

Trial Hearing
Witness: CAR-D04-PPPP-0060

(Open Session)

ICC-01/05-01/08

1 International Criminal Court
2 Trial Chamber III - Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo - ICC-01/05-01/08
5 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch and Judge Kuniko Ozaki
6 Trial Hearing
7 Thursday, 13 September 2012
8 (The hearing starts in open session at 9.04 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE STEINER: Good morning.
13 Could, please, court officer call the case.
14 THE COURT OFFICER: Thank you, Madam President. Situation in the Central African
15 Republic, in the case of The Prosecutor versus Jean-Pierre Bemba Gombo, ICC-01/05-01/08.
16 PRESIDING JUDGE STEINER: Thank you very much.
17 Good morning, and I welcome Prosecution team, legal representatives of victims, Defence
18 team, Mr Jean-Pierre Bemba Gombo. Good morning to our interpreters and court
19 reporters.
20 We will continue this morning with the questioning of Witness D-60 by Prosecution, and
21 for that purpose I ask, please, the court usher to bring the witness in.
22 (The witness enters the courtroom)
23 WITNESS: CAR-D04-PPPP-0060 (On former oath)
24 (The witness speaks English)
25 PRESIDING JUDGE STEINER: Good morning, Professor Bokamba, and welcome back.

1 THE WITNESS: Good morning, Madam President, your Honours.

2 PRESIDING JUDGE STEINER: Are you ready to continue with your testimony, sir?

3 THE WITNESS: Yes, ma'am.

4 PRESIDING JUDGE STEINER: Professor, I need to remind you that you are still under
5 oath. Do you understand that, sir?

6 THE WITNESS: Yes, ma'am.

7 PRESIDING JUDGE STEINER: And also to remind you on our ground rules. You are
8 expected to speak slower than normal and to not forget the five seconds before you start
9 answering to a question put to you in order to facilitate our interpreters and court
10 reporters' job.

11 THE WITNESS: Yes, ma'am.

12 PRESIDING JUDGE STEINER: This morning we will start or continue with the
13 Prosecution questioning, and I give the floor to Maître Badibanga.

14 MR BADIBANGA: (Interpretation) Thank you, Madam President. Thank you, your
15 Honours.

16 QUESTIONED BY MR BADIBANGA: (Interpretation) (Continuing)

17 Q. Good morning, Professor.

18 A. Good morning, Maître Badibanga.

19 Q. The first piece of good news is that you told us that you rested well and the second
20 piece of good news is that we will conclude our cross-examination today, so you should
21 be able to organise yourself for what happens later.

22 When we adjourned yesterday, sir, we were talking about Lingala as one of your mother
23 tongues, and that is what you even mention in your report, page 2, CAR-D04-0003-0441.

24 That is the reference. We were also talking about Lingala as a common language in the
25 Équateur region. Now, is there another language in the Équateur region which can

1 compare or compete with Lingala in relation to the number of speakers?

2 A. No, sir, there is none. The closest language would be Lomongo, which is spoken in
3 a substantial part of the Equator, particularly in Achuapa region. That would include the
4 city of Mbandaka, but Lingala is indeed the most widely-spoken lingua franca in the state
5 or province.

6 Q. You had an opportunity to go over your report with my Defence colleagues, but I
7 will not insist on going through the entire report. What I will do is that from time to time
8 I will refer to it, and I will quote it, so if my quotations are correct that is fine. If not,
9 please do not hesitate to correct me.

10 On page 3 of your report, reference CAR-D04-0003-0442, that report talks about the
11 emergence and propagation of the Lingala in the DRC; that is emergence and
12 (indiscernible) in DRC. I can see that you are looking at your report, so I will give you
13 time to locate the place.

14 Now, would I be correct if I conclude that Lingala, as you have just said right now, is the
15 language spoken by all the inhabitants of Équateur? Would I be correct, basing myself
16 on your report, that Lingala has become so popular and become such a dominant
17 language that the entire province of Équateur speaks Lingala?

18 A. The answer specifically to that question is "No," for the simple reason that even in
19 any country, such as the United States, while we say that English is the common language,
20 it does not mean that everybody knows that language.

21 And I am speaking here when you use the quantifiers of "all," "all" means that if there are
22 100,000 or let's say a million-and-a-half speakers, inhabitants rather, of Équateur, that
23 every one of them speaks Lingala, that's not the case, nor is it the case that the
24 eight million or nine million inhabitants of Kinshasa all speak Lingala because it is the
25 default language, but rather that it is the language which is expected to be spoken if and

1 when two people meet and that they do not have any other common language; referred to
2 sometimes in the literature as either "lingua franca" or "link language." To that extent
3 then Lingala is a link language for inhabitants of the Équateur, just as it is for the
4 inhabitants of Kinshasa or Bandundu for that matter.

5 Q. Thank you, sir. You have answered my question quite correctly, even though it
6 was badly formulated. Thank you. Let us go to the next page, or to the next two pages.
7 I think it is page 5, actually, and it is Chapter 315 where you speak of adoption of a
8 security force's official language of Lingala.

9 THE INTERPRETER: From the interpreter: Yes, that is page 5.

10 MR BADIBANGA: (Interpretation)

11 Q. I will try to summarise what you have said here. The substance of what you say is
12 as follows: That ever since 1930, the armed forces or the security forces of the Belgian
13 Congo at the time, right up to independence and even afterwards, used Lingala as the
14 language of communication. I can even say as their working language; is that correct?

15 A. Yes, sir.

16 Q. In that regard, I would like you to elaborate a little bit regarding the period after
17 independence. My question is as follows: What was the language used by Mobutu's
18 army and security forces during the entire time that he was in power in Congo and then
19 Zaire; that is from 1965 right up to 1997?

20 A. The language used by the security forces, which I have I believe defined here as
21 including the army, air force, the gendarmerie or Military Police, as well as regular city
22 police, was Lingala and that was the official language. Whether in every instance they
23 used it is not something that I can address because it would require my having observed
24 them, but that was the policy and it was well-known, so much so that, sir, individuals
25 who were sent to cities in the east where Lingala was not dominant, particularly in the

1 Kivus and Katanga, as opposed to Kisangani which is in the east, but Lingala is a
2 competing language with Kiswahili, were -- had acquired a bad reputation in that every
3 time that they reportedly confronted a citizen, that citizen was afraid that they were going
4 to arrest them, or harass them for some reason or another, and Lingala was the language
5 associated with the military, so much so that it acquired a bad reputation.

6 So I expect from that kind of reaction, and what I know to be a fact of the use of the
7 language both in public by the military, as well as in their radio station, or broadcast
8 system, that it was indeed Lingala, the official language of the armed forces or the security
9 forces.

10 Q. Professor, yesterday I asked you to speak about yourself and today I will speak
11 about myself a little bit. I experienced the situation that you have just described, because
12 I myself I grew up in Lubumbashi and, as you have said quite correctly, the soldiers spoke
13 Lingala.

14 I will now ask you a question about that. Now, could a language -- and in this case
15 Lingala. Let us take the typical case of Mobutu's armed forces. Can a language be used
16 as a tool of domination, or rather let me say a tool of authority, over the population?
17 When they arrive in a region for example where people spoke Swahili and then they
18 address people in Lingala, can that be considered as the use of language as a tool to
19 exercise domination or authority?

20 A. The answer from a general perspective, namely including other languages, it is
21 positive, namely, yes, it can, and I would say that it would apply equally to Lingala as
22 well.

23 Q. In that case, I'm trying to see whether I have fully understood you. Now, in that
24 case, a soldier who had authority as a sociolinguist, would you agree that the message he
25 is sending out is that, "I have the authority and it is up to you, the civilian population, to

1 understand what I am saying because I am issuing orders and instructions," so it is the
2 population that have to do -- to make the effort to understand the language of the
3 dominant authority and not the other way around? Would that be correct?

4 A. Yes and no. It's an ambiguous message. One interpretation is what I stated, that
5 it can be characterised as a language of authority, a language of domination, just as let's
6 say a police arresting someone in this city, speaking the language that everyone knows,
7 but let's say that if that person who is arrested is a woman who wanted to complain to the
8 police, or bring a complaint to the police with regard to some kind of a harassment, the
9 questions that a police person would ask would in part reflect their authority and in part
10 their attitude vis-à-vis that person; what is often characterised as a, you know,
11 authoritative language. So Lingala, in a context such as the one that you're describing,
12 could be used in that respect.

13 But the other possibility is that the soldiers having learned Lingala, no matter where they
14 came from in the Congo, only know that language to communicate with the population.
15 In other words, they may not be fluent in Kiswahili in Lubumbashi, or they may not know
16 let's say, you know, Tshiluba in the case of Kasai and so on and on, and therefore one
17 cannot say categorically that it is A or B, but that there are possibilities that can be
18 interpreted depending on the circumstances.

19 Q. Thank you, sir. Let me come back to the case that concerns us directly. On the
20 one hand you said that Lingala is the lingua franca in Équateur province, and you have
21 also explained that it was indeed used by the armed and security forces almost
22 throughout the entire history of that country.

23 Now, if the MLC, the Congolese Liberation Movement, recruited let us say 20,000 people,
24 young and not so young, in the Équateur region, that is to include in its army, and these
25 young people came from all the towns and villages of the Équateur province, which

1 language would they have in common and which language will those 20,000 people use to
2 communicate naturally?

3 A. As I have indicated previously, sir, they would use Lingala, assuming as you have
4 stated that these individuals are coming from different parts of Équateur. However, if
5 they were recruited primarily from let's say the northern part of the Équateur, where
6 Mbaka or Mbandi are spoken, they could also use that language.

7 So in a mixed group I would say Lingala would be the default language. It's very
8 unlikely that it would be French, because some of the soldiers may not have had the level
9 of education to be in a position to speak French, and in that case this is what would
10 obtain.

11 So given the hypothetical situation that you have presented, the answer would be Lingala
12 as the language of communication. Why do I emphasise the term "hypothetical"?

13 Because if the soldiers were not all recruited from the Équateur, but some from different
14 provinces and others from other countries, then no one knows what language would have
15 been used unless there was a specific language policy that was articulated in the MLC
16 command.

17 To be more specific, sir, from what we know of the situation that prevailed in the Congo,
18 from 1994 or, to be a little bit more accurate, 1996 at the time of the invasion of the Congo
19 by Rwanda and Burundi, and when different militias were established to overthrow the
20 Mobutu regime and this was eventually followed after Kabila came to power in 1997,
21 May 1997, and reigned for a year until -- or perhaps a little bit less, until 2 August 1998
22 when Rwanda reinvaded the Congo after he attempted to send them back to -- namely,
23 send the Rwandan officers and soldiers back to Rwanda, that you could find amongst the
24 MLC soldiers individuals who came from that composition of the war effort, in which
25 Mr Bemba was a participant, just as Kabila and Ruberwa and Wamba Dia Wamba, et

1 cetera, were part of the so-called groups with militia.

2 So what I'm trying to portray here, sir, is that MLC may have contained, and we know
3 from some reports, soldiers who were not Congolese, who came from other countries, and
4 therefore it would be I think presumptuous of me to conclude that they would have
5 necessarily used Lingala because I don't know what the language policy of the MLC was.

6 Q. Professor, this explains why I began my cross-examination yesterday with some
7 questions relating to documents that had been provided to you in relation to this case.

8 So, you see, there is abundant documentation that has been made available to parties and
9 participants, and the Judges, and I think that would have allowed you -- that
10 documentation would have allowed you to restrict your replies to the particular field that
11 interests us.

12 So mention was made of approximately 20,000 soldiers. Now, the estimates are that the
13 MLC was made up of between 20 and 22,000 soldiers, recruited mostly from Équateur
14 province, and some of the documents -- well, these documents have been provided to the
15 Court, and this is -- these documents are common to all the parties, and if you had had
16 access to those documents I think you would have had a better view-point, or you would
17 have been able to take a better view-point, a more realistic one.

18 What's more, I'd like to add one point in relation to what you were just saying. Now, if,
19 if it had been brought to your attention that a great many former soldiers of the Mobutu
20 army joined the MLC to fight Kabila's government, and historically this is a logical
21 permission -- supposition, rather, so if that had been brought to your attention, that a
22 great many former soldiers from the Mobutu army had joined the MLC army to fight
23 Kabila, would that have had an impact on your replies regarding the possible use of
24 Lingala by the MLC troops?

