Chapter 4
International Criminal Justice in Africa: Specific Procedural Aspects of the First Trial Judgment of the International Criminal Court

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Contents

4.1 Introduction

The first trial of the International Criminal Court was a significant benchmark in international law. As the first permanent international criminal court, the Court joins an important assembly of international courts which is working to change the global order and provide security and peace in a complex world. Not only did the *Lubanga* case mark the operational beginning of the International Criminal Court; also it highlighted a new and changing international criminal law, focusing attention on the issue of the use and role of children during armed conflict.

The views expressed in this chapter are not necessarily those of the International Criminal Court.

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In order to highlight some of the most important aspects of this time in the history of international justice, one must begin at the beginning—by going backward and providing historical context for the contemporary international courts. History teaches us that Africa was the seat of the first international human rights tribunals. These important early courts were composed of international judges applying international treaty law and serve as a model for the international courts on the rise today. After exploring the roots of international law, this chapter will canvas briefly the significant subject of the crime of using child soldiers in armed conflict—a substantive crime which serves to show the direction in which international criminal law is moving. Finally, this paper will address the *Lubanga* trial, the first trial of the International Criminal Court, by discussing not only the substantive law of child soldiery but also some of the most interesting procedural issues, especially stay of proceedings and how this procedure was used in the first trial before the Chambers of the Court.

However, it is important to note the judgment, sentencing and reparations decisions are all on appeal and, therefore, have not been adjudicated finally. Thus, the exercise which follows will be restrained, referring only to very limited objective issues related to substantial and procedural law.

4.2 The Anti-Slavery Courts

Long before the International Criminal Court was created and long before the Rwanda Tribunal was established, Africa hosted international courts. Africa was a protagonist of international courts in the 19th century already, when mixed courts were created by international treaties of a multilateral nature for the suppression of the transatlantic slave trade.[1]

The concept of mixed commissions to settle disputes goes as far back as the 1794 Jay Treaty between Britain and the United States which allowed their representatives to settle claims arising from the American Revolutionary War.[2] In 1817, after several years of negotiations, Britain reached agreements with the Netherlands, Portugal and Spain to establish mixed courts to prosecute those captured on slave ships.[3] Thus, courts were established in Freetown (Sierra Leone), Havana (Cuba), Rio de Janeiro (Brazil) and Surinam.[4] The US did not ratify the treaty with Britain until 1862. This bilateral agreement opened the door to the establishment of courts in New York, Sierra Leone and Cape Town.[5] The courts were humanitarian in nature, though each treaty was slightly different.[6]

[1] Martinez 2008, p. 550.
[2] Nickels 2001, p. 313.
[3] Martinez 2012, p. 34.
[4] Martinez 2012, p. 69.
[5] van Niekerk 2004, p. 432.
[6] Martinez 2012, p. 85.

Annexes to the treaties provided basic procedural rules under which the courts operated. Under the treaties each nation appointed a judge, and the government of the territory in which the court sat appointed a registrar, who acted as the court's chief administrator and assisted in the taking of evidence.[7] Despite their relatively brief existence, these courts adjudicated more than 600 cases, freeing nearly 80,000 slaves.[8]

The court in Sierra Leone was the more active as to both the number of cases heard and the number of slaves freed. Established in 1819, the Sierra Leone court was responsible for the capture of 22 slave-trading ships in 43 years and held hearings in more than 500 cases, with approximately 65,000 slaves been freed during that time.[9] This is a vivid example of how the success of international courts provides hope and promise for the future of international justice.

At the same time it reminds us that Africa not only has played a leading role in the beginnings of international human rights but also has been a target of crimes against humanity. In the 20th century, when the then denominated Congo Free State became the personal property of *King Leopold II of Belgium*, it also became the victim of a regime of brutality, mutilation and mistreatment, causing humanitarian disasters and the decimation of the Congolese population. The scale of killings in the Congo between 1885 and 1908 is terrifying, with the estimated number of victims oscillating between 3 and 13 million.[10]

4.3 The Child Soldiers

As shown above, the International Criminal Court proceeds from the early success of the international courts model as an intervention instrument in human rights. Though the international court as a tool in the fight for justice is not novel to the global order, many of its features, both in respect of substance and structure, are. In the Rome Statute there are several provisions which go beyond the codification of existing international criminal law, including the denunciation of the use of child soldiers as a war crime, codified in Article 8(2)(b)(xxvi) and Article 8(2)(vii) of the Statute. The insertion of this provision in the Rome Statute serves to codify a human rights principle which had not previously entailed criminal liability in international law.

