

# **Achieving Credibility in Quasi-Judicial Discourse: A Genre Analysis Approach to the Report of the Commission of Enquiry into Post-election Violence in Kenya**

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**Abstract:** This paper assesses the strategies used to achieve credibility in written judicial discourse by analysing the Report of the Commission of Inquiry into Post-election Violence in Kenya. It is argued that Commission of Inquiry Reports, as texts, essentially constitute distinctive genres with particular defining characteristics. One such characteristic which sets them apart from other related genres-other types of reports-is the fact that Commission of Inquiry Reports have an inherent credibility and acceptability test since the authors would expect the stakeholders and other people that the report touches on to believe, accept, adopt, and implement its findings. Genres are conceived of as texts constituting particular conventions of content (such as themes or settings) and/or form (including structure and style) which are shared by the texts which are regarded as belonging to them. The paper concludes that the report of the commission adopts certain linguistic and formal strategies in an effort to achieve credibility but fails in this endeavour due to certain extraneous factors.

**Keywords:** Commission of Inquiry; Genre Analysis; Kenya

## **1 Introduction**

Violence has been a part and parcel of Kenya's electoral processes since the restoration of multi party politics in 1991. However, the violence that shook Kenya after the 2007 general elections was unprecedented. It was by far the most deadly and the most destructive violence ever experienced in Kenya. Also, unlike previous cycles of election related violence, much of it followed, rather than preceded elections. The 2007-2008 post-election violence was also more widespread than in the past. It affected all but 2 provinces, led to more than 1,500 deaths and was felt in both urban and rural parts of the country. Previously violence around election periods concentrated in a smaller number of districts mainly in Rift Valley, Western, and Coast Provinces.

This paper analyses the report of the Commission of Inquiry into Post Election Violence, henceforth referred to as the Waki Report (named after the commission chairman), by examining the strategies that were used by the writers of the report to make it more acceptable and credible to the appointing

authority, the people of Kenya, stakeholders, and the world at large. The paper adopts a genre analysis approach to its treatment of the report by putting forward the argument that such reports essentially constitute distinct and specific genres. Due to the circumstances that led to it, the scope of its mandate, the legal and constitutional significance of its findings, the historical nature of the disputed elections that led to the creation of the commission that produced it, and the unprecedented international attention that the proceedings of the commission attracted, the Waki report has arguably the highest need for credibility and general acceptance in comparison to other previous such reports in Kenya, some of which were never even made public. It is from such a premise that the present paper examines how the Waki report set out to satisfy such a high credibility requirement.

The most recent study of Kenya's judicial discourse that readily comes to mind is that by Obiero Ogone (Ogone & Orwenjo 2008). The study is similar to the present one in the sense that it also focuses on a commission of inquiry, namely the Goldernberg Commission of Inquiry of 2003. The study is, however, different from the present work due to its focus on the analysis of the rhetoric that characterised the proceedings of the commission and how such rhetoric inherently puts the cross-examinee at a disadvantaged position with regard to the manner the evidence is adduced and how such evidence determines the final report of the commission. Secondly the present study departs from that of Ogone by focusing on the product rather than the process of deliberations of a commission of inquiry. Ogone puts the type of discourse that takes place during the proceedings of a commission of inquiry under the label of "judicial discourse" but fails to state what such a discourse entails. This serious omission leaves readers not yet familiar with legal or judicial discourse guessing on their own what it could entail.

## **2 Analytical Framework: Credibility, Ethos and Metadiscourse**

Credibility can be defined as believability. Scholars of credibility use two points to help clarify the construct of credibility. The first groups (Fogg & Tseng 1999) describe credibility as a perceived quality; it does not reside in an object, a person, or a piece of information. Therefore, according to Petty and Cacciopo (1981) and Self (1996), in discussing the credibility of any report or document, one is always discussing the perception of credibility. Second, other scholars (Gatignon & Robertson 1991; Buller & Burgon, J. K 1996) agree that credibility perception results from evaluating multiple dimensions simultaneously. Most researchers have identified "trustworthiness" and "expertise" as the key components of credibility. Trustworthiness is defined as a quality of being well-intentioned, truthful, and unbiased. Rhetoricians in ancient Greece used the term *ethos* to describe this concept. The expertise dimension of credibility refers to the perceived

knowledge and skill of the source. From a linguistic standpoint, the concept that explains credibility is metadiscourse. The term has been used by several discourse analysts (Vande Kopple, 1985; Crismore, Markannen & Steffensen, 1993; Hyland 1998a) as a way of understanding language in use, representing a writer's or speaker's attempts to guide a receiver's perception of a text. Hyland (2005) borrows the Greek rhetorical concept *ethos* to explain credibility within the broader linguistic concept of metadiscourse. Taking into account that metadiscourse is concerned with the purposes of the speakers and writers because it allows them to project their interests, opinions and evaluations into a text, it can be argued that it pursues persuasive objectives aimed at enhancing the credibility and acceptability of a text. It therefore has convergence points with rhetoric, the art of persuasion from which the concept of *ethos* is derived.

*Ethos* deals with the character of the speaker and his or her credibility. According to Hyland (2005), the aspects of metadiscourse that contribute to credibility in a company are boosters, engagement markers, hedges, self mentions and evidentials. Boosters are lexical items such as *clearly*, *obviously* and *demonstrate*, which allow writers to close down alternatives, head off conflicting views and express their certainty in what they say. Hyland (1999) notes that boosters suggest that the writer acknowledges potentially diverse positions but has chosen to narrow this diversity rather than enlarge it with a single confident voice.

Engagement markers are devices that overtly address readers, either to focus their attention or include them as discourse participants (Hyland 2005). They acknowledge the need to adequately meet reader's expectations of inclusion and disciplinary solidarity, addressing them as participant's in argument with reader pronouns (*you, your, inclusive we*), interjections (*by the way, you may notice*), imperatives (*see, note*) and questions. Hedges are devices such as *possible, might, perhaps* and *about* which indicate the writer's decision to recognize alternative voices and viewpoints and so withhold complete commitment to a proposition (Hyland, 2005). They emphasize the subjectivity of a position by allowing information to be presented as an opinion rather than a fact and therefore open that position to negotiation.

Self-mentions indicate the extent of explicit author presence in the text measured by the frequency of first-person pronouns and possessive adjectives (*I, me, mine, exclusive we, our, ours*). Evidentials are metalinguistic representations of an idea from another source which guide the reader's interpretation and establish an authorial command of the subject (Hyland, 2005). The function performed by evidentials is "to indicate the source of textual information which originates outside the text" (Hyland 1998: 443).

### 3 Defining Genres and Genre Theory

The word *genre* comes from Latin word, *genus*, meaning ‘kind’ or ‘class’. The term has been widely used in rhetoric, literary theory, media theory, and more recently linguistics, to refer to a distinctive *type* of text. Robert Allen notes that ‘for most of its 2,000 years, genre study has been primarily nominological in approach and typological in function. That is to say, it has taken as its principal task the division of the world of literature into types and the naming of those types - much as the botanist divides the realm of flora into varieties of plants’ (Allen 1989: 44). There is often considerable theoretical disagreement about the definition of specific genres. ‘A genre is ultimately an abstract conception rather than something that exists empirically in the world’, notes Jane Feuer (1992: 144). Carolyn Miller, on her part, suggests that ‘the number of genres in any society... depends on the complexity and diversity of society’ (Miller 1984, in Freedman & Medway 1994: 36). Swale (1990: 54), on the other hand, has argued that “how we define a genre depends on our purposes; the adequacy of our definition in terms of social science at least must surely be related to the light that the exploration sheds on the phenomenon”. And yet, Gunther Kress defines a genre as ‘a kind of text that derives its form from the structure of a (frequently repeated) social occasion, with its characteristic participants and their purposes’ (Kress 1988: 183). This minefield that is the definition of the term “genre” has undoubtedly spilled into the theoretical realm of genre and genre analysis. Stam (2004: 14) seems to acknowledge this when he remarks:

A number of perennial doubts plague genre theory. Are genres really ‘out there’ in the world, or are they merely the constructions of analysts? Is there a finite taxonomy of genres or are they in principle infinite? Are genres timeless Platonic essences or ephemeral, time-bound entities? Are genres culture-bound or transcultural? ... Should genre analysis be descriptive or proscriptive? (Stam 2000: 14)

As might be expected, such theoretical landmines have not done much to dissuade scholars from theorising on genres. In fact the effect has been to provide motivation for scholars to postulate theories and counter theories regarding genre and genre analysis. Two main theoretical orientations have emerged: Contemporary theorists tend to describe genres in terms of ‘family resemblances’ among texts (a notion derived from the philosopher Wittgenstein) rather than definitionally (Swales 1990: 49). An individual text within a genre rarely if ever has all of the characteristic features of the genre (Fowler 1989: 215). The family resemblance approaches involves the theorist illustrating similarities between some of the texts within a genre. However, the family resemblance approach has been criticized on the basis that ‘no choice of a text for illustrative purposes is innocent’ (David Lodge, cited in

Swales 1990: 50), and that such theories can make any text seem to resemble any other one (Swales 1990: 51).

