



**Ejarra Batu Balcha**

Adama Science and Technology University  
Adama, Ethiopia

**FUNCTIONAL INTER-TEXTUALITY IN THE SPOKEN  
AND WRITTEN GENRES OF LEGAL STATUTES:  
A DISCURSIVE ANALYSIS OF JUDGE'S SUMMING-UP  
AND LAWYERS' CLOSING ARGUMENTS  
IN ADAMA HIGH CRIMINAL COURT**

**Abstract.** This study examines the intertextual influence of the courtroom spoken genre with the written genre used by judge's summing up and lawyers' closing arguments in Ethiopian Criminal court trial. In doing so, it employs the relational and comparison-expository structuring models. The relational structuring is used to give emphasis to the manner in which evidence items bear on particular issues and shows how evidence items are related to each other and to major facts in issues of judge's summing-up while the comparison-expository structure is to intertextually link the spoken genres of the two opposing lawyers' views with the Ethiopian criminal law written statutes. The findings of the study suggest that mixed rhetorical strategies, the judge's relational summing up and the lawyers' comparison-expository closing arguments, are more effective than a strict narrative strategy in addressing the final judgment of the argumentation.

*Keywords:* closing arguments, comparison-expository, genre, inter-textuality, summing up.

The current legal genres are characterized by functional hybridity that it requires a consistent alertness and interaction with the legal statutes to which the spoken genres are intertextually linked. Bhatia (2004) puts forward that the study of professional genres has, in current days, moved from a focus on form and structure to a focus on contextual factors in interpreting discourse. Similarly, Heffer (2010:212) notes that such types of intertextual linkages are analyzed in civil court trials rather than criminal court trials. On the contrary, this study analyses the Ethiopian criminal law system that follows an exclusive courtroom norm where the judge, rather than the jury, is in a position to sum-up (spoken genre) not on his or her own right, but strictly based on the written genre of Ethiopian legal statutes. So,

this paper testifies this assumption from the Ethiopian Criminal court trial exclusive judge's summing-up (in the absence of jury) and lawyers' closing arguments point of view.

In order to derive meaning from the texts of such legal genres, an ethnographic fieldwork of courtroom observations are indispensable. My ethnographic fieldwork of courtroom observations demonstrates how legal professionals' talks were closely oriented to the relevant legislative materials (spoken to written genres). The spoken genres of both the judge's and lawyers' talk were derived from a case of aggravating circumstances, article 84, an offence contrary to article 83/1. The indictment against the defendant was that she 'violated the improved VAT payer proclamation No. 169/1 in order to obtain an unjustifiable enrichment by claiming what she is not entitled' – which is, therefore, considered as a serious crime.

My ethnographic study traces the lawyers' pre-trial and in-trial notes in relation to the question of intent, since the defendant admits not issuing the VAT receipt, but not intending to do what the prosecutor argued for rather than with a complete ignorance. The defense lawyer case centred around the issue of absolute ignorance versus intent of the prosecutor.

This paper focuses on the discursive analysis of both the judge's summing-up non-partisan guidance on how to decide the case based on both the facts found and written legal statutes, and how the overtly partisan fashion of the lawyers' spoken closing arguments are linked with the written legal charges depending on the summing address of the judge.

In this regard, this study employs Schum's (1993) relational and comparison-expository structuring models. The relational structuring is used to give emphasis to the manner in which evidence items bear on particular issues and shows how evidence items are related to each other and to major facts in issues of judge's summing-up while the comparison-expository structure is to intertextually link the spoken genres of the two opposing lawyers' views with the Ethiopian criminal law written statutes. This is based on the assumptions that these model structures are more effective in judge's summing-up and lawyers' closing arguments than their narrative structures.

## **An Overview of Ethiopian Post Evidence Criminal Procedures**

After the judge went through all acceptable evidences produced by the prosecutor which is relevant to the proof of the facts, he reaches into a decision, which is referred as "Murtii" in Afan Oromo.<sup>1</sup> The judge eval-

uates the weight of the evidences based on a certain standard. Aderajew & Kedir (2009) assert that in the continental Europe for the accused to be convicted a court needs to have the internal conviction while in Anglo-American system, on the other hand, the court must be convinced to the degree of – beyond reasonable doubt” that the accused is guilty. In our legal system there is no such fixed standard of proof required. But it can be said that the Anglo-American system has a significant influence and practically we have the standard called – beyond reasonable doubt” degree of proof (Aderajew & Kedir, 2009:273).

Thus, once the judge examines the evidences and measures its weight, he decides whether the case is proved to the extent of the required degree against the accused or not. If the judge is not convinced that the case is sufficiently proved, he acquits the accused without requiring him to defend himself and enter an order of release of the accused if he is in custody pursuant to Art 141 of the CPC (Aderajew & Kedir, 2009:273). On the other hand, if the judge is satisfied with evidences produced and is convinced that the accused had committed the alleged crime unless rebutted by the evidences to be produced by him; he requires the accused to produce all possible evidences he has to defend himself. Accordingly, the accused comes up with a list of all relevant evidences required.