The utilization of child soldiers is not limited to Africa, but has been known to humankind since ancestral times. As an example, children as young as 10 years of

[7] Martinez 2008, p. 579.

[8] Ibid. p. 553.

[9] Martinez 2012, p. 79.

[10] See Ewans 2002, Hochschild 1998.

age are documented to have fought in the American Civil War.[11] Today, their recruitment continues in many different parts of the world.[12]

In fact, the use of child soldiers is common practice. Approximately 250,000 children are used in conflicts worldwide.[13] The Human Rights Watch report on child soldiers of March 2012 established that children are involved in fighting in at least fourteen countries, including countries on the continent of Africa as well countries such as Burma, Colombia, the Philippines, Iraq, India and Afghanistan.[14]

In the Democratic Republic of the Congo, where the *Lubanga* case originates, an estimated number of 30,000 children[15] were involved in the conflict, with 8,000–10,000 within the Ituri region.[16] Child soldiers suffer serious harm, from physical injury, through the trauma of separation from family, to the loss of educational opportunities.[17] Such children are robbed of their childhood and exposed to terrible dangers, both psychological and physical. They are placed in combat situations, used as spies, messengers, porters, servants or to lay or clear landmines. Girls, in particular, are at risk of rape and sexual abuse.[18]

Thus, under the Rome Statute, conscripting or enlisting children under the age of 15 years is a war crime. The current global commission of this crime is a clear indication of the necessity of the norm, and so is its immediate application in the Court's first case.

4.4 The *Lubanga* Case

4.4.1 Overview

Trial Chamber I was assigned the case of *Thomas Lubanga Dyilo* upon the Confirmation of Charges as provided by Pre-Trial Chamber I. Trial Chamber I was composed of three judges from diverse backgrounds with experience from both the Romano-Germanic and common law traditions.

The *Lubanga* case had strict jurisdictional parameters, requiring the Court to focus precisely on events that occurred in the territory of the Democratic Republic

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[11] Rosen 2005, p. 4.

[12] For example, the nineteenth century *Cheyenne* of North America, boys joined their first war parties when they were 14 or 15 years old. The female warriors of Dahomey were recruited between the ages of nine and fifteen. Among the *Yanomamo* of Venezuela and Brazil, children were allowed to determine when they wanted to take up the role of warrior. See ibid. p. 4.

[13] UNICEF 2009.

[14] Human Rights Watch 2012.

[15] Ibid.

[16] Suárez 2009, p. 103 f.

[17] Hausler et al. 2012, p. 175.

[18] Amnesty International. Child Soldiers: From Cradle to War.

of the Congo, and, more specifically, in the District of Ituri, Oriental Province. In addition, the jurisdictional requirements demanded a focus on events which occurred from early September 2002 to 13 August 2003.[19]

The Trial Chamber heard 67 witnesses over 204 days. The prosecution called 36 witnesses, including three experts, and the defence called 24 witnesses. Three victims were called as witnesses following a request from their legal representatives. Additionally, the Chamber called four experts. The prosecution submitted 368 items of evidence, the defence 992, and the legal representatives 13, giving a total of 1,373 items.

Written submissions were supplemented by the oral closing arguments of the parties and participants, heard on 25 and 26 August 2011. Since 6 June 2007, when the record of the case was transmitted to the Trial Chamber, the Chamber delivered 275 written decisions and orders and 347 oral decisions.[20]

On the strength of the evidence before it, the Chamber found Mr *Lubanga* guilty as a co-perpetrator of the crime of conscripting and enlisting children less than 15 years of age into the *Force Patriotique pour la Liberation du Congo* and using them to participate actively in hostilities.[21] In July 2012, he was sentenced to 14 years' imprisonment.[22] In August 2012, the Chamber issued its decision on the principles of reparations to be applied in the case.[23] Both the sentence and the principle of reparations have been taken on appeal.

