

1 International Criminal Court

2 Appeals Chamber - Courtroom 1

3 Situation: Democratic Republic of the Congo

4 In the case of The Prosecutor v. Thomas Lubanga Dyilo - ICC-01/04-01/06

5 Presiding Judge Erkki Kourula, Judge Sang-Hyun Song, Judge Sanji Mmasenono

6 Monageng, Judge Anita Ušacka and Judge Ekaterina Trendafilova

7 Appeals Hearing

8 Monday, 19 May 2014

9 (The hearing starts in open session at 9.31 a.m.)

10 THE COURT USHER: All rise.

11 The International Criminal Court is now in session.

12 PRESIDING JUDGE KOURULA: Good morning. Please be seated.

13 As indicated, good morning everybody again. As indicated the court officer, the

14 hearing of the Appeals Chamber is now in session.

15 I would like to welcome everyone here today, here in the courtroom and in the

16 gallery as well - sorry - and everyone joining us via the internet or otherwise.

17 The Chamber has authorised the taking of photographs and video recordings for

18 one-and-a-half minutes. I understand photographers have already -- are already in

19 or have been here, so thank you very much.

20 I think we can start in the normal way and ask the court officer to call the case, please.

21 THE COURT OFFICER: (Interpretation) Thank you, your Honour. Situation in

22 the Democratic Republic of Congo, in the case of the Prosecutor against Thomas

23 Lubanga Dyilo, ICC-01/04-01/06. We are in open session.

24 PRESIDING JUDGE KOURULA: Thank you very much. I would then like to invite

25 the parties and participants to introduce themselves and let me start with the Office of

1 the Prosecutor.

2 Madam Prosecutor, would you be so kind as to introduce yourself and members of
3 your office who are with you today.

4 MS BENSOUA: Thank you, Mr President. Mr President, Honourable Judges, the
5 Office of the Prosecutor is represented this morning by Fabricio Guariglia, the
6 Prosecution's co-ordinator; Helen Brady, senior appeals counsel; Manoj Sachdeva,
7 trial lawyer; Nicole Samson, trial lawyer; and Sylvie Vidinha, case manager. I am
8 Fatou Bensouda, Prosecutor. Thank you.

9 PRESIDING JUDGE KOURULA: Thank you, Madam Prosecutor.

10 And moving then to the Defence of Mr Lubanga, I would like to invite Maître Mabilille
11 for you to introduce your team.

12 MS MABILLE: (Interpretation) Yes, your Honour. The Defence team of
13 Mr Lubanga is represented by Caroline Buteau on my left, Jean-Marie Biju-Duval on
14 my right and myself, Catherine Mabilille.

15 PRESIDING JUDGE KOURULA: Thank you very much. I also recognise the
16 presence of Mr Lubanga.

17 And then moving to legal representatives. Let's take the team V01 first, please.

18 MR WALLEYN: (Microphone not activated)

19 THE INTERPRETER: Microphone. Microphone.

20 MR WALLEYN: (Interpretation) My name is Luc Walley. I represent the
21 victims, V01, and I am with my case manager, Evelyne Ombeni. Thank you.

22 PRESIDING JUDGE KOURULA: And then the legal representatives of victims team
23 V02?

24 MR KABONGO: (Interpretation) Thank you very much, your Honour. The team
25 V02 is represented by myself, Paul Kabongo, and assisted by Madam

1 Sylviane Glodjinon.

2 PRESIDING JUDGE KOURULA: Thank you.

3 I am Judge Kourula, Presiding Judge in this final appeal proceedings in the case of
4 The Prosecutor versus Thomas Lubanga Dyilo.

5 Sitting directly to my right are Judge Song and Judge Monageng and to my left, direct
6 left, Judge Ušacka and then Judge Trendafilova. And seated in front of me are
7 Volker Nerlich, legal adviser of the Appeals Division, as well as Franziska Eckelmans,
8 Mary-Anne Power and Erin Rosenberg.

9 We are also joined today by staff of the Registry, including the courtroom officers,
10 courtroom usher, interpreter, stenographers and security officers whom I all welcome
11 and thank for their assistance.

12 For those who are watching us, I will briefly -- if you allow me, I will briefly explain
13 how the hearing will be conducted. The hearing will take place over two days,
14 today and tomorrow. Today we will hear the testimony of the two witnesses for the
15 Defence of Mr Lubanga. The witnesses are testifying from the Democratic Republic
16 of the Congo via video link.

17 And court officer, video link is working I understand? Thank you.

18 Tomorrow we will hear submissions from the parties and participants on issues
19 arising in this appeal. Mr Lubanga will have the opportunity to personally address
20 the Appeals Chamber.

21 In accordance with the schedule for the hearing, we will now proceed with the
22 questioning of the witness for the Defence of Mr Lubanga.

23 I will, however, first make a few general remarks on
24 behalf of the Bench. The parties are reminded that pursuant to the instructions given
25 in the most recent order of the Appeals Chamber, no documents will be admitted in

1 the evidence at this hearing.

2 Any requests for the admission of additional evidence need to be filed in writing by
3 Friday, 23 May 2014, in accordance with the Regulation 62 of the Regulations of the
4 Court and should not be requested orally today.

5 Next, the parties are reminded that the questioning of the witnesses is to be
6 conducted in line with the procedures adopted during the trial proceedings.

7 In this respect, counsel for Mr Lubanga is reminded that leading questions should not
8 be posed in her examination.

9 Furthermore, the scope of the questioning of the witnesses is limited to the issues
10 relevant to the subject matters on appeal for which they may be -- they may have been
11 called -- they have been called.

12 The witnesses may also be questioned, excuse me, on issues relevant to their
13 reliability and credibility as well as matters relevant to their availability at trial.

14 Questions that go beyond this scope should not be posed.

15 The parties are reminded in respect -- to respect the requirement that they pause five
16 seconds between receiving a response and posing their next question.

17 Finally, the Bench expects the parties to complete their examinations within the time
18 frame laid out in the schedule.

19 Unless the parties have questions with respect to what I've just said or any matter that
20 they need to raise, I would now ask the court officer to please bring the first witness
21 to the transmission room.

22 THE COURT OFFICER (Remote Location): Yes, Mr President. I will go and pick
23 up the witness now.

24 (The witness enters the video-link room)

25 THE COURT OFFICER (Remote Location): Mr President, the witness is in the

1 courtroom.

2 PRESIDING JUDGE KOURULA: Thank you very much.

3 Good morning, Mr Witness. I would first like to ask you if you can hear me?

4 WITNESS: DRC-D01-WWWW-0040

5 (The witness speaks French)

6 (The witness gives evidence via video link)

7 THE WITNESS: (Interpretation) Indeed I can hear you very well.

8 PRESIDING JUDGE KOURULA: Thank you. You are appearing before the

9 Appeals Chamber of the International Criminal Court. You have been called to give
10 evidence in the case of The Prosecutor versus Mr Lubanga, Thomas Lubanga Dyilo.

11 The Bench is aware that you have been completed the familiarisation process with the
12 Victims and Witnesses Unit regarding the procedures related to your testimony,
13 including your right against self-incrimination under Rule 74 of the Rules of
14 Procedure and Evidence.

15 According to Article 69(1) of the Statute and Rule 66 of the Rules of the Procedure and
16 Evidence, you shall make a solemn undertaking as to the truthfulness of the
17 testimony you will provide. In this regard, I also remind you that in accordance
18 with Article 70(1)(a) of the Statute, the Court has jurisdiction over the offence of
19 giving false testimony before it.

