

Trial Hearing
WITNESS: CAR-D22-P-0004

(Open Session)

ICC-01/05-01/13

1 International Criminal Court
2 Trial Chamber VII - Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba,
5 Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido - ICC-01/05-01/13
6 Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut and
7 Judge Raul Pangalangan
8 Trial Hearing
9 Tuesday, 15 March 2016
10 (The hearing starts in open session at 9.30 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 PRESIDING JUDGE SCHMITT: Good morning, everybody. Could the officer please call
14 the case.
15 THE COURT OFFICER: (Interpretation) Good morning. Yes, your Honour. Situation in
16 the Central African Republic in the case of The Prosecutor versus Jean-Pierre Bemba Gombo,
17 Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse
18 Arido, in the case reference ICC-01/05-01/13.
19 We are in open session.
20 PRESIDING JUDGE SCHMITT: Thank you very much. Now I ask for the appearances of
21 the parties. We start, like always, with the Prosecution.
22 MR VANDERPUYE: Good morning, Mr President, your Honours. Good morning,
23 everyone. Today the Prosecution is represented by Sylvie Wakchom, seated to my left;
24 Sylvie Vidinha, seated to her left; Marina Zagar seated behind Ms Vidinha. I'm Kweku
25 Vanderpuye. Good morning.

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1 PRESIDING JUDGE SCHMITT: Good morning.

2 And now for the Defence teams, please.

3 MR DJUNGA: (Interpretation) Good morning, your Honour. Good morning your
4 Honours. The Defence of Aimé Kilolo is assured by Madam Lueka Grogga; Rosalie Mbengue,
5 case manager; Steven Powles; and myself, Paul Djunga.

6 PRESIDING JUDGE SCHMITT: Thank you.

7 MS LYONS: Good morning, your Honours. The Defence of Mr Arido today is represented
8 by Chief Charles Taku, lead counsel; myself, Beth Lyons, associate counsel; and we also have
9 two case managers here, Mr Tibor Bajnovic and Kiel Walker; and lastly, Tharcisse Gatarama,
10 legal assistant; and our client, Mr Narcisse Arido.

11 PRESIDING JUDGE SCHMITT: Thank you very much.

12 Mr Kilenda.

13 MR KILENDA: (Interpretation) Good morning, your Honour. Good morning, your
14 Honours. Maître Azama Shalie Rodoma, co-counsel, will be here this morning for the main
15 examination of the witness. The other members of the team, Coralie Klipfel and Lucile
16 Paupard; and Adriana-Marie Manolescu is our case manager; legal assistant Bokolombe, who
17 is behind Fidèle Babala; and myself, Jean-Pierre Kilenda Kakengi Basila. I am the lead
18 counsel.

19 MR GOSNELL: Good morning, Mr President, your Honours. I'm a little bit closer to you
20 today. My name is Christopher Gosnell, representing Jean-Jacques Mangenda, who is
21 behind me; and I'm joined today by Maître Arthur Vercken and Rita Yip. Thank you,
22 Mr President.

23 PRESIDING JUDGE SCHMITT: Thank you.

24 MS TAYLOR: Good morning, Mr President, your Honours. Melinda Taylor, appearing on
25 behalf of Jean-Pierre Bemba together with Ms Natacha Lebaindre. Thank you.

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1 PRESIDING JUDGE SCHMITT: Thank you very much.

2 The Chamber turns now to the upcoming testimony of Witness D22-4. This is

3 Professor Jean Kambayi Bwatshia.

4 Professor Bwatshia, do I pronounce your name correctly first? Because I do want to
5 address you in a correct manner.

6 WITNESS: CAR-D22-P-0004

7 (The witness Speaks French)

8 THE WITNESS: (Interpretation) Indeed. I'm very pleased with that.

9 PRESIDING JUDGE SCHMITT: Thank you very much. You are supposed to testify
10 without any protective measures. So, in principle, it will not be necessary to go into private
11 session for your testimony. But if anybody of the parties, the questioning parties or yourself
12 have doubts, you can raise this question.

13 Mr Bwatshia, you are going to testify before the International Criminal Court. You
14 are well aware of that. On behalf of the Chamber, I would like to welcome you to
15 the courtroom.

16 THE WITNESS: (Interpretation) Thank you very much.

17 PRESIDING JUDGE SCHMITT: This Chamber has been established to try the case of the
18 Prosecutor against Mr Jean-Pierre Bemba Gombo and others. You are called to testify to
19 assist us in our search for the truth. There is a card in front of you, Mr Bwatshia, with the
20 solemn undertaking to tell the truth. Could you please read out this card aloud.

21 THE WITNESS: (Interpretation) Shall I stand up or sitting down?

22 PRESIDING JUDGE SCHMITT: You can remain seated.

23 THE WITNESS: (Interpretation) Solemn undertaking. I solemnly declare that I will tell
24 the truth, the whole truth, and nothing but the truth. Thank you.

25 PRESIDING JUDGE SCHMITT: Thank you, Professor Bwatshia. And now a few practical

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1 matters you should have in mind when giving your testimony. Everything we say here in
2 the courtroom is written down and interpreted into English and French, you know that, and it
3 is, therefore, important to speak clearly and to speak at a moderate or rather slow pace. We
4 want to make sure that your words can be well understood by the interpreters and then, of
5 course, also by the rest of us.

6 Please speak into the microphone and only start speaking when the person asking
7 you the question has finished to allow for the -- is there a problem with the
8 interpretation?

9 THE WITNESS: (Interpretation) No. It's very good.

10 PRESIDING JUDGE SCHMITT: I recommend to you when the lawyer asked -- has asked his
11 or her question, please count in your head to three, and only then give your answer.
12 If you have any questions yourself, raise your hand so we know that you wish to say
13 something. We will then give you the word.

14 Have you understood all that, Professor Bwatshia?

15 THE WITNESS: (Interpretation) Indeed.

16 PRESIDING JUDGE SCHMITT: Thank you very much. We will then start your testimony.
17 The Defence of Mr Babala, you have the floor. And I assume that you want to submit the
18 report to, perhaps, facilitate matters a little bit.

19 MR RODOMA: (Interpretation) Indeed, your Honour.

20 PRESIDING JUDGE SCHMITT: Very well. Then the document that we all know of, the
21 report of Mr Bwatshia, is formally submitted. You can continue then with your examination.
22 Perhaps you can bear in mind that not everything that the report contains has to be addressed
23 in examination since it has been formally submitted. So you have the floor.

24 MR RODOMA: (Interpretation) Thank you very much, your Honour. Your Honour.

25 Before starting with my examination, I would like to go back to the protection measures that

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1 you spoke about.

2 I would propose under your authority, because you are responsible for the hearing, to
3 go into closed session occasionally; rather than doing that, I would propose the
4 following scenario: That we remain in open session, that the report, because I'll just
5 refer to the report, which has been passed on confidentially; and where I refer to this
6 report, this report is not broadcast to the public but only the parties present in the
7 courtroom. And that means we won't have to go into private session occasionally.

8 PRESIDING JUDGE SCHMITT: Any comments by the Prosecution on that?

9 MR VANDERPUYE: Mr President, I've read the report. I don't see anything in the report
10 that requires that we go into private session. However, if my colleague has a specific
11 application, I think it's appropriate that we hear it at that time in order for the Chamber to
12 render an informed decision. But on its face, I don't see that there is any reason for it.

13 PRESIDING JUDGE SCHMITT: To be honest, I agree with the Prosecutor. I also have read,
14 of course, the report. And from the outset, I don't see any issue that would force us to go
15 into closed session. But if the problem really arises specifically, you could address us again.
16 So, please, we continue in open session.

17 MR RODOMA: (Interpretation) Thank you very much.

18 QUESTIONED BY MR RODOMA:

19 Q. Good morning, Witness.

20 A. Good morning.

21 Q. Before anything else, I have to say that it's a great pleasure to see you here today. I
22 hope that you had a good trip and that you are well.

23 A. I am.

24 Q. You know since our last meeting in Kinshasa, I am the lawyer for Mr Fidèle Babala
25 Wandu, who is behind me, and within this Defence team. We met in Kinshasa. I was

1 accompanied by one of our case managers, Antoine Robert. And to give the information, the
2 information correctly and the structure, I have proposed that we will divide up the
3 examination into two parts.

4 Now, the first we'll go into your education and your professional experience, and the
5 second part will go into the report itself, and it will have two sections.

6 Now, the first section that I would call the methodology that you've used as well as
7 the sources that you have made use of, and the last part will go into your report in
8 itself, the substantive aspects thereof. Is that okay?

9 A. It is, counsel.

10 Q. Thank you, Professor. Now I would like, before going into my examination on your
11 education and professional experience, I would like to ask you, Professor, if you could just
12 answer the questions that are put to you in a concise and precise way to make it possible to
13 meet our time frame that we have and in order to answer the questions.

14 A. Thank you.

15 Q. Thank you. Now, my first question is as follows, witness: Could you tell us your full
16 name for the court record?

17 A. I am Kambayi Bwatshia. I am a professor at the University of Kinshasa and in
18 particularly at the National Pedagogical University. I am a historian, and I am specialized in
19 the history of mentalities. And I have a Ph.D. in history at the University of Montreal. And
20 I am married. I have three children. I teach contemporary European history and
21 particularly the history of mentality, sir; and at the same time, the courses of philosophy and
22 history as well. I also work in different universities, the Académie des Beaux-Arts, where I
23 give the course on the psychology of arts and Pedagogue of arts. What else do I do? I also
24 teach. I've been teaching for 30 years. I am a titled professor. I have a chair in history.
25 And what else? What other information do you need? Is that okay?

1 Q. Thank you very much, Professor Kambayi. Just a question with regards to your
2 teaching. When you say that you teach, could you give the name of the information or
3 institutions at which you teach?

4 A. Well, at the Nationale Pédagogical University where I give critical history teaching, also
5 the history of mentalities, Contemporary European history. And I'm also the professor of
6 pédagogique and art psychology at the Academy des Beaux-Arts, fine arts, and I also aid in
7 knowledge building within my country at the University of Bakongo, at the University of
8 Mbuji-Mayi, and sometimes I'm called to Marien Ngouabi, the superior school in Brazzaville
9 as well in order to give courses there.

10 Q. So you've anticipated one of the questions I was going to put to you. I was going to ask
11 you about your qualifications, and I think that you have answered that with relevant
12 information, but I would also like to know if you could tell us how many years of experience
13 you have?

14 A. Well, if I take the experience that I have since I was having internships, I would say
15 more or less 30 years of teaching experience in higher education and at university level in the
16 Republic of Congo.

17 Q. Professor Kambayi, I note that you have an enormous amount of education and
18 qualifications. My question is with all these qualifications and with all the vast experience
19 that you have, have you ever drafted a report which has been used before a national or
20 international court?

21 A. Before an international court, yes. National, no. International, that is to say when I
22 came here, if my memory serves me well, three years ago, approximately, to the International
23 Criminal Court in order to speak about the issue of name attribution in the Democratic
24 Republic of Congo. And that was the time of the Thomas Lubanga case, I think. That's it.

25 Q. Very briefly, could you describe what this report consists of?

1 A. It was a matter of explaining to the Court, of course to persons who do not know the
2 languages and culture of Africa when it comes to attributing names in Africa, in Central
3 Africa and particularly the Congo, to explain the fundamental aspects and the basis of these
4 names because the way in which somebody is attributed a name or somebody is baptized in
5 Africa, that's different to the way in which it is done in Europe, and by consequence, the
6 cultures are different. When you don't know the culture of others, it's very difficult. And
7 that's the reason why I came to the High Court, to explain that and to facilitate the
8 understanding of the pedagogical aspects, the methodology of name attribution in Africa.

9 Q. You've referred to the issue of names. Now, this doesn't concern us here currently in
10 your report, but very briefly, would it be possible to explain the way that people proceed
11 when it comes to attributing names and in the Democratic Republic of Congo?

12 A. Well, names in Africa, this concerns the history of the person who will bear that name.
13 Now, if in the West the name is perpetuated throughout the family, in Africa things are very
14 different. Somebody who is called Bwatshia will be given the name Bwatshia because his
15 father wants this name to symbolise, this is my experience and my example, Bwatshia, that is
16 two words, Bwa tshia. The Bwa, that means the light which takes away the darkness where
17 the light. And tshia, that means it will be day. And Bwatshia, that means the dawn, if you
18 like.

19 So my family wanted me -- well, I was in the family, so they call me Koho. And
20 Kambayi, once again, Ka, that is -- bayi, and that means to speak, ba amba speak.
21 And if you ajoute amba, that means go and tell them that the night is finished.

22 So if you take a name, somebody will have a name, for example, Mongulu and
23 Mouyanzi. Now Mongul, that's two words, Mon gul, and this is a person who has
24 had this name, ulu, and this means the door. And you would say, well, why are you
25 giving that to a person? And you say no, this is a name which is made positive

1 because in that family, you suppose that in that family there are a lot of children who
2 die, and now in order to make it such that the witches do not come back and eat up
3 the children as it were, then you tell the witch, well, take the door. And so they give
4 the name Mongulu to prevent that the witches come and take that child. And in that
5 sense, the philosophy, the axiological and anthropological and ontological nature of it
6 means that somebody can have such names.

7 Zambi, for example. Vula is another name. And why? Because he came at the
8 time when it was raining, and it means rain.

9 The son of Bwatshia doesn't automatically have the name of Bwatshia. But if he was
10 born by the river, then he would be called Bwatu, which is a pirogue, and that's a boat.
11 And so this is what's done in Congo in Central Africa, and that's the way it's done.

12 Q. Thank you very much, Professor. Professor, we all know that you are on the list of
13 experts of the International Criminal Court.

14 A. Yes.

15 Q. And I don't think I'm mistaken when I say that you know that when you are called to
16 testify in a case as an expert, there are different ways in which you can be asked to come and
17 testify. You can be invited as an expert by the Chamber for the Chamber, or you can be an
18 expert called for the Prosecution, the Office of the Prosecutor to testify for the Office of the
19 Prosecutor, or you can be called by the Defence as is the case today.

20 So my question is: When you testified in the Lubanga case, who asked you?

21 A. The Prosecutor I think.

22 Q. The Prosecutor. But apart from the Lubanga case that you testified in and you spoke to
23 us about that, the communication and the aspects related to the Democratic Republic of the
24 Congo, in this case, is this a second time that you are testifying?

25 A. Yes.

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1 Q. Did either the Prosecution or the Chamber ask you to testify in a different case, apart
2 from Lubanga?

3 A. No. That's the second time that I've been to The Hague, at least to my knowledge.

4 Q. Thank you. Now, you are on the list of experts with the International Criminal Court.
5 And I have a question, which is to know what motivation you have and what caused you to
6 want to be placed on this list?

7 A. Well, there are the Court, in the first case the Court I suppose was trying to be informed
8 about the issue of name attribution. And having presented my report, I suppose that the
9 Court found that it could be interesting for me to give my expertise as an expert, that I could
10 be contacted when they needed to know about a specific subject. And I didn't imagine that
11 one day the members of the Court would look at the list firstly in the Lubanga case and say
12 Mr Kambayi could come and come as an expert. And I was put on the list of experts.
13 And that is how the Babala case came. And somebody said we're going to call upon
14 that person. And why have they called me? Well, I think it was because I was the
15 person who was shown to have this competence on the list. And anyway that's why
16 I got onto the list of experts. Being quite sincere, I didn't ask that I become an expert,
17 but I'm not unhappy that I have become an expert.

18 Q. Thank you very much, Professor.

19 Now, we have heard half an hour ago at the time I was asking you several questions
20 about your qualifications and experience, you referred to your university training, to
21 your writings with regards to sociology and the history of mentalities, is that correct?

22 A. Yes.

23 Q. Now, when you take the list of experts who are listed for the International Criminal
24 Court here in The Hague, you see that you are an expert in sociology on this list, is that
25 correct?

1 A. You have to add in history of mentalities.

2 Q. Thank you very much. Another question is as follows, could you explain to us what
3 the link is, if there is a link, between history of mentalities and African solidarity?

4 A. Well, you know, dear counsel, mentality evokes representations. And as we all know,
5 the theory of representation leads to the culture. The culture is this place in which all
6 experiences are put into traditions within a society. Culture is this place where generation to
7 generation a people identifies with and the mentality based on the culture and the way in
8 which we see things in the Hermetic sense of the term.

9 We go further in Anglo-Saxon terms, they talk about the way of seeing things. Now,
10 in our languages, in our Bantu languages, Wa, to see, is tella. And now, now you
11 have mentality. Tella, see, that is the way in which people see things, the way
12 people conceive things and the way in which people decide to act.

13 So mentality, that goes alongside with tradition, and that is situated in the society.

14 And in order to know it and understand it, you have to be quite vigilant in sociology
15 and like psychology, like philosophy as well.

16 Now, somebody who wants to know the evolution of decisions that were taken as a
17 people or a head of state or a president or a director, decisions that somebody can
18 take in their life, you have to consider that this decision comes from a particular
19 mentality. You can't just say I'm going to do this, I'm going to do that. No. That
20 goes along with it. You have to say that if this event occurred, it came from a
21 representation of the society.

22 Now, a society is represented and that is situated within a culture, and this is a
23 societal culture, and that traditionally is transmitted from generation to generation
24 given that the tradition is very dynamic and it evolves as well. So sociology,
25 psychology, culture and mentality all go together.

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1 Q. Thank you very much.

2 Your Honour, with your leave, I would propose that we now go into the report so I
3 may examine the two sections as were presented at the start of the examination. I
4 spoke about the methodology that was used before going to the substantive parts of
5 the report.

6 Your Honour, with your leave, could I ask you if you were to show on the screen the
7 report of Kambayi Bwatshia, Professor Kambayi Bwatshia, CAR-D22-0024-0071.