In addition to the definitional and family resemblance approach, there is another contemporary approach to describing genres which is based on the psycholinguistic concept of prototypicality. According to this approach, some texts would be widely regarded as being more typical members of a genre than others. In this approach certain features would 'identify the extent to which an exemplar is prototypical of a particular genre' (Swales 1990: 52). Genres can therefore be seen as 'fuzzy' categories which cannot be defined by necessary and sufficient conditions. The prototypical approach to genres lacks in theoretical depth since it fails to clearly establish the criteria for determining what constitutes a "prototype", to which others should be compared. Failure to clearly define genres in this way makes it difficult to classify texts as belonging to a genre or to identify new genres based on texts encountered.

The other main theoretical orientation to genre and genre analysis has been the interpretive approach to genre analysis. Foremost among the interpretivists is Gunther Kress, who defines a genre as 'a kind of text that derives its form from the structure of a (frequently repeated) social occasion, with its characteristic participants and their purposes' (Kress 1988: 183). An interpretative emphasis on genre as opposed to individual texts can help to remind us of the social nature of the production and interpretation of texts. In relation to film, many modern commentators refer to the commercial and industrial significance of genres. Denis McQuail argues that:

The genre may be considered as a practical device for helping any mass medium to produce consistently and efficiently and to relate its production to the expectations of its customers. Since it is also a practical device for enabling individual media users to plan their choices, it can be considered as a mechanism for ordering the relations between the two main parties to mass communication. (McQuail 1987: 200)

The present study adopted a middle ground; borrowing certain aspects which were deemed relevant for the present study from the two camps. Thus Commission of Inquiry Reports are conceived of as both representative of other related quasi-legal reports and documents, which together are considered to constitute a single family, and prototypical members of such a family. Such reports will also be considered to be deriving their forms from the structure of the judicial event that leads to them-that is the commission of inquiry-with its attendant participants and purposes. Thus, in looking at the Waki Report, this paper seeks to determine how its contents, form, and language are reflective of the judicial event which created it, including the

participants, the purposes and goals, and the social significance of such an event. Secondly the report will be analysed with a view to determining the extent to which it adheres to the structural, linguistic, and pragmatic features of the genre family to which it belongs. These will then be related to the credibility of the Waki report by examining how such features which make it representative of a given genre were exploited by its authors to make it achieve credibility.

#### **4 Commission of Inquiry Reports as Genres**

One of the main arguments of the present contribution is hinged on the premise that commission of inquiry reports are constitutive of specific genres and having other related genres, both of which have specific defining characteristics. Yet, on what basis are we to make this assumption? What defines commission of inquiry reports as specific genres? And what are the other related genres? Within the theoretical frameworks adopted in this paper, that is the interpretive and the family resemblance approaches to the study of genres, an attempt is made here to argue out the fact that commission of inquiry reports, such as the Waki report, are constitutive of genres.

As mentioned previously, an interpretive approach argues that specific genres derive its form from the structure of a (frequently repeated) social occasion, with its characteristic participants and their purposes. Therefore, it seeks to establish the occasions and participants that uniquely lead to the production of a text, and the structure of the text so produced. On the basis of these three parameters, the text is then assigned to a specific genre. The other theoretical model adopted in this study, the family resemblance approach, seeks to assign texts to particular genres based on perceived resemblances that it has with other texts within the genre family. In sketching out the generic niche of commission of inquiry reports, these two theoretical approaches to genre are combined to produce a unified framework within which the defining generic characteristics of such reports. Accordingly, the formal characteristics of commission of inquiry reports will be, on the basis of the interpretive approach, first established. These will then form the basis of demarcation and assignment of commission of inquiry reports constitutive of specific genres.

As texts, commissions of inquiry reports have certain distinctive characteristics which set them apart from other related documents. Other texts that are related to commission of inquiry reports include task-force reports, reports by fact-finding missions and general organisational and government policy reports. Among the characteristics that commission of inquiry reports share with other reports is the nature of their authorship, all such reports being products of collective authorship by a group of persons, normally answerable to an appointing authority or institution, and arriving at the content of the report after lengthy deliberations. Commission of inquiry

reports being quasi-judicial, differ in one aspect of authorship, namely that one part of the participants in the processes of its authorship are normally witnesses or people under some sort of suspicion.

One other common feature shared by commission of inquiry reports is the fact that such reports may or may not be made public, depending on the nature of the appointing authority of its authors, the sensitivity or otherwise of the subject matter it deals with, the nature and scope of its mandate, and the nature and implications of its findings. Finally, most reports, including commission of inquiry reports, usually anticipate some form of action arising from its findings and recommendations. Whether the report is acted on is, however, normally dependent on the goodwill of the appointing authority and the implications of its implementations. Most reports have definite structures, being divided into various sections on the basis of some logical necessity and depending on the contents therein. As genres, there are however certain common divisions that are likely to be found in all reports: an introduction giving the background and the mandate of the commission which authored the report, a section on the methods used to gather information, findings, recommendations, and in most cases a series of appendices. With respect to commission of inquiry reports, given the fact that they are products of quasi-judicial bodies which, in many countries like Kenya, operate under an act of parliament or some sort of legislation, the introduction is almost always likely to contain a clause indicating where the commission draws its legal mandate and the date and the announcement of the commission. In case of Kenya, the announcement would normally be in a Kenya Gazette supplement.

Commission of inquiry reports, however, have certain defining and distinctive characteristics that set them apart from other reports and therefore justifying the position that they are, indeed, constitutive of genres in their own right. In terms of authorship, as has been mentioned earlier, commission of inquiry reports are unique by the fact that the process which leads to their being authored involves persons who give evidence under oath. Some of these persons are usually people under investigation who are, in fact, the subject of the inquiry, while other witnesses are normally called to throw more light on the issues under investigation. A commission of inquiry also has investigators who are charged with finding out the truths and facts under investigation and summoning various witnesses to come and testify before the commission and assisting counsels whose role is to advise on the interpretation of the commission's terms of reference and on the appropriate procedures for the conduct of the inquiry, and to ensure that all the evidence is brought before the Commission and that the proceedings are conducted in a fair and balanced manner. These aspects regarding the membership of the commission and the participation of such membership in crafting the report cut out commission of inquiry reports as a distinct genre.

Commission of inquiry reports are also unique as genres by the fact that a very high capital is often placed on their acceptability, not only by the appointing authority of the commission, but also by the general public and other stakeholders. This is due to the fact that unlike other reports, commissions of inquiry are normally formed to investigate issues of intense public interest and the resultant reports normally attract greater public scrutiny and attention. Secondly, as has been pointed out earlier, the recommendations of a commission of inquiry report are always expected to attract some implementation of sorts. Whether that implementation takes place and the form it takes depends largely on how credible and acceptable to the stakeholders involved. In Kenya for instance numerous significant commission of inquiry reports such as the Akiumi Commission and the Goldenberg Commission have never been put in the public domain, let alone implemented. Although the reason for non-implementation of the recommendations of commission of or the refusal to make public the findings contain in such reports is never explicitly stated, it is normally understood that political expediency, especially in cases where far reaching political decisions have to be made with equally far-reaching implications, is normally the underlying cause. When the contents of a commission of inquiry report are not made public or are not implemented, the reason is almost always an issue of credibility and acceptability- that what is contained therein is not deemed credible or acceptable enough by the powers that be.

One last characteristic of these reports, that makes them constitute distinctive genres, has got to do with their history-the circumstances that make their authorship necessary. Unlike many other types of reports, commission of inquiry reports are unique in terms of how they come into being. Organisational and other policy reports are usually not investigative in the legal sense of the word; on the contrary they are mainly explorative, meant seek ways of improving certain aspects of the organisation or the body concerned or to seek possible ways of tackling a problem at hand. On the other hand, commission of inquiry reports are normally options of last resort, in cases where proper judicial procedures are precluded due to a dearth of incriminating facts. The very fact that a commission of inquiry is formed to look into a subject matter implies that there are not enough facts about the issue at hand to warrant prosecution, so that the authorities concerned can study the report of the commission with a view to finding out if there is sufficient evidence to warrant prosecution of certain individuals. Indeed, as with the Waki and other commission of inquiry reports one of the major recommendations is normally that certain persons should face prosecution. Thus, commission of inquiry reports, as genres, are both products of a quasi-judicial process and raw products of a judicial process proper. The quasi-judicial process is set in motion due to lack of facts upon which a judicial one



should be commenced and the commission of inquiry report acts as a bridge between the two. This makes such reports largely transitory in nature.

## **5 Commissions of Inquiry as Quasi-Judicial Bodies**

A quasi-judicial body is an entity which has powers and procedures resembling those of a court of law or judge, and which is obligated to objectively determine facts and draw conclusions from them so as to provide the basis of an official action. Such actions are able to remedy a situation or impose legal penalties, and may affect the legal rights, duties or privileges of specific parties. The Waki Commission met all these defining criteria for quasi-judicial bodies just as it enjoyed quasi-judicial powers. A quasi-judicial power refers to the power vested in the commissions established by law, administrative officers, or bodies to determine the rights of those who appear before it. A quasi-judicial power has been described as the power or duty to investigate and to draw conclusions from such investigations. In *Perdue, Brackett, Flores, Utt & Burns v. Linebarger, Goggan, Blair, Sampson & Meeks, L.L.P.*, 291 S.W.3d 448 (Tex. App. 2009), the court observed that “Texas courts have recognized six powers relevant to the determination of whether a body possesses quasi-judicial power: (1) the power to exercise judgment and discretion; (2) the power to hear and determine or to ascertain facts and decide; (3) the power to make binding orders and judgments; (4) the power to affect the personal or property rights of private persons; (5) the power to examine witnesses, to compel the attendance of witnesses, and to hear the litigation of issues on a hearing; and (6) the power to enforce decisions or impose penalties.” Once again, it is paramount to note that the Waki Commission qualified as a quasi-judicial body as per the decision of the Texas court.

