



The Armenian Path Toward a Referral to the ICC, Threatened by the New Draft Peace Agreement?

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ABSTRACT

This paper examines Armenia's accession to the ICC amid evolving peace negotiations with Azerbaijan. It explores the legal and political obstacles to accountability and proposes alternative mechanisms for promoting justice and sustainable peace in the region.

EXECUTIVE SUMMARY

In February 2024, Armenia became the 120th State Party to the Rome Statute, signalling its commitment to strengthening international justice mechanisms amid ongoing regional tensions. However, peace negotiations with Azerbaijan and mounting external pressures, particularly from Russia, have challenged Armenia's ability to fully leverage its ICC membership. Although legally empowered to refer cases to the Court, Armenia has hesitated, fearing political escalation and constrained by the draft peace agreement's rejection of international judicial involvement. Additional legal challenges, such as limitations on the ICC's temporal and territorial jurisdiction, further complicate prospects for accountability. Alternative pathways—such as transitional justice, hybrid tribunals, and universal jurisdiction—offer potential, albeit limited, mechanisms for addressing past atrocities. Ultimately, Armenia faces a critical decision: whether to uphold its obligations under international law and pursue justice for its citizens, or to prioritize short-term political stability at the cost of long-term peace and accountability.

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1. THE SECOND NATIONAL IMPETUS LEADING TO THE ACCESSION TO THE ROME STATUTE

▪ Armenia: the 120th State Party to the Rome Statute

Armenia was among the original signatories of the Rome Statute on 1 October 1999.¹ However, in 2004, the Armenian Constitutional Court found partial incompatibilities between the Statute and the Armenian Constitution, notably regarding interference with judicial sovereignty and the presidential prerogative of pardon. In 2014, at the initiative of the Armenian government, a Special Commission was established to draft constitutional reforms enabling ratification of the Rome Statute. Yet, a year later, the President chose to disregard the proposed "ICC clause," and it was ultimately omitted from the constitutional reforms.²

Armenia's path toward the ICC gained renewed momentum following negotiations on the draft peace treaty **On the Establishment of Peace and Interstate Relations between the Republic of Armenia and the Republic of Azerbaijan**. A decisive moment came with the Constitutional Court's Decision No. 1680 of 24 March 2023, which found the ratification of the Rome Statute compatible with the Armenian Constitution.³ Armenia deposited its instrument of ratification on 14 November 2023 and officially became a State Party on 1 February 2024. Concurrently, Armenia retroactively granted the ICC jurisdiction starting from 10 May 2021, pursuant to Articles 12(3) and 11(2) of the Rome Statute. However, Armenia did not ratify the Kampala Amendments on the crime of aggression, nor did it sign the Agreement on Privileges and Immunities of the ICC⁴ (APIC), which facilitates cooperation between States and the Court.

Armenia's accession to the ICC was primarily driven by the desire to prevent further escalation and atrocities. Amid ongoing regional conflicts, the ICC was perceived as a mechanism capable of ensuring crime prevention and delivering impartial justice to support a peaceful resolution. In particular, the decision reflected Armenia's response to the renewed war with Azerbaijan and the blockade and assault against

¹ ICC 'The Stats Parties to the Rome Statute- Armenia' <https://asp.icc-cpi.int/states-parties/eastern-european-states/armenia#:~:text=Armenia%20signed%20the%20Rome%20Statute,Statute%20on%2014%20November%202023>, accessed on 6 February 2025

² Parliamentarians for Global Action 'Armenia and the Rome Statute' <<https://www.pgaction.org/ilhr/rome-statute/armenia.html>> last accessed on 6 February 2025

³ Europe in Law 'The 2023 Decision of the Armenian Constitutional Court on the Rome Statute' <https://ela.am/en/2023/07/28/the-2023-decision-of-the-armenian-constitutional-court-on-the-rome-statute/> Accessed on 6 February 2025

⁴ ICC 'Armenia joins the ICC Rome Statute' <https://www.icc-cpi.int/news/armenia-joins-icc-rome-statute> accessed on 6 February 2025

the *de facto* independent Nagorno-Karabakh⁵, which triggered a massive population displacement to Armenia.⁶

However, the mutual understanding reached between Armenia and Azerbaijan on the draft peace treaty has severely undermined the Armenian government's efforts to establish avenues for accountability⁷. Armenia's strategic reality—caught between maintaining relations with Russia and Azerbaijan while seeking support from Western partners—has been significantly altered. In an effort to avoid renewed war at any cost, the Armenian government largely accepted Azerbaijani terms, which explicitly reject any international involvement in bilateral relations or justice mechanisms. Nevertheless, the agreement has not yet been signed, despite repeated overtures by the Armenian Prime Minister to the Azerbaijani President.⁸ Given the historical volatility between the two countries, it is plausible that the agreement may not be implemented in the near future, if at all⁹.

This situation raises a critical question: should Armenia set aside the opportunity to engage the ICC and pursue justice for the region? Although Armenia continues to walk a geopolitical tightrope, often on the brink of renewed conflict, the draft treaty's provisions fundamentally disregard core international principles.

- **The incorporation of the Rome Statute's provisions into national law: a remaining obligation**

As a full-fledged State Party, Armenia committed to incorporating the Rome Statute into its national legislation. The ICC supported this process by organizing a workshop in August 2024 to enhance Armenian State institutions' understanding of the Statute¹⁰. On 2 December 2024, the President of the Assembly of States Parties visited

⁵ The Republic of Nagorno Karabakh is *de facto* independent from Azerbaijan since 1994, however this status has never been recognised by the international community ; see Freedom House 'Nagorno-Karabakh' <https://freedomhouse.org/country/nagorno-karabakh> accessed on 12 February 2025

⁶ Ministry of Foreign Affairs of the Republic of Armenia 'Meeting of the Foreign Minister of Armenia with the ICC President' https://www.mfa.am/en/press-releases/2024/12/02/Mirzoyan_ICC_SecGen/12974 accessed on 6 February 2025

⁷ CivilNet 'Pashinyan: Armenia's strategy is to prevent war' <<https://www.civilnet.am/en/news/814057/pashinyan-armenias-strategy-is-to-prevent-war/>> accessed on 13rd April 2025

⁸ The Armenian Report 'Pashinyan urges Aliyev to sign Peace Agreement' <<https://www.thearmenianreport.com/post/pashinyan-urges-aliyev-to-sign-peace-agreement>> accessed on 13rd April 2025

⁹ News.am 'Deputy Foreign Minister: One step forward- two steps back, this is Azerbaijan's policy' <<https://news.am/eng/news/873408.html>> accessed on 13rd April 2025

¹⁰ Europe in Law 'Workshops for the Key Actors within Armenian State Institutions on the Substantive and Procedural Law of the International Criminal Court' <<https://ela.am/en/2024/08/26/workshop-for-the-key-actors-within-armenian-state-institutions-on-the-substantive-and-procedural-law-of-the-international-criminal-court/>> accessed on 10 February 2025

Armenia to discuss cooperation frameworks with the ICC. It has been noted that a draft law¹¹ on cooperation with the ICC is currently under preparation.