8 And this was disclosed to all my colleagues as well as yourselves -- D22-0004-0007.

9 PRESIDING JUDGE SCHMITT: It will take a moment, but we will do that. Thank you.
10 You can continue now.

11 MR RODOMA: (Interpretation) Thank you very much, your Honour.

12 Q. Professor Kambayi, if I may?

13 A. Of course you can, counsel.

14 Q. You have available the report, "De la solidarité Africaine," is that correct?

15 A. Thank you.

16 Q. Now I would like to ask you if you would be so kind to go to the last page of the report,
17 namely, page 7 thereof, page 7.

18 A. One moment, please. Number 7.

19 Q. At the bottom of the page it's indicated Kambayi Bwatshia and then there is a seal that's
20 put there. Do you recognize this signature?

21 A. That is my signature, yes.

22 Q. So you confirm that this is your report and this report is the authentic one that you
23 communicated to the parties?

24 A. I confirm that.

25 Q. Thank you. So I would ask you if possible, I would ask if possible if we could go to

1 page -- my question is as follows. I beg your pardon.

2 Now, you personally drafted this report. My question is this: Do you remember
3 the instructions that were given to you to prepare this report?

4 A. When?

5 Q. Now, when you were asked to draft the report, someone approached you I believe to
6 draft a report. So my question is this: Do you remember the exact instructions you were
7 given?

8 A. Yes, yes.

9 Q. Were these instructions oral or written down?

10 A. Orally. Now, I believe we did meet, sir, you and I. And you, you said in approximate
11 terms, well, you asked me if as a person who excels in this area if I could draft a report about
12 African solidarity, and I prepared the report. I sent it in.

13 And then the report -- well, a few changes were made so that it would be more in
14 keeping with what the Court had requested. I worked on the document further, and
15 in light of my experience, the fact that I've already appeared before the Court, and of
16 course I must admit I was guilty of the usual flaws of someone in my area, my report
17 was too long and I was asked to be more concise, and I boiled it down to nine points
18 essentially. And I do remember I was working to that.

19 Q. I believe I put my question poorly. Now, before we met, and that is not untrue, but
20 before we met, I believe you did receive instructions, you received some instructions because
21 it was only after you had received the instructions that we met in Kinshasa?

22 A. Oh, yes.

23 Q. That is what I was referring to, not about the meeting that we had in Kinshasa.
24 I'm just asking you this. Now, you were asked to prepare this report. You were
25 given some instructions. And then my third question, and I will be getting to this

1 point in a few moments, were the documents sufficient for you to draft your report in
2 an objective fashion?

3 A. Allow me to say that -- well, I don't have all my files here. But to be properly guided, I
4 did receive instructions by email and I was asked to discuss African solidarity. And as I was
5 drafting, I was given more clear instructions from the counsel in question, and I was able to be
6 more specific in my thoughts because, you see, I had been asked to give more -- a more
7 targeted or more specific reply.

8 Q. So I think you have answered my question and I believe you said -- well, I was asking
9 you whether it was a written request or oral instructions, and you just mentioned that you
10 received emails with instructions. Thank you for that reply.

11 Now, did you think that the instructions given to you by the Defence fell within your
12 area of expertise?

13 A. Yes, I can confirm that. That is why I enjoyed drafting this report. It really was a
14 good assignment in light of my way of seeing things, my work. I was quite pleased to
15 discuss African solidarity.

16 Q. Now, exactly why do you say that this falls within your area of expertise?

17 A. Well, my area is the history of mentalities. And as a university professor, I have
18 learned to observe society and why is it that some people or some groups of people act in a
19 particular manner? I said to myself, now, why is it that we must come to a particular
20 conclusion?

21 Now, someone who is not familiar with my culture, who comes from another culture,
22 can that person judge me or re-judge me on my behaviour? So this has been a
23 question that has been out there for a long time.

24 I have travelled in Europe. And when, for example, a person makes a very serious
25 decision, would an African person be able to come in and say, well, that is a good way

1 of proceeding or a bad way of proceeding. So that was the issue that was of my
2 concern. And I wanted to shed light on African society. And I think we have to be
3 very careful before we draw any conclusions.

4 Q. Thank you, Professor. Now, the instructions that were given to you, did they guide
5 you in any particular direction? Did you come to --

6 A. No, no, no, no. What you find in my report comes from my own experience. This
7 report contains knowledge that I have acquired, what I have truly acquired about African
8 society. Now, no one can claim that they told me to write my report in a particular way or to
9 come to any particular conclusions. I drafted my report and I believe that my conclusions
10 can be verified in the field.

11 Now, someone who might wish to explore these issues in greater depth may find the
12 report to be useful for their own work.

13 Q. Do you remember any items or pieces of evidence or documents, anything like that?

14 A. What do you mean by items or evidentiary --

15 THE INTERPRETER: Overlapping speakers.

16 MR RODOMA: (Interpretation)

17 Q. When you received the instructions you were given, you just told us, you just told the
18 Chamber that the instructions did not lead you to draft your expert report in any particular
19 way and that you drafted your report in a very objective manner.

20 Now, my question is this: When you received the instructions and when you asked
21 yourself whether you could prepare such a report in this area -- now, you were sent
22 an email you say. What do you remember in addition to the email? Were you
23 given any other documents?

24 A. Other documents, no. I did a number of interviews. I consulted my own documents.
25 I ran some experiments. And I looked at society as it works, as it operates, and I began to

1 draft the report hoping that it would be in keeping with what the requesters had asked for.

2 So there you have it.

3 Q. Now if I could turn to the methodology that you used to draft your expert report. So
4 you say that you received instructions to draft the report?

5 A. Yes.

6 Q. And you did your research and you just told the Chamber that you gave an account of
7 what you knew and what activities you engaged in. Now, what method of analysis did you
8 use?

9 A. As is the case with any piece of practical and scientific work, one begins with a historical
10 approach, the historical method. And this method is based on direct observation. I was of
11 the opinion that the correct method and the method in of itself is a path, a path to be followed.
12 And this path is not something that someone from outside indicates to you. It's not a
13 question of someone else showing you which path or direction to take.

14 So it's a very, in a way, it's a subjective approach. And I began to write, and I myself
15 was the first source of documentation, so to speak. I tried to determine whether
16 people had worked on these issues, and I began to compile documents.

17 Other than documents, I also decided that I would take a particular path, historical
18 criticism, that is, authenticity, for instance, that was the second path that I decided to
19 explore. And this second path led me to prepare the general canvas of my report,
20 not really a structure, but at least a canvas. I then moved on to explore the meaning
21 of various words, for example, "solidarity," "duty."

22 I also prepared a file with the specific aspects of solidarity, one file having to do with
23 an important point, the conclusions, the evolution of African solidarity, and then a file
24 regarding the functioning.

25 And in this case now, if someone who doesn't know how a culture works, can that

1 person come to a conclusion about the culture and gradually, like a photographer
2 who gradually develops his print, I saw the photograph emerge from my mind and
3 then I prepared the actual structure of my report, and gradually I realised how I
4 would be able to prepare a rather robust file, so to speak, and then, you see, I was
5 given these instructions to be more concise.

6 After that there was, well, a debate, so to speak, which ultimately led to the plan, the
7 structure of my report.

8 Q. So you were able to gather specific and exhaustive information?

9 A. Yes.

10 Q. As found in the report --

11 THE INTERPRETER: Overlapping speakers. Message from the interpreters: Could the
12 5-second rule please be respected?

13 MR RODOMA: (Interpretation)

14 Q. This is page 6 and 7 of the Professor's report. D22-004-0007, 0004-0013. Now, when
15 we look at the bibliography that is appended to the report and when we look at the various
16 documents that you consulted in order to draft the report, I notice that these are documents
17 from the field of anthropology. Now, were you able to define the modalities of action
18 required and come to objective --

19 A. Yes. The sources, you see, were already known by myself, when I teach, for example,
20 or when I write articles for publications and the like.

21 Now, when I worked on African solidarity, I went to a number of sources because I
22 knew which sources could provide me with a particular item of information. I wrote
23 a number of things about African culture in the Congo, for example, and I felt in a
24 position to describe the various phenomenon, death, the seasons, preservation of life,
25 mutual assistance. So it is easy for me to explain these issues, and I was in a position

1 to draw up a number of arguments.

2 Now, some sources are more important than others. And I would say that I was the
3 first source because I have excelled in this area. When it comes to just anthropology,
4 well, no, everything that has to with mankind becomes anthropology. Everything
5 that -- everything about society becomes part of sociology. And when we look at
6 man, mankind, this becomes mentalistic, psychological.

7 So it was thanks to my entire range of knowledge and my studies along with this
8 knowledge I was able to prepare my report.

9 Q. Thank you, Professor.

10 Your Honour, with your leave, I would suggest that we move on to the second part of
11 the examination-in-chief, which has to do with the substance of the report.

12 Now, for the purposes of the record, perhaps we could ask page 1 of the report to be
13 placed on the screen, CAR-D22-0004-0007, could that be displayed on the screen?

14 Professor, now at page 1 of this report, point II entitled "Duty of African solidarity, its
15 manifestations and expressions." Point number II within that section you wrote and
16 you said that African solidarity ensures an individual enjoys moral security, which
17 constitutes a group of assistance and cooperation, benefits which characterise the
18 experience of African societies?

19 A. Yes.

20 Q. What sort of forms does this assistance and cooperation take?

21 A. Well, to answer this question, we really have to look at African society in its entirety.
22 Now, you have read the report, counsel, and I think you realise that Africans live within a
23 context of interdependency. And I'm not talking just about an interdependency between
24 individuals but, rather, ontological, axiological, philosophical and even religious. So this
25 ensures that people or an individual within Africa within his society, well, it means that

1 others must provide for that person, provide moral security for that person.
2 Morality calls upon us, well, leads us to ethics. Ethics leads us to ways of being,
3 ways of doing, cooperating with others, and at the same time the solidarity means
4 benefits, provisions. But, you see, morality and ethics ensure that all of society can
5 operate smoothly.

6 Now, if within European -- correction, of African society anyone, if an individual
7 operates outside of that framework of moral security, that individual is not social, is
8 not part of society. That person must be expelled, excommunicated. So, you see,
9 this moral security allows for people to live within the African society because, you
10 see, this morality exists. So there is a connection between the society and the
11 individual and in the other direction.

12 Q. Thank you. Now, within the same section, section II, point 5, I quote, "Moral security is
13 underpinned by ideals that have been acquired and agreed to over the course of generations.
14 And this includes, these ideals include, for example, communitary solidarity." So what are
15 these ideals that undermined?

16 A. As we just said, how can one be within a society? Unfortunately, you see, counsel,
17 these things are explained in French. How do we explain this notion of community
18 solidarity without perpetration of ideals?

19 Ideals allow us to build society, to construct society. And these ideals which
20 becomes virtues ultimately are transmitted from one generation to another, from
21 father to son. That's how it would be put in French, from father to son. We can also
22 say from generation to generation.

23 These ideals, for example, the sense of sharing, an African person who does not share,
24 such a person is thought of as a thug, someone who lives outside of the general
25 framework of law and morality, an African person who does not respect the code of

1 his society, that person is not African, is not Fulbé, is not Bantu, is not Dioula.

2 Whatever the ethnicity, that person, you see, is just -- these are virtues that allow
3 society to continue and allow society to operate harmoniously. These values are
4 passed down generation to generation, you know, by word of mouth within the oral
5 tradition.

6 But, you see, a society that does not have a heritage, that -- and if we, when we look at
7 the concept of motherland, this leads us to the notion of being patriotic. And we can
8 look at this in university terms, in academic terms. This is a deeper level of analysis,
9 and this is not necessarily something you learn at university. I'm talking about
10 traditions that are handed down from one generation to another. And, you see, if
11 these values are not handed down, the society in question disappears because the
12 society no longer has any moral guideposts.

13 Q. You mentioned a number of ideals, including the ideal of sharing. My question is as
14 follows: So the term "community solidarity," is this a reference to -- is this sense stronger
15 when two Africans are within the same group, be it the same religious group or another
16 group?

17 A. Now, sir, so that you understand properly, first of all, I would like to say this. One
18 must explain to those who speak a language other than French -- now, this brings us to the
19 notion of hospitality, and this is quite different from hostility, and both words have the same
20 origin. "Hospitality" means that a person is obliged to welcome others, to welcome others.
21 And in our languages in Africa, it means more than just entertaining someone. It is a
22 broader concept.

23 So now the person coming towards me, is that person a friend or an enemy?

24 This also brings us to the word "conviviality, assistance, mutual assistance," these are
25 all words that are reflective of harmony within society.

1 Now, this community solidarity cannot be conceived of. You see, someone within
2 our society who does not follow these values is thought of as a person who acts in bad
3 faith, someone who -- a person must base his actions on virtues. Now, if ever the
4 person comes is hostile, when someone finds himself in a sad situation or a difficult
5 situation, you don't even ask yourself the question: Why did this happen to this
6 person? No. Spontaneously one first goes and helps and tries to help the person
7 deal with the problem, and then afterwards we see whether the person did something
8 wrong or not.

9 But the initial response is quite spontaneous, and it is one of solidarity, support. One
10 must support others when they are in difficulty. So this assistance, this mutual
11 assistance, this sociability, this spontaneity, an African person, whether you know the
12 person or not, when a person is having a hard time of it, you must say to yourself, my
13 brother is going through a tough time. Even if it is a more distant relative, you say,
14 my brother is having problems; I will go help him.

15 If you come across someone along your path, a stranger, the first thing, well, if that
16 person is an African, I have a duty to help this person, to give him some money
17 without expecting anything in return.

18 The person may go off, but one day he will say, yes, you saved me from that situation.
19 So, you see, a person wants to be tranquil with the living and with the dead because,
20 you see, for Africa people, when someone does not help another, that person is
21 thought of as being an outsider, not part of society, a sorcerer, and a sorcerer could
22 fall upon that person easily. They believe that. To what extent that is true, well,
23 that is another debate, is not?

24 Q. Thank you very much. I would now like to move on to page 2 of your report, we're
25 talking about CAR-D22-004-008.

1 Now, Professor Kambayi, on page 2 of your document at point III, we have a section
2 on the specific features of African solidarity, and there you refer to the movement of
3 material goods free of charge.

4 Now, my question is, when you mention a freedom from charge, does this mean that
5 people would actually pass on material belongings without any payment whatsoever?

6 And I'd like to know whether this can be reconciled with one's own personal
7 individual interest?

8 A. No, I don't think so. Let's imagine we're dealing with one's family. And, of course,
9 family is quite a large-ranging concept in Africa. There are terms, familial terms in French
10 that don't have an equivalent in Bantu. In fact, the word "family" doesn't have a simple
11 translation in a Bantu language. When it refers to one's brother, it's not so much a matter of a
12 clan or tribe or what have you or ethnic group as one might imagine in Europe, rather,
13 without even knowing the background of the person who is in difficulty, we're going to
14 immediately move to assist. We're not going to stop to think, well, what will he give me in
15 return?

16 Even the poorest will assist others without expecting anything in return. When one
17 assists, the person who is assisted is not in debt. Rather, one approaches the person
18 freely and says: My friend, you're in trouble. Let me help you. And even if the
19 other one suggests that something is drawn up on paper, you say no, no, we can look
20 at that or talk about that another time. This is an ideal of African society. The need
21 for spontaneity in assistance, circularity in assistance and, above all, placing the
22 person in the centre of one's considerations or of society's considerations.

23 There may be a situation where I have some interests where one -- where it's possible
24 to both -- to borrow and to lend. That is possible, of course, in Africa. But in Africa,
25 there's a -- traditionally one gives without intending to receive.

1 One might cast aspersions and say, well, you've done something wrong. But if the
2 person has based his action on a feeling of truth, then normally one would not expect
3 that he'd be punished.

4 In the Congo, we have had situations where kings have handed down punishments to
5 cut off a hand or what have you, but these things can be met with a lack of
6 understanding amongst African people if they feel that they have acted from a desire
7 to express the truth.

8 African solidarity involves affection, interdependence but also inter-subjectivity.

9 That is what leads people, individuals, in their acts.

10 Q. Thank you, Professor Kambayi. I'd like to stay with page 2 and point 3. You refer
11 amongst the features of African solidarity the feeling of embodying one's group and
12 considering oneself to be a valid representative of one's group. Could you tell us how this is
13 linked with other features of solidarity? For instance, would a person be considered as no
14 longer a member of their group if they fail to assist another individual?

15 A. Absolutely. And in African culture, that is legitimate. The awareness that one
16 embodies one's group is as follows: I note that I'm a member of a society, and I see myself
17 also as a symbol of that society, whether I'm a rich man or a poor man. I'm a manifestation
18 of my society. And if I do something wrong outside of my society, people won't say, "Oh,
19 Kambayi Bwatshia did something wrong." One is going to say, "Hey, a member of that
20 group has done something wrong." Therefore, the conduct of an individual who is a
21 member of a group outside of the group will always be considered a serious matter, and he
22 needs to be careful of his actions.

23 An individual will always take care and be aware of the fact he represents his group
24 and he's a representative of the values of that group, and he will do this and act on
25 this basis spontaneously.

1 There are various virtues, various ideals, and they're part of a whole. It's part of an
2 anthropological and axiological context. These matters have to be taken as a whole.
3 A person acts within a society, and that society is made up of individuals. He is an
4 individual in moral terms, and he has responsibilities vis-à-vis other individuals.
5 Society will take care of him and, therefore, he must also take care of other individual
6 members of society. That is how one should see African society; if not, then one is
7 really an outsider.

8 Q. Thank you, Professor Kambayi. I've heard you speak of individuals, society, and also
9 larger groups, global groups. You said -- you referred to the groupality of the society, and
10 I'd like to know what the limitations are within one's obligations within society.