Two other points about quasi-judicial authorities need mentioning: Typically, quasi-judicial bodies can make a decision that then becomes legally binding, unless appealed. At the point where an appeal takes place, the case often moves into a traditional court system. The judge, in such cases, may not be in the role of the assessing the facts of the case in particular, but rather simply be charged with determining whether the quasi-judicial entity made a decision it had the authority to make, and was within the confines of the law and any administrative rules. Secondly, quasi judicial bodies all have some specific mandate and the nature and extent of their powers depends on the nature of their mandate. Generally, such bodies will be under the supervision of courts only when their actions are taken in excess of their jurisdiction, or violate rules of natural justice or are taken in bad faith and which bad faith must be demonstrable. Their mandate and the scope of their actions will thus vary based on the task ahead of them. Thus, some quasi-judicial bodies may be inquisitorial while others may be adversarial in nature.

## **6 Background to the Commission of Inquiry**

A commission of inquiry is a quasi-judicial body established to inquire into matters of major public importance to the government of the day. In Kenya, commissions of inquiry operate under the Commissions of Inquiry Act (Chapter 102, Laws of Kenya). The Act sets out the legal requirements under which all commissions must act. In particular any commission must act within its terms of reference and ensure that its processes are within the law. The Commission of Inquiry into Post-election Violence in Kenya, henceforth CIPEV was set up by, the President of the Republic of Kenya, H.E. Mwai Kibaki through a Kenya Gazette Notice No.4473 vol. cx-no.4., and was a product of negotiations in the Kenya National Dialogue and Reconciliation process, established under the auspices of the African Union (AU) to begin a process of dialogue and reconciliation following the stalemate, chaos and ethnic killings which rocked Kenya following the disputed 2007 general elections. The Kenya National Dialogue and Reconciliation process was spearheaded by an AU appointed Panel of Eminent African Personalities lead by former UN Secretary General Dr Koffi Annan, other members being former Tanzanian President Mr Benjamin Mkapa and former South African and Mozambiquean First Lady; Graca Machel. Other members of the Kenya National Dialogue and Reconciliation committee were appointed by the two feuding Kenyan political parties namely Orange Democratic Movement (ODM) and the Party of National Unity (PNU). The negotiators agreed on the parameters of the Commission on March 4, 2008. Although CIPEV is established by presidential appointment, it is independent.

CIPEV's terms of reference were published by His Excellency President Mwai Kibaki in the Kenya Gazette on May 23, 2008. The life span of the Commission was three months after which the Commission's final report was to be submitted to the President and to the Panel of Eminent African Personalities. Due to the enormity of its work and the wider scope of its mandate the Commission was granted only a 30 day extension, published in the Gazette Notice no. 7288 Vol. CX – no. 67 dated 12th August 2008. Subsequently, the Commission received another two week extension for the purpose of preparing this report through Gazette Notice No. 8661 in Vol CX – 74 dated 12th September 2008. As per its terms of reference, CIPEV was set up to investigate the facts and circumstances related to the post-election violence in Kenya and investigate the actions or omissions of state security agencies. CIPEV was also expected to make recommendations to prevent a repetition of electoral violence in the future, measures to bring those responsible for violent acts to justice and eradicate impunity and measures to promote national reconciliation in Kenya. CIPEV was also supposed recommend other legal, political and administrative measures to address the issues of violence CIPEV and, where appropriate, make recommendations to the Truth Justice and Reconciliation Committee.

CIPEV had three members of the Commission: Philip Waki (Chair, Judge of Appeal, Kenya), Gavin McFadyen (Member, New Zealand) and Pascal Kambale (Member, Democratic Republic of the Congo). The Secretary to the Commission was George Kegoro (Kenya) and CIPEV's Counsel Assisting was David Shikomera Majanja (Kenya). All were sworn in by the Chief Justice of Kenya on June 3, 2008. The Chair was proposed by the National Dialogue and Reconciliation negotiating team. The two international members were identified by the Panel of Eminent African Personalities following consultations with the Kenya Dialogue and Reconciliation negotiation team. The Panel consulted with various international organisations whose areas of expertise cover the issues dealt with by the Commission.

The Commission was funded by the Government of Kenya and from the Trust Fund for the Kenya National Dialogue and Reconciliation which received contributions from Norway, United Kingdom, Sweden, Denmark, France, USA, Finland and the European Union. The Fund was managed by the United Nations Development Programme (UNDP), and administered on the basis of regular UN guidelines. The Government of Kenya has provided offices on the first floor of the Kenyatta International Conference Centre in Nairobi. The Commission may, from time to time, decide to conduct its inquiries from other locations.

CIPEV received views from members of the public with relevant information by oral testimony and/or in written form. CIPEV also held the inquiry in public, but also held private hearings in order to instil confidence in the people appearing before the Commission or to allay their fears of reprisals. Further the Commission had the discretion to determine when private hearings shall take place. It used official reports of previous investigations and carried out on its own investigations, or asked to be carried out, studies, investigations, or research in relevant areas. CIPEV also had the power to require co-operation from public offices and relevant institutions. The Commission being a quasi-judicial body did not have powers to prosecute. It would, however, recommend measures to bring persons responsible for criminal acts to justice.

## **7 Summary of the Waki Report**

The 529 page report is very detailed with regard to its findings on the causes of post-election mayhem in Kenya and recommendations on how such violence can be avoided in future. Such recommendations touch on a wide range of issues that include institutional, legal, policy and constitutional. In this section, only a summary key recommendations is given to prepare the reader for and contextualise the analysis and discussion that is to follow.

Regarding the root cause of the violence and killings, the report pointed accusing fingers at past historical political and economic injustices, and the

exploitation and marginalisation perpetrated and perpetuated by successive regimes which were viewed by other Kenyans as favouring specific ethnic groups in terms of access and distribution of national resources and opportunities. The report observed that:

The widespread belief that the presidency brings advantages for the President's ethnic group makes communities willing to exert violence to attain and keep power. Inequalities and economic marginalization, often viewed in ethnogeographic terms, were also very much at play in the post-election violence in places like the slum areas of Nairobi. (8)

On the extent, nature, and scale of the violence and killings, the commission also faulted the conduct of state security agencies, noting that they failed institutionally to anticipate, prepare for, and contain the violence. It further noted that "often individual members of the state security agencies were also guilty of acts of violence and gross violations of the human rights of the citizens" (8). Still on this subject the report also states that:

One of the main findings of the Commission's investigations is that the postelection violence was spontaneous in some geographic areas and a result of planning and organization in other areas, often with the involvement of politicians and business leaders. Some areas witnessed a combination of the two forms of violence, where what started as a spontaneous violent reaction to the perceived rigging of elections later evolved into well organized and coordinated attacks on members of ethnic groups associated with the incumbent president or the PNU party. This happened where there was an expectation that violence was inevitable whatever the results of the elections.

The report notes that the violence and killings took an ethnic dimension, with attackers capitalising on deep rooted ethnic animosity and mistrust among Kenya's major ethnic communities:

These were systematic attack on Kenyans based on their ethnicity and their political leanings. Attackers organized along ethnic lines, assembled considerable logistical means and travelled long distances to burn houses, maim, kill and sexually assault their occupants because these were of particular ethnic groups and political persuasion. Guilty by association was the guiding force behind deadly "revenge" attacks, with victims being identified not for what they did but or their ethnic association to other perpetrators. (510)

The report concludes by making recommendations for a host of legal, institutional, electoral and constitutional reforms with the most notable ones being the complete overhaul of the Electoral Commission of Kenya (ECK) and the establishment of an independent international war crimes tribunal to try the alleged perpetrators and financiers of the violence.

## **8 Methodology**

A document analysis of the entire 529 page Waki Report was conducted with a view to finding out the strategies used by the authors of the report and the commissioners to make it credible, and, therefore, acceptable to the general public and the appointing authority. More specifically, the content of Waki Report was analysed with a view to determining how its contents, form, and language are reflective of the judicial event which created it, including the participants, the purposes and goals, and the social significance of such an event. Secondly the analysis sought to establish the extent to which the Waki Report adheres to the structural, linguistic, and pragmatic features of the genre family to which it belongs. The Waki report was also examined with a view to finding out how such features which make it representative of a given genre were exploited by its authors to make it achieve credibility.

## **9 Results and Discussion**

The analysis revealed that the Waki Report adopts certain strategies aimed at giving it a high degree of credibility and acceptability. These include structural and formal properties of the report which makes it acceptable, even at the face value, as a commission of inquiry report. As pointed out earlier, it is imperative that a report such as the Waki Report should be able to be recognised as being what it actually is, a commission of enquiry report, even at the face value, for it to gain credibility and acceptability. To this end, the report adopted a specific format that makes it easily identifiable as a member of the generic family to which it belongs-that of commission of inquiry reports.

