDAFILOVA: Thank you very much.
The floor is over to you, Mr. Kerago.
MR. KERAGO: Madam President, your Honours, I stand before this
Court today being accused of broadcasting material, directing,
coordinating, and allowing people to use the station to attack a section
of the Kenyans. I have been a broadcaster for the last 12 years. My
first experience in broadcasting did happen in the year 1999 where I
started having strong values in the Christianity. I worked in a
Christian radio station for six years and later moved to another
Christian station for three years before Kass came into being in the year
2005. And, as everyone would wish to move on, especially when you get
greener pastures, I moved to Kass FM, which broadcast in Kalenjin to ten
sub-tribes and that they understand each other, but sometimes would miss
in some words.
I do my programmes, and I reach all the Kalenjins. In fact,
Kass International, being online, I reach all the Kalenjins, even here in
the Netherlands. And not only Kalenjin in terms of tribe but people who
listen to Kalenjin language.
As many have said, Rift Valley where we made our broadcast
contains people of all the tribes in Kenya. Myself being 36 years, we
have neighbours in which I got them when I was born, both Kisiis, Kambas
Kikuyus, Luhyas and the rest, and we have lived with them all that time.
I listen -- or, I understand some of the Kikuyu and Kisii language and
the Luhya. They do the same. I speak on radio. They listen to me as
their son. They understand Kalenjin and they are Kikuyus. They even
sometimes contribute in my programme. So if the Prosecution alleges that
I used Kass to co-ordinate the attacks because I was speaking to the
Kalenjins, what of these Kikuyus, Kisiis, Kambas, Luhyas, and the rest
who are getting what I talk? I do not understand what coded language is
I′ve never used any coded language. And so definitely they understood

all I would say on that. So you wonder how would a few people located in two districts, Nandi and Uasin Gishu, who′d only get my messages and implement the same messages while people who listened to me at any time are people who are living wherever they are and they listen to Kalenjin? Rift Valley is the largest province in Kenya. Kalenjin are spread across the whole Rift Valley. So I wonder, the Kalenjins in Tungun (* phon), the Kalenjins in Nakuru, Naivasha, Kericho, Kisii, Kisumu, Nairobi, Ukambani, Mombasa, if I was to say words, if I had to direct them to attack as part of the Prosecution that those who listened to me and acted are from Nandi and Uasin Gishu, what of the other areas? Is there another Arap Kerago who was inciting people and directing and coordinating, that all the violence that happened in Kenya was because of me? And if not, then why is it in that a small area?

As I said, I′m professional journalist. I′ve done my diploma and I′ve just completed my degree in communication and journalist. I know all the ethics of media and furthermore the values of Christianity that is in me. I would never even think in a minute to kill anybody because I respect sanctity of life. Those are my values.

I would not at any time join a network or work with people who are anticipating to kill, to maim, to destroy or to move people from any area in this world, because I was not made to be a broadcaster in the Kalenjin. I would like to move to another station, maybe a national station with broadcast in Kiswahili or in English. So would I be a hero in the Kalenjin and end my ambition of being a broadcaster? Definitely, I wouldn′t, as young man who would like one day to be one of the greatest broadcasters on earth.

I hosted several people in my programmes, both from different tribes and different parties. I gave them an opportunity to argue out their issues in terms of a debate from both parties for the benefit of my listeners. If surely I did that, would I be linked to one party, ODM, while I hosted people from different parties? What was my interest in ODM? I′m a journalist. I do not belong to any party. Most of the witnesses have said things that I wonder sometimes if really the Joshua Arap Kerago they are talking about is me if the occasions and events they are saying that I did surely did happen.

For instance, this is one who said that I attended funeral, burial of one renowned athlete, Luka Kerago on the 14th of January, 2008. For God′s sake, I wasn′t there. And, again, the burial happened on the 10th of January and not 14th of January. So the Kerago who attended the funeral on 14 of January is not me. I didn′t attend. The same burial

which is the original one, which is the real one that happened for Luka Kerago was on 10th of January, I didn't attend. And my Defence would be able to give evidence towards that light. So are these witnesses people to be trusted who concorded things against me and my tribesmen? I want again to say one of the witness said about me, talking on air --

PRESIDING JUDGE TRENDAFILOVA: Mr. Kerago --

MR. KERAGO: I'm ending, please, madam

PRESIDING JUDGE TRENDAFILOVA: I hate to interrupt you. Let us keep our promises. As of -- not tomorrow, tomorrow is the Prosecutor's day, but thereafter you will have all the opportunity to make comments on all pieces of evidence presented by your rival in these proceedings. Let us not abuse the kindness of the interpreters.

MR. KERAGO: I beg for a minute to end this.

PRESIDING JUDGE TRENDAFILOVA: Just one minute.

MR. KERAGO: Okay. On the 30th December 2007, immediately after the announcement of the presidential election, the government of Kenya gave a notice banning or suspending all live coverage from 30th December, and me, Arap Kerago, being a loyal abiding citizen, I wasn't on air on 31st, 1st, 2nd, 3rd, all through, as the days mentioned that I was coordinating and telling people where to attack. I was not on air. The only thing that I did on that time being a human being who felt for the people and the issues that were happening in Kenya, I recorded messages appealing for peace. I looked for people, including Honourable Chacha to record messages appealing for peace because I am a peaceful person. Last, I have never in my lifetime stepped in any court either accused in a civil or criminal case. This is my first one. Thank you.

PRESIDING JUDGE TRENDAFILOVA: Thank you. Thank you, Mr. Kerago. We have to put an end to today's session. I would like to thank the parties, the Prosecutor and his team, the suspects and their Defence teams, the legal representative for victims. Very much thank you, interpreters, the court reporters, the stenographers, the court officers, my colleagues and our legal officers. So the hearing is adjourned. Tomorrow we start at 9.30 with the presentation of the case of the Prosecutor. Have a nice evening to everyone.

COURT USHER: All rise.

The hearing ends at 8.04 p.m.