25 A. Counsel, I'm wondering what you understand by "impact." What you are trying to

1 convey? In other words, would that information have influenced the analysis of the case
2 as to whether or not Lingala is a determinative factor in ascertaining that the individuals
3 who committed the alleged crimes were MLC members, or are you saying that I would
4 have recognised that the alleged use of Lingala represented essentially an outcome that
5 was predictable, given the composition of the army of the MLC?

6 Which of these are you attempting to seek a response to, sir?

7 Q. That's a very relevant point, Professor.

8 What I'm trying to establish, and I've been doing this ever since the end of yesterday's
9 sitting and this morning, I'd like us to be in agreement, without any possible challenge,
10 that the MLC soldiers spoke Lingala when speaking amongst themselves. Just that
11 point.

12 Why am I saying this? Well, because you were questioned, and other witnesses in the
13 room were asked questions about the languages used in the Équateur province, such as
14 Mbandi, and others. I don't want people to be left with the impression that there's some
15 doubt as to whether the MLC soldiers, when they were in operations, whether they spoke
16 to one another or spoke to the local people in Mbandi, or any other Equatorial language,
17 rather than in Lingala. That is why I added that particular factor.

18 So we have the factor -- or that this language is a common language used in the area. We
19 know that language can be used as a language of -- tool of domination, perhaps, and the
20 language was used by the security forces and then we also know that many former
21 Mobutu soldiers were included in the MLC. So those were the points that I was trying to
22 bring out and try to seek agreement on. Does that make things clearer to you?

23 A. Yes, sir. So with that clarification, I can say that the knowledge of the usage of
24 Lingala by the MLC soldiers would have been a factor in my analysis but would not have
25 changed my conclusions.

1 Q. Have I understood properly, from your conclusions, that you're saying that the only
2 criterion of language, Lingala, does not allow one to determine with certainty the origin of
3 the soldiers that used that language, because this is what I've gathered from your
4 conclusion? Have I come to the right conclusion?

5 A. Yes, sir. And if you permit me, let me explain or repeat essentially what I stated in
6 response to your colleague, Maître Haynes, and that is the fact of using a language in any
7 communicative event represents only one aspect of the identity of that individual.

8 If you take any army in modern -- in the modern world today, you will find that there are
9 speakers of various languages even though there may be one language that is shared.

10 For example, in the American Army, those involved in the wars currently in Afghanistan
11 or Iraq, you'll find that there are Americans but Americans of different nationalities.

12 Among them, Lingala speakers, French speakers and so on, and depending on how the
13 units or battalions are organised, you could very well have an opportunity where a
14 selected elite unit would use a language that they feel is relevant for their particular
15 purposes in communication. So that's one aspect.

16 A second aspect, sir, is that when you view the boundaries of the Congo with countries in
17 the west, namely western of Congo, you'll find that there is not only Congo-Brazzaville
18 and Central African Republic, of course, but also that Central African Republic has a
19 boundary that it shares on its south with Congo-Brazzaville.

20 In this respect, Lingala admittedly is one of the languages spoken in that part of
21 Congo-Brazzaville, which is the northern part, in the area near Infondo. And if necessary,
22 to make sure that we are on the same page, we could look at the map that you showed me
23 yesterday to determine that.

24 Why am I bringing this as a factor? It could very well be that those individuals who
25 were accused of using Lingala in the commission of crimes could have involved MLC,

1 could have involved as you described them, in terms of that composition, what -- you
2 know, former Mobutu soldiers, and so on, and others who had come from, you know,
3 Congo-Brazzaville and may have joined the army. So there are a number of possibilities.
4 So what I'm trying to convey here, sir, is that the fact of using a language per se does not
5 constitute a sufficient condition for determining the nationality of an individual. It's only
6 a factor, but an important factor at that.

7 PRESIDING JUDGE STEINER: Maître Badibanga, if you don't mind, I would like
8 to -- since yesterday I wanted to seek to some clarifications from the expert, bearing in
9 mind that in your field of expertise I am a layperson.

10 THE WITNESS: That's all right.

11 PRESIDING JUDGE STEINER: So I apologise if my question is too -- appears to be too
12 simple, but I've taken note yesterday the transcript 243, and I'm talking about page 7 and 8
13 and onwards, that sometimes -- that you started on page 7.21 saying exactly what you
14 just -- have just repeated, "Lingala is spoken in north-western Angola in at least two of the
15 provinces, as well as in parts of Gabon and Central African Republic and South-West
16 Sudan, what is today South Sudan, in areas within the province of Orientale, and then
17 there are all speakers in Zambia and as well in Rwanda."

18 I tried not to bring -- to bring some personal information, but I feel forced to do so in order
19 to understand what you mean when you say that "Lingala is spoken" in a country. And I
20 give as an example my country, which is a huge one, and we have parts or some villages
21 in the country with 50/60,000 people that only speak German. Very close to the place I
22 come, there is a city that was founded by Dutch people. It's a 70,000 population
23 inhabitants in that city that in their daily communication they speak Dutch, but we are far,
24 very far in my view, to say that Dutch or German are languages spoken in Brazil.
25 So maybe I'm not understanding really what you mean when you say that "a language is

1 spoken in"? It appears to me that the fact there are some groups of persons that among
2 themselves speak a certain language, because it's the language of their ancestors, doesn't
3 mean that in that country it is a language spoken.

4 Could you please explain to a layperson what is the difference to say that Lingala is
5 spoken in North Angola and there are speakers of Lingala in Zambia? Thank you,
6 Professor.

7 THE WITNESS: Your Honour, your question is well put and the answer is a
8 straightforward one. I will give the answer first and provide illustrations. You have
9 already done some of that.

10 When we say as sociolinguists that a language is spoken in a particular country, what we
11 are claiming is that there is a community of speakers sufficient enough that they can
12 communicate among themselves, let's say in a whole neighbourhood, in that language.
13 So when you have 9 to 10,000 people, or 20,000 people, or 86,000, you know, people, living
14 in a country that is predominantly of one language, that community is recognised as what
15 we call "a speech community" to the extent that these individuals function there.

16 Example in point would be what you just mentioned in the case of Brazil. If one doesn't
17 know Brazil at all, the conclusion would be, or the first sort of description would be, Brazil
18 is a monolingual country. Far from it. There are other languages, as you've just
19 indicated, that are used there among those individuals in the limited fashion, but as a
20 nation, you know, Portuguese is the language of common communication, just as it is the
21 case in United States of America where English is expected or is the default language that
22 people use, but to say that Spanish is not spoken in the United States, or French is not
23 spoken in the United States, would be dismissing that significant population that exists.
24 And it is in this sense, your Honour, that I'm making the statement here in my report and
25 in my answers that there are speakers of Lingala in Zambia and so on; that is among

1 themselves this is a language they use. In some cases, in worship service that's the
2 language they use, or if they don't use French they use Lingala, or they combine the two;
3 songs in Lingala and preaching in Lingala and sometimes in French, et cetera. So it is
4 this type of what we refer to as "linguistic enclaves" that exist here and there and, if they
5 are large enough, they can make a difference.

6 To provide even a closer example, in the city of Brussels, and Maître Badibanga or
7 anybody here who has gone to Brussels in that area will recognise, there is an area that is
8 referred to as Matongé. It has shops that are staffed by Congolese men and women.
9 They sell Congolese, you know, pieces of articles. If you go in there and address
10 somebody in French they will respond, talk to them in Lingala they will happy to
11 recognise you, "Oh, you are a speaker of Lingala."

12 And it is a fact of life, and this is what I have been describing as "There are speakers of
13 Lingala," or, "Lingala is spoken in." It's not that it is perhaps a recognised language in
14 that state, in the sense that you would have Lingala, Kiswahili, Kikongo and Tshiluba
15 recognised as national languages of the Congo and they have broadcast service on them,
16 you know, but rather that they are spoken by communities within that state.

17 I hope my answer is clear, your Honour.

18 PRESIDING JUDGE STEINER: Of course your answers are always clear, but I must
19 confess that I still have some difficulties in understanding because I am a layperson, as I
20 said. That for instance like in Angola, a country with maybe more than 20 million
21 inhabitants, there is a community of a few thousand people that speak Lingala and that
22 we can consider that Lingala is a language spoken in Angola, the same way as in Brazil, a
23 country with 200,000 --

24 THE WITNESS: Million.

25 PRESIDING JUDGE STEINER: No, 200,000 million people, if we have 50,000 speaking

1 Dutch I have difficulties in assuming that Dutch is a spoken language in Brazil, but I
2 understand your point and I thank you very much for the clarification, Professor.
3 Maître Badibanga.

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

5 Q. Professor, we are going to be looking at this issue from a different view-point.
6 Yesterday you were very clear about the documents that were provided to you, but
7 during the telephone discussions and the email exchanges that you had, now during these
8 exchanges did the Defence inform you, or make you aware, of the various armed groups
9 that were in the area of hostilities between 2002 and 2003 in the CAR? Did they tell you
10 anything about the various armed groups present in that country at that time?

11 A. You mean armed groups in the Central African Republic, sir?

12 Q. Exactly. I mean all the armed groups that were present in the Central African
13 Republic between October 2002 and March 2003, which is the time frame that we are
14 dealing with for this case which is now before the Chamber.

15 A. No, sir. I mean that I was not provided any documents from the Defence team to
16 this effect. I don't know why and if I was entitled to such I did not get such documents,
17 and in my own reading - background reading - I sort of vaguely am aware of the existence
18 of some other armies, but it is not something that I focused on precisely because, as I've
19 stated previously, I was asked to deal with the linguistic situation and that the military
20 situation prevailing during that period was not within the purview of my mandate, if you
21 will, sir. So from my point of view that information was not relevant, although
22 tangentially useful, but I did not have it and I didn't think of requesting it, nor did anyone
23 offer it to me.

24 Q. Well, Professor, this is the very first point on which we are not in agreement.
25 Myself, I am of the view that the maximum amount of information that they could have

1 provided you about the circumstances and events would have helped you make
2 maximum use of your expertise. Without context your knowledge of linguistics is
3 already impressive, but I think with more information this would -- you would have been
4 able to provide greater assistance to the Chamber.

5 For example, now the two experts that were called by the Defence who preceded you, and
6 both of them testified in open court, spoke a great deal about military matters. The first
7 gentleman was a military expert and the second expert was an expert in political and
8 military matters, and it just so happens that unlike you, well, they did receive a great deal
9 of information about the troops that were present in the area and neither one of these
10 Defence experts ever said anything before the Chamber about soldiers from Angola being
11 present, or soldiers from Congo-Brazzaville, and I would like to go on to mention the
12 other countries where you say Lingala is spoken.

13 I make reference to page 26 of your report, CAR-D04-0003-0465. And there, Professor,
14 you mention Angola, which I've just mentioned, Congo-Brazzaville, but you also mention
15 Gabon, Kenya, Southern Sudan, Uganda, Rwanda, Burundi, Zimbabwe, Zambia, and
16 even South Africa.

17 As the Presiding Judge pointed out, those are countries where apparently Lingala is
18 spoken. And personally, my reading of this is the same as that of the Presiding Judge.
19 No doubt there are speakers of Lingala in these countries, because the Congolese diaspora
20 is quite wide broad, but I have a hard time -- I would have a hard time saying that these
21 countries are countries where Lingala are spoken but, in any event, what I'm pointing out
22 to you is that the previous experts did not say anything about Kenyan, or Ugandan, or
23 Rwandan, or Burundian, or Zimbabwean, Zambian or South African troops taking part in
24 this conflict.

25 And you are correct, language is not the only criterion, but if I now put it to you in

1 summary that that there was no contingent of soldiers from those other countries where
2 Lingala is spoken, according to your analysis during the conflict in the Central African
3 Republic, would that information have helped you? Now, how should I put this? In
4 English I would say to "narrow down" or to "focus." Would this have helped you, would
5 this have helped you focus your study?

6 A. Counsel, that's a long complicated question, but let me try my best. Beginning with
7 your last sub-question, yes, that information would have been helpful to me and it
8 probably would have led me to ask more questions to the Defence team with respect to
9 what the language policy was, and what was the composition of the MLC army battalion
10 that was involved in this particular case. And given that information, then I would have
11 been in a position to analyse how those circumstances would have led to a reasonable
12 conclusion. I would like to repeat, sir, would have led to a reasonable conclusion that the
13 language factor was of primary importance.