However, this process should be treated as a top priority by both the Government and Parliament to demonstrate Armenia's credibility as a State Party that fully endorses and acknowledges its obligations following ratification. Furthermore, to effectively trigger ICC jurisdiction, facilitate proper investigations, and eventually enable prosecutions, Armenia must establish national procedures to operationalize cooperation with the Court. Without such legislation, any referral to the ICC—such as a case concerning Azerbaijan—risks being undermined by Armenia's inability to respond adequately to the Court's requests.

Whether the delay stems from a lack of political will or from the complexity of understanding the Rome Statute, the Armenian government must prioritize the legislative process, accelerate its adoption, and establish a close working relationship with the ICC Registry. This will be crucial to ensuring the best possible implementation of the Rome Statute's provisions within Armenia's domestic legal framework.

2. CAUSES AND CONSEQUENCES OF ARMENIA'S (IN)ACTION TOWARDS A REFERRAL

As demonstrated above, Armenia, now being a full-fledged ICC State Partie, can simply refer a case to the Prosecutor, who will then analyse it and decide to take further action on it or not. Therefore, the mere referral to the ICC is a pure and simple administrative matter, before entering into the consideration of the Prosecutor's assessment for the opening of a case, the launch of prosecution and the type of judgement that could be rendered. However, and despite the Armenian rationale to ratify the Rome Statute, no referral has been placed after a year.

A. Peace negotiation and external pressures

i. Russia

Armenia has been an official ally of Russia since its independence, maintaining military ties through the Collective Security Treaty Organization (CSTO) and economic ties through the Eurasian Economic Union and the Commonwealth of Independent States (CIS). However, Russia's non-assistance during the 2022 war and the subsequent Nagorno-Karabakh crisis, combined with its close relations with Azerbaijan and endorsement of anti-Armenian narratives, has prompted Armenia to gradually distance itself from its traditional partner¹².

¹¹ Ministry of Foreign Affairs of The Republic of Armenia 'Meeting of the Foreign Minister of Armenia with the President of the Assembly of States Parties to the ICC' < https://www.mfa.am/en/press-releases/2024/12/02/Mirzoyan_ASP/12978 > accessed on 10 February 2025

¹² Carnegie Russia Eurasia Center 'Armenia navigates a path away from Russia' <https://carnegieendowment.org/research/2024/07/armenia-navigates-a-path-away-from-russia?center=russia-eurasia&lang=en> accessed on 10 February 2025

Alongside its accession to a Western-oriented international organization, Armenia's ratification of the Rome Statute — under which the Russian President is subject to an ICC arrest warrant for alleged core international crimes¹³ — was perceived by Russia as an 'unfriendly step.' The Armenian Prime Minister attempted to reassure Russia by emphasizing that Armenia's move was intended solely to address war crimes committed by Azerbaijan, and that it did not intend to implement the ICC arrest warrant should President Putin visit Armenia.¹⁴

Nevertheless, Armenia's current strategy raises significant risks. First, Armenia is distancing itself from Russia — a partner notoriously resistant to change — without having secured sufficient protection or support from other powers. Second, ICC membership cannot be treated 'à la carte,' selectively implementing obligations based on political convenience.

The obligation to cooperate fully with the ICC is essential for the Court's effectiveness, given that it lacks its own enforcement mechanisms. The ICC does not adjudicate cases in absentia; thus, without State Parties' cooperation in bringing accused individuals into custody, the Court is unable to uphold international justice.¹⁵

The ICC has previously condemned State Parties for failing to meet these obligations, notably South Africa's failure to arrest Omar Bashir¹⁶, followed later by Jordan¹⁷. In the case of Putin arrest warrant, Mongolia has recently been demonstrated the wrongness of its decision. In particular, it emphasised the special status of the Court, being '*independent of States, impartial and [acting] in the general interest of the international community*'.¹⁸ Thus, pre-existing bilateral obligations between Mongolia and Russia to respect the head of State immunity, did not remove its Rome Statute's obligations. The ICC considers itself above these considerations due its mandate of exercising '*jurisdiction on grave crimes of international concerns that threaten peace and security of States Parties and the international community as a whole*'.¹⁹ Other international laws applying to States, such as the 1961 Vienna

¹³ ICC 'Situation in Ukraine : ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyvna Lvova-Belova' <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> accessed on 10 February 2025

¹⁴ France 24 'Armenia joins International Criminal Court, Moscow decries 'unfriendly step'' <https://www.france24.com/en/asia-pacific/20240201-armenia-joins-international-criminal-court-moscow-decries-unfriendly-step> accessed on 10 February 2025

¹⁵ European Society of International Law 'ESIL Reflection-The ICC and in-absentia proceedings-Finding a response to the difficulties of executing arrest warrants' <https://www.france24.com/en/asia-pacific/20240201-armenia-joins-international-criminal-court-moscow-decries-unfriendly-step> accessed on 10 February 2025

¹⁶ ICC PTC II Situation in Darfur, Sudan in the case of the Prosecutor v Omar Hassan Ahmad Al-Bashir 'Decision under article 87(7) of the Rome Statute on the non-compliance by South Africa with the request by the Court for the arrest and surrender of Omar Al-Bashir' 6 July 2017 ICC-02/05-01/09

¹⁷ ICC PTC II Situation in Darfur, Sudan in the case of the Prosecutor v Omar Hassan Ahmad Al-Bashir 'Decision under article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender of Omar Al-Bashir' 11 December 2017 ICC-02/05-01/09

¹⁸ ICC PTC II 'Non-compliance by Mongolia arrest and surrender of Putin' 24 October 2024 ICC-01/22, §30

¹⁹ Ibid, §28

Convention on Diplomatic Relations, analogically does not apply to the Court, as much as the articles 27(2) and 98(1) of the Rome Statute providing for the consideration of States immunity and pre-existing obligations, do not apply in this context.