### **9.1 Credibility Strategies**

Overall, the analysis revealed that the report and its authors used structural strategies, ethos, and meta-discourse devices to achieve credibility and acceptability. Each of these devices is discussed in greater detail below.

#### **9.1.1 Structural Strategies**

For the Waki Report to be credible as a commission of inquiry report, and for it to be regarded as one, it is important that first and foremost, it should look like and easily be recognisable as one. The authors of the report sought to achieve credibility by adopting a structure that is consistent with and easily recognisable as not only that of a report, but a quasi-judicial report such as a

commission of inquiry report. This ensured that the Waki report, based on its structure and outlook, can easily be recognised as being what it actually is: a commission of inquiry report. To begin with, the document is logically divided into independent yet quite cohesive parts which are typical of reports in general and which gives it a recognisable logical structure normally identified with reports. To begin with, the Waki report has a list of acronyms, where all the acronyms used in the report are explained and defined. This is followed by an “executive summary” of the whole report, giving its most salient features is given. From this point onwards, the report is logically divided into logical sections each addressing a specific aspect of the findings of the commission in tandem with its mandate. Part ONE (1-20) is an introductory section outlining the background and the legal status of the commission, part TWO (21-76) traces the historical roots of the 2008 post elections violence and the attendant historical injustices. The section on FINDINGS (77-235) forms the bulk of the report and presents the findings of the commission with regard to the various aspects of its mandate and the specific causes of the mayhem. This chapter also contains the recommendations of the commission in relation to its findings. At the end comes a list of 8 appendices touching on various aspects of the report.

This structure, in which the report is divided into several sections, makes it easily recognisable and acceptable as a commission of enquiry report. This is because of the similarity of this structure to other members of this genre. This similarity is clearly seen, for instance in the appendices which are mainly legal and police documents relating to the post election violence. The logical division of the report into various chapters, sub-chapters and appendices which contain specific details regarding the post-election violence in Kenya makes the report credible and readily acceptable as being what it is- a quasi-judicial report on the post election violence in Kenya. It is worth noting that physical structure alone would not lend credibility to a report addressing a serious issue as the post-election violence in Kenya, or indeed, any other report worth its salt. What would matter most in judging the credibility and thereby, in objective terms, determining its acceptability is inevitably its contents. Yet, the physical presentation is not entirely peripheral to credibility and acceptability since if such a report were to be considered not to be representative of the genre then even the entire contents would risk being considered incredible and therefore unacceptable, even the content which could have otherwise been judged credible.

### **9.1.2 Ethos**

As mentioned earlier, *Ethos* deals with the character of the speaker and his or her credibility. From a rhetorical explanation, it is possible for authors; in this case, the Commission of Inquiry into Post Election Violence (CIPEV) to have credibility prior to their text being read or partly related to their

reputation and expertise but must re-establish it during the course of the discourse itself. Relating the rhetorical concept to metadiscourse, Hyland (2005) explains that metadiscourse projects the personal appeals of *ethos* when it refers to the writer's authority and competence. It is therefore a means by which the commission of inquiry could project themselves into their writing to present a competent, trustworthy and authoritative persona.

The authors of the Waki Report went to great detail to exploit *ethos* as a strategy for achieving credibility and acceptability. To begin with, the commissioners were people perceived to be of the highest integrity, competence, and reputation. The chairman, Justice Philip Waki is a Judge of the Kenya's Court of Appeal, the highest court in the land. In 2003 Justice Philip Waki, then a judge was suspended on charges of corruption and abuse of office alongside a dozen of other judges, in what the then Justice Minister referred to as "a radical surgery on the judiciary". These judges were given the option of resigning from the bench and getting their full dues and benefits, or facing a judicial tribunal and if found guilty being sacked summarily without any benefits which for most of them, amounted to over 25 years of service. Justice Philip Waki was one of the only six judges to opt for the risky option of facing a tribunal. He was finally cleared of all the charges levelled against him after almost 2 years before the tribunal and consequently promoted to the Court of Appeal. Two outstanding and well polished lawyers were appointed as assisting counsels to the commission. Thus, at the time of his appointment to head the CIPEV, he had a high moral standing in the country as a judge who had proved his clean track record. The other two members of the commission were foreign judges from New Zealand and Congo and had the confidence of Kenyans on account of their perceived impartiality.

By exploiting their character, credibility, authority, and competence, not only the commissioners themselves but also the appointing authorities were keen to exploit the persuasiveness of *ethos* to achieve the desired credibility and acceptability of the Waki Report and the process that created it. The intention here is to make the general public accept the report as credible by merely accepting the credibility of the commissioners. In this way, the credibility and acceptability of the three commissioners and the assisting counsels would be transferred to the Waki Report. Reading the introductory chapter of the report, one can easily detect a deliberate effort by its authors to enhance its credibility by touting the experience, impartiality, and the international character of its staff. Commenting on the commission's investigators and the process of recruiting them, the report, for instance, says:

To ensure the independence of its investigators, the Commission advertised locally and internationally for these positions. For the same reason, the Commission decided that the head of its team of

investigators should be an international rather than a local. The Commission recruited a Canadian, Robert Grinstead, for this post. Later, the Commission also recruited an international consultant, Dr. Suzanne Mueller, a political scientist. (13)

As can be seen above, there is a deliberate effort to foreground the international nature of these investigators and the professional qualifications. This can also be said about the special investigators charged with investigating rape and other sexual crimes committed against women by the police and other armed militias during the period of violence. This is what the report had to say about the two special investigators:

In addition, the Commission also recognized the need for specialists who could investigate sexual violence. This was an important part of the post election violence and something the Commission wanted to probe comprehensively as an integral part of its mandate. The Commission, therefore, recruited two female investigators to examine sexual violence: one international, Ms. Melinda Rix of New Zealand, and another Ms. Gladys Mwariri, a Kenyan. (13)

It is clear from the above description that the report emphasises on the blend of local and international in its selection of special investigators. The idea is to show that whereas the international investigator would bring expertise and impartiality, the local one would provide the much needed expert local knowledge, ensuring a firm grasp of the local dynamics. Just as is the case with the three general investigators, the special investigators on sexual violence were selected in such a way that they provide checks and balances on each other; thus we have a blend of local knowledge, independence, and professional expertise combined.

But ethos as a credibility strategy was not exploited only by highlighting the positive qualities, qualifications, values and integrity of those recruited. On the contrary, this was also effectively exploited by a deliberate highlighting of those who would otherwise have been part of the commission's activities, but were not hired or consulted due to a perceived stain on their character or an inherent aspect of their nature that would effectively render them unreliable and partial. The most outstanding among these was the police force. The force was seen as party to the violence since they were responsible to more than half the deaths and in some parts of the country, newspaper reports indicated that all the deaths and cases of sexual violence were as a result of their high handed and overzealous reaction as they pounced on unarmed demonstrators with unrestrained force. The Waki Report, consequently, states that it was agreed that because part of the



Commission's mandate was to investigate the role and conduct of the security forces in the post election violence, none of their serving members would be eligible to apply for positions with the Commission". This is a deliberate effort by the commission to assure the public that it only engaged people or agencies that could not compromise its impartiality and professionalism. All this was aimed at making their final product-the report-credible and acceptable.

### **9.1.3 Meta-discourse Strategies**

A reading of the Waki Report reveals that its authors made effective use of a number of meta-discourse strategies in a bid to achieve credibility and acceptability of the document. These are briefly discussed and exemplified below.

#### **9.1.3.1 Boosters**

As mentioned earlier, boosters allow writers to close down alternatives, head off conflicting views and express their certainty in what they say. Boosters suggest that the writer acknowledges potentially diverse positions but has chosen to narrow this diversity rather than enlarge it with a single confident voice. They allow writers to express certainty in what they say and to mark involvement with the topic and solidarity with readers. While they restrict opportunities for alternative voices, they also often stress shared information and group membership as people tend to get behind those ideas which have a good chance of being accepted (Hayland 2000). In the Waki Report, boosters were mainly used to channel the information and guide the reader to a certain desired line of thinking within which the information is desired to be interpreted. These are exemplified below:

The evidence the Commission has gathered so far is not, in ***our assessment***, sufficient to meet the threshold of proof required for criminal matters in this country: that it be "*beyond reasonable doubt*". It may even fall short of the proof required for international crimes against humanity. (41)

In the above example the booster used is "in our assessment" indicated in bold italics. This phrase allows writers of the Waki Report to close down alternatives and head off conflicting views so that they can express their certainty in what they say-that the evidence presented before the commission does not meet the minimum threshold of truth required for a criminal prosecution, and could therefore be used only as a basis for further investigations. In doing this they, in effect, acknowledge potentially diverse positions, but choose to narrow this diversity rather than enlarge it with a single confident voice. The purpose of the booster here is to enhance the

credibility of the report by anticipating and consequently warding off criticisms that may be levelled against the report and the commission for not out rightly recommending prosecution of suspected perpetrators.