20 Have you understood your rights and the seriousness of the solemn undertaking?

21 THE WITNESS: (Interpretation) Yes, I have understood it well.

22 PRESIDING JUDGE KOURULA: Thank you.

23 I would ask the court officer there with you to hand you the solemn undertaking and
24 ask you please to read it.

25 THE WITNESS: (Interpretation) I solemnly declare that I will speak the truth, the

1 whole truth and nothing but the truth.

2 PRESIDING JUDGE KOURULA: (Interpretation) Thank you.

3 As to party calling you as a witness, the Defence will first put its questions to you,
4 followed by the Prosecutor. Each party will question you for approximately one
5 hour. The Chamber may put questions to you afterwards. The Defence will be the
6 last to question you if it finds it necessary to do so.

7 Finally, I would ask you to wait for five seconds after the questions have been asked
8 before beginning your response and to try to speak clearly and at a normal speed.

9 Maître Mabilie, would you be so kind as to begin your examination.

10 MS MABILLE: (Interpretation) Thank you very much, your Honour.

11 QUESTIONED BY MS MABILLE: (Interpretation)

12 Q. Good morning, Witness.

13 A. Good morning, Maître Catherine.

14 Q. I don't think there is any need for me to present myself. My name is
15 Catherine Mabilie. I am the counsel of Mr Lubanga. We have already had the
16 opportunity to meet before and I am -- today am going to put certain questions to you,
17 but before asking these questions, as the President indicated, please try to leave time
18 between when I ask you the question and when you answer the question so that the
19 translation can be done correctly.

20 Furthermore, if you do not understand one of my questions, well, please do not
21 hesitate to let me know so that I can reformulate it. Have you heard me and have
22 you understood me well?

23 A. Yes.

24 Q. Perfect. Witness, please could you be so kind as to indicate to us your full
25 name?

- 1 A. My name is Mbogo Malobi Augustin.
- 2 Q. Thank you very much. What is your date of birth?
- 3 A. My date of birth is 8 April 1983.
- 4 MS MABILLE: (Interpretation) Thank you.
- 5 Your Honour, can we show the witness the document with the reference
- 6 EVD-D01-0111, which is in the small document that we have provided to the
- 7 Chamber and tab 1 thereof?
- 8 PRESIDING JUDGE KOURULA: Go ahead, please. Do you need any help from
- 9 the court officer?
- 10 THE COURT OFFICER (Remote Location): Mr President, the document is before the
- 11 witness.
- 12 MS MABILLE: (Interpretation)
- 13 Q. Witness, do you recognise this document?
- 14 A. Yes, indeed I recognise this document. It is my electoral card.
- 15 Q. Could you be so kind as to tell us when you obtained this electoral voting card?
- 16 A. Yes, 18 May 2011.
- 17 Q. Is it the first elector's card that you have had?
- 18 A. No, no, it's the second time that I have had this electoral card.
- 19 Q. Do you remember when you obtained your first electoral card?
- 20 A. Yes, I remember. I obtained my first card in 2006.
- 21 Q. Thank you. Now, as regards the birth-date on this electoral card that you have
- 22 before you, is it correct, the date of birth on the card?
- 23 A. I'm sorry, Counsel. Please could you be so kind as to repeat your question?
- 24 Q. Please could you look at this electoral card. I would ask you if the date of birth
- 25 which is on this electoral card is correct?

Appeals Hearing
Witness: DRC-D01-WWWW-0040

(Open Session)

ICC-01/04-01/06

1 A. Yes, indeed it is.

2 Q. This electoral card, well, it's a photocopy. Do you have the original card?

3 A. There is an original. I have it, but I haven't brought it with me here today into
4 the courtroom today.

5 Q. Very well. Thank you.

6 MS MABILLE: (Interpretation) Could we now please go to tab number 5 of the
7 document, or documents, and could we show the document with the number
8 DRC-OTP-0236-0488.

9 THE COURT OFFICER (Remote Location): Mr President, the document is before the
10 witness.

11 PRESIDING JUDGE KOURULA: Thank you.

12 MS MABILLE: (Interpretation)

13 Q. Witness, please could you look at this document?

14 A. Indeed.

15 Q. Do you recognise this photo?

16 A. Yes, I recognise this photo. That's my photo.

17 Q. Are the facts written, the name, post name, the other elements and information
18 on this document, are they the same as those on your electoral card?

19 If you so wish, you can take the electoral card, that's in tab 1, in order to check.

20 PRESIDING JUDGE KOURULA: One second. Prosecutor, please.

21 MR SACHDEVA: Mr President, I'm grateful. Perhaps my learned friend could first
22 ask whether the witness has seen this document before as she did with the voter's
23 card, may it please the Court?

24 PRESIDING JUDGE KOURULA: Thank you.

25 Counsel, would you be so kind as to proceed.

Appeals Hearing
Witness: DRC-D01-WWWW-0040

(Open Session)

ICC-01/04-01/06

1 MS MABILLE: (Interpretation)

2 Q. Witness, have you already seen this document which comes from the national
3 electoral commission -- the Independent Electoral Commission?

4 THE INTERPRETER: Independent National Electoral Commission, corrects the
5 interpreter.

6 MS MABILLE: (Interpretation)

7 Q. I'm sorry, Witness, did you hear my question or would you like me to put it
8 again?

9 A. It would be good to put the question again.

10 MS MABILLE: (Interpretation) If you would give me a second, your Honour?

11 PRESIDING JUDGE KOURULA: Absolutely.

12 MS MABILLE: (Interpretation)

13 Q. Witness, my question is as follows: Have you seen the document which I am
14 presenting to you at tab 5; that is to say the document that is before you?

15 A. Yes, I've seen the document. It's in my hands here.

16 Q. Is it the first time that you've seen it, or have you already seen this document
17 before?

18 A. Well, this is a photocopy of a card that I have at my home.

19 Q. Could you check that the information with regards to name until name of the
20 mother, so the six first items of information on this document, can you check that they
21 are the same as those that figure on your electoral card that we presented to you.

22 A. Indeed, it's the same.

23 MS MABILLE: (Interpretation) Thank you. I would now like the witness to be
24 shown the document at tab 3 -- no, please excuse me, tab 2. It has the reference
25 EVD-D01-01112.

1 THE COURT OFFICER (Remote Location): Mr President, the document is presented
2 to the witness.

3 PRESIDING JUDGE KOURULA: Thank you again.

4 MS MABILLE: (Interpretation)

5 Q. Witness, do you recognise this document?

6 A. Yes, I recognise this document. This is my state diploma. Well, it's a
7 photocopy of my state diploma.

8 Q. Now, is this state diploma -- well, it shows a birth-date on it. You can have a
9 look at it and you can see this birth-date on your state diploma. Is this information
10 correct?

11 A. Indeed, it is.

12 Q. This document that you have before you is a photocopy. Do you have the
13 original?

14 A. Yes, there is an original.

15 Q. At what point in your studies are you at the moment?

16 A. I'm sorry, please, could you put the question again?

17 Q. Yes. Are you still carrying out your studies, or have you finished with your
18 studies?

19 A. I've already finished my studies. I did about three years ago now.

20 Q. Very well. Can you tell us what was your occupation during the years
21 2002/2003?

22 A. Thank you for the question. In 2002/2003, I was a member of the UPC army.

23 Q. Did you hold any particular position in the UPC army?

24 A. I didn't quite understand you. What do you mean?

25 Q. What were your specific duties in the UPC army?

1 A. In the UPC army -- when I joined the UPC army, I was a member of the
2 Presidential Guard, that is, Thomas Lubanga's guard unit.

