

Role of the international criminal court in achieving social protection

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Abstract. The relevance of the study is determined by the growing role of international criminal law not only in ensuring punishment for international crimes but also in shaping broader mechanisms of social protection in post-conflict societies. The aim of the paper was to determine how the International Criminal Court (ICC) may indirectly contribute to the achievement of social protection through its legal and institutional mechanisms. The study employed an analytical-interpretive approach within a socio-legal framework, based on the analysis of the Rome Statute, case law, and policy documents of the Office of the Prosecutor. The findings demonstrated that the ICC exerts an indirect influence on social protection through a set of interconnected legal mechanisms. In particular, the principle of legal equality, enshrined in Article 27 of the Rome Statute, contributes to combating impunity by reshaping expectations regarding the accountability of political elites and strengthening public trust in justice. The recognition of vulnerable social groups under Articles 6 and 7 provided a legal qualification of collective violence, including gender-based crimes, which influences the development of national approaches to their investigation and prosecution. The reparations system established under Article 75 operates as a hybrid instrument combining elements of criminal responsibility and social support aimed at restoring victims and affected communities. The principle of complementarity, set out in Article 17, encourages states to reform domestic legal systems, strengthen judicial institutions, and incorporate international standards of accountability. Taken together, these mechanisms created institutional and normative conditions conducive to social protection, although their impact remains indirect and does not guarantee immediate outcomes. The practical value of the study lies in its potential application for improving national legal policies in the field of victim protection and ensuring accountability for international crimes

Keywords: justice; equality; atrocity; impunity; institutional reform

Introduction

Committing grave human rights violations that qualify as international crimes under the Statute of the International Criminal Court (ICC) has diverse and long-lasting consequences. The most important of these consequences is the emergence of social groups whose rights, and sometimes even their existence, have been denied, preventing them from accessing justice as a result of internal institutional collapse or weakness. This context reveals the extent to which the ICC can fill this institutional void. This can be achieved not only through a punitive framework, that is, by prosecuting perpetrators of grave violations of the rights of these social groups but also by creating an institutional and legal environment that guarantees their social care and protection.

There are important, but fragmented, insights offered by scientific literature into this topic. For example, C. Sperfeldt (2022) examined the general assistance mandate of the Trust Fund for Victims and argues that the ICC's institutional architecture has developed beyond conventional criminal adjudication by incorporating forms of victim support that are

not dependent on conviction. In addition, she shows that this expansion is causing conceptual tension, as assistance-oriented functions cannot be neatly incorporated into traditional punitive models. M. Lostal (2021) highlighted the importance of reparations in the "Al Mahdi" case and showed that reparative justice is not only a matter of judicial recognition of harm, but also of institutional capacity. She demonstrated that reparations could contribute to restoration and recognition but also reveals enforcement practical limitations. M. Ingber (2025) argued that the ICC's reparations regime aims not only to repair harm, but also to support recovery and formally recognise victims' suffering. Their analysis suggested that reparations are not just legal remedies after conviction, but part of a broader framework that shapes how victimhood, harm, and justice are conceived.

Another area of research has focused on the recognition of victims and vulnerable groups in recent years. The Office of the Prosecutor (OTP) (2022) developed a policy for understanding gender persecution as part of its efforts to acknowledge

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that harm that have traditionally been marginalised in criminal law should be identified and treated. In this context, the Policy on Gender-Based Crimes makes OTP's approach to sexual and gender-based violence clearer and more organised and comprehensive. It shows that prosecutors should deal with these crimes in a way that is informed by gender issues and should make these harms more visible in the Court's work. In this way, the ICC contributes to defining and recognising the suffering of vulnerable groups, even when it cannot protect them directly. A. Jones (2025) argued that, although the Rome Statute grants victims an important place in ICC proceedings, this does not always lead to equal participation in practice. In other words, formal recognition alone does not guarantee that all victims are equally heard or and protected. A similar point is made by S. Pellet (2025), who indicated that the Court often expects victims to present their experiences in specific legally accepted ways. Consequently, while the Court recognises victims, it may also limit how fully and freely they can express their suffering during proceedings.

