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LUBANGA TRIAL CASTS DOUBT OVER ICC'S CAPACITY TO PROVIDE FAIR TRIALS

The International Criminal Court's conduct of the trial of Thomas Lubanga from the Democratic Republic of the Congo provides further concrete evidence that the Hague-based court is incapable of staging a fair trial.

Mr Lubanga's defence counsel Catherine Mabilie, addressing the judges, on the second day of the trial last year said: *"How can we have a fair trial under [these] conditions? There has been a wholesale abuse of the rules by the office of the prosecutor."* Ms Mabilie was referring to the fact that the ICC prosecutor, Luis Moreno-Ocampo, has deliberately withheld information from the defence team provided to the court by the United Nations that cast doubt on the prosecution's claim that Mr Lubanga had recruited child soldiers. The ICC Pre-Trial Chamber ordered the release of Mr Lubanga but the prosecutor's office was successful in preventing this on appeal. The ICC has still not made public the reasons for granting the prosecutor's appeal.

In the opinion of *ICCwatch* director, Marc Glendening, Mr Ocampo could have been investigated by police for attempting to pervert the course of justice in Britain and other western societies. The ICC is however a law unto itself and its officials enjoy immunity from prosecution on the territories of the countries that have ratified the Rome Statute.

Another cause for concern has been the extensive use of anonymous witnesses, often giving their alleged evidence in private, and repeating hearsay. This has made effective cross-examination impossible. The defence team were excluded from half of the pre-trial hearings.

So-called 'victim statements' have been made in court whose veracity cannot be challenged and which can only serve to prejudice the minds of the trial judges.

It has been alleged by the Thomas Lubanga's defence team that there has been a huge discrepancy between the financial resources the ICC has made available to the prosecution compared to the defence. In the run-up to the trial, the prosecutor's office had twenty researchers working in the DRC seeking to discover evidence, whereas the defence could only afford one researcher.

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ICCwatch director Marc Glendening has now written to the Public Affairs Office of the ICC requesting a detailed breakdown of the funding that has been made available to both the prosecution and defence teams.

The Lubanga trial also highlights a key charge made against the ICC, namely that it is a politically motivated body and is incapable of upholding the rule of law. Mr Lubanga was referred to the ICC by DRC president Joseph Kabila, a political opponent. Officials from the Kabila regime have been active in the case against Mr Lubanga. The ICC chief prosecutor has shown no interest in investigating the numerous accusations of human rights abuses directed at the DRC government and military.

For more information concerning *ICCwatch's* critique of the International Criminal Court, please refer to **www.iccwatch.org**

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