14 However, one, as you recognise, I was not given that information. Secondly, the
15 narrative that I provided you here, if one goes to the beginning of the section where I talk
16 about the spread of the language, I stated that in order to understand the extent to which
17 this language is a language of wider communication, one has to look at where it went,
18 what factors have influenced its spread in a manner that it did, and in mentioning all
19 those surrounding countries it was to demonstrate the fact that we have these what we
20 call speech communities, involving Congolese, living inside and that in as -- it is possible,
21 and has been shown in other countries, such individuals constitute a significant portion of
22 the population. Even if they're only half a per cent.

23 So that if one were to take what is called state census, in a state census -- I don't know how
24 it is done here in The Netherlands, but in the United States they would have documented
25 that there are "X" number of individuals who are Lingala speakers, because that question

1 is raised. What language do you speak beside English in the household or in a
2 marketplace?

3 So whether or not it is within your prism possible to envisage that speakers of these, of
4 such languages and wherever they live, are part of the cluster of languages in a
5 multilingual society is one thing, but the fact is undeniable that there are communities,
6 other speakers, and they're recognised in some countries as legitimate ones. So it is in
7 that sense.

8 It was not my intention to suggest that because those speakers of Lingala are everywhere
9 and therefore, you know, they could have come from -- I was not, I confess, addressing
10 the military aspect, sir. If someone asked me that question, I would have said, "I'm not
11 competent to deal with it."

12 Q. Professor, I know that when we met for the familiarisation tour you said that this
13 was your methodology but that it also exposed some of your worries because you
14 expected harder questions from me, but let me put it very clear to you that I do not mean
15 to challenge you in any way whatsoever; I simply want to shed light on all issues for the
16 benefit of the Chamber.

17 If it appears to me that you did not receive information that was good enough to lead you
18 to a good conclusion, it is my duty to highlight that point. I am not challenging your
19 competencies at all. I simply -- I'm trying to demonstrate here that you ought to have
20 been aware of a number of points of information that would have helped you to shed light
21 on a number of issues for the benefit of the Court, irregardless of the issues.

22 Now, let me move forward to the next question along the same lines. Is Libya a
23 Lingala-speaking country? Do Libyans speak Lingala?

24 A. No, sir. To my knowledge, one, I have not checked whether there are Lingala
25 speakers in Libya. And if you ask, "Is Libya a Lingala-speaking country?" I would say

1 "No." In the same way, if you ask me, "Is Central African Republic a Lingala-speaking
2 country?" I would say "No." But if you ask me, "Are there communities of speakers of
3 Lingala in Central African Republic?" I would say "Yes," and if they were in Libya I would
4 say "Yes." So those are two different questions, sir.

5 Q. That's correct. And along the same lines as what you have said about Libya and
6 Central Africa, I was going to put the same question to you about Libya, Central Africa
7 and Chad. Can one say, as far as you know, that Chad is a Lingala-speaking country,
8 along the same lines as you have provided an answer for the two previous countries I
9 mentioned?

10 A. The answer to that question is namely what I understood to be the question, can we
11 say Central African Republic is a Lingala-speaking country? That is a technical question
12 in the sense of language policy that exist, which would be either de facto or de jure. If in
13 Central African Republic Lingala had been recognised as one of the national languages,
14 one can then say, yes, it is Lingala-speaking country.

15 Example in point, and perhaps the best illustration, would be Congo-Brazzaville across
16 from the Democratic Republic of the Congo. You can say, yes, Congo-Brazzaville is a
17 Lingala-speaking country, just as it is a Kikongo and French-speaking country; and that,
18 in that respect, note with regard to the last mentioned, namely French, when you examine
19 the statistics as to how many Congo-Brazzavilloise speak French, you will find that that
20 number is far inferior to those who speak Kikongo and Lingala. The same thing is true
21 of the Democratic Republic of the Congo.

22 I recall that during the period of President Pompidou, or was it Mitterrand, I think it was
23 Pompidou, he said that the Democratic Republic of the Congo is the largest
24 French-speaking country. Sitting here and you coming from the Congo would recognise
25 that that is a myth, but because it is the official language we say it is French-speaking.

1 There are more speakers of Kiswahili percentage-wise in the Congo than there are
2 speakers of French. Same thing could be argued with regard to Lingala. Perhaps
3 Kikongo and Tshiluba would be less, but here we are; it's declared. So my point, sir, is
4 that to say that is it a Lingala-speaking country means that there has been a de facto/de
5 jure recognition of that language, and that is not the case in Central African Republic.
6 Sango is the language of that country, as recognised in its constitution as well as in terms
7 of common usage.

8 Q. I am attempting at this level to apply your precious expertise to the case at hand. I
9 have just mentioned three countries because, and I stand corrected by the Defence if
10 necessary, the information before the Court in summary is that there were soldiers,
11 contingents of troops or armed groups, originating from four countries during the period
12 under review; that is, from October 2002 to March 2003. These groups included first of
13 all Central Africans themselves, in different factions, the government forces and the rebel
14 troops.

15 So that was a group of Central Africans, and I'm being very simplistic here, Professor, so
16 that you can get the picture clearly. It is also alleged that on the government side, and in
17 support of the Central African forces, soldiers from Libya, from Colonel Qadhafi. It is
18 also alleged that in support of General Bozizé's rebels, there were soldiers from Chad and
19 then there were also Congolese soldiers of the MLC.

20 Except I am mistaken that, in broad strokes, is the picture of the troops that were present
21 in this conflict and that has been extensively discussed before this Chamber. It is
22 mindful of this picture that the use of Lingala as a language takes up all its significance.
23 Knowing the troops that were on ground, the question then is can one expect that, apart
24 from the Congolese troops, were there any other groups that spoke Lingala during their
25 intervention in the Central African Republic?

1 A. To be accurate or correct in responding to your question the answer would be I don't
2 know, because you are asking me if there were and, not having invent -- no, surveyed
3 those groups, for example the composition of the Central African Republic soldiers, I
4 cannot therefore say that there were no other Lingala-speaking groups apart from the
5 MLC. One can see easily the exclusion of Libya and Chad in not having possibly Lingala
6 soldiers, but one can see the possibility - the probability - that CAR could have some
7 soldiers.

8 As you recall, sir, in the history of the Congo we have had -- I am talking about
9 Congo-Kinshasa or the Democratic Republic of the Congo. From the time of
10 independence we experienced a number of rebellions, or so-called civil wars, and during
11 that period there were soldiers who under one circumstance or another fled to other
12 countries. In a more recent invasion of the Congo, which I mentioned previously, by
13 Rwanda, Uganda and assisted by other countries, we had Mobutu's soldiers who fled
14 elsewhere.

15 So I'm not in a position, not having done any survey, to affirm or disconfirm the presence
16 of Lingala-speaking soldiers in the Central African Republic under Patassé, but I can see
17 the exclusion, as I indicated, from Chad and Libya.

18 Q. Professor, I think we have made significant progress by eliminating a number of
19 actors, so we still have to deal with the MLC Congolese and the Central African soldiers.
20 Allow me therefore to quote from a witness who appeared before this Chamber and spoke
21 in open session, and we take the statement for what it is worth because this person is not a
22 linguist, but he is a Central African.

23 I am referring, your Honour, to an excerpt from the statement of Witness 6, a Prosecution
24 witness. This was in open session. The reference in English, transcript 95, page 3, page
25 11, and I'll be focusing on those two pages and referring to two excerpts. When I do that,

1 I will mention the specific lines I am referring to. Now, for the French transcript, still
2 transcript 95, page 3 and page 11.

3 Witness 6 testified before this Court as follows, and I'm referring to transcript 95, page 3,
4 lines 20 to 27:

5 "The perpetrators of the acts of violence were not known by name, but they were known
6 by virtue of the way in which they were described, either because they were carrying
7 Kalashnikovs they would fire once or twice, or they came and knocked at the doors.
8 They did not speak Sango. You know, in our country Sango is a language that is spoken
9 by everybody. All defence and security forces speak Sango."

10 And the witness continues, and I'm referring to page 11 in the French transcript, lines 18
11 to 23, French version, English version page 18, lines 22 right to -- page 11, rather, line 22,
12 to page 12, line 23:

13 "No Central African does not speak English, or Sango rather. All Central Africans speak
14 and understand the Sango language, so if someone happens to come to our area, either at
15 night, they would have to speak either French, because it is a language that is understood,
16 or Sango, but if you are of the same tribe then he will speak to you in the language of that
17 tribe."

18 Now, let me mention the last two excerpts to give you a full picture of what I'm driving at,
19 and I return to page 3 of the English version, from lines 22, and it goes up to page 4, line 8,
20 in the English transcript. The French transcript is on page 3, line 25, to page 4, line 1:

21 "Therefore, when a soldier or a member of the army visits you, or comes to you, that
22 soldier cannot be unfamiliar with Sango. They speak Sango to you. So those troops
23 who came in and did not speak Sango were speaking a language that Central Africans
24 were not familiar with. Some Central Africans may understand Lingala, but most
25 Central Africans do not."

1 Are we still together, Professor? Am I flooding you with too much information?
2 Now, my last and short excerpt is from the English version of the transcript, transcript 95,
3 page 3, line 22, up to page 4, line 8, and in the French version of the transcript -- I think I
4 was mistaken. Let me mention the French reference, page 11, lines 24 to 25. I will
5 cross-check these references, because I have a slight difference between the English and
6 French references.
7 Madam President, I will check the references in due time, but in essence this is what the
8 witness had to say at the end of his testimony:
9 "The nature or one of the distinctive characteristics of the assumptions about the MLC
10 troops is that they did not also speak Sango."
11 Now, Professor, you have stated that Lingala was the language of the security forces in
12 the DRC. According to this witness, Sango was the language of the security forces in the
13 CAR. Now, if this information had been made available to you, would this have enabled
14 you to dig a little deeper and to further conduct analysis before drafting the report which
15 you presented to this Court?
16 A. Counsel, thank you very much for that background information. Definitely it
17 would have, and again as I stated before I am a person who, given data, I dissect them
18 and try to see what would be the most reasonable or probable conclusion. If there are
19 any fuzzy areas, then I present a hypothesis as opposed to a categoric answer. Yes, it
20 would have been helpful.
21 Q. Well, I have been thinking and wondering, since you've been here, and I've been
22 trying to understand what the Defence is seeking to drive across, what point they are
23 trying to make. We have reduced our picture to determine where the MLC troops were
24 and the Central African troops were. I have also read out to you what a witness has
25 testified to.

1 But let us think about this together. Just let us think about this together. If we were to
2 lend credence to the theory whereby it is the Central African soldiers who spoke Lingala,
3 let us just think about it. It might not be absolutely incorrect, but imagine that such were
4 the case.

5 From a sociolinguistic point of view, Professor, would that mean that throughout the
6 duration of the events, whenever a Central African soldier attacked or aggressed an
7 individual they would have spoken to that person in Lingala? Would that be the case?
8 And my question therefore is: The language of the Central African forces was or is
9 Sango. The language of the Central African people is Sango. How then would the
10 Central African forces upon attacking somebody, either to take their money or any other
11 item of property, why then, or how then, would the Central African forces choose to
12 speak to such people in Lingala?

13 A. From the point of view of what we know in research in sociolinguistics, and
14 particularly with respect to communication between individuals, or an individual and
15 groups, when there is a common language between the speaker and the interlocutor,
16 namely the listener or listeners, it is that common language, the default language that I've
17 been referencing previously, that is used.

18 It's for this reason that yesterday, I believe, that I stated that the fact that we say Lingala is
19 a default language in Kinshasa means that, if you see anybody with a black face or a
20 brown face, whatever, the first thing you think of when you address them you want to
21 address them in Lingala thinking that they are Congolese, but they may not be, and so
22 on.

23 The same thing, you know, in the street here, or someone who is here. I have been
24 addressed several times in Dutch, even though I don't look like someone who would
25 come from here, but the fact that I'm here they assume that I know the language.

1 So in that case it would have been naturally Sango to be used, rather than Lingala. The
2 literature is clear on that.

3 Now, whether one would choose to necessarily use that, again, I'm not a magician to focus,
4 you know, what they would have done differently but the expectation would be that they
5 will use Sango.

