

EMA PROGRAMME

CRIMINAL PROCEEDINGS FROM A HUMAN RIGHTS  
PERSPECTIVE

---

Theory of the Fair Trial and the Lubanga Case before the ICC

**Begoña Elez Amatriain**  
**2008-2009**

## **Abstract**

The Fair Trial enjoys global recognition as a Human Right. The norms that regulate the proceedings, which apply the Fair Trial in practice, are essential to it and as such must be respected. Despite the particularities of every legal system, there are common grounds that define the Fair Trial. This subject is particularly sensitive in criminal proceedings due to the special nature of the crimes and penalties. The compliance of the Fair Trial is a duty of every judicial actor. The Fair Trial is for victims, society and the accused person too. The International Criminal Court, at a legislative level, has included procedural norms that are consistent with the generally accepted concept of the Fair Trial. However, its practice in the Lubanga Case has been dramatic. The non-compliance of the procedural norms with regards evidence matters by the Prosecutor has violated important procedural rights of the accused which are essential elements of the Human Right to a Fair Trial. The problem has been solved but with excessive delay. The hope is that the ICC and the Prosecutor have learnt the lesson and the conduct of Moreno Ocampo is more consistent with the procedural norms that define the Fair Trial in the future.

*To my mother*

## TABLE OF CONTENTS

INTRODUCTION.....	6
<b>PART I: THE FAIR TRIAL FROM A HUMAN RIGHTS PERSPECTIVE .....</b>	<b>7</b>
<b>1. The Right to a Fair Trial.....</b>	<b>7</b>
1.1. The Fair Trial as a Binding Legal Norm.....	7
1.2. The importance of the Right to a Fair Trial .....	9
<b>2. Elements of the Fair Trial.....</b>	<b>10</b>
2.1. All persons shall be equal before the courts and tribunals.....	10
2.2. The Right of Access to a Court .....	11
2.3. Determination of any criminal charge.....	13
2.4. Everyone shall be entitled to a fair and public hearing.....	14
2.5. Within a reasonable time.....	17
2.6. By a competent, independent and impartial tribunal established by law .....	18
2.7. The Due Process.....	<b>Error! Bookmark not defined.</b>
<b>3. The Procedural Rights of the Parties: substantive element of the Due Process in the Fair Trial.....</b>	<b>Error! Bookmark not defined.</b>
3.1. Rights of Accused Persons.....	<b>Error! Bookmark not defined.</b>
3.1.1. The Right to be Presumed Innocent.....	<b>Error! Bookmark not defined.</b>
3.1.2. The Right to Defence .....	25
3.1.3. The Right to be tried without undue delay .....	29
3.2. The Rights of the Victims .....	30
<b>PART II: THE FAIR TRIAL IN THE PROCEEDINGS OF THE ICC AND THE LUBANGA CASE .....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>1. Theory of the ICC proceedings with regards the Fair TrialError! Bookmark not defined.</b>	
1.1. The Elements of the Fair Trial within the ICC legal systemError! Bookmark not defined.	
1.1.1. The principle of equal treatment.....	<b>Error! Bookmark not defined.</b>
1.1.2. The Right of Access to the International Criminal Court.....	35

1.1.3. Determination of any Criminal Charge under the ICC Statute.....	<b>Error!</b>
<b>Bookmark not defined.</b>	
1.1.4. The Fair and Public Hearing in the proceedings of the ICC.....	<b>Error! Bookmark not defined.</b>
1.1.5. The ICC: competent, independent and impartial tribunal established by law? .....	<b>Error! Bookmark not defined.</b>
1.1.6. Within a reasonable time .....	<b>Error! Bookmark not defined.</b>
1.1.7. The Due Process .....	<b>Error! Bookmark not defined.</b>
1.2. The Rights of the parties in the proceedings: content of the Due Process of the ICC .....	<b>Error! Bookmark not defined.</b>
1.2.1. The Rights of Accused Persons .....	43
1.2.2. The Rights of Victims .....	45
<b>2. The first Empirical Experience of the ICC: the Lubanga Case.....</b>	<b>47</b>
2.1. Background of the Case .....	47
2.2. The Proceedings at the Pre-Trial phase of the Lubanga Case.....	<b>Error! Bookmark not defined.</b>
2.3. Some critical thoughts about the Proceedings in the Lubanga Case.....	51
<b>CONCLUSION.....</b>	<b>56</b>
<b>BIBLIOGRAPHY.....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>