3 Q. As far as you can remember, when did you join Mr Lubanga's Presidential
4 Guard Unit?

5 A. Thank you for that question. I started working as a member of Mr Lubanga's
6 guard as soon as he returned from Kinshasa.

7 Q. And when did you leave Mr President -- Mr Lubanga's Presidential Guard?

8 A. I left when he went to Kinshasa and from Kinshasa he was transferred to The
9 Hague. It was after he left for The Hague that I even left his residence.

10 Q. Where were you based during your time as a member of the Presidential
11 Guard?

12 A. While I was -- I was a member of the Presidential Guard, we were near the
13 Bunia residence.

14 Q. Did you live there?

15 A. Yes, indeed.

16 THE INTERPRETER: Correction: The witness said, "Near the Prosecutor's office in
17 Bunia."

18 MS MABILLE: (Interpretation)

19 Q. Can you be more elaborate? You have indicated where you were when you
20 were working in the Presidential Guard, but specifically where was that located?

21 A. Thank you. I have said that we were in Bunia and it was right next door to the
22 Bunia Public Prosecutor's Office.

23 MS MABILLE: (Interpretation) Thank you. Can we show the witness video
24 EVD-OTP-00574 and from time stamp 01:48:34 to time stamp 01:49:08?

25 Q. Mr Witness, please look very carefully, watch this video extract very carefully

1 after which I will put some questions to you.

2 (Viewing of the video excerpt EVD-OTP-00574)

3 MS MABILLE: (Interpretation)

4 Q. Mr Witness, on this video we can see an individual wearing a cap and an insect
5 on his shoulder. Can you recognise that person?

6 A. Yes, it is my photograph.

7 Q. Do you recognise the location at which this video was made?

8 A. Yes, it was at the office. Yes, it was right next to the office near the fence.

9 Q. Is that where you were working?

10 A. Yes.

11 MS MABILLE: (Interpretation) Can we go back to time stamp 01:48:34 and I would
12 like this video to be shown in slow motion to 01:48:41.

13 (Viewing of the video excerpt EVD-OTP-00574)

14 MS MABILLE: (Interpretation)

15 Q. What is written there on your arm?

16 A. "Mbogo Sport". "Mbogo Sport" on my arm.

17 Q. Who wrote that on your arm?

18 A. Myself. I was the one who wrote that on my arm.

19 Q. Thank you. A short while ago you said that this video was made at the office.

20 To whom did that office belong? Whose office was it?

21 A. Thank you. To clarify, it was not the office itself, but it is within -- it was
22 within the compound where that office was. It was Mr Thomas Lubanga's office.

23 Q. Thank you. As far as you can remember, how many soldiers were members of
24 the Presidential Guard?

25 A. Thank you for -- for the question. I no longer remember, but I can just give

1 you an idea of those who were close to Thomas Lubanga.

2 MS MABILLE: (Interpretation) Thank you. Now, let us move on to tab number 4
3 and I would like to point out to the Chamber that in tab 4 there are two documents.
4 The first document has names and then the second document is identical, but the
5 names do not appear. We discussed with the OTP and we agreed to present this
6 document to the witness in redacted form; that is the one that does not contain the
7 names.

8 So I would like to ask the court officer to show that document to the witness. It is in
9 tab 4 and I really want to be sure that it is that specific document that is shown to the
10 witness; that is the document that does not include any name?

11 THE COURT OFFICER (Remote Location): Mr President, the redacted version of
12 document DRC-OTP-0003-0032 is presented to the witness. This document contains
13 only pictures without any names on it.

14 THE WITNESS: (Interpretation) Yes, Counsel, I have seen the document.

15 MS MABILLE: (Interpretation)

16 Q. Very well. Look at that document, Mr Witness. It is made up of three pages
17 and I would like to ask you whether you are able to identify the individuals on these
18 photographs?

19 A. Can you kindly repeat the question, Counsel?

20 Q. Very well. Please look at those three pages and then tell us whether you
21 recognise those individuals on those photographs?

22 A. Yes, Counsel, I recognise these people and I even know their names.

23 Q. Let us look at the first page, DRC-003-032 (sic). Tell us who is the first person
24 at the top left-hand corner of the page?

25 A. Yes, indeed, it is Mugisa Mulese.

1 Q. Now, the next photograph on the right, do you recognise the person?

2 A. John Mugavu.

3 Q. And at the bottom left, the person wearing the red beret?

4 A. Alexi.

5 Q. And then on the right?

6 A. Eritier.

7 PRESIDING JUDGE KOURULA: Counsel, just for a second, could we very quickly

8 see what is in front of the witness, just very briefly. What is -- it's the same

9 document you are talking about, yes? Okay, thank you.

10 THE COURT OFFICER (Remote Location): Mr President, document on tab 4 at page

11 DRC-OTP-0003-0032 was presented to the witness.

12 PRESIDING JUDGE KOURULA: Thank you so much. I just wanted to confirm.

13 Thank you.

14 THE COURT OFFICER (Remote Location): And the witness was commenting on

15 that page.

16 PRESIDING JUDGE KOURULA: Thank you.

17 MS MABILLE: (Interpretation)

18 Q. Now, look on the second page at the top left-hand corner, the person with the

19 red beret, do you know that person?

20 A. Marine.

21 Q. And to the right wearing a blue beret?

22 A. Tubi Godu.

23 Q. And at the bottom of the page, the person on the left?

24 A. Unega.

25 Q. And the person on the right?

1 A. Kisi (phon).

2 Q. Now, let us look at the third page and do the same exercise for the three
3 remaining photographs. On the left?

4 A. Jobalo.

5 Q. On the right?

6 A. Mbogo Malobi Augustin.

7 Q. And the last person, that is at the bottom?

8 A. Christian de Gaulle.

9 Q. Do you remember when that photograph, that is the one of yourself, was taken?

10 A. Thank you for the question, Counsel. The photograph was taken when the
11 French forces came to Bunia.

12 Q. Do you remember why photographs were taken of all these people?

13 A. Yes, indeed, I do remember. At that time they were talking of Bunia without
14 weapons, but Mr Thomas Lubanga was authorised to have eleven bodyguards. So
15 we were members of that guard unit. The photographs were taken in our residence,
16 right there.

17 MS MABILLE: (Interpretation) Thank you. Now I would like to show one last
18 document to the witness. That document is in tab 3.
19 Just a moment, your Honour.

20 Q. Mr Witness, please look at that document carefully and tell me whether you can
21 see your name on that document?

22 THE COURT OFFICER (Remote Location): Mr President, document on tab 3,
23 DRC-OTP-0014-0280, is presented to the witness.

24 THE WITNESS: (Interpretation) Thank you, Counsel. I have seen the document.

25 MS MABILLE: (Interpretation)

1 Q. You didn't hear my question apparently. Do you want me to repeat?

2 A. Yes, I have seen the document and my name is on that document.

3 MS MABILLE: (Interpretation) Very well. Thank you very well, Mr Witness.

4 Mr President, I have no further questions.

5 PRESIDING JUDGE KOURULA: Thank you very much. Just a brief explanation.

6 I didn't realise that we were given early this morning the pictures without names, so I

7 didn't know that they existed you know at that point. Thank you so much. That's

8 why the strange question. Thank you.

9 (Microphone not activated)

10 THE INTERPRETER: Presiding Judge, microphone please.

11 MS BENSOUDA: Mr President, with your permission, Mr Manoj Sachdeva will

12 conduct the cross-examination.