6 Q. There might be, or there's supposed to be, an explanation that is not sociolinguistic,
7 it is supposed to be political, strategic and military, and this would be to say that all
8 Central African soldiers, irrespective of the camp in which they were found, had received
9 instructions to the effect that one they attacked the population they should pass
10 themselves off as Congolese.

11 This is not in your area of expertise, so I will not dwell too much on that, but this seems to
12 be extremely complicated and sophisticated and it requires that some -- these soldiers
13 should be so disciplined as to use another language over a period of five months.

14 Let me come back to your own domain of expertise. At the beginning, I asked the
15 question: Why did man invent language? In other words, what is the purpose of a
16 language, in order to be brief, because you can give us a lengthy answer, is language used
17 for communication? Does it help us to communicate?

18 A. Counsel, the answer is "Yes." It's for communication purposes. That's why it is so
19 definitive, in the sense that it defines us uniquely as a society, and without language it
20 would be impossible to visualise what society would be like, and differentiates us from
21 the animal, the rest of the animal kingdom. It is language for communication; not to
22 deny that animals don't have languages of their own, but their languages, as far as we
23 know, on earth is highly-structured as ours, and so on.

24 So, yes, language is for communication, and other things that we can achieve through
25 communication, such as befriending a person, seeking, you know, assistance, all of that

1 again is communication, expressing our love, expressing our sadness. And all of that,
2 again, the ultimate is we are communicating, yes.
3 Q. And indeed, from the sociolinguistic point of view, let us go back to the examples
4 given to you by Mr Haynes. He said, "If somebody just tells you 'Give me money,' is it
5 possible to identify that person's country of origin from a sociolinguistic point of view?"
6 Can one say that a Central African soldier who speaks Sango would be stupid, excuse me
7 for that expression, would he be stupid to use Lingala to ask money from a Central
8 African woman who also speaks Sango? If he really wants that money, it is ten times
9 easier to use Sango which is understood by that woman and that he himself uses. Would
10 that theory be correct?

11 PRESIDING JUDGE STEINER: Yes, Mr Haynes.

12 MR HAYNES: I've sat patiently and listened to the long speeches, and Mr Badibanga's
13 opinion about the way in which the Defence should have conducted its case, but that is
14 not a question; it is just a comment. And insofar as it might even be a question, it's not
15 within the expertise of this gentleman.

16 PRESIDING JUDGE STEINER: Any comment, Maître Badibanga?

17 MR BADIBANGA: (Interpretation) I am speechless because I'm trying to understand
18 what Mr Haynes is trying to say. Is he claiming that a linguistic expert cannot tell us
19 which is the best language that two speakers can use under specific circumstances,
20 because what I'm asking him is would a Central African citizen use Lingala when he has
21 to speak to his compatriot?

22 And we were talking about the claim that Lingala was used. I was not talking about the
23 other issues regarding whether Lingala was started in the 1800s or 1700s. That is not
24 relevant. The issue is the use of languages during the conflict. I am surprised by that
25 objection, so I do not know how else to answer.

1 PRESIDING JUDGE STEINER: Mr Haynes.

2 MR HAYNES: Well, if that is genuinely the question, with your Honour's leave, then it
3 has been asked and answered at page 31, line 14.

4 PRESIDING JUDGE STEINER: I think the way Maître Badibanga put the question now
5 is maybe more appropriate than asking would be -- "Would he be stupid to use Lingala to
6 ask for money?" So maybe it was more related to the way the question was put, so
7 maybe you could rephrase the same question the way you did it now when you respond
8 to the objection made by Mr Haynes?

9 MR BADIBANGA: (Interpretation) Much obliged, Madam President. I could not find
10 the right word.

11 Q. My question to you would be, sir, would it be illogical for this soldier to use Lingala
12 to satisfy a primary need using Lingala, rather than using the language which would
13 allow him to be most effective in communication?

14 A. Again I can only fall back to what is known and commonly characterised, but as in
15 any other non-exact sciences, your Honour, I can only say that when we say, "This is what
16 a theory would expect," we are talking about, "The preponderance of the evidence is such
17 that, but not 100 per cent."

18 And therefore with that caveat I would say, "No," for the same reason that I stated
19 previously. Given that there is a common language, a language that is known by most of
20 the population -- this is a minor point, but the witness that you cited, Maître Badibanga,
21 said that, "Everyone knows Sango." I cannot imagine that being possible in any country,
22 but let it be that this individual, who in the commission of a crime would have used
23 Lingala, that the expectation would have been that he or she would have used Sango
24 instead of Lingala.

25 That's a normal thing, that would, you know, come out at first, but whether he or she

1 eventually chooses to do that, or chooses to camouflage themselves and use something
2 else, would not be beyond the imagination as we know how people try to camouflage
3 themselves, pretending to be somebody else, but again that's not in my domain of
4 expertise, sir.

5 Q. Thank you, Professor. I think we have explored the use of Lingala exhaustively
6 and the knowledge of Lingala by MLC and other troops. I would like to move on to
7 something else which relates to the identification of the language, and you would have
8 realised that Professor Samarin dealt with this issue.

9 To be fair with you, instead of starting with questions on what you have said in your
10 report, I would like to use the minutes remaining to read a few extracts of what witnesses
11 said. They were questioned about the language used by the aggressors and how they
12 identified that language. Maybe you will simply take that away and reflect on it during
13 the break.

14 My first extract -- and these are extracts of testimonies given in open session. My first
15 extract is Witness 38, transcript number 33. In the English version it is page 46, lines 3 to
16 20. I will read the extract in French, but in the French version it is line 24 of page 50 up
17 until line 18 of page 51, and it is still transcript number 33.

18 Maybe, if you want, you can take some notes on a piece of paper? If you want that, a
19 piece of paper will be provided to you. Do you want me to ask the court usher to give
20 you a piece of paper? You will realise that the witnesses are using simple words to give
21 an account of what happened to them, but still maybe you will need some notes?

22 Let me read: "How were you able to recognise that the language they spoke was
23 Lingala?

24 Answer: Madam, our country neighbours this country. Lingala is a language - well,
25 how shall I put it? It's a language for music in Africa. It is also a Bantu language, that is

1 the second thing, and then we are neighbours. If a Central African goes to the Congo,
2 everyone will immediately know that he is from Central Africa when he speaks. If a
3 Congolese comes here and he speaks Lingala, we will know immediately. There are
4 words that we understand. We understand each other. We know some words.
5 Personally, I know a few words in Lingala.

6 Question: Was Lingala a language that is spoken or even understood in the Central
7 African Republic?"

8 The witness continues: "Yes, madam."

9 And the next question: "PK12 --", and a part of the question is indeed missing.

10 "Answer: By a certain ethnic group along the river which understands Lingala perfectly.
11 I can tell you the names of the ethnic groups, if you like. The Bansiris, the Bubakas, the
12 Munjobas, the Yakomas, the Sango, the Lambassi. All these, the Zande, also Kilonjo, that
13 is along the Ubangi River, these ethnic groups speak a bit of Lingala. In fact, these ethnic
14 groups do speak Lingala or at least understand Lingala. Even in the interior of the
15 country it is because of the music that one knows that someone is speaking or singing in
16 Lingala.

17 Question: So it was a language you could easily recognise?

18 Answer: Absolutely, absolutely madam."

19 The same witness continues, and this time French version, it is transcript number 35, page
20 7, lines 13 to 24. And in the English version it is transcript 35 edited version, page 6,
21 from line 23, to page 7, line 1:

22 "Question: Thank you. You also stated that some of the ethnic groups in the border
23 area speak and understand a little bit of Lingala?

24 Answer: Yes.

25 Question: Now, how can you distinguish between a citizen of the Central African

1 Republic and a Congolese when they speak Lingala?

2 Answer: The Central African who speaks Lingala will speak it haltingly. He cannot
3 articulate like the other ones who are Congolese natives. The Congolese speak fluently
4 without accent. They would use certain words but the others, and I add, these are
5 Central Africans, they will more likely add some French words so as to be better
6 understood. Sometimes they could also borrow some words from their local languages.
7 I believe that is the difference."

8 Let me continue, Professor.

9 A. Yes. Yes.

10 Q. Now I will give you an extract of what Witness 22 said. In the French version it is
11 transcript 41, and all the references I give are the edited versions and it is page 7, line 26
12 right up to page 8 line 18. In the English version it is also transcript 41 page 7, lines 3 to
13 20.

14 "Question: How did you know that the people who entered your house were
15 Banyamulengue?

16 Answer: I knew that because after they came into the house I was listening to them
17 while they were walking along the corridor to the room. I listened to the noises. When
18 I came I crossed them at the door. To begin with, they said 'Yaka,' and then someone
19 said to me in French, 'Give me money.' That is when I understood that they were the
20 ones.

21 Question: Do you know which language is used to say 'Yaka'? Which language is it?

22 Answer: I know that 'Yaka' is Lingala. I know that because I have a brother whose
23 mother is on the other side of the river. From time to time, during the holidays, they
24 visited us and we used to speak a lot amongst ourselves. We teased him. We asked
25 him how they would say 'Good morning' or how they would ask for something. So

1 when I listened to these people I remembered how my brother used to teach us and that is
2 how come I understood that they were the ones.

3 Question: What do you mean by 'on the other side of the river'?

4 Answer: When I say 'the other side of the river,' since there is a river separating us from
5 them, the other ones on the other side of the river, that is Zongo, they are always referred
6 to as 'those across the river.' That is why I usually refer to them as those on the other
7 side of the river."

8 Still the same witness, and still transcript 41. The French version, it is page 16, lines 15 to
9 26. And in the English version it is T-41, page 14, as from line 23 to line 8 on page 15.

10 "Question: In which language did the first perpetrator speak to you?

11 Answer: The first one who addressed me spoke in French.

12 Question: Were you able to understand him?

13 Answer: Yes, I understood him very well. He said he wasn't going to hurt me. Before
14 that he said 'Yaka.' I didn't say anything. And then he added, 'Give me money,' and I
15 said had none. He tried to force me and as I struggled he pushed me and he added that
16 he didn't want to do any harm to me, and then he spoke in French after that and the
17 others who came after him did not say anything.

18 Question: Did he speak French with an accent?

19 Answer: First he started speaking in Lingala and he mixed in a bit of French. I was just
20 trying to understand the French he used to speak to me."

21 Another excerpt, and this is still transcript 41, page 17, lines 8 to 11 in the French version,
22 and in the English it is T-41, page 15, lines 17 to 20.

23 "Question: We will come back to the stealing of your belongings later, Madam Witness.
24 Did the six men in your room talk among themselves?

25 Answer: Yes, the three who were gathering my belongings spoke to each other but it

1 was in Lingala, and I didn't understand it."

2 Still the same witness, page 37 of transcript 41, lines 1 to 3. In the English it is page 33,
3 lines 21 to 23.

4 "Question: In which language did the Banyamulengue speak that were in the living
5 room amongst themselves?

6 Answer: They were speaking in Lingala."

7 Transcript number 42, French version, page 21, as from line 18 up to page 22, line 3. In
8 the English version it is transcript 42, page 20, line 16 and it goes up to line 3 of page 21.

9 "Question: You also mentioned the Congolese accent. You said the Congolese-Zaireans.
10 What do you mean by 'Zairean accent'?

11 Answer: I said that because I have a brother whose mother hails from the other side of
12 the river so he used to visit us and that is how he spoke. We teased him and we would
13 ask him how to say 'Good morning, how are you doing?' He would answer us. So we
14 were in the habit of listening to him speak and the day that these people came they spoke
15 in the same way that our brother used to speak. That is why I said that they had the
16 accent of people from the other side of the river.

17 Question: I would like to have some clarification regarding what is referred to as the
18 accent of the people from across the river?

19 Answer: Like our brother told us, he said to us 'Mbote' and he would tell us 'Yaka.'
20 And when they came in those were the same words that they used to address us. That is
21 what made me say that these were people from across the river."

22 Sir, it is time for the break. I have read some extracts but I will read out some more after
23 we return from the break. I will read them faster.