Beyond public criticism, Mongolia faces formal consequences²⁰, as its failure to cooperate was referred to the Assembly of States Parties (ASP). Potential sanctions include a formal warning, the loss of the right to nominate candidates for ICC positions, temporary suspension of voting rights in the ASP, or the imposition of administrative fines. By pursuing a "half-in, half-out" approach, Armenia risks exposing itself to similar sanctions. Moreover, this strategy projects an image of inconsistency and partiality in the international judicial system, undermining Armenia's credibility. It may also partly explain why, despite Armenia's precarious position — caught between Russian pressure, Western silence, and internal hesitation to initiate a case against Azerbaijan — the international community has thus far refrained from referring the situation to the ICC.

ii. Peace negotiation with Azerbaijan

Before the peace treaty

Until recently, Armenia remained free from any binding peace agreement following its accession to the ICC. On 14 March 2025, however, the peace negotiations took a decisive turn, culminating in an agreement on the terms of a draft peace treaty. Although this development has weakened Armenia's position in relation to the ICC, it is important to understand the earlier Armenian hesitation regarding a potential referral of a case against Azerbaijan.

First, initiating proceedings could have triggered an escalation of armed conflict, at a time when Armenia lacked solid international support. Second, even absent immediate escalation, such a move would have likely stalled, if not entirely derailed, the ongoing peace negotiation process.

From the Peace treaty

Now, the Armenian government's hands are tight due to the mutual agreement on the remaining troublesome provisions concerning the implications of international mechanisms. It seems that Armenia finally gave up on its reluctance related to these terms in order to encourage regional peace, as promoted by the international community. This 'sacrifice' might be honourable, however, this is not justified by the reality of Armenia's obligations to the ICC and its obligations towards its citizens. On one side, it is pragmatically understandable that Armenia needs a sustainable and lasting peace at its borders to be able to focus on an internal agenda. Yet, peace can neither be brokered at the expense of Armenians' interests nor without the restoring of justice and accountability for crimes previously committed. On the other hand, and from an objective stance, the sustainable peace and stability desperately needed by Armenia cannot be achieved in those terms. No fair peace agreement

²⁰ ICC Assembly of States Parties 'Report of the Bureau on non-cooperation' 23rd session 5 December 2024 ICC-ASP/23/31

would impose conditions that are inherently against the purpose of a peace agreement. Objectively, no peace can arise and be built on impunity, lack of commitment and hatred.

B. The draft peace agreement, a turning point in an Armenian referral to the ICC?

As mentioned above, the Armenian government could have referred a case to the ICC, a year before the agreement on the draft peace treaty, and did not use this occasion for the reasons exposed beforehand. Therefore, the fact that the draft agreement prevents any implication of international mechanism on the Armenia-Azerbaijan relationship does narrow down the field of possibilities for a referral to the ICC without having too big of an impact on the Armenian government reality. In addition of the risks of escalation following a referral, an accent needs to be objectively made on the imagined key role the ICC could have played in this situation.

▪ Considerations around the temporal jurisdiction of the ICC

The Rome Statute entered into force on 1 July 2002, meaning that crimes committed before this date, even if they would otherwise fall within the Court's material jurisdiction, cannot be prosecuted or adjudicated by the ICC. For a new State Party, the Statute enters into force on the first day of the month following 60 days after the deposit of the instrument of ratification. In Armenia's case, the Rome Statute officially entered into force on 1 February 2024. However, Armenia invoked Article 12(3) of the Statute to retroactively extend the Court's jurisdiction to cover crimes committed from 10 May 2021 onwards. This decision raises important questions, as the selected retroactive date does not encompass all relevant recent conflict developments.

First, it is evident that the Rome Statute does not permit investigation or prosecution of core international crimes committed during the First Nagorno-Karabakh War (1988–1994), despite the scale of the conflict, which resulted in approximately 30,000 casualties over six years.²¹

Second, significant incidents occurred prior to 10 May 2021, including drone attacks, shelling, and special operations conducted by both sides. For example, in April 2016, hundreds of casualties were reported during four days of intense fighting along the border. Moreover, from September 2020, violations of the Bishkek Protocol escalated, culminating in a six-week war that caused around 7,000 military and civilian deaths, fuelled by the use of heavy weaponry and long-range artillery. This conflict ended with a peace agreement brokered by Russia on 9 November 2020.²²

²¹ BBC 'Nagorno-Karabakh profile' < <https://www.bbc.com/news/world-europe-18270325> > accessed on 10 February 2025

²² Global Conflict Tracker 'Nagorno-Karabakh Conflict' < <https://www.cfr.org/global-conflict-tracker/conflict/nagorno-karabakh-conflict> > accessed on 10 February 2025

In particular, Armenia decided on the 10 May 2021 for the jurisdiction of the Rome Statute, as it considered this date was the first notable military escalation since the trilateral statement.²³ Thus, the ICC has jurisdiction over the events of September 2022 which killed hundreds of persons, and when Azerbaijan launched attacks on several locations inside the Armenian territory which led to the evacuation of 2700 civilians. At the end of these borders' clashes, the peace negotiation process started.²⁴

Two critical issues arise from this situation.

- First, the date selected by the Armenian government does not capture all recent conflict-related developments that could fall under the ICC's jurisdiction. At a minimum, Armenia should have extended jurisdiction back to April 2016—or earlier, if warranted by additional evidence. This omission could be easily remedied by submitting a further declaration under Article 12(3) of the Rome Statute to expand the temporal scope.
- Second, although the atrocities committed during the First Nagorno-Karabakh War fall outside the ICC's jurisdiction, Armenia should nonetheless take steps to address these crimes through alternative mechanisms, in order to combat impunity and promote accountability.
 - **Armenia unable or unwilling to investigate or prosecute? The principle of complementarity**

The draft peace treaty does not affect several pre-existing limitations to an Armenian referral, which are rooted in the ICC's procedural framework. One of the key admissibility criteria, first assessed by the Prosecutor and later by the Pre-Trial Chamber when considering whether a situation may proceed to preliminary investigation, is the "unable or unwilling" standard under Article 17 of the Rome Statute. This raises the question of whether Armenia could be considered unable or unwilling to prosecute individuals — whether Azerbaijani or Armenian — responsible for core international crimes.

Armenia cannot be deemed unwilling to prosecute, given the significant steps it has taken to accede to the ICC in response to its pressing need to restore justice in the region. As for the question of ability, Armenia currently has an established government elected through democratic processes, and a functioning judiciary, despite persistent challenges such as corruption. Therefore, Armenia cannot reasonably be considered either unwilling or unable to genuinely investigate and prosecute core international crimes.

Moreover, one of the fundamental principles of the ICC is complementarity: the Court does not replace national jurisdictions in the investigation and prosecution of

²³ OpinioJuris 'Armenia as the' 124th Member to the Rome Statute'

<<http://opiniojuris.org/2023/09/22/armenia-as-the-124th-member-to-the-rome-statute/>> accessed on 10 February 2025

²⁴ Global Conflict Tracker, Supra 23

international crimes but intervenes only when States are unwilling or unable to act. In this context, it would be more proportionate for Armenia to seek cooperation and support from the ICC to strengthen its capacity to conduct investigations and prosecutions in accordance with international standards, rather than relying on the Court to assume direct jurisdiction.