Depending up on the collected evidences from both opposing parties, the judge renders judgment which would either be conviction or acquittal. In this case, the accused would be convicted if the evidences produced by the prosecutor convinced the judge to the extent of the required degree that the accused committed the alleged crime and his evidence, if any, could not rebut such evidences and affects his/her conviction. On the other hand, if the evidence(s) produced by the defense lawyer can falsify the evidence(s) of the prosecution, the judge decides for the acquittal of the accused. In so doing, the judge gives reason for any of its decisions based on the written legal statutes of Ethiopian criminal code.

In this regard, when the accused is found guilty and convicted, the judge invites the prosecutor whether he has anything to say as regards sentence by way of aggravation or mitigation as being provided under Art 149/3 of the CPC. It is at this stage of the Ethiopian criminal procedure that the prosecutor is given a first-hand closing speech to disclose to the judge the aggravating grounds such as previous conviction(s) of the accused inter-textually linking it to the legal statutes. This is because, the prosecution is usually trying to construct a version that will prove that the accused person is guilty while the defense lawyer is usually trying to construct a competing version of the same events – his client is not guilty, or is worthy of lenient

treatment. This is to enhance the judge to take the fact into consideration in the determination of the final sentence.

After the prosecutor's aggravating or mitigating closing arguments, the judge gives the next chance to defense lawyer. So, the defense lawyer can have a last turn to reply and mention any mitigating grounds he can raise. In this manner, the judge may command the production of evidences to prove these grounds. The extended courtroom observation made, on the other hand, indicates that most of our judges do not ask the production of prove to mitigating/aggravating ground mentioned by the parties. Similarly, the actual courtroom observation shows that the prosecution lawyer tends to utter only aggravating state of affairs while the law, additionally, demands him to mention some mitigating situations.

### **Functional Hybridity of Spoken and Written Genres**

When creating texts, the speaker's lexical preference is a direct result of their communicative action and purpose (Swales, 1990). This affirmation makes register and genre inter-related features of textualisation. Lexical and grammatical preferences, such as the use of a restricted set of reporting verbs in lawyers statements and notes (said, asked, replied), inclusive phrases and lists in legal texts (using 'and' and 'or'), passive constructions with 'by' and phrases that enclose the verbs provided in contracts, are made because of what needs to be communicated (Coulthard & Johnson, 2007).

In this manner, genre is a conventional, repeated and distinctive feature of text that arises from its communicative purpose (Coulthard & Johnson, 2007:55). Maley, Candlin, Crichton & Koster (1995) identify genres that predate the trial and occur within it from both written and spoken point of view. They affirm that written genres include pre-existing, codified documents, such as legislation, contracts, precedents or judgments which inform the legal process, or records and law-making that form a part of the legal process after cases have been heard and which may be embodied in case reports.

Hasan (2000:29) takes the 'genres within genres' concept, a further step that she discusses the 'uses of talk' in institutional environments. She notes that in such talk participants can make 'the talk move to suit [their] own purposes' in a way that signals the speaker's 'readiness to constantly reclassify discursive situations. She refers to this as hybridity, which is 'the mixing of the recognized properties of different pre-existing genres' (Hasan, 2000:29). For example, regarding the adversarial genre trial, Cotterill (2003:208–217)

shows how the prosecution and defense lawyer in the OJ Simpson trial both use the ‘jigsaw puzzle’ metaphor to argue their respective cases. While the jigsaw is visually effective, it does have the weakness that there are always missing pieces of evidence (Cotterill, 2003:216–217).

On the other hand, the defense lawyer notes that ‘the prosecution took a photograph or picture of OJ Simpson first, then they took the pieces apart’ (Cotterill, 2003:218), essentially accusing the prosecution of finding the evidence to fit the picture. In many respects, though, the closing arguments are not centrally concerned with the construction and evaluation of narrative but rather attempt to bridge the gap between storytelling and the legal categories to which the jury (the judge in my case) rapidly have to fit the evidence. Indeed, there is some empirical evidence to suggest that ‘legal-expository’ closing arguments, in which legal elements are outlined along with the evidence that supports or fails to support those elements, might be more effective than narratively organised closings (Spiecker & Worthington, 2003).

As Schum (1993) quoted in Spiecker & Worthington (2003:441), within the civil context, there are two forms of argument structuring employed by advocates – temporal and relational structuring. Corresponding to the storytelling technique, temporal structuring places emphasis on putting events significant to the dispute in their chronological order. The narrative structure was defined as a story containing an exposition, complication and resolution where the actors and situation were introduced in the exposition, followed by an event that required action by the actors in the complication, and concluding with the resolution returning the story to a new stable state (Spiecker & Worthington, 2003).