24 Madam President, I think we can take the break now. Thank you.

25 PRESIDING JUDGE STEINER: Thank you, Maître Badibanga. Indeed, I had received

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(Open Session)

ICC-01/05-01/08

- 1 the information that the tape is almost ending.
- 2 Therefore, Mr Witness, we'll have our break. We will resume at 11.30.
- 3 I ask, please, court usher to accompany the witness outside the courtroom. In the
- 4 meantime, we will suspend and resume at 11.30.
- 5 (The witness stands down)
- 6 THE COURT OFFICER: All rise.
- 7 (Recess taken at 10.58 a.m.)
- 8 (Upon resuming in open session at 11.33 a.m.)
- 9 THE COURT USHER: All rise.
- 10 Please be seated.
- 11 PRESIDING JUDGE STEINER: Welcome back. I ask, please, court usher to bring the
- 12 witness in.
- 13 (The witness enters the courtroom)
- 14 PRESIDING JUDGE STEINER: Professor Bokamba, welcome back.
- 15 THE WITNESS: Thank you, Madam President.
- 16 PRESIDING JUDGE STEINER: Are you ready to continue with your testimony?
- 17 THE WITNESS: Yes, ma'am.
- 18 PRESIDING JUDGE STEINER: Maître Badibanga, you have the floor.
- 19 MR BADIBANGA: (Interpretation)
- 20 Q. Professor, I took advantage of the break - and I think the interpreters will be glad to
- 21 hear this - I've decided to reduce the number of passages that I'll be reading out to you.
- 22 Now, I think I've really cut back on the amount of material that I'll be quoting. I'll be just
- 23 quoting a few items, two or three items, nothing more than that.
- 24 Now, for the interpreters, what I'll do now is just to allow them -- work a little bit faster, I
- 25 have given them a hard copy of the transcripts. I'll give them the references so that they

1 can turn to the right passage. Now, right now, we're at page 3 of the document, and I'll
2 be quoting the last two, the last two passages, page 44, the last two ones at the bottom
3 from transcript 44.

4 Now, for the benefit of the Chamber, that's transcript 44, page 25, lines 21 to 22. In the
5 French version --

6 THE INTERPRETER: Many thanks from the interpreters for the line references.

7 MR BADIBANGA: (Interpretation)

8 Q. French version, page 27, transcript 44, lines 2 and 3, and then moving on later to
9 lines 10 to 12.

10 "Question: Madam Witness, can you share with us how you differentiate the soldiers
11 from the Presidential Guards and the Banyamulengue?"

12 The answer was as follows, and this is at line 10. I'll just skip over one minor exchange.

13 The answer was:

14 "If they are the soldiers from my country then I am able to recognise them because of their
15 clothing and by the way in which they speak Sango. If they are soldiers who are not
16 from my country, I know that they are not from my country."

17 Now, let us move on to page 5. Now, for the interpreters, this will be in the English
18 version, it's transcript 44 -- correction, 64, the second-last paragraph, transcript 64, page 25,
19 lines 15 to 18.

20 The witness said this, lines 22 to 25 in the French version, transcript 64:

21 "When they came back to PK12, they started to commit acts of violence and abuse, taking
22 objects, asking for money. Since they didn't speak Sango, they would say to people 'Pesa
23 ngai mbongo,' which -- well, those who didn't have money were whipped."

24 Now once again for the interpreters, same page, page 5, the last passage, the English
25 version it is transcript 64, page 27, line 21 and then it goes on to page 28, line 13. And I'll

1 just drop the first two questions and then move on to the third question.

2 Now, the French was as follows, transcript 64, page 30, from line 27 on to page 31, line 14:

3 "Question: Are you able to tell us in which accent did these speak these French words
4 you refer to?

5 Answer: What kind of accent? Well, the accent was like the Lingala that they speak, the
6 French that you speak. You have your own mother tongue, and you have French as a
7 second language, a secondary language, but I think you express better yourself better in
8 your main language than in your second language. When you speak a second language,
9 that second language is influenced by the mother tongue, so people can realise what's the
10 origin of the person. So there are a number of hints or indications. The accent was the
11 Lingala accent. I understand a few Lingala words, I do understand them. I don't speak
12 that language because, you see, because we are neighbours, we live right before the
13 former Zaire. My village is located close to a town in Congo, and in the centre of town
14 we are well -- we are right beside the Congo. I've had opportunities to cross, so the
15 language that they were using was Lingala. Not only that, in the neighbourhood where I
16 live, there are some people from Zaire who have come to do odd jobs. One of these
17 people lives close to my home, Delege (phon) is his name, because when there is a conflict
18 within that community he's the one who settles the matter. He speaks and I
19 understand."

20 We are coming towards the end, I still have three more passages to read out. Transcript
21 70, English version, page 28, lines 17 to 19. In the French version, page 30, lines 11 to 13.
22 "The events that we experienced did not prevent us from moving about. When you met
23 one of them, he would greet you with the word 'Mbote,' in their language."
24 Now, a few lines further along, line 23 I believe we're at in French, all the way to page 31,
25 line 12, English version, transcript 70, page 29, lines 2 to 17:

1 "Question: Sir, do you know the meaning of this word you referred to just a while ago
2 that the commander used, that the commander used to greet people when he meets with
3 them? If I would pronounce it correctly, it's 'Mbote'.

4 Answer: It was not only the commander. Even his men, the Banyamulengues, when
5 they were patrolling in the neighbourhood and particularly if they were in a good mood,
6 as you know there were also children amongst them, so the words that I remember when
7 they greeted me were 'Tata mbote.' I would tell them 'Thank you' and they would go on
8 their way. I understood that that was their way of greeting people.

9 Question: Did you get to know the meaning of those words?

10 Answer: Yes, the expression 'Mbote' means 'Good day.' I live with some of their fellow
11 countrymen in my own neighbourhood. Before they came - and I said this
12 already - some of their fellow countrymen were already living in my area, and when they
13 spoke on a daily basis that's how they greeted one another. They would -- when they
14 met with me they would say 'Tata mbote', until I realised that this was a greeting intended
15 for me. They didn't speak any other language than Lingala when they arrived.

16 Amongst them, there were very few who spoke French properly."

17 And this will be the last quote, Professor. Now, in the English version it's transcript 77,
18 page 15, line 14, all the way to page 16, line 8. That's the English version. In the French
19 version, once again transcript 77, page 15, from line 25, to page 16, line 23:

20 "I will ask you my question now. You told us that these men did not speak to you, but
21 they were speaking to each other and you told us that you didn't understand Lingala.

22 My question is: How were you able to tell that what they were speaking was in fact
23 Lingala, Madam Witness?"

24 It was my colleague, Ms Bala-Gaye, who put that question. The witness answered as
25 follows:

1 "Well, those men didn't talk to me. They talked to each other and they did so in Lingala.
2 I don't understand Lingala. One or two words -- the one or two words I do know from
3 Lingala are words that are used by my domestic staff, but I don't understand -- I didn't
4 understand what they said to each other."

5 And, just for your information, Presiding Judge Aluoch intervened and asked a question.
6 She said this:

7 "Thank you, Madam Prosecutor. As we are now talking about language, if you go to
8 page 11, go back to page 11 please, the English version, line 21, I think this is when the
9 attackers entered the house and then they are -- she is recorded as having -- she's quoted
10 as having said when they went where the children were, 'Don't make noise, or we will
11 shoot you. Don't make noise, or we will shoot you.' In what language did they say
12 those words, please?"

13 That is the question that the Judge asked. The witness said: "Well, that was said in
14 Lingala."

15 Judge Aluoch put her question again:

16 "So you understood that when it was said in Lingala?"

17 And the witness answered saying:

18 "Well, I've already said to you that we have a domestic employee who is from Zaire and
19 he spoke Lingala, and when he spoke -- well, the assailants I recognised that they were
20 talking to each other in Lingala."

21 Professor, these are some of the passages that I've chosen to read out. I mentioned that I
22 decided to drop a few passages, but in any event these are various things that were said
23 here by witnesses right here in the courtroom.

24 I'll summarise briefly. It's not about whether or not they were speaking Lingala. What
25 we're focusing on here is the witnesses' understanding of Lingala but, you see, several

1 times the witnesses said that they recognised Lingala.

2 As an expert - as a linguistic expert - would these passages have helped you come to some
3 kind of conclusion about the ability of people from the CAR to understand or recognise
4 Lingala?

5 A. Yes, Counsellor. It sounds like a number of them had the appropriate sort of
6 background in having been exposed to Lingala through neighbours, through relatives,
7 and therefore they would have recognised Lingala in addition to what I've said previously
8 hearing it on a radio, or the music.

9 It sounds like one of these witnesses is much more sophisticated than all the others that
10 you have cited or referenced, in that she goes to the detail of ascertaining that someone
11 is -- who comes from another country would speak the language, namely Lingala, and in
12 particular if they come from Congo, or Zaire as they refer to it, would be much more
13 fluent and articulate as opposed to being halting et cetera, which would characterise
14 somebody who is not -- does not have a good command of the language, and that is in
15 part on target.

16 Whether that individual has a so-called accent of Lingala that is specific to the Congo
17 versus another I'm not so sure that the picture is clear, but that's immaterial. If I'm
18 mentioning it, it's simply to point out that what I stated the other day still obtains. You
19 have to know the language well enough to be able to ascertain that somebody is speaking
20 Tshiluba, as someone who comes from Katanga as opposed to someone from Kasai, and
21 even in Kasai in certain areas you can tell there are specific features to that.

22 Having said that, I feel that this information, yes, would have been very helpful to me in
23 trying to present my own analysis of the situation, as opposed to basing my analysis
24 solely on the transcripts from my colleague, as well as his report. And, as you have
25 undoubtedly seen, my report is much more extensive than his, and therefore some of the

1 statements that he made there were too cryptic in that they were too short to be able to
2 interpret in terms of the depth of the possible knowledge that existed, or that was
3 recorded here in court, and I don't know whether he had access to that information which
4 I did not.

5 So my response has to stand on the basis of those were the documents on which they were
6 based, and as a theoretician I would say if I had more information, or more data, I would
7 have therefore constructed a response that was, you know, appropriately based or
8 gauging that set of data.

9 Q. You're entirely right, Professor. Now, just for your information, Professor Samarin
10 received 70 documents -- correction, 60 documents, 16 of which - 16 of which - were
11 witness statements, and of the 16, 12 were witnesses from the CAR, four were from
12 Congolese people who discussed language one way or another. What's more, he
13 received a number of documents that I referred to yesterday; for example the Document
14 Containing the Charges. He received a number of public reports drawn up by various
15 institutions and NGOs. He received a number of other documents that are part of the
16 case file and that deal with the issue of language.

17 And so that's why I asked you the first day, if you had had the material upon which he
18 had based himself would that have helped you in your own work not to come to the same
19 conclusions, but just for you to be able to assess the materials and come to your own
20 conclusions?

21 A. Yes, the answer is as I stated just a few seconds ago. It would have been helpful.

22 Q. You spoke at length about Congolese music as a vehicle for the transmission of the
23 Lingala language, and I think you were quite right to point to that out. It's quite relevant.
24 If music is a vehicle for the learning of Lingala, could we say that music also helps people
25 identify the Lingala language? Thanks to the music, more people in the world are able to

1 recognise Lingala in comparison to the number of people who speak Lingala?

2 A. Yes. The answer is unambiguous.

3 Q. Professor, in the various passages that I've read out to you, mention is made of the
4 Banyamulengue several times. I don't know whether you're familiar with the context
5 that -- in which that word is used in this trial but, generally speaking, do you understand,
6 could you tell us what that word means, if you are familiar with it, the word
7 "Banyamulengue"?

8 A. "Banyamulengue" came into the forefront of the political discourse in the
9 Democratic Republic of the Congo following the Rwandan and Ugandan invasion of the
10 Congo in an attempt to overthrow Mobutu, and it was presented as individuals, that is
11 Banyamulengue represented individuals who are Congolese of Tutsi origin in eastern
12 Congo who at that time, through my knowledge and reading of those developments,
13 contended that they were in rebellion in order to reclaim their rights of citizenship that
14 President Mobutu wanted to abrogate after giving them, back in the '70's, I believe it must
15 have been 1972 if my memory serves me correctly, mass as opposed to individual
16 citizenship.

17 So that is the context in which I understand Banyamulengue and, as such, I would hasten
18 to indicate that Banyamulengue would be expected to speak Kinyarwanda but not Lingala
19 although, as I've indicated in my report, Lingala is spread so much in the country but the
20 Kivus are not areas that are known to be -- to have Lingala as a very competitive language
21 as would be the case for Lingala in the Oriental province where it is competing against
22 Swahili. So that is the sense in which I understand "Banyamulengue."