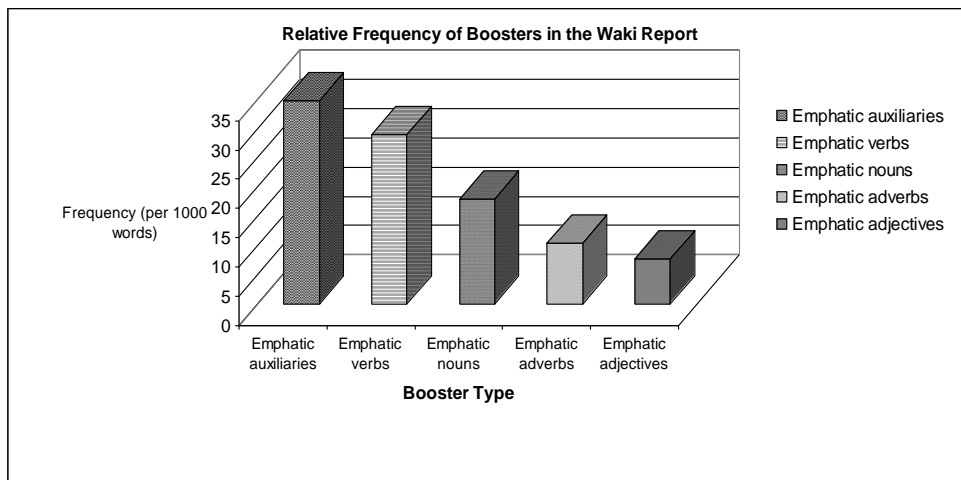
Another example of a booster used in the report is with regard to how the commission came to the decision of not making the names of the alleged perpetrators and financiers of the post-election violence, but rather to hand the names in a sealed enveloped to the chief mediator Dr Koffi Anan. The report uses a booster, the word “carefully” to qualify their decision and to emphasise the fact that their decision was not arbitrary.

The Commission has *carefully weighed* the choices available to it and has decided against publishing the names of alleged perpetrators in its report. Instead, these names will be placed in a sealed envelope, together with its supporting evidence. (53)

The booster in this case seeks support for the decision and dissuades dissenters thereby bringing acceptability and credibility to the whole document. The authors of the report seem to be warning the reader and the general public that every decision they made was “carefully weighed” and considered and that any opposition or reservations to it should equally be carefully weighed. The last example of a booster used in the report is given in the following extract:

We *believe* the recommendations of this Commission are capable of implementation and monitoring and that where there is failure to implement, accountability and responsibility can be assigned to a specific person or institution. (237)

In the example above, the booster “believe” seeks to suppress alternatives, presenting the proposition that the recommendations of the commission are capable of being implemented, with conviction while marking involvement, solidarity and engagement with the readers. In this usage of a booster, just like in the previous two cases, the authors of the report anticipate possible responses from the public but close down alternatives, head off conflicting views and express their certainty in what they say. This helps the authors in instilling confidence and trust in the public domain on the report and thereby making it credible and acceptable. In the figure below, the relative frequencies of the different types of boosters used in the report are indicated.



### 9.1.3.2 Hedges

Hedges, in contrast to boosters are devices such as *possible*, *might*, *perhaps* and *about* which indicate the writer’s decision to recognize alternative voices and viewpoints and so withhold complete commitment to a proposition. They emphasize the subjectivity of a position by allowing information to be presented as an opinion rather than a fact and therefore open that position to negotiation. By means of hedges, the authors of the report therefore, strategically “tone down” (Lewin, 2005) their commitment to the proposition in order to comply with expectations of the reader and the general public, and thus gain credibility and acceptability of their report.

Hedges are devices which withhold complete commitment to a proposition, allowing information to be presented as an opinion rather than fact (Hyland 1998a). They imply that a claim is based on plausible reasoning rather than certain knowledge and so both indicate the degree of confidence it might be wise to attribute to a claim while allowing writers to open a discursive space for readers to dispute interpretations. The commanding, confident figure is not always the appropriate one. There are certain situations that demand that information is presented with caution, especially when the subject is as delicate and as potentially explosive as that of the Waki Report. Hedges are the most appropriate metadiscursive devices to capture such situations. In a report, the use of hedges indicates the author’s decision to recognize alternative voices and viewpoints from that of other stakeholders and consequently withhold complete commitment to a proposition. Information is therefore presented as an opinion rather than a fact especially when dealing with sensitive issues or those with legal implications. Below are some excerpts from the Waki Report which illustrate how hedges were used to make the report more credible and acceptable:

Apart from the lack of anticipation of what might follow, the testimony by the D.C. for Uasin Gishu and the OCPD for Eldoret *suggests* that they neither followed upon local intelligence nor information they knew about. Had they taken the initiative to do so, they *might* have pre-empted some of the post-election violence which was experienced. (121)

In the above extract, the interactional marker *suggests* enables the authors of the report to present their argument (that they neither followed upon local intelligence nor information they knew about) as an opinion rather than a fact. This enables them to achieve more credibility and acceptability for the report. The same can be said of the use of *might* in the sentence that follows in which the idea that “some of the post-election violence which was experienced” could have been pre-empted is presented as a viewpoint and not a fact. In these two examples, therefore, the people with opposing views are therefore somewhat persuaded that the report has not completely ignored the possibility that divergent positions on the issues raised would exist, leading to greater acceptability and credibility. In the example below, the report yet again utilises a hedge as a device for accommodating possible conflicting views, while commenting on a statement given by one of the witnesses before it.

This statement *suggests* that local administration in Koibatek was not able to maintain level of political neutrality during the campaign period, a proposition similarly observed by district administration and recorded in the Minutes of the DSIC on 19 February 2008 which noted that some chiefs were partisan. (103)

Other examples of a hedge used widely in the report were adverbs such the one in the excerpt below:

Commission investigators obtained information that one police officer (from the Rift Valley Province) was responsible for fatally shooting citizens, *said to be* at least five and *possibly* more, during the unrest following the election at the end of 2007. (408)

In the above excerpt, the use of the phrase “said to be” hedges the evidence that “one police officer (from the Rift Valley Province) was responsible for fatally shooting citizens at least five citizens” such that it provides for the possibility that there exists other opinions or facts about the evidence. It is, consequently, not presented in absolute terms, leaving room for the possibility of contradicting information or evidence. The use of the second hedge, “possibly” reinforces this perspective. These two hedges have the collective effect of making the report more credible and acceptable even to

those who might have had opposing views on some of its contents. Yet another example of hedging is evidenced here below:

In the time available, details as to the degree and effects of injury were not made available to the Commission. *It is possible* that while some of the injuries *may have been* slight, a number of them were serious, *possibly* life changing experiences. (411)

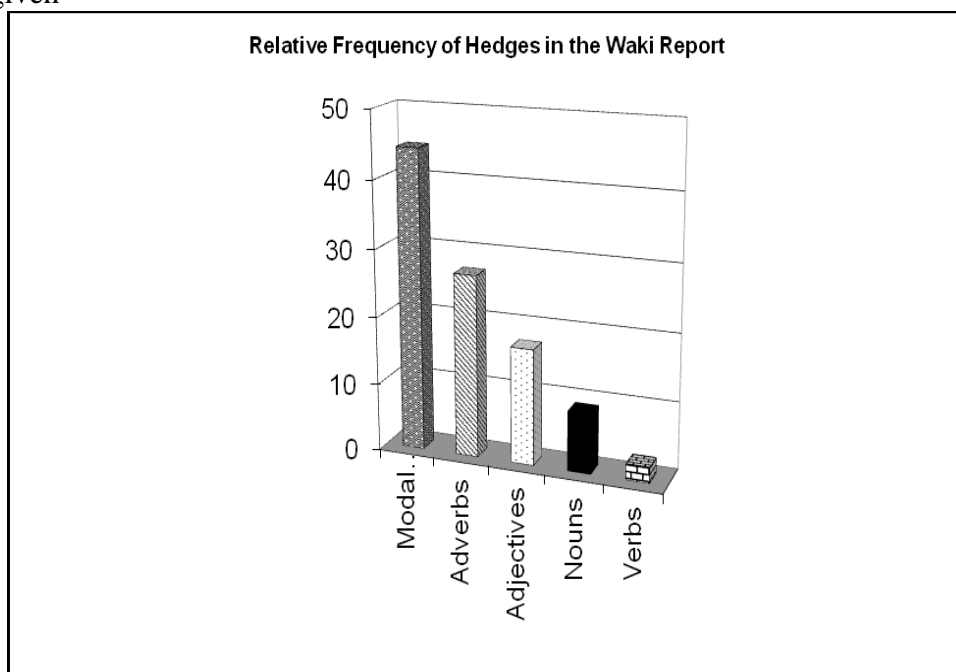
In the above example, the authors of the Waki Report do not want to commit themselves as to the nature and degree of the injuries of the victims of PEV victims. As they clearly explain in this excerpt, they were only provided with the information that there were injuries, but without an indication as to the nature and extent. They rightly point out that the time available for them to complete their work could not enable them to go into such details. Yet they remain cognisant to the fact a report of this nature would seem shallow and inadequate if the details of the nature and extent of the injuries were to be omitted completely. In order to cushion the report, and by extension, themselves from criticism, the writers employ a hedging strategy as shown above. This hedging enables them achieve credibility and ethical appeal among readers who would have others question a report on post election mayhem and violence, which does not mention the nature and extent of injuries of the victims. The example above also brings to light one critical generic property of commission of enquiry reports: that such reports are texts that result from a highly time constrained process such that unlike other genre, they rarely have the ample time to probe into everything as they ought to have. This is because commissions of inquiry, by their very nature, are time-bound entities which operate within a specified time frame. It is therefore, more often than not, the case that reports emanating from such commission usually present only the pertinent information and may not go down to the finer details.