▪ **The 2nd Nagorno-Karabakh war: under the ICC jurisdiction?**

Another critical aspect of the Azerbaijan-Armenia conflict concerns the territorial dispute over Nagorno-Karabakh. The second Nagorno-Karabakh war is fresh in the memories and requires justice to be served as well as accountability holding. The six weeks of bloody armed conflict killing thousands of militaries and hundreds of civilians,²⁵ the blockade of the Lachin corridor in December 2022 and the 19 September 2023 Azerbaijan's offensive causing 200 deaths and alleged war crimes and crimes against humanity,²⁶ are events that require proper judicial proceedings to prevent impunity and set the ground for peacebuilding in the region. However, all the atrocities committed around it do not fall under the jurisdiction of the ICC, as the alleged crimes were neither committed within the territory of a State Partie nor by a national of a State Partie.

The key far-fetched element that could trigger the ICC jurisdiction is the massive displacement of 100 000 ethnical Armenians from Nagorno-Karabakh to Armenia.²⁷ The ICC already made this interpretation in the case of Myanmar. It found that the deportation and persecution on grounds of ethnicity against the Rohingya population amounted to crimes against humanity. The ICC considered it under its jurisdiction, as the crime partly occurred on the territory of a State Partie (Bangladesh) with the arrival of a high number of displaced persons.²⁸

Justice cannot be considered achieved unless the events surrounding the second Nagorno-Karabakh war are thoroughly investigated and prosecuted. Accordingly, the Armenian government and civil society organizations must work to build a strong legal case, while also preparing for the possibility that the ICC may ultimately decline jurisdiction.

Even if Armenia were to refer a case to the ICC, significant limitations to achieving comprehensive justice would likely remain. Justice cannot be considered fair or complete if only isolated parts of a conflict are adjudicated. Given the inherent constraints of the ICC—such as geographic distance, prolonged procedural timelines, and the lack of its own enforcement mechanisms—any ICC referral would need to be complemented by additional processes to ensure sustainable peace and accountability.

²⁵ International Crisis Group 'The Nagorno-Karabakh Conflict : A visual Explainer' < <https://www.crisisgroup.org/content/nagorno-karabakh-conflict-visual-explainer> > accessed on 10 February 2025

²⁶ Global Conflict Tracker, Supra 23

²⁷ The Government of the Republic of Armenia '99.2 percent of forcibly displaced persons from Nagorno Karabakh have been registered' < <https://www.gov.am/en/news/item/10388/> > accessed on 10 February 2025

²⁸ ICC 'Situation in the People's Republic of Bangladesh/ Republic of the Union of Myanmar' < <https://www.icc-cpi.int/sites/default/files/itemsDocuments/QandA-bangladesh-myanmar-eng.pdf> > accessed on 10 February 2025

3. DRAFT TREATY COMPLIANT MECHANISM FOR PEACE

Peace, accountability and justice principles have been controversially addressed in the draft Treaty 'On the establishment of Peace and Interstate Relations between the Republic of Armenia and the Republic of Azerbaijan'. The mechanisms discussed below represent different avenues for Armenia to engage into a genuine peace process, including justice and accountability. Technically, they comply with the terms of the draft agreement of not engaging with international courts and mechanisms. In fact, Armenia's options are limited to the terms for 'peace' dictated by Azerbaijan.²⁹ The accomplishment of those core principles, fundamental for building a sustainable peace, are disregarded. Azerbaijan through the peace treaty is making a mockery of well-established international principles, and the needs of the local communities. Armenia is standing on its position, to seek peace at almost all costs³⁰, based on the immediate threat of escalation and armed conflict at its borders, and the international community's wish for regional peace to develop partnerships. However, the implications of such terms are not tolerable for Armenia, which lately made effort to join the ICC, engaging in a democratisation transition. Those terms contravene with prior commitments taken both by Armenia and Azerbaijan in regard to the ECHR, including the obligations of the Armenian's state to represent the interest of its citizens in front of international courts and mechanisms, as the peace treaty foresees the withdrawal of international lawsuits filed against Azerbaijan and remove European Union monitors from the Armenian-Azerbaijani borders.³¹ Consequently, the peace treaty as it is, is unbearable for the Armenian government for three reasons: those are not the appropriate conditions for a long-lasting peace, rather a masquerade. The government shall not forget the interests and rights of its citizens as well as it should not dismiss its obligations towards international mechanisms stemming from its membership to them. As this type of accountability and justice mechanisms are insufferable for Azerbaijan, and taking into account the current regional context, locally based processes and tools could palliate the void created by impunity lasting for decades.

A. Transitional justice

- The principle

One process that may contribute to peacebuilding between Armenia and Azerbaijan is transitional justice. As its name indicates, its purpose is to assist a societal transition from conflict to peace. Transitional justice encompasses the shift from a security-oriented reality to democracy, rule of law and human rights, a reality

²⁹ EU News 'Armenia and Azerbaijan agree on the terms of a peace treaty' <<https://www.eunews.it/en/2025/03/14/armenia-and-azerbaijan-agree-on-the-terms-of-a-peace-treaty/>> accessed on 13rd April 2025

³⁰CivilNet, Supra 7

³¹ Azatutyun.am 'Armenian proposal to sign peace Deal 'still nit accepted by Baku' <<https://www.azatutyun.am/a/33357617.html>> accessed on 13rd April 2025

enabling internal progresses.³² In this case, peace is obtained through the mutual adhesion to fundamental values and norms.³³ Besides, this transition should take place on three levels: *legally, morally and practically*. Indeed, this transition can only succeed and lead to peace with the components of justice and reconciliation, materialised into the application of a transitional justice agenda.³⁴ For this process to work, it needs to be owned by the communities as well as made specifically to address the contextual issues and victims' needs.³⁵

However, transitional justice inevitably touches deeply rooted traumas, emotions, values, and principles. This makes its implementation particularly sensitive and often the subject of intense debate.