23 This other sense of "Banyamulengue" here seems to be an over-generalisation of
24 Congolese who presumably settled in Central African Republic and among whom others
25 that came with the MLC; is that correct?

1 Q. I am waiting to read the end of your answer from the transcript, real-time. I have
2 not fully understood your answer, I think.

3 Now, did you say, and I'm referring to the real-time transcript, page 49, lines 8 and
4 following, did you say that "I believe that it would be an over-generalisation if you talk
5 about the Banyamulengue being Congolese who settled in the Central African Republic
6 and who are members of the MLC," is that the question you're putting to me, Professor?
7 Is that your question?

8 A. In part, yes. Having defined "Banyamulengue" as I understood it in the context of
9 the war of invasions in the Congo, or wars of invasion in the Congo, excuse my English,
10 that extending it to refer to, or describe MLC soldiers as Banyamulengue would represent,
11 in my understanding, an over-generalisation of what the narrow definition ala Congolese
12 of that term "Banyamulengue," which is restricted to individuals who are Congolese
13 citizens of Tutsi origin speaking Kinyarwanda.

14 PRESIDING JUDGE STEINER: Maître Badibanga, if you allow me? I think it's
15 important, Mr Witness, that we clarify because it may be that we have a mistake in the
16 transcript because here, on page 50, as from line 19, it says, that you said that "This other
17 sense of 'Banyamulengue' here seems to be an over-generalisation of Congolese who
18 presumably settled in Central African Republic." Is that correct?

19 THE WITNESS: I did state -- yes, your Honour, I did -- I did state that but I didn't mean
20 to -- to say that they are settled. Well, "Yes" and "No." Some individuals who were
21 settled in Congolese were settled in Central African Republic. Whether they are
22 permanent residents or they are, you know, forthcoming, it seems to me, namely going
23 back and forth, seems to me that they are referred to as "Banyamulengue," at least on the
24 basis of the transcripts that I read. And in referring to the soldiers in the MLC battalions,
25 that the use of the term "Banyamulengue" again represents a -- an extension beyond what

1 narrowly what was understood in the case of the Congo conflagration that
2 Banyamulengue represented ethnic Tutsi inhabitant or citizens of the Congo, especially in
3 the Kivu provinces.

4 MR BADIBANGA: (Interpretation) Thank you, Madam President. I will also attempt
5 to get clarification from the witness on this point.

6 Q. What the President has actually mentioned is the question that the witness raised
7 with me. The last part of your explanation relating to the fact that Banyamulengue were
8 Congolese Tutsis who settled in the east of the Congo is indeed correct because that is the
9 information that is publicly available and available to the parties.

10 Now, in answer to the question you have put to me, what I would say is that, yes, it is an
11 over-generalisation but I do not want to delve into the fine details of that matter.

12 However, let me tell you that the Central Africans referred to the MLC soldiers as the
13 Banyamulengue, and that is what obtained at the time. There are reasons for that. Part
14 of the MLC command is of Banyamulengue origin, and they had already had an operation
15 in 2001 involving some Banyamulengue in their contingent, and this then became a
16 general term that was used in the Central African Republic. That is the term that was
17 used by Central Africans to identify the troops.

18 Now, the reason for which I raised this issue of the Banyamulengue with you, Professor, is
19 to find out whether as far as you know there were any, or there are any, ethnic groups
20 also known as the Banyamulengue in the other countries where Lingala is spoken which
21 you refer to, such as Angola and the Congo-Brazzaville. As far as you know, are there
22 any Banyamulengue in Angola or in the Congo-Brazzaville?

23 A. I do not know, and the reason I don't know is that I did not research that
24 information to ascertain whether there are Banyamulengue residing in those countries.
25 My guess - educated guess - would be probably very few, if any, in the sense that I

1 defined Banyamulengue, according to the Congolese situation, because they had no
2 reason for escaping to other countries unless they are part of, let's say, the musical groups
3 that I have, you know, mentioned previously where they found that during Mobutu's
4 regime the political expression or freedom of expression was being, you know,
5 suppressed, and therefore they needed to go somewhere else or they are among
6 the -- those who are involved in migrant labour kind of work, but I'm not aware of that
7 information precisely because I've not researched it.

8 Q. Professor, I would like us to revisit an aspect or one point in your report in which
9 you at some point talk about people who are able to understand or speak Lingala in the
10 Central African Republic. You challenge the one on twelve figure put forth by Professor
11 Samarin.

12 Now, when I was young, living in the Congo, our educational system allowed us to
13 choose the arts or science, science for the mathematicians and scientists and the literary or
14 art sector, which I followed because I'm not very competent in mathematics, but I tried to
15 calculate and I spent quite some hours working on figures to see what I can come up with.
16 Now, I was looking at the figures that you put forth, and I don't challenge their accuracy.
17 You said that roughly some 10,000 Central Africans, according to the report you referred
18 to, speak Lingala; is that correct?

19 A. I cannot answer the question whether is that correct or incorrect, but rather to
20 answer it this way: That the information that I cited there came from two sources, the
21 internet, that are posted by particular organisations, and it is in that respect that I stated
22 that these have been found to be "X" number of Lingala-speaking individuals in the
23 Congo but it is unclear whether in fact all of those individuals speak Lingala or simply
24 because they come from the Congo and it is assumed that they come they speak Lingala.
25 And I think that the sort of picture presented in those brief reports is that of assuming that

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1 once you have a Lingala -- rather, a Congolese community or a significant population of
2 Congolese gathered in a foreign country, that they would use Lingala as the diasporic
3 language in the same way that I made mention of those in Belgium who gather at
4 Matongé or in some other countries where you find that this is, you know, the case;
5 namely, Lingala is used as the language of (indiscernible) language unless they are using
6 the language of their home country, or French.

7 So my -- what I'm trying to say, Counsel, is that these are data extracted from other
8 sources and I'm citing -- I cited them for the purpose of demonstrating that there do exist
9 these communities that are reportedly of Lingala speaking.

10 PRESIDING JUDGE STEINER: Maître Badibanga, if you allow me?

11 Mr Witness, just for being certain that the transcript reflects what you said, I see from
12 page 54, lines 22/23, that is, "I stated that these have been found to be 'X' number of
13 Lingala-speaking individuals in the Congo, but it isn't clear whether in fact all of those
14 individuals speak Lingala simply because they came from the Congo." I think you meant
15 the Central African Republic?

16 THE WITNESS: The Central African Republic, yes.

17 PRESIDING JUDGE STEINER: Thank you.

18 THE WITNESS: As well as, you know, Angola and so on.

19 PRESIDING JUDGE STEINER: Thank you.

20 THE WITNESS: Yes, thank you.

21 MR BADIBANGA: (Interpretation) Thank you, your Honour.

22 Q. Witness, indeed you cited other sources and you mentioned them, and on page 10 of
23 your report, CAR-D04-0003-0449, paragraph 3232, at which you reference two sources and
24 you say, "According to the Central African Country Profile Report, Volume 1, Strategic
25 and Practical Information 2011, there are 9,100 Lingala speakers in the CAR who are part

1 of a group of traders and refugees hailing from various linguistic groups from various
2 neighbouring countries, including Chad, Sudan, Rwanda and the DRC."

3 Then you go on to state, referencing the site "Ethnologue," and then you go on to say that
4 the website "Ethnologue," which is the most comprehensive resource on world languages,
5 states -- in its chapter on languages of the Central African Republic, it provides a slightly
6 lower figure for the number of Lingala-speaking persons, and then you have another
7 series of languages mentioned in the list of that series.

8 Then we also looked at information from the Ethnologue website and the figure we found
9 was 10,700, which is slightly higher --

10 THE INTERPRETER: Correction from the interpreter: "Slightly higher" was the
11 reference before. "Slightly higher."

12 MR BADIBANGA: (Interpretation)

13 Q. Now, yesterday Mr Haynes asked you, I believe, how many inhabitants there were
14 in the Central African Republic. You did not have that information, but I think that the
15 information is that the Central African Republic has a population of between four to five
16 million, and then I get to my problem with mathematics.

17 Now, if I take the lower figure of that bracket it will be four million, so if we take it that
18 there were four million inhabitants in the CAR in 2002 as our starting point and we took
19 an average of 9,700, or between 9,700 and 10,000 -- 9,100 and 10,700, the average would be
20 10,000; an average which appears to be reasonable to me.

21 Now, with the best effort that I can make, my conclusion would be that 10,000 is less than
22 one per cent of four million. Except I am mistaken, it would be something like 0.25 per
23 cent of four million.

24 Going by those figures, therefore, there would be in the Central African Republic 0.25 per
25 cent of the population that speaks Lingala, or that is able to speak Lingala. This is lower

1 than the figure provided by Professor Samarin. Professor Samarin said one-twelfth,
2 which would be about eight per cent. Could we then on this point say that you and
3 Professor Samarin may at least find common ground and say that there is an extremely
4 low number of Lingala-speaking people in the Central African Republic?

5 A. Absolutely. I disagreed with him in terms of where he got his figures from,
6 because even he himself admitted in his report, as you recall Counsel, that, "This is not
7 due from a census, or that I took a survey, but rather this is my guesstimation as it were,"
8 to use my own word but not his, whereas in my case I said, "Here are the resource -- you
9 know, the sources." So the conclusion would be, yes, it's a low percentage. There's no
10 question about that.

11 Q. I'm really pleased to be able to reconcile two friends, and I would even go a little
12 further towards that reconciliation, Professor, because I think that there was a slight
13 mistake in interpretation. You see, Professor Samarin's report, which is available to all
14 parties, was discussed at length in this trial. The report does not say that, "One-twelfth
15 of Central Africans speak Lingala." In fact what he says is, "One out of twelve witnesses
16 do speak Lingala."

17 I told you earlier that he had received 60 documents, and that of those 60 there were 16
18 witness statements and 12 of those witnesses were from the Central African Republic.
19 What Professor Samarin did is that he took a sampling of what was provided to him and
20 came to the estimation that one out of every 12 witnesses, or one witness out of the 12 that
21 he had to deal with, spoke Lingala. So he was therefore within his professional, should I
22 say, parameters and he did not extrapolate as such.

23 What I therefore want to say is that, based on the sampling that was provided to him and
24 you based on the figures that you found in your sources which appear to be more
25 objective, you and Professor Samarin come to the same conclusion that there is a very low

1 percentage of Lingala-speaking persons in the Central African Republic?

2 A. Just in the interest of discussion, Counsel, if you don't mind? What you've said
3 with respect to the conclusion is true, that it's both of us. Whether my figures that were
4 cited from other sources, or whether his, represent a low percentage of the potential
5 speakers of Lingala.

6 What I took issue with -- and I made it clear in a way of my profession. I quoted what
7 Professor Samarin stated before I made the comment that this number does not stand to
8 scrutiny. Not that I want to debate it, but I wanted to clarify that that is what I did.

9 Before critiquing it, I provided the evidence and then I dissected it.

10 Earlier you had made a comment that you are happy you have reconciled, you know, two
11 friends. There is no -- as you know, there is no animosity. I like to debate. It's in my
12 DNA, sir. So I took issue with what I saw and that is that, yes. No concerns about, you
13 know, friction of any sort.

14 Q. That did not cross my mind at all, and we heard Professor Samarin here. He was a
15 very qualified person, just as you are, and this thought didn't cross my mind at all.

16 Now, what Professor Samarin says also is that, given that there is such a low percentage
17 of Lingala-speaking people in the Central African Republic, there are -- however there are
18 many Central Africans who are able to recognise Lingala.

19 In your report you have referred to different types of Lingala, but let us set that aside and,
20 without talking about the different types of Lingala, can we agree that, yes, a majority of
21 Central Africans, or many Central Africans, are able to recognise Lingala because of the
22 music and because of the proximity with the other country and so on and so forth? Can
23 we say that?