Relational structuring places emphasis on the manner in which evidence items bear on particular issues and shows how evidence items are related to each other and to major facts in the issue (Schum, 1993:189). The comparison-expository structure was defined as an organization based on the similarities and differences of information, such as when two opposing views are compared on the same issue(s) (Schum (1993:11) cited in Spiecker & Worthington (2003:441)). As Spiecker & Worthington (2003:441), when operationalizing the comparison-expository structure, (McCullough, 1991:11) contrasted the plaintiff’s and defendant’s arguments point by point. This organizational structure resembles a point-counterpoint presentation or legal expository structure. The legal-expository structure is identified by the delineation of the judicial instructions and legal elements governing the dispute, accompanied by a preview in the opening statement or summary in the closing argument of why the evidence in the

case either supports or refutes the applicable law (Spiecker & Worthington, 2003:441).

## **Data Presentation and Analysis**

### **Judge's Summing-Up and Decision**

In their closing speeches (as discussed in sections 2 and 3 below), the prosecution and defense lawyer respectively showed the judge how their spoken evidences were linked with the written legal charges depending on the summing address of the judge. In the same manner, they were also arguing in an overtly partisan fashion, giving weight only to those elements which support their own case and employing a full armory of persuasive rhetoric (Cotterill, 2003).

In the contrary, the judge in the context of this study received non-partisan guidance on how to decide the case. In other common law court countries, judges tend both to instruct the jury on the law with more caution over wording and to review the evidence presented in the case in light of that law. In Ethiopian case, on the other hand, judges tend to supplement the sum-up section with the evaluation of the evidence presented in the case in light of the legal frame not for the jury but for the two rivalry parties. So, the finding reveals that in the context of Ethiopian courts in general and Oromia Criminal Court System in particular, the judges were acting as jury and engaged in the work of "Summing-up" to render decisions based on the statute legal frames.

The evaluation of the evidence is perhaps the principal way in which narrative can enter into the judge's summing-up (Wolchover, 1989). The evaluation is meant to be as unbiased as possible, and judge must present the defense lawyer case. The judge also comments on both the weight of the evidence and the credibility and plausibility of witnesses. In this regard, below are the judge's summings-up of the "Taxation Trial" (resulting in conviction) in Adama High Criminal Court.

In this manner, throughout the adversarial phase of the trial, the judge was concerned with trying to evaluate the credibility and weight of both the evidence and the witnesses in order to arrive at just a decision/verdict. This careful process of reflection comes into the public eye with the start of the adjudicative phase (judge's summing-up phase).

The trial judge endeavored to give a much more support in 'reading' the case. Instead of an uncovered evidence of the facts, he provided something much more like an evaluated narrative. In Extract 1, 'four of us made

a visit to Mame Restaurant to see the way VAT was being carried out' is described clearly from the complainant's perspective. A full-fledged of Judge's Summing-Up narrative, from which the entire summing-up phase was argued, which was translated into English can be obtained in Appendix 1 (Note that the original Afan Oromo, transcript can also be available from Appendix 2, and both the transcription and translation works were made by the researcher himself.

In this regard, in order to make the naturally occurring spoken data original, the transcripts and the translations were made in conscious of avoiding making changes to the participants' actual language. So, induced changes which include correction of inaccurate grammar, elimination of false starts, syntactic rearrangements or restoration of dialectal features into standard forms were avoided. Similarly, the English version of Ethiopian criminal law transcripts was originally taken as they were).

The text has a great deal of internal evaluation, including intensification and emphatic repetition ('violating, by protecting the receipt, ... made a total of 68 ETB VAT reduction... giving services without VAT receipt, ...defendant has violated the improved VAT payer proclamation No.,...'), allusive clichés ('bumped into her ...,') and colloquialisms ('If she has warned them not to make sales ..., they would have.....'; when the prosecutor's witnesses go to identify ...was paid or not; if the waitress mistakenly received ..., it is ... refuse to accept the ...).

### ***Extract 1, Judge's Summing-up***

The passage has precisely the sort of 'high rhetorical degree and intensity' which Robertshaw (1998:182) severely criticizes as a source of bias in English summings-up. Henning (1999:212–213), though, argues that, rather than offering the 'fantasy of neutrality', this narrative approach provides a 'balanced' review which reflects the relative strengths and weaknesses of the case and guides towards the legally relevant issues for sanction.