Recently, a number of studies have been published that have enriched the debate on reparations and the role of the Court. K.J. Fisher (2024) described the Barlonyo massacre and the Ongwen reparations process, arguing that victims' strong expectations may turn into frustration when reparatory outcomes are limited or delayed. Author cautioned scholars not to overestimate the protective capacity of the Court and points out that symbolic recognition does not always translate into meaningful redress. A. Barnes (2025) revisited the nature of reparations orders, arguing that they can be both compensatory and punitive. This intervention is valuable because it challenges the idea that reparations are only meant to restore what was lost. Instead, it showed that reparations work within a mixed approach to justice. In his article R. Jain (2025), analysed victim assistance under the Rome Statute and concluded that it has institutionalised a reparative dimension to international criminal justice that goes beyond punishment alone. In addition, C. Hillebrecht & H.R. Read (2023) argued that the Court can generate hidden impacts that traditional assessments do not capture. They suggested that the Court's influence extends into social and institutional domains that are hard to measure directly.

Overall, these studies demonstrate the value of recent scholarship in advancing understanding of victim assistance, reparations, participation, gender-based harms, and the broader influence of the ICC. However, these themes are still usually analysed as separate doctrinal or institutional issues rather than as interconnected mechanisms through which the Court may indirectly contribute to social protection. The cumulative sociolegal significance of these mechanisms when read together remains under-researched: how legal equality, the recognition of vulnerable groups, reparations, as well as complementarity-driven strengthening of domestic accountability frameworks influence the possibility of achieving protection. This gap makes the present study necessary. Accordingly, this article aims to examine how the ICC contributes indirectly to social protection through its legal framework, jurisprudence, victim-oriented mechanisms, and influence on domestic legal systems.

Materials and methods

The study was based primarily on the analysis of legal rules of the Rome Statute of the International Criminal Court (2002), the International Criminal Court (2013), selected policy

documents issued by the OTP and selected judicial decisions and reparations-related rulings of the ICC. Particular attention was devoted to the analysis of Articles 6, 7, 17, and 27 of the ICC framework and their social implications. This study focused on legal equality, recognition of vulnerable groups, reparations, and complementarity, which are addressed in the Court's constitutive instruments, prosecutorial policies, and case law, they were particularly relevant for this study.

In addition to these primary legal sources, the study also used secondary sources, including academic journal articles, legal commentaries on the Rome Statute, and other scholarly writings addressing immunity, complementarity, victim participation, reparations, sexual and gender-based crimes, and the wider social effects of international criminal law. These secondary sources were of considerable importance as they contributed to the interpretation and implementation of relevant legal rules at both the international and national levels.

The secondary sources were accessed through Google Scholar, HeinOnline, JSTOR, and SSRN. During searching for these sources, the focus was on the period between 2020 and 2025 to identify recent developments concerning the non-traditional roles of the ICC, particularly in the field of social protection. However, it was sometimes necessary to review some earlier sources to build legal arguments, as they provided a foundational conceptual background for several legal standards and rules, such as the principle of complementarity and the rule of irrelevance of official status for international crimes perpetrators. In addition, sources were selected that provide broad interpretations of the Rome Statute, mechanisms for the protection of victims, and models of local institutional impact. The sample of sources for the study included specialised books and peer-reviewed articles of academic credibility, as well as reports and documents prepared by international and national institutions. This study adopted an analytical-interpretive approach, focusing on the significance of legal rules, their elements and practical applications, rather than on empirical findings. These analytical interpretations go beyond simply describing legal rules; they extend to analysing their operational mechanisms within broader conceptual frameworks, such as equality before the law, accountability, recognition of the rights of social groups, the concept of the victim, restorative justice, and indirect protection.

The interpretive analysis was carried out in two successive phases. In the first phase, the ICC Statute and its Rules of Procedure and Evidence (International Criminal Court, 2013) were examined to explore and understand the general elements of key concepts relevant to the study, namely: legal equality, vulnerable groups, reparations, and complementarity. The second phase was devoted to analysing a selection of ICC case law concerning, for example, non-immunity of perpetrators of international crimes, and reparations, in order to understand how these legal standards and rules, as set forth in the ICC Statute, are interpreted and applied in the context of achieving social protection. In addition, the second stage involved reviewing prosecutorial policies to better understand how the Court conceptualises sexual and gender-based crimes, gender persecution, and cooperation with national systems. The documents were considered relevant interpretive materials since they shed light on how legal norms are operationalised within prosecutorial strategies.

The materials were then compared in order to determine how each of them contributes to answering the central

question of the article, namely whether and how the ICC's legal framework and practice may contribute indirectly to social protection. The comparison focused on accountability, recognition of victims and vulnerable groups, reparations, and complementarity. A material's contribution to one or more of the following dimensions was assessed: challenging impunity through legal equality, recognising vulnerable groups and specific forms of harm, expanding justice through reparations, and fostering domestic accountability through complementarity. As part of the analysis, context was considered by reading legal materials in relation to mass atrocities, post-conflict justice, and institutional weakness. Furthermore, the study explored how judicial engagement with international criminal norms, legislative reform, and broader recognition of victims' rights could be fostered through the ICC's legal framework. In this sense, norms have been evaluated through their normative and institutional implications rather than quantitative measures of impact.