In the example below, the Waki Report uses the hedges “seems” and “possible” when talking about the sensitive issue of preparedness of the security organs to deal with the post poll violence. The matter is considered a highly sensitive one given that it touches on the government agencies, and that the commission was also appointed by the same government. Yet, the commission was also well aware of the possible discrediting of the report by anti government agencies and NGOs who believed that the government was not well prepared to deal with the post poll chaos. In order to strike a balance, the commission therefore decided to hedge its statements relating to the preparedness of the state security agencies. As it is in the example below, they have neither said that such agencies were prepared, nor have they said that they were not. In this way, the commission sought to gain acceptability and credibility across the various divides.

Of all the State Security Agencies the NSIS was, *it seems*, with the *possible exception* of the Military, best prepared. (361)

In the final example given below, the report makes use of hedging in order to make predictive statements which they clearly could not have proof of. The report would like to link the increased HIV/AIDS prevalence to the massive rape cases that occurred during the PEV, but since they do not have objective scientific proof to link the two, and thereby risking credibility loss, the report resorts to hedging in an effort to gain acceptability and credibility.

Even when victims told perpetrators (whether members of the security forces, gangs or individuals) that they were HIV positive, perpetrators chose to rape. This is *likely* to result in an increase in HIV AIDs in Kenya (360). In figure below, the relative frequencies of hedges used in the Waki Report is given



As can be seen in the figure above, almost half the hedges were modal auxiliaries followed by adverbs and adjectives in that order. Nouns and verbs contributed the least in terms of hedging strategies used.

### 9.1.3.3 Engagement Markers

Engagement Markers are the expressions that personalize the relationship between the writer and the reader. They are one of the components of 'interactional metadiscourse' and their role is to establish a bond between writers and their readers. As a sub-category of 'Interactional Metadiscourse',

they are not independent stylistic devices which authors can vary at will but are integral to the context in which they occur and are intimately linked to the norms and expectations of particular cultural and professional communities (Hyland 1998: 438). Thus engagement markers are devices that overtly address readers, either to focus their attention or include them as discourse participants (Hyland 2005). They acknowledge the need to adequately meet reader's expectations of inclusion and disciplinary solidarity, addressing them as participant's in argument with reader pronouns (*you, your, inclusive we*), interjections (*by the way, you may notice*), imperatives (*see, note*) and questions. Very few instances of engagement markers were identified in the Waki Report. Even then, these mainly instances of were restricted to only the inclusive "we". This is illustrated in the following examples:

Curiously, we note that at the time the Attorney General made a request to the Commissioner of Police to investigate the persons named in the Akiwumi Report, the Department of Criminal Investigations was directly under the Office of the President. It follows, and *we* can safely conclude, that it was indeed very difficult for the officers working directly under the same President who had made strong reservations about the report, to come to a different view from the President's. The Attorney General himself candidly accepted this reality. (273)

In the example above, the authors of the Waki report use the inclusive "we" as a way of engaging the reader and making him or her identify with the sentiments expressed in this segment. In doing this the purpose of using the inclusive pronoun is to make the reader part of the decision to conclude that it was difficult for officers working and the president to have different views. The net effect is that by using the engagement marker, what should have been a mere conjecture is given credibility and believability due to the involvement of the reader. The next example below is yet another illustration of the strategy of exploiting the pronominal selection to achieve credibility and believability:

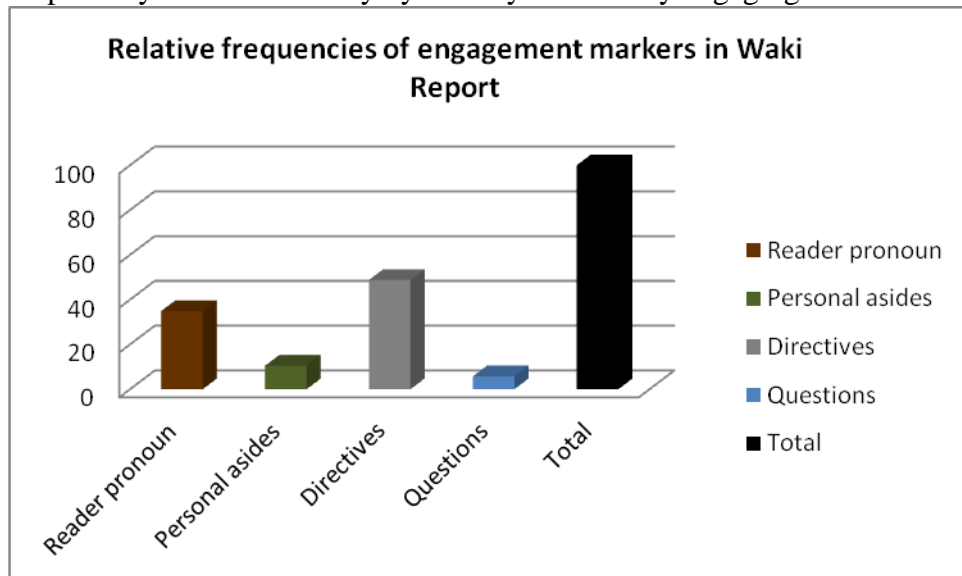
A Kalenjin religious leader dismissed the theory and instead accused political leaders who come up and use the ethnic background and the unity they found to instil violence, and suggested that to end the cycles of violence *we* have to break that. (396)

Just like in the first example above, in this example, the inclusive pronoun is used as a strategy to lure the reader and to make him or her part of ideas being espoused here (in this case, that the cycle of violence in Kenyan elections should be broken. This is very critical for credibility and believability in the sense that the public, who are the consumers of the report,

have to be part and parcel of an effort to end the cycle of violence. Making them part of the resolve through the use of the inclusive “we” is a way of committing them to the report and thereby making the report credible. Finally, in the example below, we again see the reader being engaged through pronominal selection. The report points to a piece of evidence which is in conflict with the considered opinion and conclusion of the commission. For the reader to accept such a position, the report engages the reader through the use of the inclusive first person plural pronoun. It should be noted that this last example is a unique case whereby pronominal selection is not merely used to sway the reader along and make the report credible, but also to dissuade the reader from adopting other positions which are in conflict to that adopted by the report.

Mr. Mohamed Salim the DC for Molo informed the Commission that hostilities began on September 25th 2007, though as *we* shall see later, violence had already been reported as early as 2006 (167)

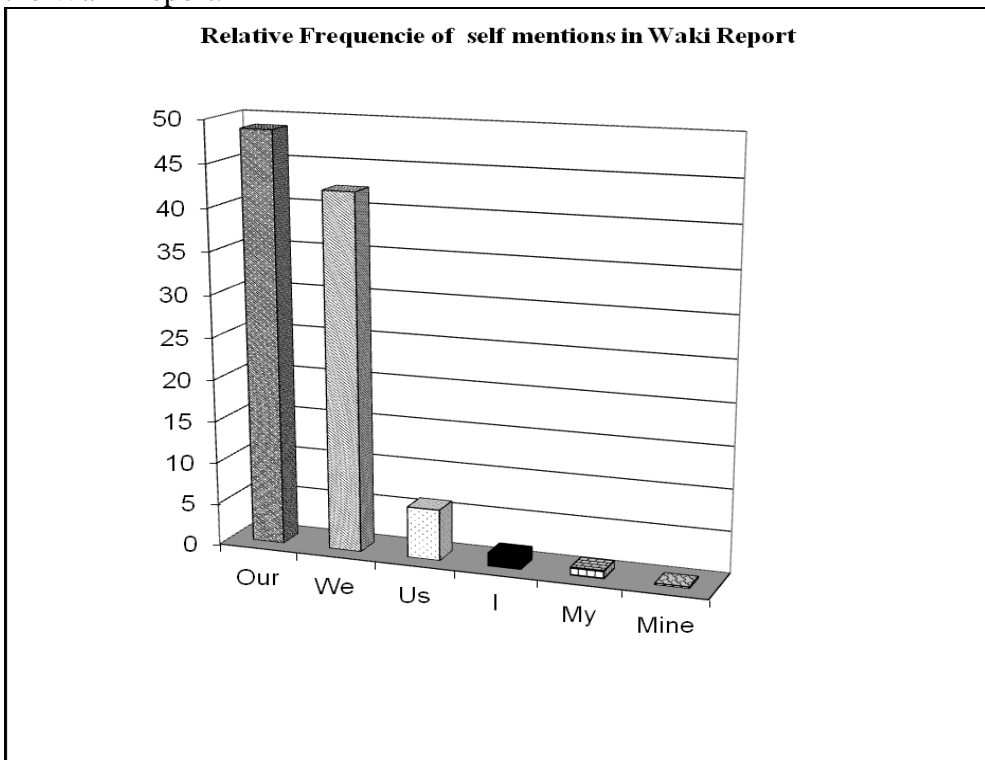
The figure below indicates the relative frequencies of engagement markers in the Waki Report. It can be noted from the figure below that reader pronouns and directives were the most frequently used as compared to personal asides and questions. This implies that the writers of the report were bent on engaging their readers as they drafted their report. Intensity of use of reader pronouns and directives indicate a strong desire to achieve credibility, acceptability and believability by directly and closely engaging the readers.