As a result (raised intonation), ee....evidences of the witnesses of the prosecutors side is found more authentic, when the prosecutor's witnesses go to identify whether the VAT was paid or not or if the waitress mistakenly received money from them, it is illogical to speculate they refuse to accept the receipt on purpose. Rather as they testified, they were wasting for the receipt for about 3 minutes if she might issue them. The second defense lawyer witness testified as being the waitress of the hotel is also found unauthentic to discredit the evidence provided by the prosecutor. The second defendant (xxxx) being the owner of the hotel did not seem to have convinced the workers to be careful

about the issuance of VAT receipts. If she has warned them to issue VAT bills for all sales, it is unbelievable to say that they make sale without VAT bills. So, the first defendant has violated the improved VAT proclamation No. 169/1, article 56 and 22/4 and VAT proclamation No. 285/94, article 22/1. The second defendant has violated the improved VAT payer proclamation No. 609/1 article 50/6/A/2 and VAT proclamation No. 285/94, article 55 in support of the first defendant, based on the indictment of the prosecutor, both of them are sanctioned guilty.

***Extract 2, Judge's Verdict (Decision)***

In Extract 2, above, the judge employs a relational structuring model to place an emphasis on the manner in which evidences from both opposing parties hold an authenticity in the issuance of VAT receipts (ee....evidences of the witnesses of the prosecutors side is found more authentic... relating that ...if the waitress mistakenly received money from them, it is illogical to speculate they refuse to accept the receipt on purpose. Rather as they testified, they were wasting for the receipt for about 3 minutes if she might issue them vs the defense lawyer witness ... found unauthentic to discredit the evidence provided by the prosecutor that the owner of the hotel did not seem to have convinced the workers to be careful about the issuance of VAT receipts. If she has warned them to issue VAT bills for all sales, it is unbelievable to say that they make sale without VAT bills). The judge reflects how the prosecution evidences are related to each other (...it is illogical to speculate they refuse to accept the receipt on purpose and...Rather ....they were wasting for the receipt for about 3 minutes if she might issue them) and to major facts in the law (...If she (the hotel owner) has warned them (the waitresses) to issue VAT bills for all sales, it is unbelievable to say that they make sale without VAT bills. So, the first defendant has violated the improved VAT proclamation No. 169/1, article 56 and 22/4 and VAT proclamation No. 285/94, article 22/1, and the second defendant has violated the improved VAT payer proclamation No. 609/1 article 50/6/A/2 and VAT proclamation No. 285/94, article 55 in support of the first defendant).

After the judge relatively evaluated all the essential evidences gathered from both the prosecutor and the defense lawyers, depending on the prosecutor's evidences and the written criminal law, he finally sanctioned guilty both the first defense (hotel owner) being violating the VAT proclamation No. 285/94, article 22/1 and the second defense (the waitress) being violating the VAT proclamation No. 285/94, article 55.

Here, the functional intertextuality of the spoken and written legal statutes that the judge employs comes up with the conviction that both



defenses are guilty. Unlike most studies of judges' behavior on legal decision makings, the impression of the judge's role that has emerged from this study is one of a powerful incidence whose decision is based not only on a reasonable evaluation of the facts but also how these facts are intertextually linked with the written legal statutes.

### **The Prosecutor Closing Arguments**

The adversarial phase of closing arguments of a trial is another important site of analysis both for discourse analysis in general and for forensic linguistics in particular. In the process of closing argument session, "two speakers take the same people, events, and evidence, and create two opposing representations for the same audience" (Rosulek, 2010:218). Accepting how this takes place can disclose how the lawyer-in-defense and the prosecution lawyer goals and belief systems influence their use of language. Furthermore, these discourses are both 'persuasive and argumentative', thus providing a major chance to revise how such discourses are 'linguistically created' (Rosulek, 2010:218).

Rosulek (2010) also identifies the three major advantages of closing arguments as they are employed in forensic discourse analysis. First, they are the lawyers' final probability to persuade the judge – the last opportunity to put together their most comprehensive and coherent "master narrative" (Gibbons, 2003:155) of the crime, inquiry, and the trial (see extract 3 and 4). Second, "the lawyers produce their argument without having to interact with witnesses" (monologue narrative) (Rosulek, 2010:218). In so doing, the lawyers can make free arguments outside external influences which could affect their discourses and language use. Thirdly, lawyers can get the chance to talk directly to the people they are endeavoring to talk into (the judge in the context of this study).

Once all the evidences have been presented and summed up by the judge, lawyers make their spoken closing arguments to the court based on the judge's summing up and the written genres of the Ethiopian criminal code. Both of the closing speeches of violating the improved VAT payer case were structured primarily in terms of the crime story rather than the trial story. The crime and investigation narratives are referred to the evidence of the witnesses and the statutes of legal frames (article 84/1/D). The reason for this is strategic. Although the prosecutor's closing statement is small (extract 3), it is interesting to note that the text focuses on the effect of the crime on the nation rather than what actually happened in the crime story.