There are several limitations to this study. The study was mostly doctrinal and interpretive, so it does not provide a full empirical measurement of how ICC norms affect political leaders, states, or domestic institutions. It used selected examples from legal scholarship and institutional practice to illustrate how ICC rulings and policies may affect accountability strategies, legal reform, and approaches to international crimes. A second limitation of this study is that it relies solely on selected legal sources and key academic works, rather than examining every ICC decision or all national practices. It examined how the ICC can indirectly contribute to social protection through careful legal analysis. In a wider socio-legal context, this approach helps identify the main legal mechanisms by which indirect contributions may occur and how accountability, recognition, reparations, and complementarity are linked.

Results and discussion

Promoting the principle of legal equality

The ICC provisions and its jurisprudence, in this respect, are an authoritative legal framework in developing the ideas of national actors on issues of accountability, justice, and protection. Therefore, the influence of the ICC is less about direct policy transfer but more about gradual institutional adaptation, professional socialisation, and internalisation of accountability norms. In other words, rather than relying merely on formal enforcement for international rules, this approach to the legal diffusion is something that comes in line with sociolegal scholarship, which emphasises interpretation, repetition, and professional practice.

The principle of legal equality is highlighted in Article 27(1) of the Rome Statute (2002), which does not recognise the official capacity of the person who commits an international crime, "whether as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official". This means that the official capacity of the perpetrator of an international crime will not exempt them from international criminal responsibility for any of those crimes, nor can it be a reason for mitigating their punishment. In other words, no one, including those working for a State, whether citizens of States parties or non-States parties, is exempt from criminal prosecution by the Court (Triffterer & Ambos, 2016). This provision is not novel; it is rooted in historical precedents established after World War II by the Nuremberg and Tokyo trials, as

well as in the Statutes of the "International Criminal Tribunals for the former Yugoslavia and Rwanda" (Klamberg *et al.*, 2023). There has been extensive scholarly debate on Article 27 of the Rome Statute for more than twenty years, which precludes international criminal responsibility for officials and heads of states. Studies by D. Akande (2018), F. Nkusi (2013), D. Jacobs (2015) have examined the tension between Article 27 and customary international law on immunities, particularly in relation to non-State parties and Security Council referrals. Article 27 has been examined as a progressive development of international law, an exception limited to the ICC's jurisdictional framework, or a challenge to traditional sovereignty-based immunity. The debates – especially in the context of the Al Bashir litigation – have been well documented and do not need to be repeated in detail.

The principle of legal equality that resides in Article 27(1) of the ICC Statute is more than a procedural rule. According to S.M.H. Nouwen (2013), it is a foundational norm that challenges the possibilities of impunity which often fuel social fragmentation and violence perpetrated by States. D. Akande (2018) emphasised, when the ICC denies official immunity, it directly challenges the authority of States to shield their agents from prosecution, thereby seeking to rebalance the relationship between the governing and the governed. This legal intervention by the ICC has significant social implications, as it aims to remove the quasi legal means that enable political elites to perpetrate crimes against vulnerable populations with impunity. C. Gevers (2011) believed that a rejection of status-based immunities under Article 27 has a sociolegal significance, as it changes expectations and incentives. Article 27 reshapes the legal understanding of officials, victims, prosecutors and lawyers, and provides domestic judges with authoritative texts for justifying the application of criminal responsibility equally. The power of this provision lies not just in its text, but also in how institutions use it, teach it in judicial academies, and use it in prosecution decisions, leading to integrating equality norms into domestic law.

Under Article 27(2), the ICC may exercise jurisdiction over perpetrators of international crimes regardless of the immunity they enjoy under international or national law. This constitutes an explicit denial by the ICC of the immunities provided by international and national law to persons in official capacity, such as heads of state or government, or others referred to in Article 27(1), for example. Neither the Nuremberg or Tokyo Statutes, nor the Statutes of the Former Yugoslavian and Rwandan International Criminal Tribunals have a counterpart to Article 27(2) of the ICC Statute (Akande, 2004). By removing immunity for officials under Article 27(2), the ICC reinforced its victim-centered approach, enabling justice for victims of serious crimes irrespective of the perpetrator's status. This aligns with the Court's foundational goal of addressing victims' demands for accountability and reparations.