11 A. African society is not one which encourages criminality. African society cannot
12 operate in terms of crime. That's not possible. I'm sure you have read in my report that it
13 cannot function or operate with criminality. Now, when society sees that some type of crime
14 has been committed and this on the basis of western conception of law or Roman law, and
15 where it is others who come and tell us what crimes are, then one must consider is the
16 understanding of crime the same in Africa as it is in the West? You see, it's a complicated
17 matter.

18 Let's take an example. If we take the case of a divorce, a priest comes and sees that a
19 judge has felt that there was a basis to dissolve a marriage in divorce without
20 knowing the background to the marriage and how the husband came to have the wife
21 or the wife the husband. So the priest sees that the judge has taken his decision and
22 that the dowry has been returned but, nonetheless, one is surprised or, rather, the
23 Judge may be surprised to see that the same woman has had a child by the same man.
24 The Judge might say, "But you are divorced. That's criminal."
25 But the man will say, "No. It's my wife."

1 The Judge might say, "But don't you have another wife?"

2 And then my man will say, "Well, no. This woman continues to be my wife, and
3 these continue to be my children so, Judge, before judging me, you need to be aware
4 of other vital forces that are at play. This wife was acquired under certain
5 circumstances. His or her father is in agreement, my father also." So, you see, there
6 is a whole context at play which cannot really be dealt with using purely western
7 concepts. This is what I have to say on this point.

8 Q. Thank you very much, Professor.

9 Professor Kambayi, in your report back on the first page, in fact, in the first section
10 you said that in terms of the law, solidarity comes to play each time persons have
11 joint obligations, whether these be in relation to a contractual debt or -- and a debt
12 relating to the holding of a thing or a right. It's a matter of mutual dependence
13 between persons who have common interests and common responsibilities, in
14 particular members of the same social group.

15 Now I'd like to ask you whether spontaneousness is even more stressed when it
16 comes to or even more underlined when it comes to a hierarchical relationship.

17 A. Naturally, in our language we have many, many proverbs, symbols, turns of phrase
18 which indicate that the person who holds something is the chief, is the boss. Even if he is the
19 younger person, he has the power and, therefore, he has an obligation to give. He has an
20 obligation to assist, to guide, whilst, of course, bearing in mind the virtues and values of the
21 society in which he lives.

22 Now, in terms of law, and I'm thinking here of western style law, there is -- here we
23 have solidarity. As I said in my introduction, people who have common interests
24 have common obligations. When someone takes on a debt, they're within a society,
25 and there is certain reciprocity. That's not really solidarity. That's more of a

1 mechanical reciprocity. But that's something that cannot be compared with

2 solidarity, and this is why I raised it in my introduction.

3 Let's not forget that this word "solidarity" comes from the word for light, and

4 ontologically light is that which brings wisdom. And I don't think that the solidarity

5 that one has in certain law in terms of debts, et cetera, where there is always a quid

6 pro quo is applicable to African solidarity.

7 You could ask any customary chief what solidarity is. I'm sure you would get a

8 complicated or he would be able to explain it in simple terms.

9 If you were to say "bomoto," then one would understand because bomoto means the

10 very being a man, the fact of being a human being.

11 If I see somebody who has -- is approximately the same age as my father, I'll call him

12 my father, somebody who has the name or, rather, the age of my mother, I will call

13 that person mother.

14 The son of the cousin of my father, I'll call him brother.

15 As regards the term "cousin," if you go to Benin, Congo or another country and use

16 the term "cousin" and you would be understood. But if you say "brother," you will

17 be understood. And I think that this is very much at the heart of African solidarity.

18 Yes, indeed, it's very closely linked with that concept.

19 So in my introduction, I underlined this difference between the legal solidarity, which

20 is quite mechanical on the one hand, and African solidarity, which is anthropological,

21 religious, ontological.

22 MR RODOMA: Your Honour, if you agree, I'd like to now have page 5 on the screen. And

23 this is CAR-D22-0004-0011, page 5. Thank you, your Honour.

24 Q. Professor Kambayi, on page 5 we have a section 9, and it says, "As regards ignorance of

25 the knowledge of positive law or of the knowledge of positive law based on ignorance and the

1 repercussions of that ignorance on conduct resulting from African solidarity in the case of
2 punishment under that same positive law." And you say here that "The idea which flows
3 from this and which needs to be placed in perspective is the tendency to present positive law
4 as being the pre-eminence of law and as the sole and principal source of law, indeed, in
5 African societies where customs have an important weight and where societal cohesion is
6 ensured by complementarity between social groups."

7 Now I'd like you to comment on this and explain it to us.

8 A. Well, I feel very at ease speaking of these matters. Now, if one is not aware of a
9 circumstance, can one judge? I put this question out there. If one is not aware of a
10 circumstance, can one take a decision? I believe one cannot. And so I would say to
11 somebody, and not with any irony in mind, I would say that this translates a certain way of
12 being. What ignorance is your knowledge based on?

13 One could say I don't agree with your appraisal, with your judgment, because it is
14 based on ignorance and quite a grave ignorance because you are judging me based on
15 a law of which I have no knowledge.

16 Now, this is the problem of inculcating the law. If somebody has not been taught
17 about the law and when African society develops on the basis of the culture of others,
18 you will find the presence of ignorance.

19 But human nature is such that one feels that one is stronger when one is not ignorant.

20 If we take the example of slavery, a slave and master, if I am the master, well then I
21 have a position of power. But the master can be ignorant and I, as the slave, I think,
22 well, here is an ignorant man who wants to judge me, but he is more powerful than
23 me, so what can I do?

24 However, one could also say, very well, your ignorance, what knowledge is it based
25 on? I believe you don't have that knowledge. And that knowledge that you have,

1 what ignorance is it based on? And that's a perplexing scenario.

2 So when one has not taught the law, sociology, philosophy, when one is being taught
3 Espinoza, Spengler or Darwin, that is not relevant when we are not being taught what
4 we need to know.

5 If a Bantu text is translated into highbrow French, it won't be meaningful to an
6 African person. He will say, "This is not correctly punctuated, this is not intelligible
7 to me."

8 But there I am taking a decision over another man, perhaps even know that the
9 person does not understand, and that is why I say that ignorance of knowledge of
10 positive law places an African person in a difficult situation. And knowledge of
11 positive law often has repercussions which are horrendous for African societies,
12 horrendous. And that leads us to various parts of our history, slavery, the Berlin
13 convention, et cetera. And I believe that the context is the same today. That's how I
14 see things.

15 It's important that one really comprehends the logic which is at play in order to be in
16 a position to really appraise what is before one and to adjudicate. And I believe that
17 the international community and others need to work together to place matters in
18 their correct context, and I would like to congratulate the Court on its efforts.

19 Q. Thank you very much. Now, Professor, I've heard you speak of different cultures and
20 different ethnic groups. Throughout your presentation this morning, you've mentioned
21 various ones. So my first question would be is the African culture a specific one? What I
22 mean is that this culture and mode of operating that you have described in your report, is it
23 common to all of an African society?

24 A. Based on my experience and my findings and my examination of the issues, I believe
25 that in black Africa, in sub-Saharan Africa, this functioning is intrinsic to society.

1 By and large, the principles are the same. For instance, even if you receive a
2 telephone call and a Senegalese person rings you and says, "Mr Bwatshia, Hello, I'm
3 Abdoulaye," I'd say, "Ah, brother." One will respond "Ah, brother." I've heard the
4 person is called Abdoulaye. The person will say, "Listen, I have a bit of a problem.
5 Do you think you can help me? I'll be coming to your area. Could I stay at your
6 place?" And very rapidly a conversation will come about and a friendship will
7 develop. So if I'm not mistaken, it is safe to say that Africans feel that they are
8 brothers wherever they are, perhaps because of their dark skin, and in Western
9 literature one reads references to the African village.

10 In relation to Belgium, one doesn't really speak to the Belgian-Congolese relationship,
11 but one refers to the Belgian-African relationship. When one refers to France and its
12 relationships, say, with the Congo, it's not that small. It's generally a relationship
13 between France and Africa.

14 One doesn't refer to America's policy on Zimbabwe. No. In general terms, we
15 speak of the US policy on Africa.

16 One refers often to Africa as being a large village. And this is because the people are
17 largely the same and act in the same way. Sheikh Abuya (phon) --

18 THE INTERPRETER: The interpreter has not got that name correctly.

19 THE WITNESS: (Interpretation) -- but it was a great and knowledgeable person spoke on
20 these matters and wrote on these matters. There are, of course, some specific features based
21 or related to geography or age or what have you. But largely African solidarity operates
22 more or less on the same basis throughout black Africa.

23 Q. Thank you, Professor Kambayi.

24 Your Honour, I think that it's almost 11 o'clock, and we would normally take a break
25 then. I do not have many questions, so I suggest that I actually continue on now for

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1 15 minutes and that we take the break after that.

2 PRESIDING JUDGE SCHMITT: I think that's a reasonable suggestion, so please move on,
3 Mr Rodoma.

4 MR RODOMA: (Interpretation) Thank you, your Honour.

5 Q. Professor Kambayi, we're still, we're actually looking at page 3 of your document, and at
6 page 6 there you say that "Western culture" --

7 A. Could you tell me what section you're reading from?

8 Q. Page 3, point 6.

9 A. Yes.

10 Q. You say, "Western culture seems to place a premium on individuality; whereas, Africa is
11 a land of solidarity." These are your statements. Could you comment on this?

12 A. Would you mind telling me exactly where you are quoting from? You said page 3.
13 Page 3.

14 PRESIDING JUDGE SCHMITT: Could it be at the end of page 3, the last paragraph? I'm
15 not sure. You must know better, Mr Rodoma.

16 MR RODOMA: (Interpretation) No, I don't think so. Perhaps I could put another
17 question while the case manager seeks out the passage for us. And thank you, your Honour,
18 for that.

19 Q. So, Professor Kambayi, I have another question, and that is would it be right to say that
20 the use of the term "papa" or "brother" in Africa is used differently in Africa and that you have
21 set out the reasons for this in your report?

22 A. Yes. I believe that in my report I addressed the matter of use of terms like "papa,
23 mama" and "brother."

24 Now, the word "brother" in French means what it means.

25 In Western culture, one has a culture which is more individualistic, discriminatory,

1 reductionist, and there brother is, biologically speaking, the child of my father and of
2 my mother. The others are cousins. There are even half brothers, which is an
3 unusual concept for us.
4 In Europe, if you say to an African, well, this chap, he's my half brother, for us,
5 conceptually speaking, that person is a brother.
6 The term "brother" is conceptual in Africa. I would say that axiologically there are
7 three readings on it. Of course the biological, cultural, ontological one where the
8 brother or my sister is a person born of my mother and father. That is my brother,
9 ndugu yangu, in Swahili. In Swahili it doesn't mean my brother.
10 And, in fact, why should we always want to translate it? Mwan'etu. Why must we
11 always translate brother?
12 Basically, of course, in Western terms this means my brother. "Mpagi-a-munu," in
13 French that means, roughly speaking in French, my brother. "Ndeko na ngai" is a
14 term used, for instance, in Brazzaville or where Lingala is spoken is a similar term,
15 which can be construed as meaning brother.
16 My daughter, my eldest daughter, will call a person coming from Tanzania and who
17 is approximately the same age as me, will call that person "papa." It's conceptual.
18 And I will say to my daughter "call them papa," although I am her father.
19 But in Belgium or any other country that would make no sense to a child. They
20 would say, "Huh? Since when is that man my papa?" So there is a cultural
21 difference there.
22 And this is the symbolism which we associate with brother. When I refer to symbols
23 and symbolism, what I am thinking of is that which joins. It is that which goes
24 together. The symbol represents the thing. That's symbolisation.
25 Africans today are beginning to adopt foreign culture. As I said earlier, it's very

1 difficult to live and operate in a foreign culture of which one is often largely ignorant.

2 That is my answer.

3 Q. A few moments ago I asked you a question, but I wasn't able to find it. I wasn't able to
4 find the passage as drafted by yourself. With our case manager, we have been able to find
5 this passage, and this is actually on page 4 of your report. That's CAR-D22-0004-0010. And
6 on point 7 -- I wrongly said it was point 6 -- point 7, "What objective conclusions can one draw
7 from the use of the word brother in African culture"?

8 And if when you look at your point 7, in particular the last paragraph, "Western
9 culture seems to privilege individualism to the detriment of a very widespread
10 conviction in African as a land of solidarity." So this is a general point, but I would
11 like to have from you more precision with regard to this statement that you make.

12 A. Well, African solidarity can play a role between the two now. This is not conceivable
13 for Western culture, which seems to privilege individualism to the detriment of a widespread
14 conviction there is in Africa of the land of solidarity.

15 The question was put and experience has shown that in Western society, you are -- in
16 liberalism, there is a society which is it's an individual society, it's liberal. The
17 individual is placed at the very heart of the functioning of society. And that's the
18 reason why today in Western society you go back, and the major philosophers and
19 the great thinkers show us very well that we are going back to man, human being.
20 You go elsewhere to find your values, value for man, human being, given that the
21 human being, human gives l'humus. L'humus is man and humanity. Even
22 Western cultures come back to humanity.

23 So Western culture is still at a level of individualism, the individual, although right
24 from Napoleon to this day function in terms of the individual. And it's a mechanical
25 relationship to the detriment of a conviction, which is very widespread. And several

1 many people, many discoveries -- I don't know what they discovered, but anyway,
2 they said that Africa was a land of solidarity and of hospitality; even better, Africa.
3 And if you look at the dimension of Africa, they say Africa as if it was a small village.
4 Do you see the size of Africa compared to Belgium? It's France -- how many times
5 bigger is France bigger than -- how many times is Africa bigger than France? But
6 they talk about it. So we are in an area called Africa. And you can look at what
7 that means. And if the world becomes a planet, global village, then Africa was the
8 first to be an African village. That's what I wanted to say, counsel.

9 MR RODOMA: Professor, your Honour, I've just got 2 minutes more, if you would allow me
10 to continue. Thank you, very much.

11 Q. Mr Kambayi, the Chamber, we're talking about the -- page 5 of your report. And if I
12 could quote you the positive law based on western law, have you found the relevant part?

13 A. Which paragraph, page 5? Yes.

14 Q. From paragraph 2 in point 9. "That is the reason why positive law of Western
15 inspiration does not always seem to respond to the social concerns of the African population.
16 To better understand African custom, you have to take within you the logic in order to arrive
17 at a better legalisation and jurisdiction thereof. The difficulty is understanding the African
18 culture in the criminal law, for example."

19 A. When you haven't taken over the logic, as we've just said throughout what's been said,
20 when you haven't interiorized this logic. And what do you mean by that? Here I mean
21 taken on that culture, taken on the logic. We've spoken about brothers, fathers, we've
22 spoken about African culture, but I would say I have to -- well, I put that in bold here. And
23 why? To draw one's attention to it, to any Court which has to try and judge somehow Africa
24 while not understanding or not knowing the logic behind it, the logic that governs the society.
25 This is something I put in bold to draw attention to it. It really has to capture people's

1 attention in order to get to a better juridicisation of it, then I think it's important to understand
2 what that means.

3 If you conceive society in Europe and that is put into a theory or it's theorized, as such,
4 in Africa what is logical -- and this is something we learn in the universities -- the
5 theory doesn't help practice. And law sometimes, and I'm saying this, you can
6 correct me, but law and rights, they come to life when there is a practical aspect that's
7 noted.

8 Africa, before going into theorization of practices, it has to be said that these practices
9 are virtuous, first of all. And, as such, with time we have to pay attention to what's
10 positivism. And I'm not going to -- well, I'll speak about myself. I have a daughter
11 who did law at Ghent University. She worked on a terrible place that was legal
12 anthropology.

13 And now when she came to Kinshasa University, everybody there is positivist, and
14 she's fighting to show that law can only have sense to the extent that it accommodates
15 the practice, and a lot of attention has been drawn to that.

16 When you have to judge in terms of crimes, the logic of positive law doesn't seem to
17 accord with the logic of anthropological African law. That is it, counsel.

18 Q. Thank you very much, Mr Kambayi. I have no further questions to put to you.
19 Thank you very much your Honour, your Honours. I would like to thank you for
20 the attention that you have given during this examination.

21 PRESIDING JUDGE SCHMITT: Thank you very much, Mr Rodoma. I think it's now time
22 to have the break until 11.45.

23 THE COURT USHER: All rise.

24 (Recess taken at 11.12 a.m.)

25 (Upon resuming in open session at 11.48 a.m.)

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1 THE COURT USHER: All rise.

2 PRESIDING JUDGE SCHMITT: First of all, I would like to ask the other Defence teams if
3 they want to put questions to the witness. Mr Taku?

4 MR TAKU: Yes, indeed, your Honours. We'll ask four questions. And with your leave,
5 my learned colleague, Beth Lyons, who, on behalf of participation in the Truth and
6 Reconciliation Commission of South Africa has a summary about this to ask just two
7 questions.

8 PRESIDING JUDGE SCHMITT: Of course, Mr Taku.
9 Mr Djunga?

10 MR DJUNGA: (Interpretation) Yes, your Honour. We have some questions to put to the
11 witness, around 10 questions.

12 PRESIDING JUDGE SCHMITT: So I would suggest that perhaps Mr Djunga starts with the
13 questioning because you have more questions. There is no more reasoning in it than that.
14 So if you want to take the floor, you have the floor.

15 MR DJUNGA: Thank you very much, your Honour, for giving me the floor.

16 QUESTIONED BY MR DJUNGA:

17 Q. Good morning, Professor.

18 A. Good morning, counsel.

19 Q. Professor, I am counsel Paul Djunga. I am a lawyer at the Paris Bar, and here I am
20 assisting the five accused in the affair, so I would like to ask you a few questions with regards
21 to your report. And the report I read very attentively and I appreciate the depth in which
22 you've gone into. And here I have the modesty of saying that I didn't understand it all, and
23 that's the reason why I wanted to ask you some questions for clarification, to make it possible
24 for me and for others to be able to understand its depth. I'd like to ask my first question.
25 And in your report it's page 3. I'd like to know why, in your report, you say it's

1 inconceivable in Africa to leave a brother suffer in distress. And you say it's really

2 inconceivable in Africa to let a brother suffer in distress.