- In practice

First, the disparity between communities' needs and the reality on the ground often creates significant tensions. Populations deeply affected by conflict frequently lack the resources and expertise necessary to initiate a transitional justice process. This is the reason why the intervention of international mechanisms or experts shall be considered by the communities and their governments.³⁶

Second, disagreements often arise around how best to address the needs of communities and the difficult path toward peace. In particular, affected populations typically prioritize justice—specifically, the desire to see individual responsibility assigned to perpetrators of crimes. Individualized justice can be instrumental in fostering a more positive image of the "enemy," by distinguishing between guilty individuals and the broader population.³⁷ Nevertheless, the threat of punishment can serve as a major obstacle to truth-telling. Consequently, some communities offer amnesties to perpetrators in exchange for the disclosure of truth. Yet such measures are often perceived as a betrayal by victims, as they allow perpetrators to evade justice despite having committed serious crimes. Therefore, it is important to emphasise the complementarity of justice, reconciliation and peace. These elements may not be pursued simultaneously, but must instead be carefully sequenced over time.³⁸

³² EVN Report 'Transitional Justice Agenda for the Republic of Armenia' <https://evnreport.com/readers-forum/transitional-justice-agenda-for-the-republic-of-armenia/> accessed on 13rd April 2025

³³ UNHRC Thematic Paper 'Peacebuilding, sustainable peace and transitional justice' <https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/4_ohchr_thematic_paper_on_transitional_justice.pdf> accessed on 13rd April 2025

³⁴ EVN, Supra 33

³⁵ OHCHR 'Transitional justice and human rights' <<https://www.ohchr.org/en/transitional-justice>> accessed on 13rd April 2025

³⁶ EVN, Supra 33

³⁷ Eirin Mobekk 'Transition Justice in Post-Conflict Societies- Approached to Reconciliation' <https://www.bmlv.gv.at/pdf_pool/publikationen/10_wg12_psm_100.pdf> accessed on 13rs April 2025, pp 272, 279, 281

³⁸ Dorota Giervcz 'Transitional Justice- Does it help or does it harm?' <https://www.files.ethz.ch/isn/57381/737.pdf> accessed on 13rd April 2025

- The Azerbaijan- Armenian reality

In addition, the involvement of both parties in addressing the legacy of the conflict is essential, as mutual adherence to fundamental principles is a prerequisite for lasting peace. However, considering the current relationship between Armenia and Azerbaijan, and their foreseen path toward peace amount at best to ‘negative peace’, meaning an absence of hostilities. The establishment of a sustainable peace requires to build a positive peace, including ‘linkages ties, and sentiments that render the use of military force either untenable or unfathomable.’³⁹ To palliate the lack of commitment from Azerbaijan to sustainable peace, Armenia should, for the time being, launch actions that would benefit the communities, such as individual reconciliation, which would equate for the communities to live similarly as they did before the conflict without negative feelings.⁴⁰ Besides, few years ago, the Armenian government already started to operate within the transitional justice framework following the velvet revolution, and the end of the Russian influenced Armenian government. It established a fact-finding commission to investigate the human rights violations committed between 1991 and 2018. Despite the fact that this transitional measure did not come to any conclusion, this could serve as a basis for a similar mechanism to investigate core international crimes committed from 1988 to 2023. In parallel, the Armenian National Assembly formed commissions of inquiry to investigate the four-day war in April 2016 and the forty-four-day war in 2020, whose mandate is hampered by the lack of access to the relevant territories and the lack of cooperation of Azerbaijan. Nonetheless, Armenia would benefit from a specialized autonomous truth-seeking mechanism, established in consultation with the civil society and victims.⁴¹ At a later stage, it would also be wise for the government to start thinking about reparations. It already has been granted to family of deceased soldiers, injured soldiers and the affected population. Yet, these reparations are only the first layers of full-fledged reparations attributed to all victims of human rights violations and core international crimes.⁴²

B. Hybrid tribunals

Hybrid tribunals or courts could be the implementation of the justice component of the transitional justice but could also be established independently. In the case in which Armenia does not want to investigate and prosecute in its national procedures, for the different reasons mentioned in this paper, without external support the crimes committed during the war(s) with Azerbaijan, it exists a halfway between national and international proceedings. This configuration was already put

³⁹Parley Policy Initiative ‘The six fundamental tasks in Peacebuilding’
<<https://www.parleypolicy.com/post/the-six-fundamental-tasks-in-peacebuilding>> accessed on 13rd April 2025

⁴⁰ Mobekk, Supra 38, p263

⁴¹ UNGA Human Rights Council 57th session ‘Visit to Armenia: Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence’ A/HRC/57/50/Add.2, §8-11

⁴² Ibid SR report, §23

into practice three times: the Extraordinary Chambers in the Courts of Cambodia⁴³, the Special Tribunal for Lebanon⁴⁴, the Special Court for Sierra Leone.⁴⁵

	Cambodia	Lebanon	Sierra Leone
Part of the national judiciary	Part of the national judiciary, as an independent entity	Not part of the national judiciary	Not part of the national judiciary, but national legal component
Law applied	National and International law	National law	National and international law
Composition of judges and prosecutors	1 national and 1 international prosecutor Majority of national judges	Mix judges	Mix judges
Diverse	N/A	Located in the Hague	The truth and Reconciliation commission and the Court operated simultaneously in search for post conflict justice

Table 1 Comparison of the judicial hybrid mechanisms against core international crimes

The hybrid format of these special tribunals/courts could be inspirational for Armenia, as they have been tailored made to the national situation and interests. However, it has to be noted, that all three tribunals/ courts were made possible with the signature of a UN agreement, which is unlikely in the case of Armenia, with Russia as a permanent member of the UN Security Council. However, further inspiration could stem from the situation in Ukraine, as the main Russian obstacle remains, and dispositions have been taken to supersede it. The Council of Europe took step to prevent impunity in the Ukraine situation, and negotiations are currently taking place for the international community to decide on the format of the judicial mechanism that will be in charge of investigating and prosecuting core international crimes committed by both parties during the war.⁴⁶

⁴³ Extraordinary Chambers in the Courts of Cambodia 'Judicial processes' < <https://www.eccc.gov.kh/en/about>> accessed on 10 February 2025

⁴⁴ UN News 'Justice served: Lebanon's Special Tribunal closes' < <https://news.un.org/en/story/2023/12/1145217>> accessed 10 February 2025

⁴⁵ International Criminal Law Services 'International, hybrid and national courts trying international crimes' < <https://iici.global/wp-content/uploads/2024/02/icls-training-materials-sec-4-intl-courts.pdf>> accessed on 10 February 2025

⁴⁶ Register for Damages for Ukraine 'Final Preparatory Meeting on a Claims Commission for Ukraine held in the Hague- Formal Treaty Negotiations to start in March' < <https://www.rd4u.coe.int/en/-/final-preparatory-meeting-on-a-claims-commission-for-ukraine-held-in-the-hague-formal-treaty-negotiations-to-start-in-march>> accessed on 10 February 2025

C. Universal jurisdiction

Universal jurisdiction allows States to prosecute perpetrators of international crimes regardless of the location where the crimes were committed. It departs from the principle that any core international crime is of interest for every state as it is violating the international judicial order and an 'offence against all humankind'.⁴⁷ In the hypothesis that Armenian CSOs quietly advocate the matter to state known for their implication with universal jurisdiction, this accountability process would fit with the draft peace treaty, as a State does not endorse *strico sensu* the international component rejected by the draft, especially if the advocacy work is solely done by the CSOs.