The ICC Pre-Trial Chamber I applied the provisions of Article 27 in the case of the Prosecutor v. Omar Hassan Ahmad Al Bashir (2021) when it decided that, although Al Bashir is a head of state not party to the Rome Statute, he does not enjoy immunity from proceedings before the ICC taking into account that the Security Council's decision to refer the situation in Darfur on 1 July 2002 to the ICC constitutes the legal basis for the Court to consider international crimes committed in that region (United Nations Security Council, 2005).

Clearly, the provisions contained in Article 27 of the ICC Statute affirm an important rule referred to by the States parties to the ICC Statute which is ending impunity for perpetrators of international crimes set forth in Article 5 of the ICC Statute (Triffterer & Ambos, 2016). The States parties declared in the ICC Statute preamble that “the most serious crimes of concern to the international community as a whole must not go unpunished and are determined to put an end to impunity for the perpetrators of such crimes” (Rome Statute of the International Criminal Court, 2002). Undoubtedly, these interconnected provisions all serve to provide social protection within societies, based on the premise that individuals will be reassured as long as there is an international judicial institution that is not concerned with the status of the perpetrator of the international crime, as the law will be applied to all persons regardless of their political or social standing within a State. The ICC’s non-recognition of immunity for State officials could indeed enhance the prevention aspect of international criminal justice, contributing to social protection. To clarify, the intervention of the ICC, and its demonstrated willingness to prosecute leaders responsible for international crimes, may function as a deterrent against the commission of further atrocities and may encourage such actors to engage in negotiations. In this way, the Court’s involvement may contribute indirectly to the promotion of security and reassurance for potential victims. For instance, the Prosecutor of the ICC issued arrest warrants for five senior leaders of the Lord’s Resistance Army in northern Uganda, which prompted them to sit down for talks with Ugandan President Yoweri Museveni, who had previously referred the case to the Prosecutor of the ICC on 16 December 2003 (Schabas, 2007). In the same context, John Prenderston, a former Clinton administration official and analyst for the International Crisis Group on Africa, stated in 2005 that Sudanese leaders were concerned about the consequences of the ICC’s investigation into international crimes in Sudan, and he considered this a positive development for resolving the bloodshed in Darfur (Schiff, 2008). It is clear from these examples that the ICC may play a deterrent role that has a positive impact on social protection.

However, it is important to be cautious when claiming that Article 27 directly deters atrocities or encourages good governance. In this article, no detailed evidence is provided to demonstrate that ICC prosecutions directly influence decision-making in leaders (Dutton & Alleblas, 2017). It therefore cannot be argued that Article 27 directly prevents international crimes. Rather, it promotes social and institutional conditions that make accountability more likely. In indirect way, it contributes to social protection, because it challenges impunity and affirms legal equality, which strengthens public trust in the possibility of accountability for victims. These effects are achieved through domestic legal adaptation, professional socialisation, and civic engagement rather than through automatic deterrence. Accordingly, Article 27 contributes to social protection not by ensuring behavioural change, but by reshaping the legal and social environment in which protection against mass atrocities is pursued.

Protection of vulnerable social groups

Article 6 of the Rome Statute (2002) states that committing “murder, causing serious bodily or mental harm, inflicting on the group conditions of life calculated to bring about its destruction, imposing measures intended to prevent births,

or transferring children from a group to another may all constitute crime of genocide if committed against a national, ethnical, racial, or religious group”. In this context, the General Assembly of United Nations declared that genocide constitutes the denial of the right to exist of entire human groups (Resolution of the United Nations General Assembly No. A/RES/96-I, 1946) and so Article 6 of the ICC Statute protects the physical and social existence of these groups. (Fronza, 1999). Despite the 1948 Genocide Convention prohibiting genocide, the Rome Statute adds a distinct layer of social relevance by embedding this prohibition within a standing judicial institution with investigative, adjudicative, and reparative functions. The Genocide Convention articulates a collective moral and legal norm; the ICC brings that norm to life on a procedural level. The Court implements its abstract obligations to prevent genocide into practical legal processes involving domestic institutions, legal professionals, and affected communities through prosecutions, victim participation, and reparations. For social protection in post-atrocity contexts, institutionalisation is more important than mere prohibition. In other words, the importance of Article 6 of the ICC Statute cannot be found in the definition of genocide as such which is well established in international law but in the institutionalisation of genocide prohibition within a permanent criminal court. While the Genocide Convention focuses primarily on state responsibility and enforcement measures, the ICC treats genocide as a criminal offense subject to individual prosecution, punishment, and reparations. A significant consequence of this institutional change is that it converts genocide from an abstract violation to a legally actionable harm, in which victims and perpetrators will be able to be identified, and there will be redress and consequences.