13 PRESIDING JUDGE KOURULA: Thank you very much.

14 Mr Sachdeva?

15 MR SACHDEVA: Thank you, Mr President.

16 QUESTIONED BY MR SACHDEVA:

17 Q. Augustin, good morning.

18 A. Yes, good morning.

19 Q. We've met on previous occasions, but I'm just going to introduce myself. My
20 name is Manoj Sachdeva and I'm going to be asking you some questions on behalf of
21 the Prosecution.

22 A. Thank you. I am ready to answer your questions.

23 Q. Excellent. Can I just repeat what the Defence have said to you, that after I've
24 asked you a question, please observe a pause before you answer so your evidence can
25 be recorded properly. Do you understand that?

- 1 A. Very well.
- 2 Q. Augustin, you remember that we met on Friday?
- 3 A. Yes, indeed.
- 4 Q. And I asked you some questions and what you told me was the truth, wasn't it?
- 5 A. Yes.
- 6 Q. Now, it's right that you've never seen a birth certificate, have you?
- 7 A. I beg your pardon?
- 8 Q. You've never seen your birth certificate; isn't that right?
- 9 A. Not yet.
- 10 Q. You don't know the age at you -- the age at which you joined primary school.
- 11 That's also right, isn't it?
- 12 A. Yes, indeed. I no longer remember.
- 13 Q. And you don't remember the age at which you joined secondary school?
- 14 A. I no longer remember.
- 15 Q. You have six sisters and you are one of three brothers; is that right?
- 16 A. Yes, there are nine of us in our house.
- 17 Q. But you don't know their ages, do you?
- 18 A. Yes, that's correct.
- 19 Q. Today you have been shown your voter's card. Do you remember that?
- 20 A. Yes, yes, I remember.
- 21 Q. And you confirmed that the details on the card were accurate, didn't you?
- 22 A. Yes.
- 23 Q. Can you just remind the Court, you were born in Nyankunde; is that right?
- 24 A. Can you kindly repeat the question, please?
- 25 Q. Certainly. I just wanted you to confirm to the Court that you were born in

1 Nyankunde; is that right?

2 A. Yes.

3 Q. May I just ask you to look at your voter's card again? For the purposes of the
4 Court, that is DRC-D01-0003-5977.

5 THE COURT OFFICER (Remote Location): Mr President, this document is
6 presented to the witness.

7 PRESIDING JUDGE KOURULA: Thank you.

8 MR SACHDEVA:

9 Q. Now, Augustin, if you look at the card you will see that the place of your birth
10 is actually recorded as being in Blukwa, and not Nyankunde, so in fact you would
11 agree that this voter's card is wrong?

12 A. Thank you for the question. I think that if you look at the old card you will see
13 that the name of the mother is not Sum (phon) Buxe . It is Mbuvé.

14 Now when I talk of Blukwa, when I enrolled I called my father to ask him questions
15 because I was being put normal -- too many questions. So I told him, "Instead of
16 telling so many details, just write Blukwa." That is what he wrote.

17 And now regarding my mother, he wrote "Buxe." It is not Buxe. It is Mbuvé. And
18 when he talked about where I was -- just a moment. Somewhere you will see that he
19 did not indicate the number of the avenue that we were. There were so many of us,
20 so they were in a hurry to issue the card. After the card was issued, I myself I saw
21 the card and said, "There are errors. Can those be corrected?" And then I was told
22 "No, there is no problem. You can take it along."

23 Now, in spite of that, if I knew that one day I will have to comment on this card, I
24 would have insisted on it being corrected, but that was not the case and so I apologise
25 for that.

1 Q. There's no need to apologise. That's fine.

2 When you went to get your 2011 card, when you got this voter's card, you went by
3 yourself, didn't you?

4 A. Yes, I went alone because I was already a big person. I could not have
5 somebody accompany me like a small boy. I was already an older person. I was
6 already in the university by that time.

7 Q. And when you went to get your voter's card in 2006 you were also not with any
8 member of your family; isn't that right?

9 A. That is correct.

10 Q. When you got the card in 2006, what documentation if any did you have with
11 you at the time?

12 A. Thank you for that question. At that time I went there with a student's card.

13 Q. The student card was from the Centre Universitaire Extension de Bunia; is that
14 right?

15 A. Yes.

16 Q. And you went to obtain your card in 2006, some time in 2006; is that right?

17 A. Yes.

18 Q. When you were at the university you were studying humanities; is that right?

19 A. I like that question very much. I really do. At the university, I never learnt
20 that we studied humanities. That's news to me. I only went to university and I
21 received my diplôme - state diploma - for humanities and then I went to university,
22 but anyway that's moving on.

23 Q. So what did you study at university?

24 A. Thanks for your question. At university, I studied private law.

25 Q. Was that what you studied at the university in Bunia?

1 A. Yes, in Bunia, that's right. Yeah, I studied law and I acquired my diploma,
2 but -- but I was given something else in lieu of my diploma, because you have to
3 finish your bachelor's degree and after that you are given a diploma. But I only
4 actually received a certificate to prove that I'd done the number of years, but I didn't
5 actually receive my diploma.

6 Q. The diploma that you have seen today, that's from your secondary education;
7 isn't that right?

8 A. Yes, that's right.

9 Q. And on the diploma it says that you received the certificate on 6 January 2007.
10 You remember that, don't you?

11 A. My certificate or my diploma. What are you referring to? I do apologise, I
12 haven't fully understood your question.

13 Q. That's fine. Perhaps I can ask for the document to be shown to you to make it
14 clear. If -- for the court officer, DRC-D01-0003-5979.

15 Augustin, if you look at that and just confirm to me that this diploma was issued on
16 6 January 2007? Can you confirm that, please?

17 A. Yes, I do confirm the date. This is the photocopy of the state diploma for my
18 humanities diploma.

19 Q. Augustin, what I am having difficulty with is that you have told the Court that
20 when you went to receive your 2006 voter's card, you had a student card from
21 university. But here from this diploma it says he did not finish secondary education
22 until January 2007. How is that possible?

23 A. Sorry, I don't really understand your question. The diploma was issued at
24 Kinshasa in July 2007. It doesn't tell you the date that I finished my studies. It was
25 issued in Kinshasa. It doesn't matter where the studies were actually completed.

1 This is the date referring to the issuance. So there is a confusion there. It was
2 issued in Kinshasa.

3 Q. Do you have a copy of your student card?

4 A. Unfortunately, I've lost it. I don't have it any more.

5 Q. Sir, is it correct that you are -- your ethnicity is Hema-Nord?

6 A. Please forgive me. Would you mind repeating your question? I didn't hear it.

7 Q. Could you just tell the Court your ethnicity, please?

8 A. Thank you. Hema-Nord is my ethnicity.

9 Q. And you know that Mr Lubanga is also the same ethnicity, Hema-Nord, isn't
10 that right?

11 A. Yes. We fought as Hemas against Lendus. It was an ethnic war and that was
12 why I always fought alongside the Hemas.

13 Q. Now, today you were asked what you did once you joined the UPC and you
14 told my learned friend that you became a guard for Mr Lubanga. Do you remember
15 saying that?

16 A. Yes, I do.

17 Q. In fact when you joined the UPC you first trained at Mandro, isn't that right,
18 before you became a member of the guard?

19 A. That's right. At that time, when I went through the training, Thomas Lubanga
20 wasn't at Bunia. I was his guard. And then I returned to Kinshasa and Bunia and
21 that's when I started being the guard for Thomas Lubanga.