### 9.1.3.4 Self Mentions

Self mention refers to the use of first person pronouns and possessive adjectives to present information (Hyland 2001). Self mentions refer to the degree of explicit author presence in a text. Presenting a discorsal self is central to the writing process (Ivanic 1998), and we cannot avoid projecting an impression of ourselves and how we stand in relation to our arguments, discipline, and readers. The use of self mentions helps to build personal ethos of competence and authority about the information presented in the report. The presence or absence of explicit author reference is a conscious choice by writers to adopt a particular stance and disciplinary-situated authorial identity. The following are some of the examples of self mentions that were used in the Waki Report.



### 9.1.3.5 Evidentials

Hayland (1998: 443) defines evidentials as linguistic devices used “to indicate the source of textual information which originates outside the text”. As such, they are metalinguistic representations of ideas from another source which guide the reader’s interpretation and establish authorial command of the subject matter. Broadly speaking, evidentiality, therefore, is the indication of the nature of evidence for a given statement; that is, whether evidence exists for the statement and/or what kind of evidence exists.

Aikhenvald (2004), provides a typology of evidentials by giving two broad types of evidential marking: indirectivity marking (“type I”) and evidential marking (“type II”). The first type (*indirectivity*) indicates whether evidence exists for a given statement, but does not specify what kind of evidence. The second type (*evidentiality proper*) specifies the kind of evidence (such as whether the evidence is visual, reported, or inferred). These are briefly discussed below:

Indirectivity (also known as inferentiality) contrasts direct information (reported directly) and indirect information (reported indirectly, focusing on its reception by the speaker/recipient). Unlike the other evidential “type II” systems, indirectivity marking does not indicate information about the source of knowledge: it is irrelevant whether the information results from hearsay, inference, or perception.

The other broad type of evidentiality systems (“type II”) specifies the nature of the evidence supporting a statement. The type II evidentials can further subdivided into various subcategories:

- a) A *witness* evidential indicates that the information source was obtained through direct observation by the speaker. Usually this is from visual observation (*eyewitness*), but some languages also mark information directly heard with information directly seen. A witness evidential is usually contrasted with a *nonwitness* evidential which indicates that the information was not witnessed personally but was obtained through a secondhand source or was inferred by the speaker.
- b) A *secondhand* evidential is used to mark any information that was not personally observed or experienced by the speaker. This may include inferences or reported information. This type of evidential may be contrasted with an evidential that indicates any other kind of source. A few languages distinguish between secondhand and third hand information sources.
- c) *Sensory* evidentials can often be divided into different types. Some languages mark *visual* evidence differently from *nonvisual* evidence that is heard, smelled, or felt. The Kashaya language, for instance, has a separate *auditory* evidential.
- d) An *inferential* evidential indicates information was not personally experienced but was inferred from indirect evidence. Some languages have different types of inferential evidentials. Some of the inferentials found indicate:
  - i. information inferred by direct physical evidence,
  - ii. information inferred by general knowledge,
  - iii. information inferred/assumed because of speaker's experience with similar situations,

iv. past deferred realization.

In many cases, different inferential evidentials also indicate epistemic modality, such as uncertainty or probability. For example, one evidential may indicate that the information is inferred but of uncertain validity, while another indicates that the information is inferred but unlikely to be true.

- e) *Reportative* evidentials indicate that the information was reported to the speaker by another person. A few languages distinguish between *hearsay* evidentials and *quotative* evidentials. Hearsay indicates reported information that may or may not be accurate. A quotative indicates the information is accurate and not open to interpretation (i.e., is a direct quotation).

The present study paid attention to all these types of evidentials in as far as they were manifested in the Waki Report. In the following paragraphs, some of the above types of evidentials are exemplified:

Witness evidentials accounted for 56.8% of the total number of evidentials in the Waki Report. This means that more than half of the total of evidentials used in the report were of the witness type. In the first example below, the commission seeks to directly assert its credibility and consequently appeal to the reader's believability explicitly stating that their understanding of the nature of the violence was "enhanced by the submission by the Law Society of Kenya, South Rift Branch". This is important in terms of credibility and believability because the Law Society of Kenya is a neutral professional body that commands international respect and recognition. Their submissions to the commission would, therefore, be taken to be very credible and unbiased, hence believable. The commission, indeed, makes a direct reference to this appeal to credibility by mentioning that "The information provided by the Law Society is, therefore, highly credible as it materially corroborates the evidence from hospital sources which the Commission generally considers to be credible"

The understanding by the Commission of the nature of violence that took place in Kericho district was greatly enhanced by the submission by the Law Society of Kenya, South Rift Branch, for which the Commission is grateful. *Through its Secretary, Gideon Mutai, the Society submitted to the Commission the depositions made under oath of forty two different witnesses*, testifying to incidents of violence in the district, which either involved them personally, members of their families, persons known to them, or occurrences which they had *personally witnessed*. The first issue to be addressed is the credibility of the information provided by the Law Society. Out of the 39 cases of

shooting that the evidence dealt with, it indicated that 23 people were shot dead while the rest sustained severe injuries whose consequences varied greatly. The Commission compared the list of the deceased persons provided by the Law Society and confirmed that these are already part of the list of deceased persons in Kericho which was provided by the MOH for the area, Dr. Ambrose Rotich. The information provided by the Law Society is, therefore, *highly credible* as it materially corroborates the evidence from hospital sources which the Commission generally considers to be *credible*. (231)

In the next example, the commission quotes verbatim a witness statement. The witness here narrates what she “saw” and “heard” during one specific instance of violence in Eldoret where 32 people were burnt to death in a church where they had sought refuge. The witness here makes use of sensory evidentials by constantly asserting that she saw or heard what she was narrating to the commission. By quoting the witness verbatim in their report, the commission exploits witness evidential to appeal to credibility and believability.

“On the 1st of January 2008 at around 10 a.m., *I heard* people yelling that some raiders were coming. *I saw* smoke coming from some houses in our village and the houses were burning. Everyone in the village started running away to the church (KAG). My mother who was 90 years old was with me at the time. I decided to take my mother into the church for safety. After a few minutes, *I saw* more raiders coming towards the church...We thought the raiders would not attack the church. Many people were being pushed into the church by the raiders. The raiders threw some mattress into the roof of the church and threw more into the church. They were also pouring fuel (petrol) onto the mattresses. All of a sudden *I saw* fire break out. I took my mother toward to [the] main door to get her outside, but there were many others scrambling toward the door as well. We both fell onto the floor. I wanted to save my mother from the burning church, but one of the raiders prevented me. *I saw* the fire had reached where my mother was. *I heard* her cry for help as the fire burnt her, but I could not help.” (219)

A similar example of a witness evidential which also contains within it a series of sensory evidentials is given below:

Another *witness* rendered yet another heart wrenching tale as follows: “Some Nandi were running after people on the road. I ran away with my children. I *saw* a man being killed by cutting with a panga and hit by clubs when I was running. I fell near a seasonal river in Kipkendui

primary school while running away. My last born child fell a distance away from my arm, was hurt, and was crying. Some people were running after me and when I fell, two men caught me. They tore my panties and they both raped me in turns.” (231)

In the above example, the commission exploits a meta-discursive comment before quoting the witness verbatim. In this comment they seek to set it out clearly that the information that is to follow is from a witness. In this way, the commission seeks to achieve credibility for the information that is narrated by such a witness, and overall credibility of the entire report.

As has been previously mentioned, witness evidentials accounted for more than half the of the evidentials used in the Waki Report. This is hardly surprising given the nature of the report in terms of its contents and the intended communicative purposes. Being a product of a quasi-judicial process, the report has to rely heavily on witness statements, just like other products judicial processes. It would thus be acceptable to argue that by conforming to the generic content of other discourses within the broader genre of judicial reports, the commission sought to make their report credible, believable and ultimately acceptable.