24 A. Yes, and I think that I admit as much when I state that, when you look at for
25 example Bangui with Zongo and you look at the whole history, that's in part why I cited

1 the use of Lingala in the trade from the 1800s on and the interaction that you would
2 expect between peoples living across each other, just like Kinshasa with Brazzaville.
3 There is criss-crossing and therefore you come to know. And the exposure to the music,
4 et cetera, plus neighbours who are residing with them, yes, they can.
5 I think what is at issue from my presentation in the report - in my study report - was
6 whether -- two things: Whether one could recognise "an accent" without knowing that
7 language. If I can go back -- if I can go back to a comment I made the other day, Counsel,
8 when I provided the illustration of someone who would say "Tikangai (phon) is Tikangai",
9 for someone to be able to say, "This is a Tshiluba speaker," it's because they know that that
10 feature of what we call technically palatalisation of the "t" is a feature that they have heard
11 in Tshiluba. If they didn't know Tshiluba and come to immediately do that kind of
12 analysis, they wouldn't know what is going on and that is what I was taking in part issue
13 with.
14 Recognition of a language if you've been exposed to it, yes, you can. I can sort of say,
15 "Here's someone speaking a new language," and if I don't know that language I would just
16 say, "It sounds ..." -- you know, the proverbial saying, "It sounds Greek to me," or, "It
17 sounds gibberish," but if I knew and had been exposed to it before I could say, "Oh, I don't
18 understand it, but it's Chinese." How do I know that it's Chinese rather than Korean?
19 It's because I've heard it before.
20 So that's natural. It's to be expected of any language, but there are some aspects that are
21 much more refined and demand that you have a deeper understanding of the structure of
22 that language to make comments about it.
23 PRESIDING JUDGE STEINER: Maître, if you allow me just to check if I well-understood
24 what you say, what you said. Yesterday at -- so the transcript was 243, on page 46,
25 answering to the same kind of question, you said that "The person can guess to what that

1 language is, especially if they have heard it on the radio, or in music, or CD that they have
2 or music that they have been listening to," and then "And they can say, 'Well, that's
3 Lingala'. But which Lingala is it? They cannot make that assessment unless they yield
4 structural features that have been referencing here."

5 So the person can identify that it is Lingala, although cannot identify which Lingala it is.
6 If it is the Équateur, if it is the Kinshasa or other nuances that you mention; is that correct?

7 THE WITNESS: Yes, Madam President, it's -- it is correct.

8 PRESIDING JUDGE STEINER: Thank you.

9 MR BADIBANGA: (Interpretation) Madam President, the witness took the words out
10 of my mouth, because that was the example I was going to give.

11 Q. This case is very complex in many aspects, but some things are quite simple and
12 people can make them complicated without any reason at all. I read out excerpts from
13 witness testimonies who stated that they heard Lingala. None of them mentioned the
14 accents and different types of Lingala. Well, someone mentioned it here and there, but
15 many of them simply identified the Lingala language. However, regarding the
16 identification of the attackers, the accent is important. So let us set Lingala aside right
17 now and talk about French.

18 If you consider that French is the national language in Congo, as you've explained it is not
19 of course the most popular or most spoken language, and it is not the mother tongue, but
20 it is the national language, French is also the national language of the Central African
21 Republic; at least it's one of the official languages, it is the official language rather than
22 national. In Cameroon it is an official language, and that is also the case in Senegal.
23 Now, an average Cameroonian, for example, who has lived in his country, would the
24 average Cameroonian have a different accent from that of an average Senegalese which in
25 turn would be different from an average person from Central African Republic or the

1 Congo? That is when these people are speaking French.

2 A. The answer, Counsel, is, "yes," and it is an expected outcome for the simple reason
3 that different environment and social cultural factors enter into what one produces in
4 terms of an accent in a given language. One of these is what one of the witnesses quite
5 amazingly referred to as "the mother tongue," with the influence the second language, or
6 the third, or whatever.

7 We also know from the same literature, research on language acquisition by adults as well
8 as children, that a third language or a second language can influence the third. What I
9 am referring to are cases of multilingual societies, like those in Africa and Asia.

10 A person who has learned let's say French before learning Spanish is likely to draw
11 interestingly, subconsciously, on the French to influence or to convey whatever he does
12 not have, or in terms of accent in the form of French, because that's the language that he or
13 she has assimilated before.

14 It does not necessarily have to be the first language, the mother tongue. So it is for these
15 reasons that we can tell that, and accent consists of not just a matter of pronunciation, but
16 it's also a matter of rhythm that comes from the language that the individual, or languages
17 that the individual uses, and so I can -- I can tell, if I was not face-to-face with an
18 interlocutor, who comes from the Cameroon versus Senegal, and so on. Generally I can
19 tell that they are Senegalese, or that they are Cameroonian, or they come from, you know,
20 Burkina Faso. I -- or they come from the Congo.

21 In some cases it is difficult, because there are individuals who have such a good ability to
22 adapt, to assimilate the language to a point where some of these are hidden, namely, the
23 features that represent a local characteristic, and it goes without saying, it's true in every
24 society, whether you take, you know, French in France, or you take German in Germany,
25 they will tell you this is Bavarian, this is that thing, it has to do with culture. Yes, we can

1 recognise that.

2 Q. Would this mean, sir, that if some MLC soldiers, that is if some of them did not have
3 a high level of education, that is if they did not have a very good mastery of French, one
4 would suppose that the French they would be speaking would be affected by the
5 Congolese accent? It wouldn't be Parisian French, for example?

6 A. Of course not. It may not even be, you know, Belgian French. Yes, it would be.
7 But here, I think the test is of who is the listener, who is making the determination? So as
8 you've correctly pointed out in some of the citations you've presented, some of these
9 individuals are much more keener in recognising, and the reason they recognise is
10 because you're familiar with the varieties spoken in the two countries, and therefore can
11 say this is, you know, Congolese variety, generally speaking, because that too is an
12 exaggeration, but generally speaking we can recognise it, or this is, you know, Senegalese
13 or such-and-such, because of those features.

14 Q. In fact I was coming to that, because I wanted us to talk about the speaker, that's the
15 person sending out the message and the person receiving the message. Would it be
16 logical for a Central African national who speaks French fluently in the country would
17 identify a Congolese speaking French with a Congolese accent? From a sociolinguistic
18 point of view would that be possible?

19 A. The answer is the same, Counsel. Yes, it would be possible, provided that this
20 individual has been exposed to Congolese accent so that he or she can distinguish it from
21 their own accent which presumably they know better. Otherwise, they would not.

22 Q. What I wanted to touch on is that in your report, and you say that Lingala alone
23 cannot serve as a criterion for identification, and that comes from some of the materials
24 that you used, but as you heard from the testimonies, the witnesses mentioned the people
25 who spoke the two languages. They said "Mbote" and "Yaka," and then they said "Give

1 me money" in French. So my question is: Can the usage of the two languages, plus the
2 French accent used by the same speaker, will that multiply the factors of identification?

3 That is for the person listening to the message?

4 A. Counsel, please repeat the question. I think I've lost a segment of it with respect to,
5 in part, your illustration and then the question posed at the end of that statement. If you
6 could rephrase, please?

7 Q. I'm sorry, that is the risk when I ask a question that contains a lot of information.
8 In the conclusion of your report, you state that Lingala alone cannot serve as a criterion
9 for identification. Now, the fact that the attackers were speaking both Lingala and
10 French, does that change that conclusion? That is, does it multiply the criteria for
11 identification because there's no longer only one, there are two now?

12 A. Yes, of course. One to two. You said you had problems with mathematics.
13 There's no problem here. One and two makes -- right? One plus one makes two, so it
14 does multiply the factors. However, it is still not determinative until you consider other
15 factors and, of course, I'm sure you know this, given the way you have analysed, you
16 know, the different texts presented to the Court, and that is Lingala alone would not be
17 sufficient, but you need other factors that you have demonstrated throughout your
18 questioning this morning, as well as this afternoon, particularly this afternoon, in reciting
19 the evidence from the witnesses.

20 Q. But we were convinced that there were not only one or two criteria but several and
21 for that reason, if you allow, let me move away from this and present to you a
22 hypothetical case which I believe should simplify things.

23 You know football, not American football but the European type of football; am I correct?

24 You know that it is a sport that is very, very popular in Europe.

25 A. Yes.

1 Q. That sport is so popular that important matches are watched by huge amounts of
2 people, huge numbers of people. Now, let me give you an example. We are in Holland.
3 If the Amsterdam football team is qualified for the Champions League Final, do you know
4 what the Champions League is?

5 A. No, but Coupe du monde I know, but not this one. And I know that, you know,
6 The Netherlands team, you know, played last night and I missed it. They won.

7 Q. I can see that you are very up-to-date, Professor. The Champions League is the
8 European Championship. Now, if a Dutch team finds itself in the final of the Champions
9 League, they have to host a team from Country B. There are 80,000 places in the
10 Amsterdam stadium. 70,000 tickets have been sold to Dutch supporters and 10,000
11 tickets have been sold to Country B. We know that the match will be played this coming
12 Sunday, which means we have three more days to prepare ourselves to go and watch the
13 match.

14 The public authorities are privy to this information. The authorities and everyone else
15 are aware that there will be 10,000 supporters coming from Country B to watch the match.
16 This person arrives the country, or rather the match takes place and there are incidents.
17 There is fighting between the supporters and then damage is caused around the stadium.
18 You have cars that are burnt down, shops looted and passers-by beaten or molested.
19 An investigation is opened, and then it happens that the first 20 victims, or rather 20
20 witnesses, say, "It was the supporters of Country B who attacked me, or who looted the
21 shop," and quite naturally they would be asked, "How do you know that they are from
22 Country B? It is a European country, so physically there is no difference. You have
23 blond people, red-heads and others. How do you know that?"

24 And they say, "Some of them were wearing the jerseys of Country B." And the question
25 is, "All of them?" Answer, "No." And the question, "Is that your only criterion?"

1 Answer, "No, they spoke the language of Country B." But we know that the language of
2 Country B has speakers in other countries of Europe, and the Prosecutor in Amsterdam
3 says, "We think that the supporters of Country B attacked a certain number of people and
4 we are going to prosecute them."

5 We have a criterion of language, sometimes we have a criterion related to dressing and
6 then we have public information to the effect that 10,000 people from Country B entered
7 the country before the match, so would it be illogical for the victims to conclude that the
8 perpetrators of the crimes came from Country B? And I want to be specific. They
9 mainly refer to the use of the language, so would it be unreasonable for them to arrive at
10 that conclusion?

11 A. So, Counsel, if I understood all that you've stated in that illustration, or hypothetical
12 situation, you're saying that the language and the wearing of the shirt indicating support
13 for a particular team, or the signifying elements that identify those who aggressed or
14 participated in the mêlée, or are you saying is the language alone sufficient for
15 determining where these individuals came from?

16 Q. Sir, let me come back to my elementary arithmetic. You have said that one plus
17 one is two, and I say in my opinion if you have one plus one plus one plus one it makes
18 for many more criteria and so this is what happened in this case. If -- when the Central
19 African Republic victim says, "The perpetrator was Congolese because he spoke Lingala,"
20 your conclusion is that that criterion is not sufficient, but as a sociolinguist, based on what
21 I've understood, you put things in perspective and context C is 1,500 people came from
22 that country into this country - and this is not in dispute either by the Defence, or anyone
23 else - and we have agreed that these 1,500 people speak Lingala as a communication
24 language. And so when a victim says, "Yes, my perpetrator was Congolese because he
25 spoke language -- Lingala," is it illogical or logical to say that, "This is not correct, because

1 his only criterion was language"?

2 A. At the risk of sounding obstinate, I cannot in good conscience state that language
3 alone - and I emphasise the word "alone" - would be a sufficient criterion for determining
4 the origin of an individual for the reasons that I have given previously, but if there are
5 additional factors which taken in aggregation with the language point in that direction,
6 then it makes sense.

7 And this is precisely in part, although I did not say "additional factors," but by using the
8 quantifier alone, or one criterion, I intended to convey the sense that you need more than
9 language to make a determination, and even by knowing other, you know, factors, it
10 would be prudent or much more reasonable if you also know the variety of the language
11 that is spoken. Given the situation such as that of Lingala, there is no other varieties,
12 Lingala which is spread, and you would expect with any spread you would develop
13 different kinds of features that will characterise, as you just said, in part someone whom
14 we can recognise as being from Cameroon, or Côte d'Ivoire, or Senegal and so on.
15 So alone -- just to summarise that language alone is not sufficient. One would need
16 additional factors, and I think that you have presented those factors. I don't know if it is
17 necessary for the purposes of the proceeding that we rehearse these, but I understand that
18 if this information had been made available to me I would have then indicated, "Well, the
19 language alone -- the language alone is not sufficient, but given these other factors it
20 stands to reason that one could conclude the following."