Furthermore, despite this being a typical judge case, a great deal of effort was made to link the weight of the crime with its appropriate legal

punishment. In doing so, she listed them by strengthening the intensity of the penalty (for example, criminal law article 84/1/A,<sup>2</sup> No. 10 is changed to criminal law article 84/1/A, under No. 11, and finally moved to be adjudicated as per article 84/1/D, under No. 12).

In this way, rather than attempting to narrate the trial story, the prosecution strived to point the judge intersubjectively towards a standard story schema. In this manner, she tries to point to the schema of crime committed, in order to obtain an unjustifiable enrichment by claiming what one is not entitled:

The defendants deliberately committed the crime which has a great impact on the government's income and the country's economy. So, the accomplishment of tax collection should be a higher responsibility. Thus, if we bring this to the 10th rank, this word strengthens the verdict that it is a crime committed in order to obtain an unjustifiable enrichment by claiming what one is not entitled to and hence will be adjudicated as per criminal law article 84/1/4 and as per criminal law article 84/1/A, under No. 11 which it doesn't reconcile with. So, we moved to insist that it should be adjudicated as per article 84/1/D, under No. 12, and we demand the strongest possible punishment to be adjudicated to these defendants.

### ***Extract 3, Lawyer-in-Prosecution Closing Argument***

#### **Section III. – Extenuating and Aggravating Circumstances**

##### **Article 84. General Aggravating Circumstances.**

(1) The Court shall increase the penalty as provided by law (Art. 183)<sup>3</sup> in the following cases:

(d) when he acted in pursuance of a criminal agreement, together with others or as a member of a gang organized to commit crimes and, more particularly, as chief, organizer or ringleader (p. 35).

#### **The Defense Lawyer Closing Arguments**

In this particular section, the comparison-expository structure has been employed based on the Comparison-Expository Model of Schum (1993). This was based on the assumptions that Spiecker & Worthington (2003), "comparison-expository structure is more effective than a narrative structure for the defense lawyer's closing argument" (Spiecker & Worthington, 2003:441). Based on these theoretical perspectives, the following lawyer-in-defense closing argument has been scrutinized from comparison-expository structuring context. From this structuring framework, the lawyer-in-defense discredited both what the prosecution lawyer presented in her closing argu-

ment and what the judge presented in his summing-up respectively. In so doing, he managed to emphasize on these two opposing views to his own perceptions.

In the process of operating the comparison-expository structure, he primarily, contrasted the prosecutor's and his own arguments point by point, and then the judge's summing-up (using chronological sequences, firstly..., secondly..., etc). See Extract 4 below

Firstly, I'd like to comment on the remark given by the prosecutor. What the prosecutor claimed as .... So, this motive could not be taken as an alleged reason for strengthening the verdict, it must be ... Secondly, to the claim that this was done in coordination manner is not acceptable as ..... Other than this, there is no....

#### ***Extract 4, Lawyer-in-Defense Closing Arguments***

The defense lawyer emphasizes the word "preponderance" (Heffer, 2005) which commonly argues that there is no evidence to support prosecutor's accusation-much less than a preponderance of the evidence.

What the prosecutor claimed as a lust for undeserved money is just articulated here, it has not been verified with any evidence. No evidence about the lust for undeserved money has been presented. So, this motive could not be taken as an alleged reason for strengthening the verdict, it must be excluded from the context of the verdict.

#### ***Extract 5, Lawyer-in-Defense Closing Arguments***

The second strategy was to falsify the utterance to claim that it was untrue and therefore did not support the legal frame. An example of this occurred in the pursuance of a criminal agreement, together with others story in which the prosecution presented the crime story in the voice of the legal frame, article 84/1/D.<sup>4</sup> The defense lawyer then claimed the story must be not acceptable. The defense lawyer argued that the violation of the crime that the prosecution has raised as per article 84/1/D may be applicable to only those groups organized deliberately to commit crime. The relationship between the two defendants was just the manager and the worker (...as has been testified the first defendant is the owner and the second defendant is a worker).

Secondly, to the claim that this was done in coordination manner is not acceptable as has been testified the first defendant is the owner and the second defendant is the worker. Other than this, there is no coordination between the

two, what the prosecution has raised may be applicable to only those groups organized deliberately to commit crime but it does not reflect the relationship between the two defendants. There is no coordination, meant, to commit crime which has been confirmed in this court. So, this motive cannot be used as an alleged reason to increase the penalty.

***Extract 6, Lawyer-in-Defense Closing Arguments***

So, in the above extract, he entirely discredited the given motive that it could not be used as an alleged reason to increase the penalty. All the prosecution's criminals are made with the ultimate destination of rendering judgment which would either be conviction or acquittal. In other words, the accused would be convicted if the evidences produced by the prosecutor convinced the court (judge) to the extent of the required degree that the accused committed the alleged crime and his evidence, if any, could not rebut such evidences and affects the court's conviction. On the other hand, is the defense lawyer evidence produced by the accused can falsify the evidence of the prosecution or at least shad a reasonable doubt, the court must decide for the acquittal of the accused and be released from prison if had been in custody. It is one of the responsibilities of a judge to give reason for any of its decisions (Aderajew & Kedir, 2009:26).