For example, the German- Armenian Lawyers Association has already submitted criminal complaints to the German Federal Prosecutor General concerning crimes committed during the 2020 war.⁴⁸ However, this is at the Prosecutor discretion to launch investigation.

This principle is another alternative to all the complications interrelated to an Armenia referral to the ICC. Nonetheless, it means that the alleged perpetrators, will be prosecuted under legislations and processes not previously approved/ratified by the Armenian Government and Parliament. In addition, the crimes will be considered under a national perspective which may not bring the full satisfaction to the victims, who geographically and culturally are distant from the investigating and prosecuting country.

4. CONCLUSIONS

At the time of the agreement on the draft peace treaty, Armenia had been a State Party to the ICC for a year but had yet to take any concrete action. While many factors may explain this stagnation, they do not justify the government's inaction in the field of accountability. By joining the ICC, Armenia pledged, on one hand, to comply with the obligations stemming from the Rome Statute and to assist the Court in fulfilling its mandate. This includes incorporating the Rome Statute's provisions into national law, executing Court orders such as the arrest warrant against President Putin, and adjudicating any core international crimes committed on its territory or by its nationals.

⁴⁷ Trial International 'Universal Jurisdiction' < <https://trialinternational.org/topics-post/universal-jurisdiction/> > accessed on 10 February 2025

⁴⁸ Gurgen Petrossian 'Why Armenia is not referring the situation to the ICC' Verfassungsblog <https://verfassungsblog.de/why-armenia-is-not-referring-the-situation-to-the-icc/> last accessed on the 6th February 2025, referring to the Deutsch-Armenischen Juristenvereinigung e.V 'Ergänzung zur Strafanzeige beim Generalbundesanwalt in Karlsruhe wegen Kriegsverbrechen gegen Personen im Zusammenhang mit dem bewaffneten Konflikt um Berg-Karabach' <https://dearjv.de/ergaenzung-zur-strafanzeige-beim-generalbundesanwalt-in-karlsruhe-wegen-kriegsverbrechen-gegen-personen-im-zusammenhang-mit-dem-bewaffneten-konflikt-um-berg-karabach/> last accessed on the 6th February 2025

On the other hand, by ratifying the Rome Statute, Armenia sent a clear political signal to its historical partners of its intention to distance itself. Yet, in an attempt to ease tensions, the Armenian Prime Minister promptly reassured President Putin that Armenia would not enforce the ICC warrant should he visit Armenian territory. Despite external pressures, Armenia cannot treat the Rome Statute obligations 'à la carte.' It cannot simultaneously seek international support for its regional challenges while disregarding other fundamental international obligations. Positioned between competing pressures, Armenia risks alienating partners on both sides, discrediting itself, and exposing itself to potential sanctions from the ICC.

The draft peace agreement, with its clauses regarding regional accountability, further complicates Armenia's already hesitant efforts to ensure justice. Yet it must be emphasized: the draft treaty remains only a draft. It may or may not be signed in the short or long term and does not foreclose all pathways toward a sustainable peace.

Transitional justice represents one such pathway—an approach that could be implemented bilaterally between Armenia and Azerbaijan without the involvement of international actors, in line with the draft treaty's requirements. However, like any genuine peacebuilding mechanism, transitional justice demands a sincere commitment from both parties. Here lies Armenia's dilemma: whether to reject the draft treaty and pursue international mechanisms for justice or to invest in a bilateral process that may lack true commitment from Azerbaijan.

Either way, the Armenian government must take a clear position and act decisively to end the era of impunity.

In the first scenario, if the government concludes that the draft treaty offers no real prospect for lasting peace—and may even serve as a platform for further demands or accusations—Armenia should fully assert its rights and obligations under international mechanisms.

In the second scenario, if Armenia decides to bet on the fragile but existing possibility of peace and prioritize avoiding renewed escalation, it should not wait for Azerbaijan to initiate change. Instead, Armenia must begin the transition from a conflict-affected society to a peaceful and prosperous one on its own terms.

In any case, the Armenian government cannot abdicate its responsibility to ensure justice and accountability for its citizens, nor can it deny its commitments to uphold international principles and pursue accountability for core international crimes.

Annex 1- The path of a State Party's referral to the ICC

The referral of a case to the ICC by Armenia remains legally and technically an option, which is why it is necessary to understand the mechanism of such referral, and the potential obstacle Armenia encountered for last year. In order to secure the ICC's jurisdiction several steps need to be completed, which themselves encompass the fulfilment of many criteria. Once a situation is referred to the ICC through one of the three trigger mechanisms, the Office of the Prosecutor accomplish an examination of the information at hand. Then, if the Prosecutor is convinced that there is reasonable basis to go further with proper investigation, s/he will apply for an authorisation to the Pre-Trial Chamber. In the case the Pre-Trial Chamber is convinced by the situation's compliance with the jurisdiction and admissibility criteria, it may grant the authorisation for investigation to the Office of the Prosecutor.

1. The triggering of the ICC's jurisdiction

There are three different possibilities to trigger the ICC's jurisdiction. First, a State's referral, which entails the referral⁴⁹ by a State Partie for alleged crimes that took place on its own territory or the territory of another State Partie; or the alleged crimes have been committed by a national of the State's referee or a national of another State Partie (Articles 13(a) and 14 RS).

The second option is the UN Security Council's referral (art. 13(b) RS), which acting under the Chapter VII of the UN Charter "*Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression*", refers the situation of any country to the Prosecutor. This only occurred in two occasions: Darfur (Sudan)⁵⁰ and Libya⁵¹.

The third possibility consists of the Prosecutor own initiative '*proprio motu*', to start a preliminary examination into alleged crimes that ought to have taken place on the territory of a State Partie or committed by a national of a State Partie, or on the territory or by a national of non-State Partie that has consented to the ICC's jurisdiction (Articles 13(c), 15, 12(3) RS).

2. The Prosecutor's preliminary analysis

The Prosecutor has, then, the duty to determine if the situation answers the criteria of temporality, territoriality, subject and personal jurisdiction. Following the analysis, if the Prosecutor comes to the conclusion that there is reasonable basis to proceed with an investigation, s/he shall submit a request, to the Pre-Trial Chamber, for an authorisation to pursue with an investigation (Articles 15(2) and 15(3) RS).

⁴⁹ Rule 45 of the Rules of Procedure and Evidence indicates that 'A referral of a situation to the Prosecutor shall be in writing.'