21 I'm not sure if I've made myself clear, sir?

22 Q. You have been very, very clear, sir. I would like to read out one last extract, and
23 that is document number 8 on the list of Prosecution documents. It is
24 CAR-DEF-0002-0108, and this is a book that was written by someone who was involved in
25 the events in the Central African Republic at one point.

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1 The title is "Hostage of the Central African Republic, General Bozizé," and I'm reading an
2 extract from page 262, CAR-DEF-0002-0262, and I will read up to the middle of the next
3 page, that is page 263, just so that you should understand --

4 THE WITNESS: (Interpretation) I need to take a brief -- I will need to go out briefly.

5 PRESIDING JUDGE STEINER: Please, court usher, accompany the witness outside the
6 courtroom.

7 (The witness stands down)

8 PRESIDING JUDGE STEINER: Yes, Mr Haynes?

9 MR HAYNES: I just wondering whether I could inquire whether we are drawing to a
10 close? As I understood it, the Prosecution's time estimate for examining this witness was
11 four hours, and we've just gone through five and we have another witness waiting in The
12 Hague at the moment. So I heard the phrase "last passage," and I wondered whether we
13 really are drawing to a close now?

14 PRESIDING JUDGE STEINER: Mr Haynes, the Chamber will inquire of the Prosecution
15 at the proper moment. Don't worry.

16 (Pause in proceedings)

17 PRESIDING JUDGE STEINER: Just for Mr Haynes' and Prosecution and participants'
18 knowledge, Prosecution has until now taken four hours, 35 minutes.

19 (The witness enters the courtroom)

20 PRESIDING JUDGE STEINER: Maître Badibanga.

21 MR BADIBANGA: (Interpretation) Thank you, your Honour.

22 Q. Professor, I was saying that I wanted to read out one last passage to you, just so that
23 you understand the context a bit. This is something that was written by a person who
24 had been taken hostage and this passage has to do with his release. This person is about
25 to be released and handed over to the CAR authorities, because this person was a CAR

1 authority.

2 "Suddenly, I was brought back to reality with the -- with a check-point on the road.

3 There were dozens of men in the middle of the road, armed men. They weren't wearing
4 uniforms, but they were wearing sports clothing. They had sports shoes, then jogging
5 pants, and all kinds of T-shirts, different colours. They were heavily armed. They had
6 AK-47s and RPG-7 rocket launchers. They gestured at us, telling us to slow down and
7 stop."

8 I'll move on now to the next page.

9 "No doubt these were Congolese friends, although they were rebels in their own country,
10 the DRC, the Democratic Republic of the Congo, because they were fighting the central
11 government in Kinshasa. The driver shut off the engine. One of the Congolese fighters
12 glanced in the vehicle and saw that there were two ICRC officers who had spent the
13 previous evening at their check-point in the direction of Damara. Nearly all of them
14 spoke in Lingala, a language spoken in the DRC. I understand a few words of Lingala.
15 Speaking to the fellow from Switzerland, that I was beside in the car, one of them said to
16 him in French, "Who is this gentleman sitting beside you?" The answer was, "This man is
17 President Patassé's spokesman, who was taken hostage by Bozizé's rebels, and we have
18 gone to fetch him in Kagabandoro and take him back to Bangui." That was the answer
19 from the Red Cross representative. "Tell him whether he might be able to offer us some
20 beer," said another Congolese person speaking in Lingala. His comrade in arms said to
21 him, once again in Lingala, that this spokesperson was a prisoner who was being taken
22 back home, and he certainly wasn't in any position to offer us anything. One of them
23 raised the railing of the check-point so that we could go by."

24 I read this out to you, sir, because this is a book that was drafted -- written by a gentleman
25 whose abilities to analyse a situation cannot be threatened. This person is an eminent

1 politician, and this person was the actual spokesman of President Patassé who
2 was -- certainly knew what was going on, what the events were. So I would just like to
3 ask you whether that last conclusion of yours regarding criteria would be suitable for this
4 particular case? In this case, the person mentions the clothing worn by the soldiers, their
5 military equipment. He mentions the language they used, Lingala, and all of this was in
6 a very specific context.

7 A. On the face, Counsel, on the face of this kind of evidence, one cannot gainsay the
8 ability of the individuals making the identification, stated differently, that one would have
9 to recognise the preponderance of the evidence in making a positive identification as to
10 who was speaking Lingala, given the other pieces of evidence that is presented from
11 elsewhere.

12 Q. Professor, we are coming to the end of the cross-examination, and I'd like to hark
13 back to something you said yesterday, transcript 249, French version, page 14, lines 8 to 19,
14 and in the English version page 14 again, lines 18 to 25. And, Professor, I'm referring
15 here to the minor discussion that you had with Defence counsel regarding Article 15 -- 15,
16 and we asked you what the political meaning of Article 15 was.

17 Now, this expression, "Article 15," was this a well-known expression in the Congo, or not,
18 or is this just something that the Governor of the Province of Kasai said?

19 A. I know where you're going with that. "Article quinze, The Mulopwe." Yes, the
20 expression was produced by him and popularised, and I think it gained a certain currency
21 as understandably when they asked him, "So what is this Article quinze?", presumably it
22 was not in the constitution of the province. He said, "Well, where nothing works, do all
23 that you can to survive." (Interpretation) "Manage for yourself."

24 PRESIDING JUDGE STEINER: Mr Witness - sorry, Maître Badibanga - could you please
25 spell the name you just mentioned of the person that used this expression?

1 THE WITNESS: Yes, he was referred to as "The Mulopwe." That's M-U-L-O-P-W-E,
2 Mulopwe. That was not his real name, but he was really seen as sort of the King of
3 Kasai.

4 MR BADIBANGA: (Interpretation) Indeed, that's what that does mean.

5 Q. Professor, now this expression, is that expression still used commonly in the DRC?

6 A. "Article quinze," I think it's heard in many corners as the country suffers untold
7 indignities and all kinds of conditions. I'm not sure how it is stated, but the notion of
8 "Manage any way you can" is common knowledge especially in major urban centres, so
9 much so that there are books that have been written by social anthropologists, one of
10 whom in an edited book, I have forgotten the name of the author, but the title is
11 "Reinventing the Congo. How to live or to manage life in the city of Kinshasa," where
12 people were doing essentially that. (Speaks French)

13 Q. Now, once again on the basis of your analysis, if it were to be said -- if it were said to
14 troops in the field, "Now you'll have to apply Article 15," what would that mean to the
15 soldiers who were told such a thing?

16 A. It would mean that, "You are on your own, and that is you will not be paid the
17 requisite salary in order to be able to eat and to live and basically do whatever you can to
18 survive on your own without the support of authorities," which to me would be sort of
19 counter-intuitive, especially when you send somebody to fight and that those individuals
20 who are fighting are fighting on behalf of a president who wants to maintain power that
21 was given to him by the people who elected him democratically. So I don't understand
22 that, but the conclusion is, yes, it would mean that, but it boggles the mind that anyone
23 would send soldiers under those kinds of -- under that kind of declaration.

24 Q. It is in the very nature of humanity to be confronted with such puzzles, sir.

25 Now, there's one part of your answer that I wanted to have a look at, just to be absolutely

1 clear. I'm not challenging your expertise, or your integrity, but rather I'd just like to ask
2 you for some clarification, a procedural clarification, or an administrative clarification.
3 You explained to us that you had received a mandate - an official mandate - starting in
4 June 2012. That is when you received a letter that had been signed, asking you to
5 provide services as an expert. Like all experts before this Court, the work that is done is
6 intended to shed light on matters for the Court, and a number of rules have been
7 established so that the -- that fees can be paid for the work done. So I have no questions
8 about that really.

9 The only thing that interests me here is that clearly, for about 16 months before that time,
10 from January 2011 to July 2012, you were having exchanges with the Defence, and the
11 Defence is entirely entitled to do so, but you also provided some services. You were
12 asked for some analyses, reports, reading transcripts.

13 So I just wanted to know was that covered by the Defence? If so, were you compensated
14 for that work and how much, or rather was that included in the work that you did
15 one-and-a-half years later?

16 PRESIDING JUDGE STEINER: Maître Badibanga, I'm sorry, but I'm inclined to ask you
17 about the relevance of this kind of question that has never been put to an expert before
18 this Chamber.

19 MR BADIBANGA: (Interpretation) No, your Honour. The Defence has explored in
20 great detail the contacts that the OTP may have had with witnesses and possible fees that
21 may have been paid, regarding a whole series of witnesses. In this particular case, I said
22 quite clearly that I'm not asking the expert about his abilities as an expert, or his status as
23 an expert, and that began in July 2012.

24 What I'm interested in is determining what went on prior to that time? In other words,
25 the Defence was in contact with external persons who had no status and asked for various

1 analyses, and the Defence, well, has limited resources, apparently the defendant is
2 indigent, but -- or, on the contrary, was some work done as an expert?

3 So I'm trying to determine exactly what the professor was asked to do.

4 PRESIDING JUDGE STEINER: I will give the floor to Mr Haynes, but I continue with
5 the impression that I understand that this question must be important or interesting for
6 the Prosecution, but I've asked about the relevance, and relevance is in relation to the case.
7 Relevance is in relation to the evidence the Chamber needs to find the truth, and this is the
8 answer I'm not satisfied with.

9 Mr Haynes?

10 MR HAYNES: Nothing to say, your Honour.

11 THE INTERPRETER: Interpreter correction: The month mentioned was June 2012.

12 PRESIDING JUDGE STEINER: I think, Maître Badibanga, it would be reasonable if you
13 just express your appreciation for the presence of Professor Bokamba here and we finalise
14 your questioning.

15 MR BADIBANGA: (Interpretation) That's exactly what I was about to do. In a way,
16 you are the police officer of the hearing, so to speak, and it is up to you to assess whether
17 a point is relevant. Very well, I will not continue that line of questioning with the
18 witness.

19 I thought that, in the assessment that you would make of the entire file, both information
20 provided to you and how information is managed, or the process that leads to
21 information coming before the Bench, would be of interest and important to you.

22 That point has nothing to do with the actual expertise of our witness. I just thought
23 I would take advantage of his being here, because if the issue were to come up later it
24 would be hard to get an answer from him. He wouldn't be here.

25 Now, when we first met, you said that you were expecting some tough questions from me.

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1 I hope that wasn't the case. Thank you very much. I was very impressed by the
2 information that you were so kind to give us. I thank you very much.

3 I have no further questions, your Honour.

4 PRESIDING JUDGE STEINER: Thank you very much, Maître Badibanga.

5 Professor Bokamba, the Chamber authorised Maître Zarambaud, legal representative of
6 victims, to put some questions to you, and the Chamber authorised as well

7 Maître Douzima to put some questions - follow-up questions - for you, if any, on issues
8 arising from the transcripts.

9 Since we have only five minutes left I don't think it would be reasonable to start right now,
10 which means that we'll have to continue with you tomorrow morning.

11 Before I adjourn, I don't know whether the Defence would be in a position to advance to
12 the Chamber whether Defence intends to redirect?

13 MR HAYNES: I propose to ask three questions.

14 PRESIDING JUDGE STEINER: Thank you. It's just in order to inform VWU on
15 whether the next witness will start tomorrow, or only on Monday.

16 MR HAYNES: I'm confident we can start him tomorrow and probably in the first
17 session.

18 PRESIDING JUDGE STEINER: Thank you for the information, Mr Haynes.

19 Mr Witness, thank you very much again. We hope you have a very restful afternoon in a
20 rainy Hague.

21 THE WITNESS: Rainy. Thank you, Madam President.

22 PRESIDING JUDGE STEINER: Thank you very much, Prosecution team, the legal
23 representatives of victims, Defence team, Mr Jean-Pierre Bemba Gombo. Thank you our
24 interpreters, court reporters, our court officer and court usher.

25 I ask, please, court usher to accompany the witness outside the courtroom. In the

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- 1 meantime, we will adjourn and resume tomorrow morning at 9 in the morning.
- 2 (The witness stands down)
- 3 THE COURT OFFICER: All rise.
- 4 (The hearing ends in open session at 1.22 p.m.)