Second hand evidentials were the second highest in number, accounting for 22.8% of the total. The following are some of the examples of this type of evidentials that were found in the Waki Report:

For instance, in Kisauni, tension was *reported* to be very high with the youths contemplating to hold a public protest on 29th December 2007 against the delay by ECK in releasing the presidential poll result. (235)

In the above example, the report makes it clear that the tensions referred to were “reported” as opposed to instances where they were witnesses as has been previously discussed under the witness evidentials above. In doing this, the drafters of the report seek to achieve ethical credibility for the information they are giving by admitting that it is of a second hand nature. The next example also seeks to achieve credibility and believability in this way:

The main highway to Nairobi was blocked at Mikindani and the OCPD *reported* that riots also broke out in Chaani, Bokole, Magongo Mwisho and Miritini. In the meantime, the whole of Likoni was engulfed in violence. (237)

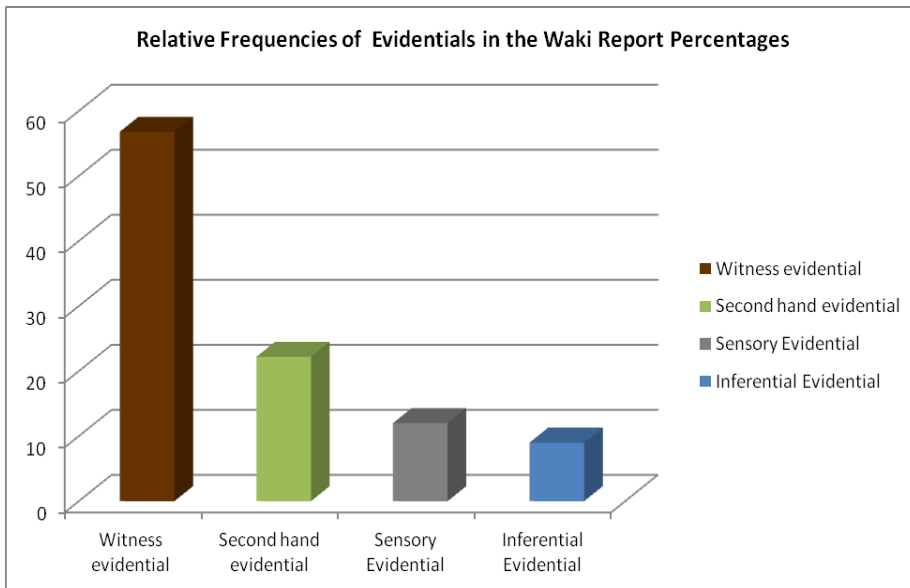
The sensory evidentials found in the Waki Report were of the auditory and visual type. The examples given below illustrate the two types:

The Commission however made a brief visit to Kakamega town on 9th August 2008 and toured the town where it *saw* properties that had been destroyed and damaged during the PEV. (309)

In the example, the report exploits the visual sensory evidential “saw” to back up their assessment of the extent of violence in Kakamega. It is informative to note that apart from asserting that they actually saw the extent of violence that was witnessed in the town, they actually provide a date when this happened. The use of a sensory evidential makes the informing provided in the report to be highly credible, reliable and therefore very believable. In the next example, the commission uses the auditory sensory evidential by reporting what they heard about the violent relations between the neighbouring Kisii and Kalenjin communities.

The Commission *heard* that this was not the first time that the Kipsigis had violently asserted their territorial claim against the Kisii. (151)

The above example also resembles a witness evidential, only differing in the sense that the writers do not explicitly state that the source was a witness before them. Accordingly, it has the same evidential value as a witness evidential, meaning that its credibility and acceptability is as equally high. Finally, we give a few examples of the inferential evidentials that were found in the report



## 10 Concluding Marks

The present study has tried to establish how the authors of the Waki Report (in this case the commission) used, among other strategies, some of the metadiscursive devices mentioned, to achieve acceptability and credibility. Hyland (1998: 437) gives the following characterization of metadiscourse:

Based on a view of writing as a social and communicative engagement between writer and reader, metadiscourse focuses our attention on the way writers project themselves into their work to signal their communicative intentions. It is a central pragmatic construct that allows us to see how writers seek to influence readers' understanding of both the text and their attitude towards its content and the audience.

According to Jensen (2009), Hyland's (1998) analytical framework is based on Crismore, Markkanen, and Steffensen (1993), and distinguishes between the interactive and the interactional dimension of interaction (Hyland 2005: 49): The interactive dimension concerns "the writer's awareness of a participating audience and the ways he or she seeks to accommodate its probable knowledge, interests, rhetorical expectations and processing abilities." The interactional dimension concerns "the ways writers conduct interaction by intruding and commenting on their message. The writer's goal here is to make his or her views explicit and to involve readers by allowing them to respond to the unfolding text." And, further, Hyland (2005: 49) argues that the interactional dimension concerns "the writer's expression of a textual 'voice', or community-recognized personality, and includes the ways he or she conveys judgments and overtly aligns him- or herself with readers." According to Hyland (1998: 438), "Metadiscourse is recognised as an important means of facilitating communication, supporting a writer's position and building a relationship with an audience."

My primary focus has been on Hyland's interactive and interactional dimensions of the Waki report in order to demonstrate the extent to which it reveals how the report involves the readers, seeks support for its position (and thereby achieving credibility and acceptability). The analysis of the Waki Report has shown that appointers of the commission, in putting it up, were gravely aware of the potential and serious credibility issues that could heavily constrain the acceptability and believability of their final report. Being a product of a quasi-judicial process, the commission was also gravely aware of the inherent limitations of their mandate and possible scope of execution of their recommendations. Consequently, the commission decide to use various meta-discursive and structural strategies to claim credibility and acceptability. Such meta-discursive strategies were both interactive and interactional in nature and succeeded in actively engaging the readers of the report to seek their acceptance and believability of the report.

It has also emerged that the report has exploited an eclectic approach to achieve credibility and acceptability. Apart from exploiting the meta-discursive strategies as discussed above, the report has also made use of the generic properties of commission of inquiry reports to achieve credibility and acceptability. In doing this, the report has conformed to the generic structure and the linguistic properties of a quasi-judicial commission of inquiry report such that the report is readily and easily recognisable as belonging to such a genre even on the face value, hence gaining acceptability. Additionally, the report has also exploited ethos as a credibility strategy. This has been done by projecting the personal appeals of *ethos* when by referring to their authority, credibility and competence. Consequently, by projecting their personal ethos, the writers of the Waki report sought to extend these to the work of their hands; namely the report itself.

This study has demonstrated that commission of inquiry reports, are constitutive of genres. Accordingly, they have unique properties in terms of structure content and purpose which sets them apart from other types of reports. being quasi judicial in nature, their generic characteristics are reflective of the inherent limitations of quasi-judicial bodies and their products.

### **References**

- Allen, R. (1989). Bursting bubbles: Soap opera audiences and the limits of genre. In E. Seiter, H. Borchers, G. Kreutzner & E. Warth (eds.), *Remote Control: Television, Audiences and Cultural Power*. London: Routledge. 44-55
- Aikhenvald, A.Y. (2004). *Evidentiality*. Oxford: Oxford University Press.
- Buller, D.B. & J.K. Burgoon. (1996). Interpersonal Deception Theory. *Communication Theory* 6: 203-242.
- Crismore, A., R. Markkanen, & M.S. Steffensen. (1993). Metadiscourse in persuasive writing: A study of texts written by American and Finnish University students. *Written Communication* 10(1): 39-71.
- Feuer, J. (1992). Genre study and television. In R. C. Allen (ed.), *Channels of Discourse, Reassembled: Television and Contemporary Criticism*. London: Routledge. 138-159
- Fowler, A. (1989). Genre. In E. Barnouw (Ed.), *International Encyclopedia of Communications*, 2. New York: Oxford University Press. 215-217.
- Gatignon, H. & T.S. Robertson. (1991). *Innovative Decision Processes*. Englewood Cliffs, NJ: Prentice-Hall.
- Hyland, K. (1998a). *Disciplinary Identities: Individuality and Community in Academic Discourse*. Cambridge: Cambridge University Press.
- Hyland, K. (1998b). Persuasion and context: The pragmatics of academic metadiscourse. *Journal of pragmatics* 30: 437-455.



- Hyland, K. (2001). Humble servants of the disciple? Self-mention in research articles. *English for specific purposes* 20(3): 207-226.
- Hyland, K. (2005). *Metadiscourse*. London: Continuum.
- Hyland, K. (2005). Stance and engagement: A model of interaction in academic discourse. *Discourse Studies* 7(2): 73-192.
- Ivanic, R. (1998). *Writing and Identity: The Discoursal Construction of Identity in Academic Writing*. Benjamins Publishing Company.
- Jensen, A. (2009). Discourse strategies in professional e-mail negotiation: A case study. *English for Specific Purposes* 28: 4-18.
- Kress, G. (1988). *Communication and culture: An introduction*. Kensington, NSW: New South Wales University Press.
- McQuail, D. (1987). *Mass Communication Theory: An Introduction* (2nd Ed.). London: SAGE.
- Miller, C. R. (1984). Genre as social action. *Quarterly Journal of Speech* 70: 151-167. Reprinted In Freedman & Medway (1994), *Genre and the New Rhetoric*. London: Taylor & Francis.
- Orwenjo, D.O. & Ogone, J.O.(eds). (2010) *Language and Politics in Africa: Contemporary Issues and Critical Perspectives*. Cambridge: CSP.
- Petty, R.E. & J.T. Cacioppo. (1981). *Attitudes and Persuasion: Classic and Contemporary Approaches*. Dubuque, IA: William C. Brown.
- Self, C.S. (1996). Credibility. In M.Salwen & D. Stacks (eds.), *An Integrated Approach to Communication Theory and Research*. Mahwah, NJ: Erlbaum.
- Stam, R. (2000). *Film Theory*. Oxford: Blackwell.
- Vande Kopple, W.J. (1985). Some exploratory discourse on metadiscourse. *College Composition and Communication* 36(1): 82-93.

### **Bionote**

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