3 A. Well, counsel, I would also like to greet you and your team. As I expressed not long
4 ago, I would like to say that really in the name of African solidarity, understood by yourself
5 and the Africans, in my experience, you cannot imagine for so -- an instance to leave a brother
6 in the understanding that we've talked about this morning and to prove to the contrary. You
7 are African, you know what I mean. It is inconceivable to leave an ndugu yangu, a brother, a
8 mwan'etu, an ndeko na ngai. One cannot leave them in poverty, even if they come from our
9 African country. It is inconceivable. And why? Because I can only repeat. Not helping,
10 that means that I am a bad person. I'm on the bad side, as it were, or I'm inventing a term in
11 badness, if you like, but not helping, not assisting. And you are in badness, if I can put it like
12 that. That badness is something -- if you do that conscientiously, that means that he is not
13 my brother and, as such, well, a person is -- the community is going to judge me whether I'm
14 dead or alive. The African community will judge me. I will be judged by the living and the
15 dead, and conscientiously he has to, and it's legitimate for him and it's natural. So I would
16 confirm this. Any African who would act -- a Matanga, for example, the neighbour that I
17 don't know, my neighbour has just lost a brother -- a child, et cetera, and we don't have the
18 same language, but I have an obligation to help. So it is inconceivable. That's what I'd like
19 to stress, counsel.

20 Q. Thank you very much, Professor. Now, still in your report you talk about the duty of
21 solidarity, which is exercised towards the poor, which is a vulnerable group, and people in
22 distress. What do you understand by vulnerable people? I'm on the first page of your
23 report.

24 A. Page 1 are you saying?

25 Q. Yes.

1 A. I'm sorry, counsel, what were you saying?

2 THE INTERPRETER: Microphone, please.

3 PRESIDING JUDGE SCHMITT: Mr Djunga, please, the microphone.

4 MR DJUNGA: (Interpretation) Thank you very much, your Honour.

5 Q. Yes, Professor. In your report, you stated the following: The duty of solidarity is
6 exercised towards the poor, vulnerable groups, and people in distress. I don't know if
7 you've seen this, but whatever the case, my question is to understand what do you
8 understand by vulnerable people? What do you mean by that within the framework of your
9 report?

10 A. Thank you very much, counsel, for your question. I know that modern literature and
11 French literature, for example, with regards to the law, international law, which has its
12 repercussions on national law, has defined what it understands as vulnerable persons.
13 Putting myself in the African culture, as we've just said, vulnerable, the word, does
14 not have the same meaning when you put it into African languages. In Lingala
15 when -- if I take the example "moto ya pasi" is what you would say, somebody who is
16 in difficulty. That's different. Moto ya pasi. That doesn't mean vulnerable.
17 Vulnerable here, I might be wrong, but I'm often subject to your control. Vulnerable
18 means somebody who doesn't have strength, who is not strong, who has -- if you say
19 a child is a vulnerable person, a woman is a vulnerable person, a mentally
20 handicapped person is vulnerable and you have different categories for the matter in
21 the law, what you understand by vulnerable persons. But in the African culture,
22 vulnerable often means somebody who is in difficulty. That's what vulnerable
23 means. African culture prevents you from not helping somebody in difficulty. You
24 can translate that as a vulnerable person, but somebody in difficulty does not mean
25 somebody who's a child. So there's an obligation upon us to come to the aid of those

1 persons. This isn't charity. No. This, far from being charity, far from being
2 opportunism, this is in the context of a moral obligation, moral security, hospitality,
3 the way of being an African, that person is obliged, and then we'll see. That's how I
4 can answer your question, counsel.

5 Q. Thank you very much, Professor. It's very clear. Now, in your report you mention
6 characteristics of African solidarity. You talk about freeness in the circulation of goods.

7 A. Yes, counsel.

8 Q. Gratuity in the circulation of goods. So how would you define that?

9 A. Thank you. Within African culture, the gratuity, far from being what one might, in the
10 first degree, consider, and I'm providing this, it's a matter of -- well, it's not a matter of
11 providing something freely. It's more than that.

12 In our culture, this goes beyond. By "duty," I am duty-bound to -- and I do not
13 expect you to pay me back. And all I expect from you is for you to acknowledge that
14 I assisted you. It's not about paying somebody back. How many times does one go
15 to Africa and one sees the tradition, the African tradition of people spending
16 tremendous sums of money and, well, a pastor is blessed, someone receives money,
17 and cattle are provided or a goat or -- not because that person has a lot of money.

18 That person is moved by that feeling, by that awareness that he has the moral duty
19 and even the ethical duty to do that. And if he does not do so, the entire community
20 will be saying, "How can it be that he lives in the same neighbourhood and someone
21 is getting married and this person has given nothing?" That is what I mean by
22 gratuity and the circulation of material goods. That is what that I mean, counsel.

23 Q. Thank you, Professor. It is true that your answer leads me to ask another question
24 about the gratuity of -- now, in light of your knowledge, would you say that this is something
25 common within Central Africa, that someone might provide money to another person whom

1 he doesn't know without necessarily expecting anything in return? Is that -- is that -- is that
2 sometimes perceived as corruption?

3 A. Thank you, counsel, for your question, and I find it quite interesting. Let us begin with
4 the understanding of the word "corruption." What is meant by that word?

5 Counsel, corruption is the denaturing of the natural nature of something, the
6 denaturing of the nature -- the natural nature of something. For example, when you
7 leave a metal rod outside for a few weeks and the weather gets to it, it is denatured,
8 so to speak. Similarly, if you provide money to someone, you buy that person and
9 you, yourself -- is that person denatured? And is the person receiving the money
10 denatured? You do not find such a thing within African society.

11 What is more, our world view of money within Western societies, my goodness, I
12 may be wrong, but I don't think so. Money is distinguished from material
13 possessions. Money cannot be put in the same category as a house or a car.

14 But in Africa, you see, money is seen as a good, a possession, an item. Often it is
15 symbolic in nature. Proof of this is that when a person gets married, for example, in
16 the old days one didn't give money. A few symbolic gifts were given. And when
17 the time came to provide a dowry -- and, actually, the word "dowry" has changed in
18 meaning now that there is more of a monetary aspect attached to it. So if I give
19 something so that someone can be helped, someone who is in a situation of distress,
20 Western society or modern society, call it what you will, unfortunately, makes this
21 distinguished -- this distinction between money and possessions. But no. When I
22 give money, I'm giving a possession, a good, an item. And my brother, my father,
23 I'm giving that money to help my brother. It's not a matter of corruption. I'm not
24 corrupting him, because corruption is a denaturing of natural nature. There's quite a
25 distinction here. Yes, counsel.

1 Q. Thank you, Professor. I believe that I have not too many questions more. Your
2 explanations are very clear and I am, indeed, edified, and I think this will perhaps be my last
3 question. In your report, you said that when someone from the West explains to an African
4 person that an act of --

5 THE INTERPRETER: Overlapping speakers.

6 MR DJUNGA:

7 Q. (Interpretation) Page 4 of the report. Now, you were writing that when a Western
8 person explains to an African that an act of solidarity that he has just performed is a crime,
9 you say that the African person does not understand this. What did you mean by that
10 exactly? Could you elaborate?

11 A. The concept of a crime within your specialty, you have defined what a crime is in
12 accordance with the law that you have learned when you were at the university, no doubt.
13 And depending on the way you understand that concept now, does that concept mean the
14 same thing in Africa? If we look for the word "crime," well, in an African context, it is within
15 a maelstrom. For example, the concept of the bobe, the bebe, the bobe, that is a
16 representation of evil. Is a crime evil? That is a problem. Does all form -- do all forms of
17 evil constitute a crime?

18 In your language, in the language of others, of, for example, Chinese or Indian, Latin
19 America, is a crime an evil? But it is -- is it understood in the same way within a
20 system of law, particularly positive law within the framework of anthropological law?
21 However, when a society believes that the evil act committed constitutes a violation
22 of what is outside of virtue when it is judged by the wise men and women of society,
23 this evil goes against the supreme values that govern society and one would say bobe
24 makasa, bobe penza, the true evil. And it would not be expressed even in terms of
25 evil. This is a very strong word, "criminality," something leading to crime. That is

1 stronger than evil.

2 Let me explain very quickly to you, counsel and before this august Court, the word

3 "sin." Christ may have been crucified several times, but -- correction -- sin did not

4 disappear. This is what we have learned from the Christian faith. Now why?

5 You see, sin, according to St Augustin or Thomas D'Aquinas, now, sin comes with us,

6 accompanies us; whereas, in Africa, sin means mauvais, evil. Evil, mauvais. It

7 means what is bad. It is things that are wrong, the concept of wrong.

8 But with that concept we also have the concept of purification, the wrong being

9 undone, evil being corrected. But sin, you see, sin cannot be corrected. So, you see,

10 there's a dichotomy here, an existentialist dichotomy between our understanding of

11 the word "sin" and the equivalent, mauvaisité, bobe, evil, wrong. What about the

12 word "capé" with a C? Someone might say, "Oh, you made a mistake, you spelled

13 that wrong," but with a K, well, then it's all right; or the word "cochon," pig.

14 Someone might write that with a K because that person heard that word and the

15 teacher will say, "Oh, you spelled it wrong." But from his point of view, it is cochon

16 with a K. So one can make a mistake, but then the mistake is corrected. Evil can be

17 corrected. But a crime is something that one is punished for. I don't know whether

18 within African society or other societies that are still pure whether these concepts are

19 seen the same way.

20 The law of an eye for an eye, well, you must realize, a wrong can be righted, but a

21 sin -- so I'm asking you. This distinction between punishing and correcting, there is

22 no -- there is not so much of a difference between the two. Thank you, counsel.

23 Q. Thank you, Professor. I have two final questions. Now, I gather, and correct me if I'm

24 wrong, but I believe you are a specialist in European and African mentalities, and I am

25 interested in your specialty, particularly the European mentality. So my question is this:

1 To your knowledge, when someone from the West gives money or provides help to his fellow
2 man, according to Western thought can we still talk about gratuity, about acting in the interest
3 of others?

4 A. Thank you for your question, counsel. I feel quite comfortable in answering such a
5 question in accordance with the -- well, within this field of endeavour that I'm less familiar
6 with. Now, when a person from the West gives money to someone who is in difficulty or in
7 a state of distress, it depends on what he has. It depends on the expectations. It depends on
8 the representation. You will observe that when a European is less in the business realm, so
9 to speak, when this person is just an ordinary person, a teacher, a nurse, a lawyer, that person
10 will look and say, well, from a moral point of view, not necessarily a Christian point of view,
11 but from a moral point of view he will say, "Well, this person is in trouble, why shouldn't I
12 help him?" And why does he do that? Because he is a man. In Africa, there are men. In
13 Europe, there are men.

14 You cannot say that men, European men, are different to African men because, after
15 all, they come -- they come from the very same origins.

16 So what are the intent -- what are the intentions? Is the person expecting to be paid
17 back? The person will ask for a receipt. He will say, "Sign a piece of paper." But
18 in Africa one does not ask for a receipt or have someone pay. But if you take money
19 out of your account and you give that money, it's you're helping somebody out. For
20 example, my business is failing; sign a paper for me, sign a receipt. That's one thing.
21 But then in contrast, if I think that what I'm giving will gain me some advantage of
22 some kind or another, and I can buy that person's conscience, then that gentleman,
23 that white person, is not acting like a man. He is acting like -- well, he is denaturing
24 the natural nature. And, you see, your law will condemn that person and they will
25 think that someone has been corrupted. Correct me if I'm wrong.

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1 However, a true European, a true American or, for example, the Chinese, they will say no, I
2 am acting out of compassion. And compassion is not necessarily an African virtue. Any
3 virtuous man must, must -- how shall I put it? -- must show compassion and mercy and thus
4 he gives money freely without an expectation of the money being given back. That is --

5 Q. Thank you, Professor. This will certainly be my last question. Now, the intent that
6 one might have, to some extent that the intent is influenced by tradition or culture, for
7 example, African culture --

8 PRESIDING JUDGE SCHMITT: Mr Vanderpuye?

9 MR VANDERPUYE: Thank you, Mr President. I think now we are actually going into a
10 fundamental issue that is properly within the purview of the Chamber. My colleague is now
11 referring specifically to intent, which is an element of the charged crimes in this case.

12 PRESIDING JUDGE SCHMITT: Yes, I think this is correct, Mr Djunga. I think we are now
13 in the realm of legal terms, and I think the expert has provided information that the Defence
14 or whoever can draw conclusions from, but I would not want him to answer questions which
15 have a close relationship to the possible legal questions that we have.

16 So if you want to put a question in that respect, you would have to rephrase it and not
17 use the technical term.

18 MR DJUNGA: (Interpretation) Thank you, your Honour. In any event, I had finished.
19 The preparation was so interesting that I was trying to glean a few more items of information.
20 I thank you.

21 PRESIDING JUDGE SCHMITT: Thank you very much, Mr Djunga.

22 And now I give the Defence of Mr Arido the floor, Mr Taku or Mrs Lyons.

23 QUESTIONED BY MR TAKU:

24 Q. Good afternoon, Professor. My name is Chief Charles --

25 A. Good afternoon, counsel.

1 Q. My name is Chief Charles Taku. I'm a customary and traditional chief from the South
2 West Cameroon, especially from the Bangwa in the group. And I represent Mr Arido. And
3 I've been very impressed about your accurate representation of the role of traditional and
4 customary chiefs in African solidarity.

5 Now, let me ask you one question. In part II of your report under the heading
6 "Devoir de solidarité africaine," you stated, (Interpretation) "This manifestation and
7 expression" --

8 (Speaks English) I'm sorry, let me take that again, please. The heading is "Devoir
9 de solidarité africaine" (Interpretation) "Duty of African solidarity."

10 A. Yes.

11 Q. (Interpretation) "Its manifestations and its expressions."

12 A. Yes.

13 Q. You write, (Interpretation) "This duty is performed within an ontological,
14 philosophical, religious, moral and anthropological context."

15 (Speaks English) Now, Professor, there has also been a reasonable recognition and
16 incorporation of African values, in particular, African solidarity into the religious
17 practices of some churches. I have in mind an exhortation that Pope Benedict
18 proclaimed in Benin Republic and his predecessor has followed ever since. With
19 that -- I'm sure you're aware of that.

20 Now, let me be very specific about the role of some of the actors, regional actors in
21 African urban and rural areas, the apostles of late, we heard apostles; what influence,
22 if any, if you know do they play -- have as far as African solidarity is concerned and
23 African culture in the communities in which they practice their religion?

24 A. Thank you. I find myself at ease, as you have said, that you are a customary chief, this
25 is very interesting. Somewhere you are the person who guarantees, who -- the trustee, the

1 steward of African tradition and culture.

2 Now, these days, unfortunately, the Catholic church and the traditional Protestant
3 churches have fallen into that trap and now we find ourselves within a context of
4 ideology. Realize I'm sure, Chief, that the establishment of religion these days
5 within -- in the past there was the division of Catholic versus Protestant, a particular
6 church, a particular assembly of prayer. But now it would appear that each religion
7 wants to create its own God as revealed by Christ, as revealed by Buddha, by
8 Mohammad. At that point the ideology that goes -- the ideology becomes indeed
9 propaganda.

10 I'm sure you realize, Chief, that ideological propaganda is always political in nature
11 within a context whereby people are attempting to win over more souls. And in
12 most cases, for example, in Cameroon, in the Congo, elsewhere, you will see that
13 people are preaching the word to get money.

14 I was in Yaoundé and I saw with my own eyes, and this is the same elsewhere in
15 Africa, people create a particular congregation as if they were creating a political
16 party. And once again it is a form of ideology based on division. And so a person
17 picks one passage from the Bible and says, "This is what God says, give us your tithe."
18 And you must realize -- well, you may not understand what dialogue the passage
19 was taken from and so, you see, this is an ideological rhetoric. And you must realize
20 that ideology can indeed play a role within society. Often ideology leads to
21 corruption. That is my answer to you, Chief.

22 Q. Thank you very much, Professor. In the same paragraph, reading the same paragraph
23 I realize, Professor, that you seem -- your views are very similar to those of the
24 well-considered provision by the Reverend Professor John S Mbiti, one of your colleagues,
25 distinguished colleagues whom I think you know from Kenya. 1969 in "African Religions

1 and Philosophy" in which he stated that, "African religions and philosophy is a systematic
2 study of the attitudes of mind and belief that have evolved in the many societies of Africa.
3 The spiritual ontology illuminates and is illuminated by the African conception of time.
4 Though the Africans are religious people is to say that your understanding of being spiritual."

5 Can you explain, Professor, how African solidarity manifested in ontological,
6 philosophical, religious, moral and anthropological context unites and sustains
7 Africans in the rural and urban settings and the African diaspora?

8 A. In a rural context, I believe that the word "rural" or its friend "rurality" is the
9 word that -- well, I mean closest to the soil, to the land, closest to agriculture. Someone who
10 has not yet been affected by what is unfortunately termed as modernity or post-modernity,
11 hyper-modernity, modern -- or perhaps someone, someone might speak of the
12 Americanisation of the world.

13 In any event, when one speaks of ontology, one is talking about "onto" in your
14 language, in our languages, "onto, onto"

15 In an African language "lomongo" "onto, onto." So I wonder whether to "onto
16 mongo" in Africa is not the -- perhaps there's some link to the Greek.