In the above spoken genre, section 1, the judge's summing-up was started by describing the figure of the defendant within normative categories. The description was based upon the inner and outer voices that were presented to him by the witnesses of both parties. According to the pragmatic concept of language use, these inner and outer voices (which are in the background of the legal battle between the two contesting parties) are interpreted in the social framework (in this case, the framework of the legal discourse) as generalizations or stereotypes building a view of the world and a system of evaluative priorities.

For this reason, I firstly present the voices presented before the judge by the opposing parties. There was no question, in this case, that the defense lawyer performed the deeds defined by the law as "violating the improved VAT proclamation No. 169/1, article 56 and 22/4 and VAT proclamation No. 285/94, article 22/1",<sup>5</sup> and "violating the improved VAT payer proclamation No. 609/1 article 50/6/A/2, and VAT proclamation No. 285/94, article 55<sup>6</sup> in support of the first defendant" in order to obtain an unjustifiable enrichment by claiming what one is not entitled.

In view of that, the defense lawyer argued that although the defendants performed the deeds ascribed to them in the indictment, they did not do it on purpose (This is because; these defendants have no knowledge to issue

hand-written receipt in the presence of cash register machine, in complete ignorance, extract 7). The defense lawyer argued, in legal terms, article 81/3, that “they don’t have the knowledge that they should issue VAT receipt” – i.e. without any criminal state of mind but with the (either mistakenly or in complete ignorance) belief that they did not issue the VAT receipt.

As Johnson’s (2006) claims of interactional hybridity with an analysis of the closing arguments, the following extracts, extract 7 and 8, intertextually linked the defense lawyer talk (spoken genre) with the improved Ethiopian criminal law of 2005, article 81/3 (written genre legal statutes). In extract 7, which on the surface sums up the content of legal statutes concerning an alleged ignorance of law and starts to bring it to a close, a number of lexical items are highlighted in bold. These lexical items link the talk (extract 8) intertextually with the Ignorance of Law article 81/3 (extract 7), which imposes no punishment in the circumstances where the criminal intent is not apparent. In the process of reading the extract from the article 81/3 (extract 7), note the words in bold and bear them in mind as you read extract 8 that follows it.

According to the improved Ethiopian criminal law of 2005, article 81/3 claims that “In exceptional cases of **absolute** and justifiable **ignorance** and good faith and where criminal intent is not apparent, the Court may **impose no punishment**” (Ethiopian criminal Code, 2005:34).

***Extract 7, Article 81/3: Mistake of Law and Ignorance of Law***

If this is impossible, I appeal for another alternative based on the Criminal Law No. 81/3 to acquit these defendants free of punishment.

**J:**<sup>7</sup> interfered (Criminal Law, Article?)

**A:**<sup>8</sup> Criminal Law, Article 81/3, I appeal they should be acquitted based on this article. This is because; these defendants have no knowledge to issue hand-written receipt in the presence of cash register machine, in complete ignorance. I would like to note The Honor Court that we have been indicted on the VAT receipt, in the presence of cash register machine suing that “you didn’t issue hand written VAT receipt.” Therefore, in the presence of cash register machine, we are not obliged to issue VAT receipt [the law didn’t.....]

**J:** [That is it, VAT receipt to be issued in cash register machine, is not issued]

**A:** The indictment provided is, The Honor Court can recheck it, the hand-written VAT receipt, in the presence of cash register machine, we are not enforced to issue VAT receipt.

- J:** Since they use “cash register”, didn’t it mean they didn’t issue that receipt [this means...]
- A:** [The indictment was not this], The Honor Court, the indictment can be rechecked
- J:** Ok...
- A:** The indictment says, “You didn’t issue the VAT receipt.”
- J:** Of course, the VAT was not issued.
- A:** Yes
- J:** Ihi...
- A:** Depending on this, we would like to comment on, The Honor Court can recheck it, the actual indictment that the VAT receipt, I can read it. Shall I read it? The Honor Court, “Their indictment is...”
- J:** Leave that, look, now in the presence of cash register machine; why [not] the hand written VAT receipt was issued?
- A:** [Yes, yes] I mean, our intention is based on the Criminal Law No. 81/3, “Absolute Ignorance”. The receipt, ee..., to mean, in the presence of cash register machine, the intention was that, ‘it was not obligatory to issue VAT receipt and in the presence of cash register machine, they don’t have the knowledge that, they should issue VAT receipt.
- J:** Have they issued that machine VAT receipt?
- A:** They?
- J:** Yes.
- A:** They were caught when they were on the process of issuing the machine VAT receipt.