22 Q. Augustin, I've asked you questions about your voter's card and your state
23 diploma, but in the end it's right, the only way that you know your age is from what
24 you learnt when you joined primary school; is that right?

25 A. The only time I did what?

1 Q. The only time that you knew your age was when you joined primary school
2 when your sister enrolled you; is that right?

3 A. I don't recall.

4 MR SACHDEVA: Mr President, might I have one moment?

5 (Pause in proceedings)

6 MR SACHDEVA: No further questions.

7 PRESIDING JUDGE KOURULA: No further questions?

8 MR SACHDEVA: No.

9 PRESIDING JUDGE KOURULA: Thank you very much.

10 Just one moment.

11 (Appeals Chamber confers)

12 PRESIDING JUDGE KOURULA: Thank you very much. I was just conferring in
13 order to know whether the Judges have any questions. At the moment they don't.

14 So, Maître Mabilie, do you wish to re-examine this witness?

15 MS MABILLE: (Interpretation) Yes, your Honour. I think so, but would the
16 Bench just bear with me for one or two moments so that we can confer?

17 PRESIDING JUDGE KOURULA: Thank you.

18 (Pause in proceedings)

19 PRESIDING JUDGE KOURULA: For the information of the witness, so -- the
20 Defence is conferring for a moment and so please be patient and wait for a while.
21 Thank you.

22 (Pause in proceedings)

23 PRESIDING JUDGE KOURULA: Maître Mabilie?

24 MS MABILLE: (Interpretation) Thanks for waiting.

25 QUESTIONED BY MS MABILLE: (Interpretation)

1 Q. Mr Witness, I'd just like to put a first question to you: The Prosecutor asked
2 where you were born and you said Nyankunde and on your voter's card Bluwa (phon)
3 features, or Blukwa features. Now, do you have any idea why Blukwa features on
4 that card? Where would the mistake have arisen from if there is a mistake?

5 A. Thank you for your question. Blukwa is --

6 THE INTERPRETER: (Overlapping speakers)

7 PRESIDING JUDGE KOURULA: Mr Prosecutor?

8 MR SACHDEVA: Mr President, forgive me, but in my submission that question was
9 already asked and was already answered in my cross-examination.

10 PRESIDING JUDGE KOURULA: Sorry, that was indeed the case. Would you
11 move on to -- on that issue. Do you have further questions, Maître Mabilie? There
12 was one answer and then would you like to continue on that note? Thank you.

13 MS MABILLE: (Interpretation) Of course, your Honour. All I'm saying is that I
14 wished the witness to explain that state of affairs. I wasn't going over what had
15 already been said, I just asked him to elaborate, an explanation, because the
16 Prosecutor used this situation without asking the witness whether the witness had
17 arisen from, and so it was on that particular point that I sought clarification, because
18 it's simple to say that there was a mistake, but sometimes there can be a rational
19 explanation for that mistake and so I wanted the witness to clarify whether he knew
20 about that.

21 PRESIDING JUDGE KOURULA: Thank you very much. So let's proceed on that
22 basis. Mr Witness explained how his father intervened, but would you like to pick it
23 up from there, Mr Witness, and give the answer to the question of Maître Mabilie.
24 Thank you.

25 MS MABILLE: (Interpretation)

1 Q. Mr Witness, you stated that when you enlisted a certain number of questions
2 were put to you, therefore, you had to telephone your father, and my question bears
3 upon the place of birth. It's stated Blukwa - Blukwa - here, whereas you say that you
4 were born in Nyankunde. Could you tell us -- if you know the reason, could you tell
5 us why there has been an error and whether there is indeed an error in the first place?
6 This is the question I'm putting to you.

7 A. Thank you for your question.

8 THE INTERPRETER: (Overlapping speakers)

9 MR SACHDEVA: Mr President, please forgive me, but I must insist with your leave.
10 The witness has explained in almost 15 lines the reasons why there may be a
11 difference between what he stated and what's on the card. In my submission,
12 Counsel is not only repeating an issue that's been explored thoroughly in
13 cross-examination, but also if this was an issue I would submit that she ought to have
14 raised it in her examination in-chief. It's almost a second bite at the cherry in my
15 view -- respectful view.

16 PRESIDING JUDGE KOURULA: Mr Witness, could you be very brief in your
17 explanation and then madam -- Maître Mabilie will continue until we have another
18 11 minutes. Thank you.

19 THE WITNESS: (Interpretation) Thank you. I was saying that Blukwa was my
20 village. Now, when I enlisted, the person in front of the machine was in a hurry, and
21 so I called my dad so that he could tell me what's going on, and so I found myself in
22 that state of affairs and I took out my card and that's why I used the card. And
23 Crum (phon) Buxe was the name of the mum, but that's not my -- my mum's name
24 and it didn't even mention the place where I was residing, something else was
25 mentioned. And I said, "Can you change this?" And he said, "No, it's not a serious

1 mistake and there's no problem for establishing your identity." And if I knew that
2 one day I would have to appear here, then I would have corrected the mistake, but it's
3 too late.

4 Now -- and I would -- I would be able to then clear this all up.

5 PRESIDING JUDGE KOURULA: Okay, thank you very much.

6 Maître Mabilille, would you continue on that basis. It was repeated what he already
7 said. Thank you.

8 MS MABILILLE: (Interpretation)

9 Q. Mr Witness, how did you learn of your date of birth?

10 A. I don't know how to answer your question. I do apologise, Counsel.

11 PRESIDING JUDGE KOURULA: (Microphone not activated)

12 MR SACHDEVA: Nothing, Mr President. I apologise.

13 MS MABILILLE: (Interpretation)

14 Q. Now, you said you had a student card. What birth-date featured on that
15 student card?

16 A. On the student card, 8 April 1983, born in Nyankunde. It said the same thing.
17 On the diploma it's the same as well, and on these -- on the documents.

18 Q. I have a last question going to your diploma: Can you indicate to us when
19 you -- when you got your exams -- after your exams how much time went by before
20 you actually issued the diploma?

21 A. Thank you very much for your question. When I finished my studies, this is
22 secondary level, well, when the diploma was issued it came directly. I received it in
23 May in 2012 when I was at Lubumbashi. I was asked for the documents for my
24 studies and it was that particular time that I received my diploma and then you
25 receive a rank order of -- and then you receive the rank order of the students in the

1 province, but anyway I didn't know whether it was a state diploma. It really
2 depends.

3 MS MABILLE: (Interpretation) Thank you.

4 I have no further questions, your Honour.

5 PRESIDING JUDGE KOURULA: Thank you very much.

6 I understand all the parties have put their questions to the victim. That being the
7 case, that concludes your testimony, Mr Witness, before the Court.

8 The Appeals Chamber thanks very much for your appearing before us today. The
9 court officer will now escort you out. Thank you.

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

11 (The witness is excused)

12 PRESIDING JUDGE KOURULA: So we have had the first witness and the question
13 is now we were thinking of starting at 11.30 or continuing at 11.30, but could I consult
14 the parties whether you wish to start at 11.30 or 2 p.m.? Are there any preferences?
15 Yes, thank you very much. I was informed by the court officer that as far as the
16 situation in Bunia is concerned it would be most -- more preferable to start in the
17 afternoon, so we will reconvene at 2.30 in the afternoon. The hearing is adjourned.

18 THE COURT USHER: All rise.

19 (Recess taken at 10.55 a.m.)

20 (Upon resuming in open session at 2.29 p.m.)

