

## **Prosecutors Criticised for Withholding Witness Information**

**Author:** [IWPR ICC](#)

Judge says Lubanga's lawyers should have been informed of details regarding defence witnesses. Judges this week criticised prosecutors in the Hague tribunal of former Congolese militia leader Thomas Lubanga for failing to tell the accused's lawyers important information they had collected about two defence witnesses.

Lubanga is on trial at the International Criminal Court, ICC, accused of enlisting, conscripting and using child soldiers in armed conflict during 2002 and 2003.

The first defence witness finished his testimony last week and the second began testifying on February 2.

Catherine Mabile, Lubanga's lead counsel, protested in court that it was only on January 28 that prosecutors disclosed certain information relating to witnesses 003 and 004, the defence's second and third witnesses respectively.

"Why were these investigators' notes not disclosed to us in time?" she said. "We felt that this put the defence in a situation where we could not ask the witnesses who are coming today or next week to give us explanations on a certain number of events which were related in these investigators' notes."

Mabile added that the prosecutor had a duty to disclose these elements.

Judge Adrian Fulford asked prosecutors to explain why they had taken so long to fulfil their disclosure obligations.

"It is self-evident that the material contained in these reports was not only disclosable but also of significance [regarding] the two witnesses that the defense is about to call," he added.

None of the parties said in public session exactly what this information related to.

Mabile told the court that, since last August, the Office of The Prosecutor, OTP, had known the identities of the defence witnesses and should therefore have made its disclosures to the defence much earlier.

But the prosecution's Nicole Samson countered that, although they had indeed received the names of defence witnesses last August, they had to make additional investigations relating to defence witnesses 003 and 004.

This was after it was established that the information provided to the OTP by the defence was not consistent with what was in the OTP's database regarding the identities of the witnesses.

Nonetheless, the judge faulted prosecutors for making the disclosures “markedly too late”.

“This should have happened at the very latest in December [2009], if not substantially earlier, once the identities of these two witnesses were revealed to you,” Judge Fulford said. “We request that you review how disclosure is approached [in cases where] you have the names of the witnesses... so as to ensure that we are not placed in this position again in future.”

Judges said they were ready to give the defence an adjournment to study the disclosure documents and to meet their witnesses before they were called to testify.

Mabille said that, although they felt they needed extra time before calling the two witnesses, they had decided not to request this since the witnesses were already in The Hague.

Witness 003 appeared without protective measures such as face and voice recognition, but gave almost all of his evidence in closed session.

Because the witness said little in sessions which were open to the public, it was unclear in what capacity he was testifying.

The first defence witness, who completed giving his evidence earlier in the week, was the father of a prosecution witness who, according to the father, lied about having been a child soldier.

Witness 003 will continue his testimony next week.

IWPR's weekly updates of the Thomas Lubanga trial are produced in co-operation with the Open Society Justice Initiative of the Open Society Institute, OSI. Daily coverage of the trial can be found at [www.lubangatrial.org](http://www.lubangatrial.org).

**Location:** Democratic Republic of Congo

**Focus:** Lubanga Trial Coverage

ICC - International Criminal Court

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