### ***Extract 8, Lawyer-in-Defense Closing Arguments***

A comparison of the two reveals the inbuilt generic hybridity present in any of the legal genres of Ethiopian criminal courts. On the surface, the spoken genre in extract 8 appears to be summing up the closing phase of the argument. So as to appeal for the defendant’s discharge, he delicately incorporated the legislative genre (extract 7) within it. The effect is to produce a complex and powerful set of communicative actions that create interpretative challenges for the addressee participant in the talk as well as other courtroom partaker.

In this regard, the defense lawyer presented a variety of ideological standpoints that were meant to evaluate the behaviour of the defendants using inbuilt generic hybridity of the legal genres. The attitudinal culture of Adama society is confronted with the defendant’s philosophy of life as presented in the two intertextually linked genres (extracts 9 and 10) below.

Article 191. – Suspension of Pronouncement of the Penalty; Suspended Sentence. When the criminal has no previous conviction and does not appear dangerous and where his crime is punishable with fine (Art. 90), compulsory labour (Arts. 103 and 104) or simple imprisonment for not more than three years (Art. 1 all be entered when a criminal is placed on probation and does not break the conditions of his probation (p. 76) 06), the Court, after having convicted the criminal, may suspend sentence and place the criminal on probation, where it is of the opinion that such decision will lead to the reform of the criminal.

***Extract 9, Article 191: Suspension of Pronouncement of the Penalty***

My own view is that the defendants as per the allegation filed against them could be incarcerated from 1–2 years which is a verdict for minor crimes. Therefore, if these defendants are given only a decision of conviction, they can learn from it and this court before giving a sentence, before giving a sentence of any kind considering that the conviction itself can teach them, I politely appeal the court to make them free from any kinds of punishment and acquit them on probation per criminal law article 191. This is because as per criminal law article 191, if it is only to incarcerate in 3 years and above that the defendant cannot be acquitted on probation. Since the crime indictment of these defendants can fulfill this article’s standards, there is no means of any type that can protect them from using their rights of exoneration on probation. This is because there was no crime previously recorded on them; they can be considered as good behaved persons. Therefore, they can be thought as good mannered persons. So, since they complete this criminal law procedure as per criminal law 191, I politely demand The Honor Court to acquit these defendants as suspicion of penalty.

***Extract 10, Lawyer-in-Defense Closing Arguments***

As that of genre hybridity in extracts 7 and 8, the bolded lexical items were used to intertextually link the spoken genre, talk, (extract 9) with the written genre, Ethiopian legal statutes (extract 10).

The provision of the law according to which the defendants were indicted was: “violating the improved VAT payer, in order to obtain an unjustifiable enrichment by claiming what they are not entitled”. This was perceived as an offence of conduct “when the prohibited conduct was defined by the general linguistic terms ‘violate’, ‘unjustifiable enrichment’. This means that, in the given case, the words of the law do not suggest a closed list of actions, performances or nonperformance, serving as a definition of the offence.

In his attempts to persuade the judge to reduce the penalty of the defendants, the defense lawyer discusses the aims of the penal laws and the

legal standard of “the rational person” (criminal law article 191 (extract 9) and article 81/3 (extract 7)). The relevant aim of the penal laws is the issue of the suspension and place the criminal on probation pending that the decision will lead to the reform of the criminal. The defense lawyer argues that in this case the aim of criminal reform has been already achieved through some linguistic tactics: the defendants had learned their lesson (...they can learn from it) – they understood their mistakes and would not do it again (...the conviction itself can teach them...) (see extract 10 above).

In order to influence the judge to weaken the credibility of the prosecutor’s evidences provided to the defendants, the defense lawyer presents a picture of the emotional aspects of the defendants’ life, in their relationship with the members of their society. The lawyer suggests seeing in the personal circumstances of the defendants’ unique case in which circumstances neutralise the criminals’ character of the conduct (...no crime previously recorded .... good behaved persons...good mannered persons) (see extract 10 above).

According to the defense lawyer’s proposition, the non-criminality of the behavior derives from absence of criminal intent. There was no question, in this case, that subjectively the defendants did not have criminal intent (extract 7); however, absence of criminal intent should be proved objectively to this end. In other words, the defense lawyer had to show that a reasonable person in the circumstances of the defendants would have behaved as the defendants did.

As mentioned above, “the reasonable persons” do not refer to any specific persons. This is because every possible model of this concept is a polyphonic set-concept (Heffer, 2005): one lacking a clear determination of the list of features included in its definition. This raises the question of the characteristics to be taken into consideration in building the model of the reasonable person that will serve as a measuring-rod for judging the behavior of the defendants.