⁵⁰ Resolution 1593 (2005)

⁵¹ Resolution 1970 (2011)

- Temporal jurisdiction

The ICC only has jurisdiction over crimes committed after the entry into force of the Rome Statute, on 1 July 2002⁵², or at the date of the Rome Statute's entry into force for the State (on 1 February 2024 for Armenia). However, Armenia lodged a declaration with the Registrar conferring the ICC with jurisdiction over events that occurred from 1 May 2021.⁵³

- Territorial jurisdiction

The territorial jurisdiction of the ICC is limited to the crimes that occurred on the territory of or perpetrated by the national of one of the States Parties, or the territory on a non-State Parties if it lodged a declaration with the Registrar (Article 12(3) RS) or the territory of the State referred by the UN Security Council.⁵⁴

- The crimes under the ICC jurisdiction

The Rome Statute confers jurisdiction to the ICC over four core international crimes: crimes against humanity, war crime, genocide and aggression (Article 5 RS). However, the latter is limited by the provisions of the 2010 Kampala amendment, which entered into force on 17 July 2018. In particular, the crimes may fall under the ICC jurisdiction, if the crime of aggression occurred on the territory of a State Partie that has not lodged a declaration of withdrawal⁵⁵ and if the crime is committed by a national of a State Partie. Currently, 47 States⁵⁶ have ratified the Kampala amendment, which entered into force for them after one year from the ratification's day.⁵⁷

- Personal jurisdiction

The ICC can only investigate and prosecute natural persons, meaning individuals, who are the most responsible for the crimes (Article 25 RS).

- The Prosecutor's admissibility assessment

⁵² ICC 'How the Court works' <https://www.icc-cpi.int/about/how-the-court-works> accessed on 7 February 2025

⁵³ Article 11 RS

⁵⁴ Article 12(2) RS

⁵⁵ This is the case of Kenya and the Republic of Guatemala (see ICC 'Resource library' <https://www.icc-cpi.int/resource-library#> accessed on 7 February 2025)

⁵⁶ UN Treaty Collection https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-10-a&chapter=18&clang=en accessed on 7 February 2025

⁵⁷ Opinio Juris 'The Kampala Amendments on the Crime of Aggression Before Activation : Evaluating the Legal Framework of a Political Compromise (Part 1) <http://opiniojuris.org/2017/09/29/the-kampala-amendments-on-the-crime-of-aggression-before-activation-evaluating-the-legal-framework-of-a-political-compromise/> accessed on 7 February 2025

The ICC does not purport to replace national jurisdictions, rather to be a **complementary** mechanism (Article 1 RS). The investigation and prosecution of core international crimes is primarily a national competence. The ICC's mandate to prevent impunity for core international crimes, prescribes the Office of the Prosecutor to cooperate with State Parties. The ultimate indicator of ICC's success will definitely reside in the few/ no case in the Court's backlog. This cornerstone principle also find ground in the fact the ICC would not be able to adjudicate all the core international crimes falling under its jurisdiction.

Cooperation between the ICC and State Parties is reciprocal, meaning that upon the Rome Statute ratification, the States Parties commit to cooperate with the Court to assist it completing its mandate (Chapter IX Rome Statute), and reciprocally the Rome Statute (Article 93(10) RS), provides for direct assistance and advice from the ICC towards the States Parties (i.e information and evidence, technical advice, training etc.)

Nonetheless, if a State Partie is believed to be **unable or unwilling** to **genuinely** carry out investigation or prosecution, the situation may fall under ICC's jurisdiction (Article 17(1a) RS). A State is considered unwilling when the proceedings undertaken aim only at shielding the person, when there is an unjustified delay in the proceedings, or the proceeding are not conducted independently or impartially (Article 17(2) RS). A State is considered unable when the national judicial system totally or substantially collapsed or is unavailable (Article 17(3) RS).

In addition, the Rome Statute provides for a criterion of **gravity** of crime to secure the admissibility of the case (Article 17(1d) RS). The Prosecutor may look at the scale, the nature, the manner and the impact of the crimes.⁵⁸

Lastly, the Prosecutor has an obligation towards his office, and thus needs to assess whether the investigation of the situation is in the **best interest of justice** (Article 53 RS).

3. Likelihood of prosecutions and outcomes

A. The Prosecutor preliminary examinations

Following the triggering of the ICC jurisdiction, the Office of the Prosecutor launches preliminary examinations of the elements at hand and has to decide whether the case is admissible according to the complementarity principle, unable/unwilling criteria, gravity and the interest of justice (Article 15(3) RS).

⁵⁸ Center for International law- National University of Singapore 'Gravity at the International Criminal Court : An introduction' < <https://cil.nus.edu.sg/blogs/gravity-at-the-international-criminal-court-an-introduction/#:~:text=The%20various%20indicators%20of%20gravity,the%20crimes%2C%20have%20been%20applied> > accessed on 7 February 2025

In this first phase, the Office of the Prosecutor has the competence to not pursue with the case, based on its own examination without justification (Article 15(6) RS). Considering all the elements previously mentioned, this is unsure whether a referral to the ICC will turn into an official ICC investigation.

B. The Prosecutor's request to the Pre-Trial Chamber to authorise investigations

In the hypothesis in which the examination of the case by the Office of the Prosecutor ends up positively, the Prosecutor needs to request the authorisation to the Pre-trial chamber to launch an official investigation on the situation.

Article 15(4) and 15(5) of the Rome Statute provides for the request's examination. If the Pre-Trial Chamber considers that there is a reasonable basis to proceed with an investigation and that the case falls under the ICC's jurisdiction, the Pre-trial Chamber may authorise the investigation. In the case in which the two elements do not satisfy the Pre-Trial Chamber, the Office of the Prosecutor cannot proceed with an investigation. This does not prevent the Office of the Prosecutor to lodge a new request based on new facts or evidence.

For example, in 2019 the Office of the Prosecutor submitted a request to the Pre-Trial Chamber concerning its analysis of the situation in Afghanistan. The latter refused to give the Office of the Prosecutor the authorisation to launch investigation, as it would have been against the interest of justice. This principle here included the lack of cooperation from the State, which would have diminished the chances of a successful investigation and prosecution. Therefore, the Court preferred to prioritise its resource on cases with higher chance of success.⁵⁹

C. The investigation phase

i. State's cooperation with the Court

The ICC's investigation depends on the States, as evidence are to be found on the ground, and witnesses shall be identified, interviewed and protected. In order for the ICC investigators to complete their mission, a strong cooperation between the States and the Court is necessary. From the authorisation to enter the country to perform their investigation to collect evidence, the Court shall rely on States Parties

⁵⁹ ICC 'ICC judges reject opening of an investigation regarding Afghanistan situation' <https://www.icc-cpi.int/news/icc-judges-reject-opening-investigation-regarding-afghanistan-situation> accessed on 11 February 2025

that have an obligation to cooperate and on non-State Parties on which the Court is dependent of their good will.⁶⁰

The States' cooperation with the Court goes beyond the investigation needs. The court has no police forces; therefore, it depends on the States to implement arrest warrants, freeze assets and transfer them to the Court and implement sanctions.