17 At the conference, I saw Mbiti, I spoke to him. And I do remember at a Jesuit college
18 I spoke of good Bantology. Everyone looked added me as if I were mad. In any
19 event, the intrinsic aspect, the smallest part within a man that makes that man operate
20 or work so that he is a man, that is what ontology is. So, you see, this is what makes
21 a being a being. I am because I live within this context of ontology. But, however,
22 it would appear to me that when we think of mentalities, the extremely materialistic
23 mentality of the West, the extreme focused ontologic, the cerebral approach to life is
24 such that emotion is set aside but rationality means -- well, it means calculated,
25 calculus. The word "rational" has the word "ratio" within it, does it not?

1 So, you see, with our minds we calculate, we discriminate, we put things in categories.
2 Exactly. We -- positive mentality. That is why somewhere the ontology of Africans is
3 different to the ontology of Europeans because Europeans, people of the West, they have their
4 own ways of being, their own ways of calculating sums, so to speak.
5 So I think -- well, ever since the changes to Europe, since the time of antiquity, we know the
6 history of Europe ever since the time of antiquity, the Greco-Roman antiquity. And why
7 Greek? Because at the time there were various philosophies. Why Roman? Well, because
8 of various reasons. And then after Rome, we saw the renaissance and the renaissance was
9 broken into various categories. After the renaissance, modern time. After modern time,
10 contemporary time. All of this comes within a context of rationality. But let us return to
11 Africa now. Where do we find the story of the African middle ages?
12 Let us say you are within the rurality in Cameroon. Will you speak of the middle ages?
13 Well, people will say, "What are you on about? What are you talking about?"
14 So students in Cameroon spend their times being force fed, force fed the history of Cameroon,
15 which is really all about -- and what does modern times within Cameroon mean or antiquity
16 within Cameroon mean? What do these periods of time mean within the Congo or school
17 children in the Congo or other parts of Africa are being emerged in a context that is not their
18 context, so how can Cameroon develop? How can Benin develop when you see, for example,
19 Cameroon was carved up or Côte d'Ivoire was carved up, Africa was carved up and put on a
20 rational basis.
21 I'd like to wrap up. I'd like to address the matter of time. African time is not
22 squared off. An African person is the difference between time being general and the
23 particular point in time as shown by a wristwatch, for instance.
24 In the West, one tends to deal in time, clock time, or one needs to perform eight hours
25 of work, for instance. So there's a lot more emphasis on clock time rather than time

1 in general as a dimension, if you would like. It's more ontological in the African
2 mind. So, Chief, there are a number of conceptual aspects that one needs to bear in
3 mind when judging such matters. Thank you, Chief.

4 Q. And now, let me move more quickly. I have two more questions. You surely know
5 about pathfinders, of course, those of us in the Pan-African movement. Dr -- solidarity for
6 Dr Kwame Nkrumah and Mwalimu Julius Nyerere, there have been attempts by them and
7 many of us in the contemporary Pan-African movement organisation to elevate the African
8 solidarity to a governing ideology, ideology for Africa.

9 Dr Nkrumah, for example, described it as a value system which unites us in the
10 recognition of the restoration of Africa's humanist and egalitarian principles of
11 society.

12 Mwalimu Nyerere, in the Arusha declaration, 1967, is the African solidarity in the
13 Swahili context with jamaa, which means extended family, brotherhood or, in other
14 words, African society. Now, this was adopted as a political concept which it's said
15 that a person becomes a person through the people of a community. Do you agree,
16 Professor?

17 A. Thank you, Chief. This is subject matter of interest to me. Kwame Nkrumah,
18 since -- intervention -- since 1957 through to the 1960s, Africa had been splintered. It had
19 been sliced up. It had been broken into parts. Having governed France or, sorry, France
20 having governed Africa and equatorial France, the western equatorial Africa, that
21 compartment was split up in the wake of independence by France. To better govern it, it had
22 been divided up. Divide and rule. The same when it came to Belgian Africa, British Africa.
23 Poor Africa. I'm not here to plead Africa's case, but it's a simple matter of fact that Africa is
24 currently operating in a circumstance which is not natural to it. Poor Africa. Poor Africa.
25 It's there, but it is operating outside of its true being.

1 Then you have a visionary such as Kuma who has declared "Africa must unite." He
2 did not say "Africa may unite." He said, "Africa must unite." And Chief, he was
3 bearing very much in mind there African solidarity. He had understood that Africa
4 was indivisible, a single entity. But given the borders, the chiefs at that time were
5 vassals. All those who had studied in Oxford, London, Paris at the Sorbonne, at Yale
6 or in Boston, they wanted to maintain their prerogatives European style. And it is
7 those people who I would say had dark skin but a white heart. It is those people
8 who saw Africa through independence. I think that often one mixes up
9 independence and decolonization. These are not the same things.
10 Each leader from the independence period, those were called "fathers of
11 independence" today, in fact, destroyed African solidarity. And that is why I'm very
12 happy that I have the opportunity to state that here. We are currently developing
13 but developing in a culture -- culture of another -- another culture. It's a kind of
14 slavery.
15 Africa today is a kind of a zombie being, a zombie being a thing whose essentially
16 part has been removed and where the carcass can be used for evil purposes. This is
17 what I have to say on this point, Chief. Thank you.

18 Q. Now, my last question before my friend asks her two questions is this: Noting, noting
19 the distinction you have made between African solidarity and mechanical solidarity, per se.
20 An unctuous consideration of certain attributes of mechanical solidarity is founded by David
21 Émile Durkheim, 1858 or 1917, validates the increasing dominant opinion held by leading
22 African scholars, like my own professor, professor to Arido and my legal assistant, Mr
23 Gatarama, Professor Aletu, Michael, that which profess sensitivity and recognition of African
24 solidarity. African solidarity could become a universal value and the panacea to the social
25 and cultural dilemma facing a troubled world. Do you agree? And let me put it in context,

1 further in context.

2 Émile Durkheim postulated that mechanical solidarity refers to a state of community
3 bonding or interdependence which rests on the similarity of belief and values, shared
4 activities, and ties of kinship and cooperation. It's cohesion, interconnection,
5 similarity of lifestyle integration comes from the whole majority of individuals. Do
6 you understand? Do you agree that African solidarity could become, judging from
7 the opinion of Émile Durkheim when he discusses mechanical solidarity. Some
8 aspects of it could become a panacea for where problems -- solving the problems of a
9 trouble world if given his appropriate recognition and sensitivity.

10 A. Thank you, Chief. This is a fundamental question. I will respond by saying that that
11 which is mechanical has been manufactured. That which is mechanical has been
12 manufactured based on the interests of the manufacturer. A car, for instance, is mechanical.
13 An aeroplane is mechanical. A racing car is mechanical. A car can be destroyed, but for it
14 to be destroyed, there has to be an accident or some kind of impact. If a car collides with
15 another, it may become destroyed just as an aeroplane or a train. So any society that
16 becomes mechanized leaves itself vulnerable to destruction. And furthermore, I can say this
17 with clear conviction: When people abandon that which is human within them, that which
18 links them to other people through virtue, through giving, such a person who adopts
19 mechanization destroys himself. And so we understand why today great thinkers, Marx and
20 others, all those great European intellectuals who have enjoyed such prestige and who
21 are -- have set out philosophies, they, themselves, would say that Western society has suffered
22 an accident, if you like. Religion looks at people as being humans, and to teach -- to go
23 beyond oneself and to reach out to the other, to embark upon reciprocity.
24 Today we all try to teach values. The values of the great wise people, Buddah, Krishna,
25 Christ and the great wise men of Benin, they all teach to look to the other.

1 I find myself in you, Chief, and you in me, we with each other here as friends. We are all
2 individuals. The fact that somebody is white doesn't make them superior. The fact that
3 somebody is black doesn't make them inferior. Rather, God wanted there to be people of all
4 colours just as he had wanted to create all types of different fruit or vegetables or what have
5 you.

6 I have colleagues who are professors in Boréal, in Tübingen, in Louvain. What we have in
7 common is that we are humans and we are men. And that is the context we find ourselves in
8 today, a context of international understanding. And I believe that the International
9 Criminal Court based on its very fondements demonstrates to people that this is the
10 framework in which we are working, a framework in which we become men.

11 When we come from a fragmented world, we have the right to patch that world together, and
12 I do believe that the solidarity of Africa is more developed, more sophisticated, if you like,
13 than the rational mechanization of the west.

14 Q. Thank you, Professor. We will continue this debate many, many years from now, I
15 mean from -- away from here, after this we will continue --

16 A. As you wish.

17 Q. Yes. I'll pass this to my colleague. Thank you so much.

18 A. I would be delighted.

19 PRESIDING JUDGE SCHMITT: So, Mrs Lyons, you have the floor. Mrs Lyons, the
20 microphone, please.

21 MS LYONS: Thank you, for reminding me. Thank you, your Honour.

22 QUESTIONED BY MRS LYONS:

23 Q. Good afternoon, Professor. Thank you for your report and for your evidence.
24 My name is Beth Lyons. I'm associate counsel working with Chief Charles Taku on
25 the team representing Mr Arido. I just have three short questions to ask you.

1 In your report you describe the characteristics and the expressions of African
2 solidarity, and you further have elaborated on these themes in your testimony today,
3 but could you focus more on what are the origins of the term "African solidarity," the
4 concept of African solidarity? What is the origin of the concept, please?

5 A. Well, thank you for that question. The concept, well, first a thing exists, then it is
6 named. An African doesn't refer to this as solidarity. It's a term we use a lot in French.
7 But if we seek the equivalent term in Bantu languages, we will look in the practice, and an
8 African and a western person might think that it's the same thing.

9 Why does an African see it as solidarity? In fact, in African languages we would
10 translate the term as a way of being, the thing that makes a society a society.

11 In my own language Tshiluba, I also speak Lingala, I also speak a bit of Kicongo and
12 Swahili, and in my language we would speak easily of being a man, a person. And
13 in my language and in African languages, "being" is kwi kalé, being. In the word
14 "being," you have the word for coal or carbon, dekale. Kwi kalé, being, so the fact of
15 being.

16 But we find something similar in Greek. When one refers to "I" naturally one moves
17 on to "you." I cannot leave in isolation. A person who lives purely for himself
18 becomes an egomaniac, if you like, focuses on their ego.

19 So at the origin, "solidarity," of which or to which I refer and which is referred in
20 French as solidarité actually follows on from the origin in Africa. In order to be at
21 ease in society, one must be in the light, and this is what governs all people. A
22 human society cannot operate without kwi kalé, without being a person, being a man.
23 And how is a man? What is this form of being? It is being in society. And he
24 enjoys a certain freedom, and his freedom follows on from the fact that he is a
25 member of a society, you see?

1 So African solidarity is expressed through the French word for "solidarity," and we
2 use it a lot in Africa because, of course, we learnt French, but it is more or less the
3 equivalent of kwi kalé, it's my very raison d'être, it is my being that makes me express
4 solidarity. However, in a court or when it comes to prosecution in a rural society in
5 Africa would not refer to African solidarity. One would speak of kwi kalé, or
6 Lingala, izalele, that is the behaviours of being. So kwi kalé, alade, these terms refer
7 to harmony within the group. Without harmony, and given that harmony is actually
8 the reconciliation of that which is contrary, society cannot operate, and so African
9 societies adopted words such as those as I have described. But I do believe the term
10 "solidarity" is a good one, it's acceptable, because what it has in common with our
11 own terms is that the origin is human. Thank you.

12 Q. Thank you, Professor. Following up on your response, I wanted to ask you to explain a
13 term which I first heard it in South Africa from Archbishop Desmond Tutu, "ubuntu."
14 Explain that term and answer the question whether it is incorporated as a concept in African
15 solidarity?

16 A. Well, this term, "ubuntu" --

17 Q. Excuse me. I may have said it incorrectly. It's U-B-U-N-T-U.

18 A. Voila, ubuntu. Very good. Well, you've referred to Desmond Tutu, who is a very
19 famous and very true African. When he referred to ubuntu, he's referring to being a person,
20 being a man. This comes from bomoto, like a man, bomoto.

21 In Zulu or in South Africa, one says ubuntu, bomoto, all of these terms are used from
22 the Cape right up to the Sahara. It is the intrinsic nature of man or of being a man.

23 In Africa, when people act outside the bounds of African solidarity, he's said to be
24 beyond or out of bomoto. He is without that which is being man. So when you do
25 not act as a man, you're said to be bestial. An animal, however, cannot be a man. A

1 man who acts like an animal, so beyond the realm of African solidarity, a man cannot
2 be an animal, but he can act like an animal, and when he does so he will be told, he
3 will be told so. One will say, you're acting like an animal.
4 And people say "Show me your bomoto. Show me how are you a man. Show me
5 to what degree you're a man."
6 And African society will judge your degree of ubuntu by the application of the
7 expressions in society of the features of African society -- solidarity. Those features
8 demonstrate that one is a man or on the contrary that one is close to being animal-like.
9 If you are selfish and not charitable, you don't have a heart for those who are
10 suffering, people will say: What kind of a man is that? He's got a bad heart.
11 Society will ex-communicate the person. And when society ex-communicates you,
12 the dead ex-communicate you, and then you are a person who is a void.
13 In Africa, if your car breaks down, people will stop to give your car a push,
14 something which almost doesn't exist beyond the Atlantic. If you go to a garage to
15 have your bicycle repaired, and the mechanic says, well -- or you don't have any
16 money, the mechanic will do the job for you nonetheless. He'll say, "Oh, don't worry
17 about it, it's on the house."
18 It's a bit like that. This is the way Africa is. But when Africans copy so-called
19 modernity, the philosophers refer to modernity, the working intellectual ponder what
20 is modernity, what is trans-modernity, et cetera, but that's not the issue. The issue is
21 human virtues and to seek out and find human virtues. And I believe that human
22 virtue is found on a massive scale in Africa. But unfortunately we're losing that,
23 we're losing that because we are becoming -- we are losing our own culture. Culture
24 is being imposed upon us, and we have lost our old reference points. In fact, we are
25 lost. And the consequences of that are very serious, particularly when one convicts,

1 when one sits in judgment, when one hands down punishments, the repercussions of
2 this are grave. Thank you.

3 PRESIDING JUDGE SCHMITT: Mrs Lyons, I understand we would now normally have
4 now the break, but I understand that you have not many questions anymore?

5 MS LYONS: Your Honour, I have one brief question.

6 PRESIDING JUDGE SCHMITT: I think then we should do that before the break, so please
7 take your time and ask the question.

8 MS LYONS:

9 Q. Thank you, Professor. I have one last question.

10 In parts of East Africa, particularly Kenya, Uganda, Tanzania, there's a money
11 transfer system called M-Pesa, which is a phone-to-phone transfer. My question is
12 this: Is there any relationship between this type of transfer of moneys and the
13 concept of African solidarity?

14 A. Thank you very much for your question. The M-Pesa system is not just an exclusivity
15 of Eastern Africa. You have a lot in Southern Africa. It's in the Congo, it's in other places.
16 M-Pesa, you can carry out a transfer, but it's a medium, a medium of transferring money.
17 You can help somebody who's abroad, you see? You can help somebody who's abroad. I
18 can -- you can use a bank.

19 Now, if today in the African culture, what obliges an individual, an African to behave
20 as he should, but maybe he can't come to Belgium, maybe he can't come to Holland,
21 and to help, how can he come? He can't even come by plane. But with modernity,
22 positive modernity, good modernity, means that the banks can help.

23 M-Pesa can be a means of transfer. I will take my money, and I will send it to my
24 brother who is in Southern Africa, South Africa, because he's in a difficult situation.
25 I send this money.

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1 So I think that M-Pesa or the bank or the savings bank, et cetera, it is a means which
2 can be profitable, which can be beneficial in African solidarity because it helps the
3 well-being. It makes the person who's far at a distance to be able to come very
4 quickly to aid despite the distance.

5 So if you have a village, you can very quickly get to it with modernity, positive
6 modernity. With globalisation the -- it's becoming a global village, the world.

7 Well, let's take advantage of that in African culture. Let's take advantage of the
8 technological advantages. But the disadvantage of it is that the Africans are asked to
9 come back to the source, and they always are told to modernize. They have
10 to -- there's positive modernization. That's it, counsel.

11 Q. Thank you very much, Professor.

12 MS LYONS: Thank you, your Honours.

13 PRESIDING JUDGE SCHMITT: Thank you very much, Mrs Lyons.

14 I understood that the other Defence teams do not want to question the witness.

15 Then we would continue after the break with the Prosecution, Mr Vanderpuye.

16 Do you have an estimate how long your examination is going to be?

17 MR VANDERPUYE: Thank you very much, Mr President. I'm going to revise it and take a
18 look at it now. It may very well be that it will be very short, but I'll take a look at the record.

19 PRESIDING JUDGE SCHMITT: Okay. And we have now the break until half past 2.

20 THE COURT USHER: All rise.

21 (Recess taken at 1.05 p.m.)

22 (Upon resuming in open session 2.30 p.m.)

23 PRESIDING JUDGE SCHMITT: So I had two questions when I entered the courtroom.

24 First, why is it so dark here? And the second was, where is the witness? But both questions
25 are now answered sufficiently, I would say.

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1 Professor Bwatshia, welcome again in the courtroom. We continue the examination,
2 and it's now the turn of the Prosecution.

3 Mr Vanderpuye has the floor.

4 MR VANDERPUYE: Thank you very much, Mr President, your Honours. Good afternoon
5 to you, and good afternoon everyone.

6 QUESTIONED BY MR VANDERPUYE:

7 Q. Good afternoon, Professor.

8 A. Good afternoon. Thank you very much.

9 Q. As you just heard, my name is Kweku Vanderpuye. I am going to put some questions
10 to you in relation to your direct examination and cross-examinations by the Defence
11 regarding your evidence.

12 I just want to remind you of a couple of things. I know that you've testified before
13 the Court on a previous occasion, but I'll ask you to try and keep your voice up and
14 speak a little slower than you might ordinarily speak. I'll do the same to the best of
15 my ability so that the interpreters can keep up and translate everything you say
16 accurately.