21 THE COURT USHER: All rise.

22 PRESIDING JUDGE KOURULA: Good afternoon, everyone. The hearing of the
23 Appeals Chamber is called to order.

24 I would unless there is anything else, something else, I would now ask the court
25 officer to please bring the second witness into the transmission room.

Appeals Hearing
Witness: DRC-D01-WWWW-0041

(Open Session)

ICC-01/04-01/06

- 1 THE COURT OFFICER (Remote Location): Yes, Mr President.
- 2 PRESIDING JUDGE KOURULA: Thank you.
- 3 (The witness enters the video-link room)
- 4 THE COURT OFFICER (Remote Location): Mr President, the witness is with us in
- 5 the video-link location.
- 6 PRESIDING JUDGE KOURULA: Thank you very much.
- 7 Good afternoon, Mr Witness. I would first ask if you can hear me?
- 8 WITNESS: DRC-D01-WWWW-0041
- 9 (The witness speaks Lingala)
- 10 (The witness gives evidence via video link)
- 11 PRESIDING JUDGE KOURULA: Thank you.
- 12 THE WITNESS: (Interpretation) Yes, I can hear you.
- 13 PRESIDING JUDGE KOURULA: Thank you very much.
- 14 You are appearing before the Appeals Chamber of the International Criminal Court.
- 15 You have been called to give testimony in the case of The Prosecutor versus
- 16 Mr Thomas Lubanga Dyilo.
- 17 The Bench is aware that you have completed the familiarisation process with the
- 18 Victims and Witnesses Unit regarding the procedures related to your testimony
- 19 before the ICC, including your private -- including your right against
- 20 self-incrimination under Rule 74 --
- 21 THE WITNESS: (No interpretation)
- 22 PRESIDING JUDGE KOURULA: -- of the Rules of Procedure and Evidence.
- 23 According to Article 69(1) of the Statute and Rule 66 of the Rules of the Procedure and
- 24 Evidence, you shall make a solemn undertaking as to the truthfulness of your
- 25 testimony. In this regard I also remind you that, in accordance with Article 70(1)(a)

1 of the Statute, the Court has jurisdiction over the offence of giving false testimony
2 before you.

3 I would like to ask whether you have understood your rights and the seriousness of
4 the solemn undertaking?

5 THE WITNESS: (Interpretation) Please can you repeat? I did not quite follow
6 you, Mr President.

7 PRESIDING JUDGE KOURULA: I read you -- I spoke to you with a few sentences
8 concerning your rights and so I was asking whether you understood your rights.

9 THE WITNESS: (Interpretation) Yes, I have understood fully.

10 PRESIDING JUDGE KOURULA: Thank you very much.

11 I would now ask the court officer there with you to hand you the solemn undertaking
12 and ask you to please read it.

13 THE WITNESS: (Interpretation) Would you like me to read the solemn declaration
14 that is before me?

15 I solemnly declare to speak the truth, the whole truth and nothing but the truth.

16 PRESIDING JUDGE KOURULA: Thank you very much.

17 As the party calling you as a witness, the Defence will first put its questions to you,
18 followed then by the Prosecutor. Each party will question you for approximately
19 one hour if need be.

20 THE WITNESS: (No interpretation)

21 PRESIDING JUDGE KOURULA: The Bench may also put questions to you. The
22 Defence will be the last to question if it's found it necessary afterwards.

23 THE WITNESS: (No interpretation)

24 PRESIDING JUDGE KOURULA: Finally, I would ask you to wait for five seconds
25 after the question's put to you before beginning your response and to try to speak

1 clearly and at a normal speed.

2 Maître Mabilie, please, you can begin your examination.

3 MS MABILLE: (Interpretation) Mr President, it is my learned colleague Jean-Marie
4 Biju-Duval who will conduct the examination-in-chief.

5 PRESIDING JUDGE KOURULA: Thank you very much.

6 Monsieur Biju-Duval, you have got the floor.

7 MR BIJU-DUVAL: (Interpretation) Thank you, Mr President.

8 QUESTIONED BY MR BIJU-DUVAL: (Interpretation)

9 Q. Good afternoon, Witness. My name is Jean-Marie Biju-Duval, counsel for
10 Mr Lubanga, and I have a few questions for you. Can you start by giving us your
11 full name.

12 A. Yes. My names are Kpadhigo Logo Justin Nembe.

13 Q. Thank you. Can you tell us your date of birth, please?

14 A. Yes.

15 Q. Please do.

16 A. I was born in 1984 on 2 December.

17 Q. Thank you. What is your father's name?

18 A. My father's names are Logo Nembe.

19 Q. What is your mother's name?

20 A. My mother's names are Semerita Nzale.

21 Q. Thank you. Do you have any brothers or sisters from the same mother and
22 father as yourself?

23 A. I have some younger brothers from the same mother and father, but my father
24 had two wives. I am the eldest child of the second wife. The first wife also had
25 some children who are older than me.

1 Q. Let us talk about your brothers who have the same mother as yourself. Can
2 you please tell us their names.

3 A. My mother had three children, all of whom were boys. One of us died in 2013
4 and only two of us are still alive, myself and my junior brother.

5 Q. Thank you. Your brother who died in 2013, do you know in which year he
6 was born?

7 A. He is my junior brother, the one who was born after me. He died in 2013. I
8 am the eldest son to my mother and father.

9 Q. Thank you. You have told us that you were born on 2 December 1984. When
10 did you become aware of your date of birth? Let me repeat the question, and please
11 wait 'til I finish asking the question before you answer.

12 You have told us that you were born on 2 December 1984. When did you become
13 aware of your date of birth, and how did you find out about it?

14 A. I became aware of my date of birth when I started my first year of primary
15 education. I asked my mother, as anybody is entitled to do. So my mother told me
16 the date and also showed me a certificate or a document which she had obtained from
17 the hospital. That is how I became aware of that date, that is, through my mother.

18 Q. Thank you. Your brother who is still alive, do you know the date, the year of
19 his birth?

20 A. Yes, I do.

21 Q. Can you tell the Court?

22 A. My youngest brother is -- was born in 1988. He is my immediate follower.

23 MR BIJU-DUVAL: (Interpretation) Mr President, I would like to show the witness
24 a document, the document at tab 1 of the small folder that has been distributed to
25 everyone. And the number of the document is DRC-D01-0003-5983. I, therefore,

1 ask the court officer, who is next to the witness. Thank you.

2 Q. Witness, do you recognise this document?

3 A. Are you talking about the document I am looking at now?

4 Q. Yes. You're supposed to have been shown a document, which is the first
5 document in the small binder that has been distributed.

6 A. Yes.

7 Q. Do you know this document?

8 A. Yes, I know this document.

9 Q. What is it? What document is this?

10 A. This is a voter's card.

11 Q. When did you obtain this voter's card?

12 A. I obtained this voter's card -- in fact, this is my second voter's card. The first
13 voter's card was issued to me in 2005. This second one was issued in 2010 to me.
14 That was in relation to the second elections that took place.

15 Q. The document before you is a photocopy. Are you in possession of your
16 original voter's card?

17 A. Yes, I have it.

18 MR BIJU-DUVAL: (Interpretation) Thank you.

19 Mr President, I would now like to show the witness the document at tab 3, tab 3 of the
20 small folder bearing number DRC-OTP-0236-0493. And would the court officer be
21 kind enough to let me know if the document is being displayed to the witness
22 already.

23 THE COURT OFFICER (Remote Location): Mr President, the document has been
24 presented to the witness.

25 PRESIDING JUDGE KOURULA: Thank you.

1 MR BIJU-DUVAL: (Interpretation)

2 Q. I would like you to look closely and carefully at this document, particularly
3 because of the poor quality of the photocopy. My question to you is: Do you
4 recognise this document?