Thus, it is vital for Armenia to incorporate all the necessary Rome Statute's provisions in its national legislation to facilitate each step of the processes, and also be willing to implement any Court order, such as an arrest warrant that does not concern its own case.

ii. The application for arrest warrants

Throughout its investigations, the Office of the Prosecutor may request the Pre-trial Chamber to issue arrest warrants against the most responsible persons successfully identified (Article 58 RS). The Pre-Trial Chamber may do so if it believes that there are reasonable grounds to believe that the person committed the crime falling under the Court's jurisdiction and if the arrest seems necessary to ensure the person's presence to the trial.

As mentioned above, the cooperation of the States' is key for the arrest warrants to be implemented. Currently, the ICC has 31 suspects at large, which for some are running away from the ICC jurisdiction for two decades. This is one of the most burdening weaknesses of the ICC, being dependent on States without proper coercive means to compel them to implement the Court's orders.⁶¹

D. The trial phase

iii. A trial *in absentia*?

The lengthy track of suspects and the States' failure to execute arrest warrants prevent the ICC to complete its mandate. In principle, for a trial to begin, the suspect shall be presented to the Pre-trial Chamber, which confirm the charges and then, the trial may begin (Articles 61 and 63 RS). In the Court history, no trial has taken place without the presence of the accused (*in absentia*).

For the first time in its existence, the Office of the Prosecutor submitted a request to hold the hearing of confirmation of charges without the suspect to be present. This exception is foreseen by the Rome Statute (Article 61(2)(b)), which provide two conditions; the suspect cannot be found, and all the reasonable steps have been taken to inform the suspect about the hearing. Despite the completion of the two

⁶⁰ ICC 'Recommendations on States' Cooperation with the International Criminal Court (ICC) : Experiences and Priorities' <https://www.icc-cpi.int/sites/default/files/2022-04/66-Recommendations-Flyer-ENG.pdf> accessed on 11 February 2025

⁶¹ ICC Home page <https://www.icc-cpi.int> accessed on 11 February 2025

criteria, the decision remains at the discretion of the Pre-Trial Chamber. In the Koni case, the Pre-Trial Chamber confirmed the hearing for the 9 September 2025.⁶²

The proceedings may be able to pursue later on, as the Rule 125(1) of the Rules of Procedure and Evidence provides the element of good causes which enable proceedings to be held *in absentia*. In this particular case, Koni has been fugitive for almost two decades. The proceedings will send the message that attempts to evade justice are vain. Second, the proceeding may give a new impetus in the track of the fugitive and lastly, the victims deserve the opportunity to voice their views and concerns.

It seems that the ICC is taking step to prevent the decline of the international judicial order and palliate against the impossibility to bring suspect to justice. The accused may not suffer the consequences of his/her action, but the victims may have the opportunity to be heard and receive reparations (through the Trust Fund for Victims). However, the other weakness of the ICC, being the slow proceedings, are not being successfully addressed for the moment.

iv. The unique procedural rights conferred to the victims

At the difference of any other judicial system, the ICC grants a specific role for the victims during the proceedings. Pursuant to article 68(3) of the Rome Statute, victims are conferred with rights throughout the entire judicial proceedings. They may present their views and concerns, independently of the Prosecution or the Defence, directly to the judges and benefit from the counsel and support of the Public Counsel for the Victims (OPCV). Independently from their right of participation, victims may file claims for reparations.

The ICC Courts have recognised the role of the victims' participation to uncover the truth. The ICC being a technological court, the victims do not need to travel to the Hague, they only have to fill in a written application for participation, and then they may be called for testimonies during the trial.⁶³

v. Possible sanctions

At the end of the trial, the accused may be found guilty or innocent. It also has to be envisaged that charges can be dropped at any time by the Prosecutor without duly justifications (i.e Mokom because of the disappearance or retraction of witnesses causing insufficient evidence against him).⁶⁴ The ICC prison facilities are only used to detain suspect or accused during the judicial processes. Once the sentence has

⁶² ICC 'Kony Case : Confirmation of charges hearing to commence in absentia on 9 September 2025' <https://www.icc-cpi.int/news/kony-case-confirmation-charges-hearing-commence-absentia-9-september-2025> accessed on 11 February 2025

⁶³ ICC 'Victims' <https://www.icc-cpi.int/about/victims> accessed on 11 February 2025

⁶⁴ ICC 'Prosecutors withdraws charges against Maxime Mokom in the situation in the Central African Republic' < <https://www.icc-cpi.int/news/prosecutor-withdraws-charges-against-maxime-mokom-situation-central-african-republic> > accessed on 11 February 2025

been given, the person sentenced may go back to his/her country of origin to serve the sentence, or any other voluntary states.⁶⁵

If the accused is found guilty, s/he may receive a prison sentence of maximum 30 years or life imprisonment in specific cases. The guilty accused may be ordered to pay reparation to victims (Part VII Rome Statute). The Trust Fund for Victims (TFV) come into play following the Court's sentencing of the accused. On one hand, it implements the Court's order for reparation, in either distributing the convicted persons' funds accordingly or using the voluntary contribution allocated to the TFV. In most of the cases, due to the large number of victims and the degree of gravity and severity of damages, reparations costs are high, and the condemned persons is not able to pay back. Therefore, the TFV is often using its own contributions to palliate this gap and address victims' demands and needs.⁶⁶ Reparations may be granted collectively or individually, in the form of monetary compensation, return of property, rehabilitation, medical support, victims' services centres or symbolic measures such as apologies or memorials.⁶⁷ On another hand, the TFV is providing assistance to the most vulnerable victims, which take the form of programs including mental health, medical interventions and material support.

⁶⁵ ICC 'how the Court works' Supra 10

⁶⁶ The Trust Fund for Victims 'Our mandates' < <https://www.trustfundforvictims.org/en/about/two-mandates-tfv>> accessed on 11 February 2025

⁶⁷ ICC 'Victim's booklet : Victims before the International Criminal Court A guide for the participation of victims in the proceedings of the ICC' < https://www.icc-cpi.int/sites/default/files/itemsDocuments/vprs/abd-al-rahman/VPRS-Victims-booklet_ENG.pdf> accessed on 11 February 2025