17 Also, if there is any question that I ask you that is unclear, please let me know. That
18 way I can rephrase my question in a way that we can better understand one another.
19 I will try to frame my questions as precisely as I can, and I'll ask for you to try to do
20 the same in answering them, okay?

21 A. I agree.

22 Q. Very good. Now, you were called to testify in this case as an expert. You have a
23 background or expertise in European and African contemporary history; right?

24 A. Yes, that's correct.

25 Q. And you testified previously before this Court in another case and were qualified in that

1 case to give evidence regarding matters related to the registration or civil status of individuals
2 as well as naming conventions in the Democratic Republic of the Congo, right?

3 A. Yes, that's correct.

4 Q. You've testified as an expert only before this Court and not before any other court, is
5 that right?

6 A. Just this Court, yes.

7 Q. And just the one time, right?

8 A. Yes, it's the second time now.

9 Q. And you've never testified before this Court or any other court about in particular the
10 notion of la solidarité africaine, right?

11 A. It's the first time.

12 Q. And the notion that you've been discussing today, the notion of la solidarité africaine is
13 not a discrete discipline, is it? It's part of a broader academic discipline, right?

14 A. That's correct.

15 Q. And it falls within the broader academic discipline of sociology among other disciplines,
16 right?

17 A. You could put it in history. You could put it in sociology. You could put it in cultural
18 anthropology, in philosophy. It could also be put in mentalistics. It's very wide, African
19 culture.

20 Q. That's for sure. But what we are talking about specifically is la solidarité africaine,
21 right?

22 A. Exactly.

23 Q. And you're not an expert in all of the fields that you've just named, with the exception of
24 history and I think you referred to mentalities, right?

25 A. Yes, I'm a historian, but I would say that I'm really specialised in mentalities. This is a

1 branch, the knowledge of the behaviour of individuals in terms of their evolution when they
2 take decisions concerning events.

3 Q. Okay. I'd like to ask you some questions about how it is that you came to be engaged
4 as an expert in this case. Just to start with, let me ask you this. Before your engagement in
5 this case, did you know any of the accused in this case, that is Mr Bemba, Mr Babala,
6 Mr Mangenda, Mr Kilolo or Mr Arido? Do you have any knowledge of who these
7 individuals were, whether personally, professionally or through any other means?

8 A. Well, these are co-citizens. But I didn't know them other than a particular friendship.
9 These are citizens, nothing less, because they are in the political scene of our country, as I am.
10 I know them, but I was never with them in a particular circumstance, a particular friendship.

11 Q. When you say you know them, who do you mean?

12 A. Well, I know them from the scene. These are Congolese people. These are Congolese
13 people. But I cannot say that I particularly know them. I don't know them particularly, but
14 I know that these are Congolese citizens, nothing less.

15 Q. You know that they're Congolese citizens. And how do you know that, sir?

16 A. Yes, but in the Congo, if I take the example when you have a university professor, and
17 you often -- well, I put it to you, I'm on TV and I comment on events, cultural events, such as
18 today, different cases, mentalities case, everybody sees me. And when they see me, they ask:
19 Well, do you know, Kambayi?

20 Yes.

21 Well, how do you know him?

22 Well, he's on TV. And they say he's a historian. He's a university professor.

23 In other words, you don't know him more than that.

24 Q. Professor, you said that you knew that the accused were Congolese citizens. My
25 question is simple: How do you know that they're Congolese citizens? And if you do,

1 which ones of them are Congolese citizens to your knowledge?

2 A. That's very easy. I knew Mr Jean-Pierre Bemba as president of a political party above
3 all. I knew Mr Babala as a major lawyer. I knew not very much Mr Kilolo, but I knew him
4 by his name. But otherwise I don't have an affinity of any type with these people.

5 Q. Okay. I think you've answered my question then.

6 Did you discuss your testimony or your upcoming testimony with any of the accused
7 in this case?

8 A. I have to say, counsel, that I don't know -- I don't even know where they live. I don't
9 know them. I never took -- I never spoke to them. So as regards this testimony, this is the
10 product of my own research.

11 Q. Thank you. That's very helpful as well.

12 You did speak to Mr Azama, right, Rodoma, the lawyer for Mr Babala, right?

13 A. As he said, we discussed things, but we didn't discuss the report or the content of the
14 report. I was just told when I was asked to speak about African solidarity. But I was not
15 told that I had to work, speak about this, that or the other, no.

16 I was asked, Maître Azama asked me if I was able to speak about African solidarity.

17 And I asked him: How did he come to me? How did he get to me?

18 And he said: Well, we've seen that you have already testified on names. And we
19 have looked at the Internet, and we've looked at your work, and we have seen that
20 you are an expert in mentalities and the African history, and we contacted you. If
21 it's not you, it could be somebody else.

22 And I said: No, I think that I can speak about African solidarity, without calling on
23 anyone else and without speaking in favour of anyone else. But I would speak about
24 what I know, and as I said this morning, with regards to my personal experience and
25 my observations and also with regard to the documentation that I read at the end of

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1 my report and state there.

2 I've said that this, because of the way in which I know these things, it comes from me,
3 it's from me, no other person has said that it could be directed in such and such a way.
4 I wouldn't even accept that because --

5 Q. I appreciate that, sir. My question was only whether you spoke to him. And I think
6 you have.

7 So my next question is: Did you speak to any other lawyers representing any of the
8 other accused in this case?

9 A. Never.

10 Q. So you've never discussed any of the particular facts that are at issue in this case, the
11 circumstances that they are alleged to have acted in a certain way which violates the Statute of
12 this Court?

13 A. In the way I am as a university professor, I'm not, almost not responsible for political
14 matters, political matters in the country, and I watch it on television like everybody else does.
15 I don't take a position for or against a particular person. That's not my thing. I'm interested
16 in politics, of course. But I don't go further in the discussion, either with myself or with
17 other people, because, counsel, I have to say I'm too busy. I am too busy. And if you see
18 my works, well, it takes a lot of time. So that's why I'm not involved in it.

19 Q. A couple of things. First, we're talking about this trial and not politics, which I'm sure
20 you can appreciate. The second thing is, it's fair to say that you don't know why the accused
21 in this case may have or may have not done the things that they're accused of having done,
22 right?

23 A. Could you repeat the question, please?

24 Q. Yes, I'll rephrase it. You don't know what they are alleged to have done in this case, is
25 that right, that is, the accused?

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1 A. On television, they said things about it. It's known by everybody in the Congo. The
2 television says things. I heard them in a vague way without going into the different details
3 somebody did this, somebody did that, but I didn't go and see what that meant, no. I didn't
4 get into that.

5 Q. So you never discussed it with any of the Defence counsel or any of the accused, in
6 particular Mr Babala, what he is alleged to have done in this case to violate the Statute of this
7 Court, right?

8 A. Yes. I worked with my assistant and I read the questions or statements concerning
9 African solidarity, concerning mutual help and, above all, the difference in understanding
10 there is concerning certain things, that's to say in African culture, when you say that the child
11 burnt the house, that's in my research, so do you have to --

12 Q. I'm talking about this case and the charges in this trial facing these accused, okay?

13 A. Very well.

14 Q. You don't know the circumstances and facts that are at issue here facing -- regarding
15 their conduct, right?

16 A. Well, the television, these things were on television. They speak about it.

17 Q. All right. That's all you know. You haven't spoken to any of the Defence lawyers or
18 the accused about that, have you?

19 A. I know --

20 PRESIDING JUDGE SCHMITT: Mr Djunga.

21 MR DJUNGA: (Interpretation) Your Honour, I note that the professor has answered more
22 than once the question. I see we're always going back to the same question. And perhaps
23 there is a need to clarify this.

24 PRESIDING JUDGE SCHMITT: Mr Kilenda.

25 MR KILENDA: (Interpretation) Your Honour, I don't want to take up the habit of cutting

1 off the examination, but I think it's going too far, because the question has no factual basis.

2 PRESIDING JUDGE SCHMITT: I agree with Maître Djunga that the question has been
3 answered now, and it's perfect -- we all can have an understanding what it means when the
4 expert witness, when he tells us that his knowledge comes from television reports. And he
5 has made clear that he does not have information that goes further. So I think you could
6 indeed and should move to another point.

7 MR VANDERPUYE: Happily, Mr President. Thank you.

8 Q. Your report essentially provides an explanation for why some Africans might act in
9 some circumstances, right?

10 A. My report, counsel, tries as you say to explain the conduct, behaviour, the mentality,
11 how an African in the name of African solidarity has to behave. Now, I spoke about poverty,
12 about distress. I spoke about sadness. I spoke about joy. I spoke about a lack -- I spoke
13 about reciprocity. My report takes into account this aspect of help to the better, or not
14 necessarily help or aid, but a contribution, a contribution -- that's the word I'm looking for -- a
15 contribution that an individual can give to another individual in any kind of circumstance.
16 For example, when a priest is ordained, death, for example, returned from a trip, a
17 diploma, marriages, African solidarity means that you assist somebody, not just in
18 case of distress, but in all circumstances related to the family at large.

19 Q. You're not suggesting, are you, that all Africans in every circumstance act in accordance
20 with the notion of African solidarity as you've described it before this Chamber, are you?

21 A. Well, this morning I stressed the fact that if really one is African living in an ontology
22 which is African, respecting the virtues and values of Africa and African ontology, then
23 naturally and legitimately you are acting within the way I described this morning.

24 Q. That's quite a mouthful of assumptions you have there. Why would you think that
25 every African in all circumstances acts in accordance with those particular virtues all the time?

1 I know that's not what you are suggesting, is it?

2 A. I'm in a framework, counsel, of ontology, morals and ethics. And I would also like to
3 add, counsel, that the notion of African solidarity, despite the fact that it's logical, it's normal.
4 It is very much inscribed within the African human being. It has undergone modifications
5 and evolution, just as all notions and concepts have. If you take, for example -- and this is
6 something that I've said here before you -- somebody who has been a long time outside of
7 African society doesn't know the conditionality of that society, of that solidarity. Of course
8 they will say, "I'm African." But when you go into depth with that person to look at the
9 understanding of that notion, that person will get lost. And what's the reason? Because
10 that person does not know it. He says he's African, but he doesn't know it, know this factor.
11 And why? Because that person has stayed for a long time outside of his patrimony.
12 The traditions and illustrations of African culture, that's a factor, the fact that he's elsewhere
13 because there was a certain degree of modernity. There's the age factor as well. The more
14 you grow up elsewhere, the more you get older elsewhere, you forget these things. Another
15 factor. If the African becomes more westernized, counsel, if he becomes more and more
16 westernized, then you will agree with me that he loses his point of focus. And most Africans
17 who have studied in Western context, in a Western sense of the term, well, sometimes they
18 forget their language. And you know that language is the mirror of culture. And when you
19 forget your language, you forget the culture and you get lost. And this is a factor.
20 Now, the next factor is wealth. When you become wealthy, you often forget that
21 you have to help. And what remains in the culture is aid. When people have
22 accumulated a certain degree of wealth, confusing money and material well-being,
23 becoming particularly equivalent, putting aside this aid that I spoke about, these
24 people have their way of being. And what I've told you is that in the name of
25 African solidarity, the society will see a certain person with a critical view. This

1 person isn't serious. He's not European, nor Western, nor American, nor is that
2 person African.

3 So we would say this person is an individual with no culture, acultural. That person
4 will be looked at with a particular viewpoint.

5 Also, furthermore, the person's children, wife, they feel outside society,
6 ex-communicated, if I can put it like that.

7 Q. I think my question was pretty simple, which is that you are not assuming or suggesting
8 that all Africans act in accordance with your notion of African solidarity all the time in all
9 situations. That's right, isn't it? Because it's affected by where they grew up, correct?

10 A. I say that in principle, ethical, ontological and morals, morality, African morality, in
11 African society, all Africans must act in this way, should act in this way. But the situation
12 which I would say has developed in a bad way, this means that --

13 Q. Professor, my question was pretty straight ahead. Whether an African acts in
14 accordance with your notion of African solidarity is affected by where they grew up, yes or
15 no?

16 A. Yes. It's influenced when that person does not know, when that person does not know.
17 But when that person comes to reason, then that person regrets it. And that's what I'm
18 saying is that person will consider himself an African. But he has to act in that way. It's
19 simple.

20 Q. How much money they make affects whether they act in accordance with your notion of
21 African solidarity, right, la richesse?

22 A. I don't have this experience unless I haven't understood the question well, but I don't
23 have the experience that money that the person is going to have is going to influence them in
24 that way or another. I don't have that experience, counsel.

25 Q. I think you just said not even five minutes ago that if somebody has money, sometimes

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1 they forget the notion of generosity, which you just testified about, in accordance with your
2 notion of African solidarity, right? Sometimes they forget.

3 A. What I would say is as follows: Forgetting, counsel, that means that you're aware of it.
4 To forget, that means that you were aware. But in most cases, they don't know. And why
5 not? Because they haven't grown up in it.

6 Q. Right.

7 A. That's what I wanted to say.

8 Q. And I agree with you. What I'm getting at is what are the circumstances in which an
9 individual will not act in accordance with your notion of African solidarity, yes?

10 A. Yes, I could put it that way. But in terms of our dealings, my way of seeing the issue, I
11 would like to say that an African person worthy of that name must behave in that manner
12 unless he doesn't know about African solidarity, if he has -- unless he has been not raised with
13 that tradition. But, generally speaking, he should act in a manner consistent with African
14 solidarity.

15 Q. In principle, right?

16 A. Yes.

17 Q. But not necessarily in fact, right?

18 A. But the facts are to be judged by the way the person behaves himself. Counsel, I would
19 like to tell you this: African society, when you act within a society, in principle, society
20 knows why you are acting in a manner, certain manner. Society sees when you are helping
21 others. Society encourages an individual to help others, to work -- to act in this fashion.
22 What I am familiar with -- well, I don't have the experience. I have only the
23 experience of societies where people work in a way they don't know.

24 PRESIDING JUDGE SCHMITT: I think, Mr Vanderpuye, you have exhausted that subject.
25 I would formulate it like that. So you could move on.

1 MR VANDERPUYE: Thank you. I'll phrase it in one other way, Mr President.

2 Q. It's right to say, isn't it, Professor, that a given individual's actions is the product of
3 many, many things, at least potentially, right? Whether they're African or European or
4 Asian or anyplace else, right?

5 A. Yes. Now, when you must consider the act performed by the individual, then you
6 must take into account a maelstrom, an entirety of circumstances that led the person. But
7 myself as such, speaking about principle, I can't say straight out that an individual, in and of
8 himself, in light of his education and background, can act in this way or another way. It
9 would be difficult for him.

10 And what's more, I wouldn't say -- I wouldn't come to the conclusion that he acted in
11 that way by helping his father or his brother, that he is in the wrong.

12 Those concepts within African society are difficult to grasp, counsel, and you have to
13 be very careful when you deal with these concepts.

14 Q. There are also laws in African countries, right, Professor?

15 A. Naturally, naturally.

16 Q. The laws are there for a purpose, right, Professor?

17 A. I would like to say that the laws -- people who made the laws, who passed the laws, the
18 laws that are applied in African society, where do they come from? The law that is applied,
19 and I'm asking you, the laws -- the law that applies, but that is, it is non-inculturated law.
20 An African person, in his milieu, is in the process of applying a law that becomes law.
21 Can I give you an example?

22 Q. Hang on one second. You're from the Democratic Republic of the Congo, right?

23 A. Yes, counsel.

24 Q. There are laws there, codes, criminal procedure laws, penal laws, right?

25 A. Yes, counsel.

1 Q. And there are people that are charged with enforcing those laws in the Democratic
2 Republic of the Congo and other African countries, right?

3 A. Yes, counsel.

4 Q. And there are citizens in those countries who are subject to those laws, right, Professor?

5 A. Yes. Yes, counsel.

6 Q. And under those laws, those citizens are required to obey those laws in those countries,
7 including your own, right, Professor?

8 A. Well, I think you were correct when you said "are supposed to." That's not always the
9 case.

10 Q. The word I used, I hope, was "required to"; but, at the very least, "supposed to" will do.
11 They're supposed to obey those laws, right?

12 A. You say required? I don't understand.

13 Q. The laws in your country are meant to be followed, right, Professor?

14 A. If, counsel, if those laws are different from customs, how are you going to enforce the
15 law? The official law in Kinshasa is different from custom. Someone who is in a rural
16 setting, who is following the customs, is not necessarily going to be held to the same sort of
17 standards as in Kinshasa. So law, as it is enforced or applied before a Court, is not the same
18 thing as custom. In most cases -- in the case of divorce, let us say -- please.

19 Q. You heard my question, right?

20 A. Yes.

21 Q. Do you want me -- do you want me to repeat it, or are you able to answer it?

22 A. Unless I misunderstood. But I wanted to say this, counsel: You used the word "are
23 supposed to," or "are required to." My answer to you is this: The word "supposed to"
24 means that it is supposed that -- well, they must know you because every -- well, everyone is
25 bound by the law. But I am saying that in the African tradition, in Congolese custom, of

1 course they are supposed to. But they are not necessarily taught. They may not be taught
2 French. So it is difficult to apply the law in a country that is not familiar with the law.
3 There is a dichotomy here.

4 Q. Everyone is bound by the law in your country and in other African countries that have
5 laws, right, Professor?

6 A. I would say so from a legal point of view, from a societal point of view. But
7 somewhere I would say no because the same person or persons who are supposed to apply
8 the law find themselves dealing with a major problem when they have to enforce the law in a
9 rural setting or when they're dealing with custom. Then it is difficult.

10 Q. You described the application of custom to individuals that are operating in rural areas.
11 You see the accused in this case. Do you have any information that suggests to you that they
12 operate in rural areas or under rural circumstances? Do you have any information that
13 suggests to you that they are the peasants and the rural individuals who don't understand
14 French, who don't understand Western laws? Is that your information?