5 A. Yes, I recognise the document.

6 Q. Can you tell the Court what this document is?

7 A. It is my voter's card.

8 Q. Would that be your first voter's card, or your second voter's card?

9 A. That is my second voter's card.

10 Q. You told the Court that you had been issued a first voter's card. Are you able
11 to tell us how this was done? What did you have to do for the first voter's card to be
12 issued to you?

13 A. My first voter's card came when everyone was asked to obtain a voter's card.
14 In fact, not everyone, it was only those who were more than 18 years old who were
15 entitled to voter's cards. Anyone below that age was not entitled to a voter's card.
16 So what I did at the time was to show up with my birth certificate which I had taken
17 from my mother, and I went with that certificate to an office where the voter's card
18 was to be issued, and at that time it was realised that I was old enough.

19 MR BIJU-DUVAL: (Interpretation) Thank you.

20 Mr President, I would now like to play a video excerpt for the witness with EVD
21 number OTP-00571 and also bearing number DRC-OTP-0120-0294. This is an
22 excerpt -- a video excerpt from time stamp 2:45:57 to time stamp 2:45 -- 47, rather, 18.
23 And I'll ask the court officer to please facilitate the playing of this video. And I urge
24 the witness to watch keenly and carefully as this video excerpt is being played.

25 THE WITNESS: (Interpretation) That's fine by me.

1 (Viewing of the video excerpt DRC-OTP-0120-0294)

2 MR BIJU-DUVAL: (Interpretation) I think we have a little difficulty.

3 (Viewing of the video excerpt DRC-OTP-0120-0294)

4 MR BIJU-DUVAL: (Interpretation)

5 Q. Witness --

6 A. I can hear you.

7 Q. -- on the image on your screen there is a young man wearing a military uniform
8 and a cap. He appears to be carrying a weapon over his right shoulder. Do you
9 know this person?

10 A. Yes, I know that person.

11 Q. Who is he?

12 A. I am the one.

13 Q. You are seen here in military uniform. Which army did you belong to at that
14 time?

15 A. I belonged to the UPC army.

16 Q. Did you have any specific functions, or were you assigned to any specific duties
17 within the UPC army?

18 A. I was a bodyguard.

19 Q. At that time whose bodyguard were you?

20 A. I was Thomas Lubanga's bodyguard.

21 Q. Can you tell us for how long you served as Thomas Lubanga's bodyguard and
22 up until when, or is there an event that comes to mind?

23 A. I would like to ask you to -- to forgive me because I went to bed very late last
24 night and I have made two mistakes. What I want to say is that I joined the UPC on
25 the 25th.

1 THE INTERPRETER: And the witness doesn't mention the month, says the
2 interpreter.

3 THE WITNESS: (Interpretation) On the 25th in 2002. Therefore, I joined the UPC
4 army in 2002.

5 MR BIJU-DUVAL: (Interpretation) Thank you.

6 Mr President, I would like to crave your indulgence for a second or two because
7 I would like to confer with my team.

8 PRESIDING JUDGE KOURULA: Thank you.

9 MR BIJU-DUVAL: (Interpretation) I'm sorry, Mr President, I just wanted to --

10 Q. I would like to repeat the question to you. It would appear to me that your
11 answer was interrupted.

12 Do you know the date of birth of your younger brother who died?

13 A. Yes, I do.

14 Q. Would you please tell the Court.

15 A. My younger brother who died was born in 1986.

16 MR BIJU-DUVAL: (Interpretation) Thank you. Thank you, Mr Witness.

17 Mr President, I have no further questions for this witness.

18 PRESIDING JUDGE KOURULA: Thank you very much.

19 Mr Witness --

20 THE WITNESS: (Interpretation) Thank you.

21 PRESIDING JUDGE KOURULA: -- thank you also. You will now be examined by
22 the Office of the Prosecutor.

23 Is it Mr --

24 MR GUARIGLIA: It will be -- it will be Ms Samson, your Honours, cross-examining
25 the witness for the Office of the Prosecutor.

1 PRESIDING JUDGE KOURULA: Thank you, Ms Samson. You have got the floor.

2 MS SAMSON: Many thanks, Mr President.

3 QUESTIONED BY MS SAMSON:

4 Q. Good afternoon. My name is Nicole Samson and I'll be asking you some
5 questions today on behalf of the Prosecution. You will remember that we met
6 yesterday when the Prosecution asked you several questions. Do you remember
7 that?

8 A. Yes, I remember.

9 Q. And the answers that you provided to us yesterday were truthful; is that right?

10 A. I made two mistakes yesterday. In fact, when I went to bed at night
11 I remembered all the answers that I gave, and I realised that I had made two mistakes;
12 in particular, regarding my place of birth and the date on which I joined the army.
13 Yesterday when I tried to remember what I had said, I realised that I had made a
14 mistake and in fact I was woken up while I was sleeping and that person woke me up
15 abruptly and this was just before I went to the office. This is why I would like to
16 answer those questions a second time.

17 Q. You said that somebody woke you up abruptly. Can you indicate who that
18 person was?

19 A. (Expurgé)

20 (Expurgé)

21 (Expurgé)

22 Q. Yesterday, sir, you indicated that you had seen your birth certificate; is that
23 right?

24 A. I did not quite understand your question.

25 Q. I'll rephrase it. Yesterday you indicated that you had seen your birth certificate;

1 is that right?

2 A. Yes.

3 Q. And yesterday you indicated that your mother told you you were born in a
4 hospital in Mudzipela known as l'hôpital des Blancs; is that right?

5 A. That is what I said, but it is not correct.

6 Q. In fact yesterday you indicated that your mother told you you were born in
7 l'hôpital des Blancs; is that right?

8 A. That is what I said, but that is not correct because my thoughts were elsewhere,
9 that is why I made a mistake, but I saw the document.

10 Q. So, sir, is the mistake that your mother told you you were born in l'hôpital des
11 Blancs? She never said that to you? Is that the mistake?

12 A. Yes.

13 Q. So, sir, where were you born?

14 A. I was born in Dheu. I was born in Dheu and, when my father died in 1990, my
15 mother took me and we went to Bunia. And it was in the Mudzipela neighbourhood
16 that I grew up, but regarding my place of birth it is Dheu.

17 Q. And what age were you when your father died?

18 A. I did not understand your question.

19 Q. You said that you grew up in Mudzipela. What age were you when you
20 moved to Mudzipela after your father died?

21 A. I was six years old.

22 Q. Sir, do you know your mother's date of birth?

23 A. The date of birth of my mother?

24 Q. Yes?

25 A. No, I do not know my mother's date of birth.

1 Q. And you don't know your father's date of birth either, do you?

2 A. No, I do not know and this is quite simply because I never asked my mother
3 that question. In our culture it is difficult to ask your parents such a question. You
4 don't ask that question to your mother, or your father.

5 Q. And you've mentioned that your father had children with a second wife. How
6 many children were there, please?

7 A. My father had seven children with the other wife, but one of those children died.
8 Six of them are still alive.

9 Q. You don't know the dates of birth of your siblings on your father's side, do you?

10 A. I do not know.

11 Q. Sir, you mentioned but I didn't catch the full date. When did you join the
12 UPC?

13 A. I joined the UPC in 2002, on the 25th.

14 Q. And which month, please?

15 A. I didn't understand your question.

16 Q. You joined the UPC on the 25th of which month?

17 A. It was in 2002, on 25 March. Yes, 25 March.

18 Q. Where were you when you joined the UPC? In which village, or place?

19 A. I was the bodyguard of Mr Thomas Lubanga. He was living in town, very
20 close to the Office of the Public Prosecutor.