Thomas Lubanga Dyilo was charged with and convicted of the offence of conscripting and enlisting child soldiers only. The narrow scope of the charge and conviction evoked much commentary and criticism. However, since the Chamber was required to rely upon the charges brought and evidence presented by the Prosecutor, it made no findings of fact or on any other issues.

As the first matter to be tried by the International Criminal Court, the *Lubanga* case had to deal with a host of wide-ranging substantive and procedural issues, such as modes of participation, individual criminal responsibility and the issue of war crimes in international and non-international armed conflict. As regards the characterization of the conflict, the Chamber established the existence of an armed conflict of non-international character and the existence of a nexus between the crimes committed and the armed conflict, which is necessary for any act to

[19] *Prosecutor v. Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute, 14 March 2012, para 1358.

[20] *Prosecutor v. Thomas Lubanga Dyilo*, Summary of the Judgment pursuant to Article 74 of the Statute, 14 March 2012, p. 5.

[21] *Prosecutor v. Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute, 14 March 2012.

[22] *Prosecutor v. Thomas Lubanga Dyilo*, Decision on sentence pursuant to Article 76 of the Statute, 10 July 2012.

[23] *Prosecutor v. Thomas Lubanga Dyilo*, Decision establishing the principles and procedures to be applied to reparations, 7 August 2012.

constitute a war crime.[24] The Trial Chamber recognized that a non-international conflict may become internationalized. Further, with respect to the important issue of individual criminal responsibility and modes of liability, the Chamber confirmed the test of overall control.[25]

With respect to the specific crime, the Chamber did not allow for the child's consent to enlistment to provide a defence for the accused, as posited by the defence. As to the use of children under the age of 15 to participate actively in hostilities, the Chamber applied the criterion that this prohibition was intended to protect children from the risks that are associated with armed conflicts. In the view of the Chamber, the concept of "active participation" had to be extended to encompass the exposure to real danger as a potential target, so that the combination of the child's support and his level of consequential risk becomes decisive.[26]

Other issues dealt with by the Chamber included the legal structure of the crime of conscripting, enlisting or using child soldiers, the issue of disclosure and admissibility of evidence, the stay of proceedings and the release of the accused, the participation of victims, the role of intermediaries, the issue of reparations, asylum, the role of the Trust-Fund, protection of victims and witnesses.

However, a subject of great interest and particular applicability, which may not have been foreseen easily at the beginning of the process, was the use of the stay of proceedings. This issue aroused great interest and triggered considerable debate throughout the *Lubanga* trial and is thus worthy of some effort to understand its use in the case.

The topic involves substantive as well as procedural issues related to the fair trial principle and the doctrine of the abuse of process, which is based on the assumption that certain violations of the accused's rights may be so serious as to render impossible a fair trial.

In the Romano-Germanic systems, courts are very reluctant to stay proceedings on the basis of serious violations of the accused's rights. Thus, it was necessary for the Chamber to engage in an extensive exercise of comparative law, which is a characteristic working methodology at a hybrid or ecumenical court such as the International Criminal Court. The matter of the stay of proceedings in the *Lubanga* case was related closely to the so-called disclosure process, evident in the common law system, which ensures that the accused is entitled to access to the evidence which the prosecution will lead in its case against him or her in a timely and complete fashion. In addition, the accused is entitled to the disclosure of materials of an exculpatory character without regard to whether the materials are admissible at trial.

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[24] *Prosecutor v. Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute, 14 March 2012, para 1358.

[25] Ibid., para 541.

[26] Ibid., para 820.