The defense lawyer portrays the defendants as one who acts according to a philosophy of life accepted among persons of his cultural background. He reflects a philosophy of life recommending a unique system of ideological and educational values and moral standards. What the prosecution called “they didn’t issue hand written VAT receipt in order to obtain an unjustifiable enrichment.” was, according to the defendant’s philosophy of life, educating them.

In order to present legal proof of absence of criminal intent, the defense lawyer is to show that a reasonable person in the circumstances of the defendants would behave as the defendants did. It is obvious, indeed, that any rea-



sonable person who regards not issuing hand written VAT receipt as a necessary means of absolute ignorance and (being intellectually-challenged) is incapable of realizing that his views are not accepted by society, would behave in the circumstances of the defendant as the defendant did.

Suggesting the application of a model of “the reasonable person” (Heffer, 2005) which is similar in the characterization of his behavior and his traits to the defendant reflects the attitude of the defense lawyer to the defendants as corresponding to the model of the “ultimate narrator (Heffer, 2005). The lawyer admits that the law should reflect and build the life norms prevailing in society; however, at the same time he points out that the court should acquit these defendants as suspension of penalty (for example, there was no crime previously recorded on them, they can be considered as good behaved persons). Therefore, they can be thought as good mannered persons. So, they complete this criminal law procedure as per criminal law 191 to be acquitted on probation.

## **Conclusions**

There is a widespread belief in the civil court trial that legal professionals contextually relate their spoken texts with their respective written legal statutes in their summing and closing statements. However, little or no empirical research has justified how this belief is also be applicable in criminal court trials. Although there might be a range of factors that may influence the final decision of the judge, this study provides initial verification that legal professionals strategic functional hybridity of their spoken texts with the written ones, as employed in judge’s summing up (also relating evidences of both opposing parties to one another) and lawyers’ closing arguments influence the judge’s final verdicts either to aggravate or mitigate the verdict.

The findings suggest that the judge advocates the effectiveness of his presentations by structuring his summing up around a relational structuring model explicating the alleged crimes, and relating how those crimes violate the legal law. Similarly, the closing arguments of the two opposing lawyers maximize the effectiveness of their presentations by structuring their arguments around a legal-expository format, delineating the written legal elements and judicial instructions that govern the case, and interpreting how the spoken genre meets these criteria when employed by the prosecution or fails to meet these criteria when employed by the defense. In this manner, it is identified that the effectiveness of the judge’s summing up and lawyer’s

closing arguments were determined by the extent to which the spoken and their respective written legal law genres are intertextually linked one another.

Therefore, it seems that legal professionals should not feel compelled to pursue the storytelling fashion and structure all presentations narratively. So, it is found useful to evaluate the presentation's purpose and employ functional hybridity that maximizes the effectiveness of the arguments and final judgment.

## NOTES

<sup>1</sup> **Afan Oromo** is a language that has the largest speakers in Ethiopia where about 35 million speak it as a mother tongue (L1) and about 3 million as a second language (L2), and a courtroom language in Oromia Regional State.

<sup>2</sup> Article 84/1/A – General Aggravating Circumstances. (1) The Court shall increase the penalty as provided by law (Art. 183) in the following cases: (a) when the criminal acted with treachery, with perfidy, with a base motive such as envy, hatred, greed, with a deliberate intent to injure or do wrong, or with special perversity or cruelty.

<sup>3</sup> Article 183 (Ordinary Aggravation): In general cases of aggravation provided by law (Art. 84) the Court shall determine the penalty without going beyond the maximum limit of the penalty specified in the relevant provision of the Special Part of this Code, taking into account the nature and the multiplicity of grounds of aggravation, as well as the degree of guilt of the criminal (p. 72).

<sup>4</sup> Article 84/1/D (General Aggravating Circumstances): (1) The Court shall increase the penalty as provided by law (Art. 183) in the following cases: (d) when he acted in pursuance of a criminal agreement, together with others or as a member of a gang organized to commit crimes and, more particularly, as chief, organizer or ringleader. (p. 35).

<sup>5</sup> VAT proclamation No. 285/94, article 22/1, Tax Invoices: 1) Except as otherwise provided in Sub-Articles (6) and (7) of this Article, a person registered for VAT that carries out a taxable transaction is required to issue a VAT invoice to the person who receives the goods or services.

<sup>6</sup> Ethiopian Proclamation No. 285/2002: Value Added Tax (VAT) Proclamation No. 285/94 (1994 E.C.), article 55 (Aiding or Abetting): A person who aids, abets, incites, or conspires with another person to commit a violation of this Proclamation also commits a violation of this proclamation. That person may be subject to prosecution and, on conviction, to a fine and imprisonment, not in excess of the amount of fine or period of imprisonment provided for the offence aided or abetted (p. 1863).

<sup>7</sup> 'J' represents 'Judge'.

<sup>8</sup> 'A' represents an Afan Oromo term 'Abukaato' which is 'Defense lawyer' in English.

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