21 Q. And how many bodyguards did Mr Lubanga have?

22 A. Initially there were two of us bodyguards. There were also senior-ranking
23 officers; soldiers who were higher ranking than us. There were two of them. One
24 died. The other is called Mugisa Lek (phon). The other one's name was Claude
25 Mbogo. He was a friend of mine.

1 Q. So I take it then that you knew Mr Lubanga and he knew you?

2 A. Yes, he knows me. Kisémbu, who recently died in Bunia, was also there.

3 Q. And when did you leave the UPC?

4 A. I left the UPC when Thomas was arrested. That is when the French arrived.

5 Thomas was taken to Uganda. We accompanied him to the airport and we stayed at
6 the airport, but when we saw that he was taken away we stayed there. The French
7 people arrived and the demobilisation process was also going on, and as part of that
8 process the equipment had to be handed in. Those who arrived were supposed to
9 ensure security in the area, so I handed back all the equipment that was with me.

10 Q. I have some questions for you about the elections cards that you were looking at
11 earlier today. You obtained your election card in 2011 and in support you provided
12 your 2006 election card; is that right?

13 A. I obtained the first voter's card in 2006 and the second one was issued in 2011.

14 Q. And when you went to obtain the 2011 card, you provided in support your 2006
15 election card; is that right?

16 A. Yes. You had to hand in the 2006 voter's card in order to be issued another one
17 in 2011. If you did not have the voter's card of 2006, then you would have to call
18 your mother, and she would be the one to establish your identity to ensure that they
19 understood who you were. And if that did not happen, you did not receive a voter's
20 card. There was a security presence, a strong security presence at the office where
21 the cards were issued.

22 Q. Thank you, sir. But my question is this: When you went to the election office
23 in 2011, you only provided your 2006 election card to support your new election card?

24 A. Yes.

25 Q. And in 2006, when you went to obtain an election card, you went alone?

1 A. Are you talking about the first voter's card, that is the one issued in 2006? Well,
2 I went there with the documents relating to my birth that I had obtained from my
3 mother. And in order to have the second voter's card, I went there with my 2006
4 voter's card.

5 Q. But you went in 2006 on your own? You were alone when you went to the
6 registration office; is that right?

7 A. Yes.

8 Q. And you were residing in Mudzipela at the time in 2006?

9 A. Yes, I was living in Mudzipela.

10 Q. Yet you registered for a voting card in an area quite far from Bunia in Lopa;
11 that's right?

12 A. No. It takes 30 minutes to go there. I was there because I had gone to look for
13 a little money, that is how I found myself there. I paid a bike to take me there
14 because during that period we were told that anyone who did not have a birth
15 certificate could not be issued a voter's card. That is why I went and fetched that
16 document from my mother and I presented it to them. They took my details
17 into -- and put them in the computer and that is how come I was issued a voter's card.

18 Q. Lopa is approximately 32 kilometres away from Bunia; is that right?

19 A. Yes, indeed.

20 Q. And the election officer didn't ask you any questions about why you were
21 registering to vote in an area outside of your place of permanent residence?

22 A. Yes, he asked me that question and I told him that it was at that place that
23 was -- I wanted to have my voter's card issued, that is at Lopa, because if I had
24 decided to go and apply for that card in Bunia it would have taken me a lot of time,
25 two to three days, but in Lopa that card was issued in a single day. There were

- 1 many people in the elections commission office in Bunia.
- 2 MS SAMSON: One moment, your Honour, with your indulgence please.
- 3 Thank you very much, Mr Witness, I have no further questions for you.
- 4 Thank you, your Honours.
- 5 PRESIDING JUDGE KOURULA: Thank you very much.
- 6 Let me confer for a second with the Judges.
- 7 (Appeals Chamber confers)
- 8 PRESIDING JUDGE KOURULA: Judge Monageng would like to ask a question,
- 9 Mr Witness. She will proceed now and make this -- pose this question to you.
- 10 Thank you.
- 11 JUDGE MONAGENG: Thank you very much, Mr Witness. I have three questions
- 12 for you. You told the Chamber earlier that when you became Mr Lubanga's
- 13 bodyguard, he lived in a town. And I would like to know -- we would like to know
- 14 which town is that?
- 15 PRESIDING JUDGE KOURULA: Could you answer the first question, Mr Witness?
- 16 THE WITNESS: (Interpretation) He was living in Bunia town.
- 17 JUDGE MONAGENG: All right. And you also told the Chamber when you were
- 18 six years old you went to Mudzipela, where you grew up. What year was that when
- 19 you were six years old?
- 20 THE WITNESS: (No interpretation)
- 21 JUDGE MONAGENG: What is the answer?
- 22 THE WITNESS: (Interpretation) I did not quite understand your question,
- 23 your Honour.
- 24 JUDGE MONAGENG: The question is, you say you went to Mudzipela, where you
- 25 grew up, when you were six years old, and I just want to know which year that was?

1 THE WITNESS: (Interpretation) I arrived in Bunia in the same year that my father
2 died. I no longer remember the day or the month. It was in 1990, the eighth month.

3 JUDGE MONAGENG: I said "Mudzipela," not "Bunia."

4 THE WITNESS: (Interpretation) I'm sorry, I did not quite understand that part.

5 JUDGE MONAGENG: Okay. Let me ask you the final question. Under
6 examination-in-chief you said that your first card, electoral card was issued in 2005
7 and the second one in 2010. Now you have said 2006 and 2011. Was that a mistake,
8 the first one?

9 THE WITNESS: (Interpretation) I was mistaken. I reflected on that. You asked
10 me the question and I mentioned 2005. I had not quite understood that question.
11 That is why I gave that answer. And it was not possible for me to ask for the
12 question to be repeated.

13 JUDGE MONAGENG: Thank you.

14 PRESIDING JUDGE KOURULA: Thank you, Judge Monageng.

15 And thank you, the Prosecutor.

16 And I understand there are no further questions from the Judges.

17 Maître Mabilie and Maître Biju-Duval, do you wish to re-examine this witness?

18 MR BIJU-DUVAL: (Interpretation) Thank you, your Honour. I just have one
19 further question.

20 Q. Mr Witness, you spoke of the Mudzipela district. Can you tell the Court where
21 the Mudzipela district is located, in which city?

22 A. Mudzipela is a district in the city of Bunia.

23 MR BIJU-DUVAL: (Interpretation) Thank you very much, Mr Witness.

24 I have no further questions, your Honour.

25 PRESIDING JUDGE KOURULA: Thank you very much. I understand this

Appeals Hearing
Witness: DRC-D01-WWWW-0041

(Open Session)

ICC-01/04-01/06

- 1 concludes your testimony before the Court, Mr Witness. The Appeals Chamber
- 2 thanks you -- thanks you for appearing here today.
- 3 And, court officer, would you be so kind as to escort the witness out. Thank you
- 4 again.
- 5 THE COURT OFFICER (Remote Location): Yes, Mr President.
- 6 (The witness is excused)
- 7 PRESIDING JUDGE KOURULA: So this concludes the first day of the hearing of the
- 8 Appeals Chamber. The hearing will then reconvene tomorrow morning at 9.30 in
- 9 this same courtroom.
- 10 The hearing is adjourned.
- 11 THE COURT USHER: All rise.
- 12 (The hearing ends in open session at 3.32 p.m.)