4.4.2 Disclosure

The issue of disclosure of the prosecutor's evidence to the accused is a fundamental feature of a fair trial in any system. In the Romano-Germanic system (inquisitorial tradition) all the materials collected during the investigation—incriminating or exonerating—are assembled in a "dossier" which, in principle, is available to all parties involved in the trial. In a common law system (adversarial tradition) disclosure is premised on separate prosecution and defence cases, which creates different disclosure obligations. While the prosecutor normally has extensive disclosure obligations, including disclosure of exculpatory materials, defence disclosure is more restricted and often is postponed until the prosecutor has presented his or her evidence at trial.

In the *Lubanga* trial, the challenges of disclosure obligations were apparent already at the Pre-Trial Chamber phase,[27] but due to a lower level of obligation at this phase, the case was able to move to the trial phase. However, both the Trial Chamber and the Appeals Chamber had to deal with the conflicting obligations of the International Criminal Court to ensure disclosure of information to the defence on one side, and the need for confidentiality in respect of information provided by the UN, on the other.[28]

The issue of disclosure is related to the procedural law of the International Criminal Court. Article 67(2) of the Rome Statute and Rule 77 of the Rules of Procedure and Evidence create the basic obligation that the Office of the Prosecutor must disclose exculpatory evidence and material in its possession or control to the defence. At the same time, Article 54(3)(e) provides that the prosecutor may decide not to disclose material obtained on condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents. Rule 81 places restrictions on disclosure, while Rule 82 provides that if the prosecution has Article 54(3)(e) material in its possession it may not introduce such material into evidence subsequently without prior consent of the information provider.

Finally, reference must be made also to the Relationship Agreement between the Court and the UN,[29] particularly Article 18 which stipulates that:

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[27] For example, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the defence request for order to disclose exculpatory materials, 2 November 2006; Decision convening a hearing on the defence request for order to disclosure exculpatory materials, 1 November 2006.

[28] For example, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008, 13 June 2008.

[29] Negotiated Relationship Agreement between the International Criminal Court and the United Nations, available at http://www.icc-cpi.int/nr/rdonlyres/916fc6a2-7846-4177-a5ea-5aa9b6d1e96c/0/iccasp3res1_english.pdf. (All internet resources were accessed on 25 March 2014).

- based on Article 54(3)(e) of the Rome Statute, the sole purpose for providing confidential information should be the generation of new evidence;
- "such information shall not be disclosed to other organs of the Court".

Against this background, the difficulty in the prosecution's ability to disclose came to a head during the spring and summer of 2008 as the Trial Chamber was readying the case for the start of trial.[30] It became apparent that the prosecution, based on the agreements it had made with third party providers of evidence, would not be able to disclose exculpatory evidence. In the process of collecting bulk evidence which would be used to generate new evidence, the prosecution had acquired materials which could be considered exculpatory, but the agreements into which the Prosecutor had entered prohibited their disclosure even to the Chamber. This deprived the judges of the capacity to make a determination as to whether the materials were indeed exculpatory. Following months of orders, negotiations and discussions which proved fruitless, the Chamber had no choice but to stay the proceedings, basing the stay on disclosure violations and fair trial practices.[31] It is important to understand that this decision not only upheld fair trial practices but also expressed the independence of the Court.

4.4.3 First Stay of Proceedings

The first stay of proceedings occurred in June 2008 because the prosecution failed to disclose potentially exculpatory materials to the accused, as a result of agreements with organizations such as the UN, which the prosecution perceived to have restricted its disclosure obligations.

The Trial Chamber determined, among other things, that the disclosure of potentially exculpatory information was a fundamental aspect of the accused's right to a fair trial and that, as a result, the trial process was ruptured to such a degree that it was "impossible to piece together the constituent elements of a fair trial".[32]

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[30] See, for example, *Prosecutor v. Thomas Lubanga Dyilo*, Order on "Prosecution's application for non-disclosure of information", 9 May 2008.

[31] See, for example, *Prosecutor v. Thomas Lubanga Dyilo*, Decision suspending deadline for final disclosure, 30 January 2008; Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008, 13 June 2008.

[32] *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008, 13 June 2008, para 93.