15 PRESIDING JUDGE SCHMITT: Maître Djunga.

16 MR DJUNGA: (Interpretation) Once again, your Honour, I feel almost obliged to apologise,
17 but this is quite leading. He said, the witness said earlier he did not know the accused
18 persons, and I don't really see why my friend would be asking questions that would --

19 MR KILENDA: (Interpretation) What is more, during examination-in-chief conducted by
20 Mr Azama, Mr Azama did not ask the witness about the accused persons here in any way,
21 shape or form. I think my learned friend does not have a factual basis here. I have let him
22 go about his business for a while now, but he is continuing down the same path.

23 MR VANDERPUYE: This is --

24 PRESIDING JUDGE SCHMITT: No, no. Mr Vanderpuye, I've heard enough. Another
25 notion is of course that we are not discussing with this expert, with this witness the evidence

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1 or the facts or any application on legal matters. And the Chamber does not want to hear by
2 the witness, because he lacks as he has stated knowledge of the evidence and the facts, we
3 don't want to hear from him any assessment concretely on the facts and the evidence of the
4 matter because of this reason. And because of that, the objection is sustained.

5 MR VANDERPUYE: Mr President, my question wasn't about the facts, the circumstances of
6 this case or the charges in this case. My question was: What is his information regarding
7 the accused in terms of his assessment of the application of African solidarity? He has said
8 that that is affected by a number of factors. That's clear. And I'm asking him what is his
9 information concerning the accused in this case with respect to its application to them.

10 PRESIDING JUDGE SCHMITT: But this, this touches what the case is about. And he is an
11 expert witness here to give us background information that could potentially be relevant or
12 not relevant. That is something what you have to decide upon when you make your, for
13 example, your closing submissions or your closing statements and the Chamber will have to
14 decide ultimately, and I think we have enough on the table to do that. So as I said, it is
15 sustained and it stays like that.

16 MR VANDERPUYE:

17 Q. Let me just clarify with you, Professor, the conclusions in your report have absolutely
18 nothing to do with any of these accused, right?

19 A. Not at all. Not at all. This morning I told you that my conclusions were, well, based
20 on personal research on my bibliography. They have nothing to do with the accused. I
21 have nothing to do -- I don't know them. This is information that comes from my experience
22 from science and from my extensive bibliography.

23 Q. So it has no bearing on them to explain any alleged conduct in this case, right? They
24 can't explain anything they've done, because it's not about them, right?

25 MR TAKU: Your Honour --

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1 PRESIDING JUDGE SCHMITT: Mr Taku.

2 MR TAKU: I'll object. This is conclusive, conclusory. It is for your Honours to decide.

3 PRESIDING JUDGE SCHMITT: We can keep it short. You're correct. Sustained. This is
4 indeed conclusive.

5 And please move on.

6 MR VANDERPUYE:

7 Q. You said you worked on this report with your assistant. Who is your assistant?

8 A. I'm a university professor. And when I am asked to do work such as this, I send my
9 assistants to the library. I can send my students. If you look at the bibliography, you will
10 see my own books, my documentation. And today that I worked with a particular assistant,
11 that will be difficult to say.

12 I could go farther and say myself, I was an assistant of a professor who, a professor
13 who has now passed away, but today to give the name of a particular assistant on a
14 particular piece of work, this, you see, is a compilation in a way of all my work. I
15 have been working on solidarity for a long time and on the history of mentalities, so I
16 cannot really give you the name of the assistant.

17 Q. Who wrote this report, Professor?

18 A. I wrote this report.

19 Q. Every word in it?

20 A. This report was drafted by myself. I signed it myself. I am the director of a research
21 centre into mentalities. And now a new theory is being advanced about mentalities,
22 mentalistique, a history of mentalities. And in September with the new school year, I will
23 begin a new course at the university entitled "Mentalities," just as two years ago at the
24 University in Lubumbashi, when I teach at the pedagogical university and all other
25 universities in the Congo, you will see at the second level a course entitled "History of

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1 Mentalities." And, you see, this is the fruit of my research, the fruit of the work done at the
2 centre, and I --

3 Q. So you wrote every word in your report, is that right or wrong?

4 A. That is a question I can't answer. Draft each word? If you -- I beg your pardon,
5 counsel. If I think of each word? When I'm here, for example, I don't think of each word.
6 I think of an idea that comes into mind. And if I said the word or if I thought of the word
7 "solidarity," and you asked me if that's my word, "African," you ask me if that word belongs
8 to me, for each word, that is difficult, or the word, the word, for example, "solidarity" or
9 "déprime," I find myself truly unable to go through the report and say each particular word
10 belongs to me. I'm sorry, counsel.

11 Q. I'm almost astonished by your answer, Professor. Did you write this report from the
12 beginning to the end with your own words or did you use other people's work in your report
13 and claim it as your own?

14 MR DJUNGA: Monsieur le Président.

15 PRESIDING JUDGE SCHMITT: Maître Djunga.

16 MR DJUNGA: (Interpretation) Thank you, your Honour. I hear -- well, correction. I do
17 not intend to keep the Prosecution from doing their work, but I find that the
18 profession -- correction, the Prosecution has been interrupting the witness constantly, and I
19 think this is definitely a flaw, a shortcoming, and we have to show the appropriate respect for
20 a witness who comes before this Court. And I find that there really is a problem here, a
21 problem with respect, the respect that should be provided to an expert witness.

22 PRESIDING JUDGE SCHMITT: It is also correct what you are saying. I also thought about
23 to interrupt the interruptions to be honest. I understand that you do not want to have on
24 examination of the witness lengthy explanations and that you want to shorten that. But
25 when the witness is asked something and tries to explain, we should let him explain it until

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1 the end. And perhaps from further on the Presiding Judge will step in and will tell the
2 witness "Now perhaps we have understood your point and your answer."

3 Otherwise I would say please do not interrupt the witness by your own will and your
4 own doing and reserve this please to the Presiding Judge.

5 But you can, once again, for one more time ask the question that you have asked,
6 because I assume that the witness has forgotten it, and then we accept whatever the
7 witness answers to this question and we move on to the next point.

8 MR VANDERPUYE:

9 Q. The question was, Professor, so you wrote every word in your report, is that right or
10 wrong?

11 Your answer began with "That is a question I can't answer."

12 Do you want to tell --

13 A. Because it is my report.

14 Q. Maybe there is a translation issue. Your answer was that you cannot answer that
15 question, is that correct?

16 A. Because, you see, this is about my report, my actions, what I say. When one gives a
17 speech, one is not asked whether something comes from oneself. So I think there is a very
18 serious problem here.

19 PRESIDING JUDGE SCHMITT: Mr Witness, do you take responsibility for what is written
20 in your report, personal, professional, expert responsibility for these seven pages? Do you
21 take responsibility for what is written down there?

22 THE WITNESS: (Interpretation) I am indeed responsible for this drafting, this piece of
23 scientific drafting. I assume that and I signed it.

24 PRESIDING JUDGE SCHMITT: Now I think we have really exhausted that subject and we
25 can move on.

1 MR VANDERPUYE:

2 Q. When did you write it?

3 A. When I was asked to write it -- how should I put this? I can't -- well, I don't have all the
4 files. But you could ask your colleague for the date.

5 Now, the date on which I was designated as an expert, that was sent on 20 January
6 2016. That is when I received the letter. And you must realise the mail does not
7 operate very well. And so I did receive that letter, and I had to work on the report,
8 and what you have received is the result of my work.

9 Now, just so that this -- the -- the -- the draft is the outcome of several -- rather the text
10 is the outcome of several drafts. I set out the methodology, and this methodology is
11 individual to each kind of work. And it depends on the researcher, who is the
12 source of his own method, and that is the path that one takes. And I know how I got
13 to my final destination.

14 Now, when I said something about -- when I say something about a society, one has
15 recourse to one's experience, to the experience of others. You'll see that on page 6.
16 And I hope that is -- well, that is how a Ph.D. thesis is drafted. That is how a report,
17 an expert report is drafted. It is not a report -- it is not -- it does not -- well, you see,
18 counsel, otherwise it is not a report.

19 Q. You wrote this sometime after 20 January 2016, fair to say?

20 A. Well, it was -- well, when you say "draft this report," counsel, what does that mean? It
21 means that -- do you mean a report about African solidarity?

22 In the mind of the researcher, some ideas come to mind automatically. Oh, I looked
23 into this. Oh, I researched that. So you take all those various ideas. You bring
24 them together and you draft.

25 And when you are asked to draft about African solidarity, I put all those ideas

1 together and I work. Just as would have been the case if I had been asked about
2 diamond mining or marriage or friendship. But I was asked to draft something
3 about African solidarity. And I have worked on the Belgian French press coverage
4 of events in the Congo back when I did my Ph.D. And, you see, gradually I began
5 working, and at the end I prepared my thesis. And this was the same sort of thing, I
6 worked in the same style or fashion.

7 Now, unless I can give more information, but I assume the fact that as I said this
8 morning the signature is there, the stamp of my research centre is there, and I assume
9 that the responsibility that yes, this is mine, and I think I have explained, if you will,
10 with as -- in a very proper manner.

11 Q. I didn't ask for an explanation. I just want to know when did you write this report? If
12 you don't remember, tell the Chamber you don't remember. But if you do, it would be
13 helpful if you could answer the question.

14 A. I cannot say that I don't remember because, you see, there was a letter that was sent to
15 me. And from the time of that letter up until now the report is here. The report, well, when
16 it started, when it ended, this is the month of January, and I started to write and I sent it off
17 recently. You see, it was over a period of time. But the exact time from January to -- I, I
18 can't -- it's not that I don't remember, but to say that I did the work from this date to that date,
19 counsel --

20 Q. This year, right, 2016 you wrote this report?

21 A. Oh, yes. I drafted it in 2016, given the writings, the work that was done before me.
22 Just, well, you see, a researcher will go look in the library, look elsewhere, put things in order
23 to provide what he has been asked to do. That is normal.

24 Q. Let me take you to your report then. That's at tab 1. CAR-D22-0004-0007. For you,
25 Professor, we're going to go straight to the back at 0011. That's page 5 of your report just

1 above where it indicates section 9.

2 A. Page 5, page 5.

3 Q. Top paragraph, paragraph on the top.

4 Let me see if we have that in eCourt.

5 A. Yes.

6 Q. And the last sentence of that paragraph, it reads as follows: (Interpretation) "In
7 actual fact, each person is required to take on his customary duties and assume his share of
8 community life to receive" --

9 A. Which paragraph, please? I beg your pardon.

10 Q. It's at the top of the page, last sentence of that paragraph, which reads, it begins "en
11 réalité," do you see it?

12 A. Page 5?

13 Q. Fifth page, yes.

14 A. Page 5, number 9, that begins "Quant à l'ignorance," is that -- I see, "En réalité," in reality
15 each person, yes, I see, yes.

16 Q. You wrote that, sir?

17 A. "In reality each person is required to carry out his customary duties and assume his
18 share of community life to receive in return support from the community." Yes, of course.

19 Q. You wrote that in 2016, right?

20 A. Yes. In 2016, yes, counsel.

21 Q. All right. Do you know somebody by the name of Muyisa Lusenge?

22 A. Muyisa Lusenge.

23 Q. Muyisa Lusenge, Lusenge.

24 A. Let me consult my bibliography. But I don't think that I've seen it there. I don't think
25 I know of him.

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1 Q. He's not in your bibliography.

2 A. No, no.

3 Q. Have you ever read an article by Muyisa Lusenge entitled "Solidarité, famille et
4 développement socio-économique en ville de Butembo" 2008?

5 A. What was the title again?

6 Q. (Interpretation) "Solidarity, Family, and Socio-economic Development in the Life of
7 Mutembo."

8 A. No, no. Muyisa Butembo? No. I haven't read -- who is this person, a professor?
9 Yes?

10 Q. This person was a student who wrote a dissertation in 2008. And let me help you with
11 that a little bit. If we could go to tab 5. CAR-OTP-0093-0480, we need to go to page -- we'll
12 start there and then we'll go to the page once it's on the screen.

13 MR RODOMA: (Interpretation) Your Honour, I have an objection to the question put by
14 Mr Vanderpuye. He is referring the professor to a document which has not been disclosed,
15 or at least Mr Kambayi has not seen the document previously. It is a document which was
16 provided to us by email yesterday. I would ask you to apply the same jurisprudence as that
17 which you applied with the expert of Mr Mangenda. In other words, the obligation or the
18 burden is on the Prosecutor to present that document to the expert before he's asked to make
19 a statement in relation to it.

20 PRESIDING JUDGE SCHMITT: Mr Vanderpuye.

21 MR VANDERPUYE: Mr President, I'm going to a very specific passage of this paragraph,
22 which is a passage that I just went through with the witness in his own report and it's of direct
23 relevance.

24 PRESIDING JUDGE SCHMITT: So you're allowed to do that, but be specific.

25 MR VANDERPUYE: I will, Mr President. We don't have it in eCourt yet. Do we not have

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1 it in eCourt at all?

2 THE COURT OFFICER: (Interpretation) Mr Vanderpuye, would you mind repeating the
3 number of the first page and of the page which you would like to have displayed.

4 MR VANDERPUYE: Thank you, sir. It's CAR-OTP-0093-0480. The page that I wanted to
5 go to is 87.

6 Q. I understand you have a binder there, Mr Witness. Do you? If you do, I'd ask you to
7 go to tab number 5 in the binder.

8 A. 5, yes.

9 Q. Do you have it there in front of you?

10 A. 5, yes. This one here?

11 Q. Yes.

12 A. Yes.

13 Q. Do you have the document in front of you that says or you can see the title "Solidarity,
14 Family, and Socio-economic Development in the Life of Mutembo"?

15 A. Yes, "Solidarity, Family, Socio-economic Development," yes, yes.

16 Q. And you can see underneath that it refers to "par," "by Muyisa Lusenge"?

17 A. Yes, Muyisa Lusenge, who is a person I do not know, yes.

18 Q. And it refers to a licence 2008, 2008. Do you see that?

19 A. 2008, yes.

20 Q. I'm going to ask you now to turn to page 8 of that document. And you'll see at the
21 bottom there is an evidence registration number which reads CAR-OTP-0093-0487. And I'm
22 going to refer you to the fifth paragraph of that page. And I would like you to read for the
23 Chamber if you can the second sentence of that paragraph.

24 A. "In reality each person is obliged to fulfil their customary duties and to assume their
25 share of community life to receive in return the support of the community."

1 Q. Professor, that's word for word what appears in your report, isn't it, word for word?

2 A. Yes, it looks like it's word for word given the wording in that document and the
3 wording in my own. But when you write a dissertation or when you write a thesis, the
4 words can be similar. One cannot say that Mr Muyisa Lusenge owns that sentence. You
5 can't say that, just as you, counsel, cannot say today that this is not mine. When does
6 something belong to another? Nobody owns ideas. What I say today can be said also in
7 German, can be said in English, in Tshiluba. But counsel, you can't say to me this is word by
8 word. Think of what you find in all of those theses, all of those books, sophisticated works,
9 word for word.

10 Counsel, you cannot claim that I have taken Mr Muyisa Lusenge's thesis, a man who I
11 do not know, or have gone to the Internet to copy that text word by word. I can't say
12 that.

13 Q. Mr Lusenge wrote his piece in 2008. That's eight years ago, eight years before you
14 produced your report in this case. That's correct, isn't it?

15 A. Several people have written on the topic of African solidarity even before Lusenge,
16 counsel.

17 Q. Professor, and I have to say it is with great reluctance that I have to do this, but I'm
18 going to take you to a different part of your own report. If we can go to tab 1, please, point
19 2 -- I mean topic 2, point 1 of your report. In fact, let's start with point 2 of your report.
20 That's CAR-D22-0004-0007, if we could have that in eCourt, please. At point 2 of your report,
21 number 2 of your report, it reads as follows: (Interpretation) "African solidarity provides
22 an individual with moral security in that it constitutes a set of services of assistance and
23 cooperation, which are a hallmark of life in African societies."

24 A. Yes.

25 Q. You wrote that in 2016. Your words, right, Professor?

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1 A. Sir, counsel, you need to understand that when one is writing an academic work and
2 when one goes to defend that work -- and here this is not a doctoral thesis requiring
3 justification of sources. When one is asked to produce a report, one produces a report based
4 on a number of items. This document is my own. But when you ask where does this word
5 come from, where does this phrase come from, paragraph by paragraph, I would say to the
6 Court that this is not appropriate because a man of conscience would say this report was not
7 written by Mr Lusenge, Muyisa Lusenge, or anybody else; rather, I went to a large library
8 where I worked. But to say I copied this report from another, I don't see how it can be used
9 to contest that this report was written by myself. It's very difficult for me to respect such a
10 thing, counsel.

11 Q. I can imagine.

12 If you can go back to tab 5 in the binder in front of you. For the Court, we'll have to
13 go back to page 8 of that document, CAR-OTP-0093-0480. And again, I am going to
14 refer to the page ending 0487, same page we were on before.

15 I'm going to refer you to the next to last paragraph. It's at the bottom of the page,
16 and it's the last sentence of that paragraph. If you can locate that, it begins with "elle
17 est comme l'écrit, mwaka tshopo." Okay. Can you read that sentence, please, into
18 the record, Professor?

19 THE INTERPRETER: This is too fast for the interpreter.

20 A message from the interpreters. Could the witness please be requested to slow
21 down? We do not have the document in question.

22 PRESIDING JUDGE SCHMITT: Excuse us, then, Mr Bwatshia. This is much too fast. So I
23 think you would have to repeat it more slowly, please. Could you read it again? It was too
24 fast for the interpreters.

25 THE WITNESS: Excusez-moi.

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1 PRESIDING JUDGE SCHMITT: No, no. That's no problem.