As a consequence, a stay of the proceedings for abuse of process was imposed by the Trial Chamber and confirmed by the Appeals Chamber, which established unanimously:

1. The Prosecutor may rely only on Article 54(3)(e) for a specific purpose, namely, to generate new evidence.[33]
2. The use of Article 54(3)(e) by the Prosecutor must not lead to breaches of his obligations *vis-á-vis* the suspect or the accused person.[34]
3. The final assessment as to whether the material would have to be disclosed must be made by the Trial Chamber.[35]
4. The Trial Chamber (as well as any other Chamber) must respect the confidentiality agreement and may not order disclosure without prior consent of the information provider.[36]
5. A conditional stay of the proceedings may be the appropriate remedy where a fair trial cannot be held at the time that the stay is imposed, but where the unfairness to the accused person is of such a nature that a fair trial might become possible later were the conditions remedied.[37]

Furthermore, the Appeals Chamber declared:

> The United Nations, from which the Prosecutor had obtained most of the documents in question, had responded negatively to the procedure contemplated at that status conference and to the undertaking of the Trial Chamber. By the time of the Impugned Decision only two of the 156 documents provided by the United Nations had been disclosed to the defence. In relation to 33 other documents, the United Nations had indicated their willingness to consider making available "elements of information" to the Trial Chamber. In relation to 121 documents, however, there were no tangible developments. To the contrary, the submissions of the Prosecutor at the status conference of 10 June 2008 indicated that it might not be possible to find a solution in respect of these documents. Thus, at the time the Trial Chamber rendered the Impugned Decision, and after lengthy discussions between the Prosecutor and the United Nations, it was not even clear that the Trial Chamber would be given access to all or the majority of the documents obtained from the UN, let alone that the documents could be disclosed to the defence. In such a situation, the Appeals Chamber does not consider it erroneous that the Trial Chamber concluded that in spite of the ongoing discussions between the Prosecutor and the United Nations, there was no prospect that the difficulties would be overcome.[38]

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[33] *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of the Prosecutor against the decision in Trial Chamber I entitled "Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008", 21 October 2008, para 1.

[34] Ibid., para 2.

[35] Ibid., para 3.

[36] Ibid., para 3.

[37] Ibid., para 4.

[38] Ibid., para 91.

Later, a mechanism was developed between the United Nations and the International Criminal Court to deal with the tensions between the conflicting obligations of the International Criminal Court to ensure the disclosure of information to the defence and to maintain confidentiality due to reasons of security and safety. The stay of proceedings could be lifted then and the trial could continue, but this remained an important moment in the *Lubanga* trial and in international justice generally, for it determined that criminal law pillars cannot be bent if legitimate international trials are to be conducted.[39]

4.4.4 Second Stay of Proceedings

The issue of disclosure took a front seat in the *Lubanga* proceedings once again when, on 8 July 2010, a second stay of proceedings was ordered after the prosecution had refused to comply with an order of the Chamber to disclose the identity of an intermediary. The role of the intermediaries had been questioned and thus it was necessary to have their identity disclosed. However, the prosecution argued that its own statutory obligations regarding the safety of its intermediaries take priority over the Chamber's order. In the Chamber's opinion, however, if once seized of the case, it is the only organ of the Court with the power to order and vary protective measures *vis-à-vis* individuals placed at risk because of the Court's work.

It therefore ordered a stay of proceedings for abuse of process, stating that, "no criminal court can operate on the basis that whenever it makes an order in a particular area, it is for the Prosecutor to elect whether or not to implement it, depending on his interpretation of his obligations".[40]

Thereafter, in its judgment on the matter, the Appeals Chamber confirmed that "under the Statute, the Trial Chamber, subject only to the powers of the Appeals Chamber, is the ultimate guardian of a fair and expeditious trial".[41] The Appeals Chamber also made it clear that a stay of proceedings for abuse of process can be

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[39] Of further interest but less relevant for this paper, is the parallel issue of the release of the accused during a conditional stay of proceedings. See the Trial Chamber's position at *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the release of Thomas Lubanga Dyilo, 2 July 2008. See also the Appeals Chamber's position at *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled "Decision on the release of Thomas *Lubanga* Dyilo", 21 October 2008. See also Judge *Pikis'* dissent from the Appeals Chamber Decision, ibid., p. 19.

[40] *Prosecutor v. Thomas Lubanga Dyilo*, Redacted decision on the prosecution's urgent request for variation of the time-limit to disclose the identity of intermediary 143 or alternatively to stay proceedings pending further consultations with the VWU, 8 July 2010, para 27.

[41] *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I of 8 July 2010 entitled "Decision on the prosecution's urgent request for variation of the time-limit to disclose the identity of intermediary 143 or alternatively to stay proceedings pending further consultations with the VWU", 8 October 2010, para 47.

ordered only as an *ultima ratio*, stating that a Trial Chamber, to the extent possible, should impose sanctions before ordering a stay of proceedings because of a party's refusal to comply with its orders.[42]

To ensure fair proceedings in exceptional circumstances, the Chamber has an important power to stay proceedings. Thus, even though the international community and even the Chamber itself expected that the *Lubanga* trial would be adjudicated in a quick and clinical manner, the decisions of the Trial Chamber and the Appeals Chamber exemplify the importance of the principle of judicial independence and respect for the integrity of international criminal proceedings. The credibility of the International Criminal Court in practice will depend predominately on the fairness and integrity of its proceedings.

The importance of the incorporation of the stay of the proceedings, as an element of last resort, is shown by decisions in other cases, and particularly by the decision of 26 April 2013 in the *Kenyatta* case when the defence asked to terminate proceedings against the accused, or remit the case to the Pre-Trial Chamber for consideration because the Prosecutor neglected to disclose potentially exculpatory information.[43]

4.5 Conclusion

The use of Anti-Slavery Courts to curtail the worst human rights abuses provides us with an early example of a functioning and truly international court system. These courts established a necessary system of procedures and rules to maintain the proper functioning of the courts and to ensure their success against human rights abuses in Africa. This practice is analogous to modern international criminal courts.

Today, 16 years after the adoption of the Rome Statute, the International Criminal Court operates in a system of international justice by working not only with States in Africa and around the world, but also with international organizations. By operating on a global scale, the goal of ending impunity, and thereby deterring the commission of the most serious international crimes of concern to the world community, may come closer to fruition.

Of course, in many respects the International Criminal Court is still in the early stages of its development. For example, it is waiting still to exercise jurisdiction over the crime of aggression, as provided for in Article 5 of the Statute. The review conference in Kampala advanced the debate on aggression and provided, through

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[42] Ibid., para 3.

[43] *Prosecutor v. Uhuru Muigai Kenyatta,* Decision on defence application pursuant to Article 64(4) and related requests, 26 April 2013. See also *Prosecutor v. Uhuru Muigai Kenyatta,* Decision on Defence application for a permanent stay of the proceedings due to abuse of process, 5 December 2013.

the amendment process, a definition of the crime, but it will be several years before this crime is fully incorporated into the jurisdiction of the Court.[44]

Despite the fact that the Court is in its early stages and it has advanced proceedings related to situations in Africa only, we have started to grasp the full potential of the International Criminal Court. In order to continue down this path, it is necessary that certain principles continue to be highlighted, namely, the Court's permanent role, its push toward universality, and its mandate to conduct just, independent and impartial investigations and proceedings in strict conformity with the Rome Statute.

Over the years, a body of jurisprudence will be formed which will resolve pending questions about the definitions in the Rome Statute and will increase the efficiency of proceedings. The doctrine of the abuse of process and the stay of proceedings, although not mentioned in the Statute, now are integrated completely in the procedural praxis of the Court, as a guarantee of a due process.

From Anti-Slavery Courts to upholding and advancing human rights norms against the use of children as soldiers in war, international law continues to advance a civil society which respects fundamental human rights norms and the importance of these norms in the global order. The ability to take procedural steps to uphold fair trial practices enhances the legitimacy of international courts and thus plays an important part in advancing substantive human rights norms. The *Lubanga* decision on child soldiers has been a pivotal moment in advancing these norms and the Court is on course to continue the important work begun by the Anti-Slavery Courts so many years ago.

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