2 MR VANDERPUYE: If I could focus him, perhaps, just on --

3 PRESIDING JUDGE SCHMITT: Yeah. Perhaps you can shorten it, yeah, yeah.

4 MR VANDERPUYE:

5 Q. -- just on the last part of that paragraph, which starts with "elle est comme l'écrit." Can
6 you read that into the record, please.

7 A. It is as written, "mwaka tshopo," in the set of services of assistance which feature or are a
8 hallmark, rather, of life in African societies.

9 Q. You see your language at paragraph 2, part 2 of your report?

10 A. Paragraph 2 on which page?

11 Q. Page 1 of your report.

12 A. Oui, oui.

13 Q. Part 2, number 2. (Interpretation) "African solidarity ensures to the individual a
14 moral security in that it constitutes a set of services of assistance and cooperation, which are a
15 hallmark of life in African societies."

16 A. Yes.

17 Q. Just what Mr Lusenge says, right, Professor?

18 A. Well, it seems to me that now I should explain to the Court a certain methodology in
19 academic work and in finalising academic reports. Although we stock all theses and reports
20 which exist or given that we do so, we find the same turns of phrase, the same structures,
21 because there is no ownership on sentences or language.

22 Counsel referred me to the document produced in 2008 by Mr Lusenge, his
23 dissertation or his thesis, I don't know. However, if you were to look at other
24 documents -- and unfortunately, I haven't brought other documents with me -- if you
25 look at other documents which I have relied and which I have consulted in doing this

1 work, you would find approximately the same words.

2 So today I really must counter this notion that I have consulted Mr Lusenge's work to
3 copy his words and put them in my report. Even if that had been the case, I can say
4 that Mr Lusenge, himself, did not invent this.

5 When one does academic research, one invents very little. Rather, one approaches
6 the same matters from a different angle, if you like.

7 Here I'm approaching a topic in The Hague from a particular point of view. One
8 could approach the topic in a different way in Zimbabwe from another angle. There
9 is much common ground, however. Try to establish whether one word corresponds
10 to another or one sentence matches with another. Well, it may be the case that there
11 are other versions. And I told you, counsel, that this is the final version of my work.
12 Initially this work was 15 pages or 20 pages long, but I reworked it and I reduced its
13 length to make it ready and to make it concise for the Court.

14 Now, today I'm being asked: "Where does this word come from? Where does this
15 word come from?" Who, amongst us, has not done this work? With all due respect,
16 counsel, a report is a report. When one writes about the press; for instance, the
17 viewpoint adopted by the press in relation to the Paris attacks, you see that all of the
18 newspapers write the same thing, and you will find that all of the newspapers are
19 starting from the same sources. This doesn't mean that one newspaper won't cite the
20 same source.

21 You can't ask Le Monde, for instance, whether a particular sentence was written by
22 the journalist, the editorialist.

23 If you look at the evening newspaper, you might find the same word, and you're not
24 going to ask that person, "Is that your paragraph?" It may well be the case that we
25 had the same source. We may have had the same source. I think we're going here

1 beyond what was or is required. The report is clear, your Honour.

2 PRESIDING JUDGE SCHMITT: Mr Kilenda is rising.

3 MR KILENDA: (Interpretation) Thank you, your Honour, for the floor. I think the
4 Prosecutor is focusing a great deal on the form rather than looking at the content of the report.
5 I think we should be occupying ourself with the substance of the report here. There were
6 many people here in the courtroom. Many of us have written academic works. Almost
7 every day we draft. We draft in our teams. It can happen that we cite a sentence from
8 memory without infringing anyone.

9 Secondly, the work of Mr Lusenge, which has been presented here today, this is the
10 work of a student which the Prosecution has downloaded from the net. Nothing
11 proves that the sources that are contained in that work have been checked by the
12 Prosecutor. Mr Kambayi Bwatshia is an expert before the Court. If the Prosecutor
13 wants to contest what he has to say, then he should have a counter-expert report
14 produced rather than challenging him in relation to texts which are -- the origin of
15 which are perhaps not certain.

16 MR RODOMA: (Interpretation) I'd like to follow up on what Mr Kilenda has said. As we
17 all know, law is based on interpretation. Words are attributed to Professor Kambayi. It is
18 being said that a sentence -- the sentence -- the set of services of assistance and cooperation,
19 which are a hallmark of life in African societies.

20 Now, if I refer myself to the document and cite that passage which I cited this
21 morning, and notably the second paragraph which the Prosecutor has returned to, I
22 see that there are words and lines which are similar to the online dissertation, but
23 there are some other words, "a set of services of assistance and cooperation." That's
24 important, your Honour, which are a hallmark of life in African societies.
25 That's an interpretive problem here, because the fact that cooperation has been added,

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1 this is something which is open to interpretation in various ways. I feel that it is not
2 possible to attribute motivations or intentions to Mr Kambayi which were not his
3 own.

4 PRESIDING JUDGE SCHMITT: Mr Djunga for the Defence finally for the moment, please.

5 MR DJUNGA: (Interpretation) Thank you, your Honour. I'm not going to return to the
6 decision you took a few moments ago. But if you are going to allow the Prosecutor to
7 continue his questioning, I would draw your attention to the fact that he has cited a segment
8 of the sentence. This was also the basis of the objection which was raised by my colleague,
9 Mr Azama. He asked that the full document be provided to the witness so that he could
10 inspect it. I note, however, that despite your ruling, that we are being referred to certain
11 segments of sentences.

12 Now, perhaps the Prosecutor is going to stop here, but I think that it would be fairer,
13 your Honour, if the expert were to be provided with a report and that he represented
14 in one go with the various segments or sections that the Prosecutor wants to draw to
15 his attention so that the expert could then comment on them.

16 PRESIDING JUDGE SCHMITT: I think it would be useful at that point in time, we have five
17 minutes to 4 o'clock, to inquire, I think I know the answer, if this exercise, you are going to
18 exercise this further on, that it would not make sense to say we extend hours until half past 4
19 to try to finish the witness testimony.

20 MR VANDERPUYE: I'll finish him. I'll finish with him, your Honour.

21 PRESIDING JUDGE SCHMITT: You'll finish?

22 MR VANDERPUYE: I won't be finished by 4 o'clock on the dot given the interventions of
23 my colleagues, but I think I'll be finished relatively soon.

24 PRESIDING JUDGE SCHMITT: But the interventions were not -- we have to think about
25 them. And I would insist also in presenting him a whole sentence. But you have done that,

1 I would say. And, of course, the Chamber has recognized that not a full sentence was similar.
2 So it's perfectly clear. You can't always be -- you have professional judges here, it's perfectly
3 clear that we can put this into perspective.

4 And also what Mr Kilenda and Mr Rodoma said, it's also clear that we do not only
5 have the written report here, we have now we are on page -- let me have a look, we
6 are on page 100 of the transcript questioning the witness the whole day. So we have
7 an impression of the witness which goes beyond also the expert report.

8 And so you can sense that it is not only about the report, but it is of course also the
9 right of the Prosecution to go into these matters because they concern sort of the
10 methodology. And I think you will understand that, that we cannot prohibit this
11 from the outset. And I understood and I think we should really try to finish the
12 testimony of the witness today when we extend hours until half past 4, that we
13 should try to do that and I think we can achieve that too.

14 So, Mr Vanderpuye, you have the floor again. And I understand that you do have a
15 few questions to ask.

16 MR VANDERPUYE: I do, Mr President. And just for the sake of the record, the very first
17 example that I showed the witness was a complete sentence.

18 PRESIDING JUDGE SCHMITT: Just one second. As I always say, these matters, you can
19 really, all the parties here, all the counsel can be sure that we recognize this. We also
20 recognize when only a part of it, when everything is the same, when there are differences in
21 the sentences, you can be sure that we put that into perspective and at the end that we will
22 consider that.

23 MR VANDERPUYE: Thank you very much, Mr President. And in the interest of time, I'm
24 not going to go through the remaining ones that I have here, but I will refer the Chamber to
25 the professor's report, page 1, item II, number 1, which also corresponds with Mr Lusenge's

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1 dissertation, 2008, at page 6 through 7, CAR-OTP-0093-0485 -- no. 0486 through 0487, in
2 addition to the ones that I've also shown the witness today.

3 Q. Professor, if you want to take a look at that, let me know and I'll be happy to show that
4 to you as well.

5 A. Very well, counsel. I'm going to start by saying what I said before. You've done some
6 wonderful work.

7 Q. Sir, I haven't asked you a question yet.

8 A. You asked me if I could take up the work. Excuse me, excuse me.

9 Q. I'm sorry, it's my fault. What I meant was if you want to see the references in your
10 report which correspond to the references in Mr Lusenge's dissertation, I'll be happy to show
11 those to you as well, okay? So if you want, you let me know. If not, then we'll move on.
12 I'm right to say that you've never produced a different report on African solidarity,
13 right?

14 MR TAKU: My Lord, I'm very, very, very sorry, exceptionally, exceptionally, your Honours.
15 Just give me one minute. The professor I think answered this question. He referred back to
16 his prior research over a number of years. Without a proper foundation, would he know
17 whether it was Mr Lusenge copying from him or professor copying from him? To explore
18 the issue that in your prior report which you refer back here over a number of years and
19 which he said inspired him to produce this report -- it could -- we do not know, your Honours,
20 so he's taking us into uncharted territory, which without follow-up questions and proper
21 inquiry we'll not be able to get a proper representation of what he wants to achieve.

22 PRESIDING JUDGE SCHMITT: But it's as I said before, this line of questioning is not
23 frivolous and it's not irrelevant, and I think the witness can answer the question. It can be
24 put to him if he wants to, but if he wants to have it put to him, then as we said before, whole
25 sentences, and we have to give him time; and if we don't finish at half past 4, that doesn't

1 matter at all. Then we continue tomorrow. So we are not in a rush or in a hurry at all.

2 MR VANDERPUYE: There is no problem, Mr President. I think the record is clear that the

3 professor produced his report in 2016 and that Mr Lusenge wrote his dissertation in 2008.

4 The document is there in front of Mr Taku. He can review it as he wishes.

5 But I specifically asked the professor. "When did you write that report?" You

6 remember that. We went over it for quite some time. So it's quite clear in the

7 record already.

8 PRESIDING JUDGE SCHMITT: But we have had this, so we don't have to repeat it.

9 Q. You're an academic and you have been one for many years, right, Professor?

10 A. Yes. I'm a professor and have been for many years, yes, yes.

11 Q. And you know as a professional academic that it's not appropriate to appropriate

12 someone else's work to your credit, right?

13 A. Of course, of course not. There is no evidence here that shows that I've gone onto the

14 Internet to search for the name of such and such a person.

15 Furthermore on this subject, counsel, if I'm going to go further, since I carried out my

16 studies, if you look at the bibliography, I think you've got it, and if you look at your

17 bibliography, you will find extraordinary works that I have drafted or other friends

18 have drafted and work in which I've participated.

19 Now, if you take in the bibliography, a very nice article written by Professor Mbuaki,

20 who is already dead; Zita-Kanda, who is deceased; Mutanda-Ntumba, who is retired;

21 and Professor Nsonsa as well, they have produced their Articles on African solidarity,

22 and I'm an assistant at that time and didn't want -- they didn't want to put my name

23 because I was an assistant, but these Articles were written in '73.

24 And I would like for this student to prove today that doing the work, that he didn't

25 look at those articles. I would like that, because this article which I assisted him,

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1 because I was an assistant in 1973 when I was studying, this was called African
2 solidarity, and I was asked to work on solidarity, African solidarity remembering that,
3 the work I had done with that professor.

4 And I called it "About African solidarity," "De la solidarité africaine." So the
5 Prosecutor has to prove or this person has to prove that he hasn't looked at this article
6 from 1973 and this phrase.

7 Q. Did you understand my question?

8 PRESIDING JUDGE SCHMITT: Mr Vanderpuye, he has answered the question. I would
9 really say he has answered the question.

10 MR VANDERPUYE:

11 Q. Is it appropriate for an academic to appropriate someone else's work to their credit?
12 That was the question.

13 PRESIDING JUDGE SCHMITT: Mr Vanderpuye, I have said he has answered the question,
14 and then I would really urge you not to repeat it. So please move on with another question.

15 MR VANDERPUYE:

16 Q. You don't cite Mr Lusenge's report in your work, yes or no?

17 A. I don't know it. I didn't read it. I haven't gone on to the Internet. How could I cite it?
18 I haven't read his article. I haven't even read his thesis.

19 Q. You don't cite Mwaka Tshopo's work either in your bibliography, right? For the
20 Chamber's reference that is at CAR-OTP-0093 at page -- 0093-0480 at page 0529, footnote
21 reference number 17, which attributes a quote which appears in your report, item 2,
22 paragraph 2, which is in Mr Lusenge's report, his dissertation as well. You don't cite Mwaka
23 Tshopo's work, which is entitled -- let me blow it up so I can see it. (Interpretation) I am
24 currently -- Reflections on the Notion of African Solidarity Theory and Practice, Dissertation
25 in International Reaction. Lubumbashi 1979. (Speaks English) You don't cite that in your

1 report. Yes or no?

2 A. May I answer? I have just expressly said -- I'm going to say a couple of things. Firstly,
3 I'm wondering if I am defending the form of my report or the substance of my report. That's
4 the first thing.

5 I think, in my opinion, in my very humble and modest opinion, this shouldn't be the
6 case.

7 Finally, we also have to see what comma isn't in the right place, what semicolon.
8 What about the capitalization, these things?

9 Furthermore, I'm also wondering -- I know I'm not allowed to ask questions to
10 counsel, but I'm wondering about the work that I assisted in myself. That goes back
11 to '73. It was carried out by excellent professors who are older or they're deceased or
12 they're still alive. I was an assistant at university at that time, and that was called
13 African solidarity.

14 Nothing proves again today that Mr Lusenge didn't go and see this work because it's
15 important, that work.

16 And thirdly, dear counsel, intellectual work, a subject such as African solidarity as
17 any other scientific work whose you have to read. And when you take a particular
18 sentence and a footnote, and when, for example, you say "I didn't put it into a
19 footnote," this is a point about the form. But what about the substance of my report,
20 the substance, African solidarity. If you ask me questions about the substantive
21 aspects and today before the Court, I'm sorry, but you can show that the substance is
22 not right.

23 If you could show that to me to show me that after -- counsel, esteemed counsel, that
24 you are really carrying out this work. In the substance of the report are there things
25 which do not accord with the reality, then I would like to be questioned on that than

1 to see if I wrote a certain word wrong or if there is a circumflex accent in the wrong
2 place. I think I would be more relaxed being able to speak about that than if I'd
3 written the word African wrong or this and that word. I agree with you when you
4 say that you have to put things in a footnote. And I would say that often at
5 universities, you have seen with your dissertations or doctor's thesis or MA thesis, BA
6 thesis, when a teacher or professor is looking at your work, he looks at it and he says
7 a couple of things.

8 He says, first of all, I have to make remarks with regards to the form, and he goes into
9 the formal aspects of it; for example, the paging, idem, et cetera, and then he'll go into
10 the substantive aspects. What you look at in a work is the substance, of course.

11 The form, you will talk about that, but you answer questions about the substance.

12 And I have not heard at any time that counsel has been kind enough to ask me and
13 say Professor Kambayi is an expert and say that does not correspond with what
14 already exists in the field, the situation. That's the sort of thing I would like to hear.

15 I'd be interested -- I'd be very much at ease in answering that. But to say that it's not
16 balanced and that the names are in the right place, the bibliography is badly written, I
17 would ask in a report: Do you have to have footnotes, et cetera? What's the form
18 which you take such footnotes? How do you write the bibliography? I think that
19 the essential part is elsewhere, and that is the substance of my report. And I made
20 this work for the Court, and I think that I did it with a significant degree of

21 competence. And the explanation that I've given this morning, these are
22 explanations which are appropriate at my level and I also think at your level as well.

23 Thank you.

24 Q. You know what plagiarism is, right, Professor?

25 PRESIDING JUDGE SCHMITT: Mr Rodoma.

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1 MR RODOMA: (Interpretation) Your Honour, for 10 minutes now we've been -- there has
2 been a trial of Mr Kambayi with regard to his intentions, and they refer to -- they call him a
3 plagiarist without bringing any evidence whatsoever. I would just like to say the following:
4 At a factual level, at a chronological level with regards to the elements, I think you'll find out
5 throughout this testimony he's answered the questions, and you can see in his bibliography
6 since 1973 with other colleagues he has been drafting documents on African solidarity, so two
7 things in one. Rather than ascribing a bad intention to him without bringing any evidence
8 thereto, I would turn the question who can be -- who is the plagiarist here? Nothing proves
9 that this online dissertation wasn't written by a plagiarist, and there is doubt -- it has to be in
10 favour of the accused, and you cannot ascribe such intention to anybody without showing the
11 evidence.

12 PRESIDING JUDGE SCHMITT: I really think we should move on. We have heard about
13 these similarities or not similarities, and the witness has answered questions that have been
14 put to him, and I think that should finish this subject, I would say. It's everything on the
15 record what you've tried to have on the record. And as I said before, the Chamber will have
16 to consider -- it will have to put it into perspective. We'll have to put it together with the oral
17 testimony today and so on and so on.

18 MR VANDERPUYE: Thank you, Mr President. Thank you, Professor. That concludes my
19 cross-examination, for what it's worth.

20 PRESIDING JUDGE SCHMITT: Any further questions by the Defence? I assume no.
21 Then we -- this concludes the testimony of Mr or Professor Kambayi Bwatshia.
22 Professor Kambayi Bwatshia, we thank you for answering the questions. The
23 Chamber wishes you also a safe return home. And this concludes also the hearing
24 for today, and we resume on Monday, 9.30. And we will have only half a day
25 because there is also expected trial judgment.

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- 1 THE COURT USHER: All rise.
- 2 (The hearing ends in open session at 4.16 p.m.)