There is no claim in this article that the Rome Statute or ICC practice directly promote social harmony. It is rather international criminal law that contributes through its symbolic and institutional effects: the ICC reinforces legal recognition of group-based vulnerability and affirms the illegitimacy of collective violence by formally naming and prosecuting acts aimed at the destruction of protected groups. Rather than ensuring a change in behaviour, these effects shape how societies understand mass violence and its unacceptability through legal discourse, education, and institutional memory. In addition, Article 7(1)(g) of the ICC Statute considered the widespread and systematic commission of “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity” against women to constitute a crime against humanity. According G. Werle & F. Jeßberger (2014) this article is that it combined all forms of sexual violence together, not to mention that it left room for any sexual act not specifically addressed, as long as it was of similar gravity to the listed acts.

One of the most prominent cases heard by the ICC relating to the punishment of sexual violence against women is that of Dominic Ongwen, a leader of the Ugandan rebel group, the Lord’s Resistance Army, which committed numerous war crimes and crimes against humanity during the group’s armed insurgency against the Ugandan government (The Prosecutor v. Dominic Ongwen, 2024). According to the ICC’s Trial Chamber IX, Ongwen was found guilty of 61 counts of war crimes and crimes against humanity, including sexual crimes. These crimes included “forced marriage, torture,

rape, sexual slavery, enslavement, enforced pregnancy, and outrages upon personal dignity, committed against seven women whose names and individual stories are identified in the judgment. On 6 May 2021, the Trial Chamber IX sentenced Ongwen to 25 years' imprisonment". It would be difficult to make a conclusive claim that the Ongwen case has changed societal perceptions toward sexual violence without extensive empirical evidence. The importance of its effects is more evident in their being clearly visible and capable of being institutionally verified. There were detailed factual findings, survivor testimonies, and explicit legal recognition of harms like forced marriage, sexual slavery, and enforced pregnancies characterised one of the most comprehensive judicial involvements in international criminal law concerning sexual and gender-based crimes. These judicial practices have helped document that sexual violence constitutes a serious international crime, rather than a peripheral or incidental one. From a sociolegal standpoint, the impact of Ongwen's actions is primarily felt in downstream institutional changes rather than on immediate cultural shifts. The Court's Policy Paper on Sexual and Gender-Based Crimes (Office of the Prosecutor, 2014) and related procedural reforms embody the Court's legal interpretations on sexual violence, which in turn shape prosecutorial approaches, evidentiary requirements, and practices for victims' involvement. Through legal recognition, procedural inclusion, and access to reparative measures, these developments strengthen the protective mechanisms for survivors of sexual violence by influencing how domestic courts, investigators, and victim-support organisations conceptualise and respond to the crime. In that sense, the protective value of such cases lies in institutional learning and professional practice rather than in demonstrable changes in societal attitudes.

There are other provisions in the ICC Statute that grant the Court jurisdiction over crimes of sexual violence against women. The Court may also exercise jurisdiction over such conduct when it is committed as a war crime under Article 8 or as an act of genocide under Article 6(b), as sexual violence crimes constitute "causing serious bodily or mental harm to members of the group" (Rome Statute, 2002). The legal framework of the ICC Statute, which also addresses sexual violence as a war crime under Article 8 and as an act of genocide under Article 6, presents a comprehensive, integrated legal approach to combating sexual and gender-based violence.

The explicit inclusion of rape and other crimes of sexual violence in the ICC Statute represents a significant advance in their classification as criminal acts targeting the physical and mental integrity of women and ensuring that such crimes are not marginalised or ignored, compared to their previous classification by international instruments as being only violations of women's honor and reputation (Triffterer & Ambos, 2016). Furthermore, F. Ní Aoláin (2014) the criminalisation of these specific acts under the ICC Statute represents a process of legal codification of dealing with social vulnerability. A law that protects women, children, and distinct ethnic and religious groups from genocide and crimes against humanity reflects and reinforces a social consensus about which groups are most vulnerable to systematic destruction. Using this legal framework, as in the Ongwen case, empowers these groups within social and political discourses, transforming them from passive victims into international rights holders (Seyed Norani, 2022).

On the implementation level, there exists no direct legal hierarchy between the Rome Statute and ICC jurisprudence, but an identifiable process of normative diffusion and institutional adaptation that exerts influence on domestic legal approaches. The ICC Statute crimes are incorporated into domestic criminal codes by legislation, ICC jurisprudence is cited as persuasive authority by the judiciary, prosecutorial and investigative reforms aligned with ICC evidentiary standards, and legal actors are socialised professionally through training, cooperation, and complementarity-related activities (Imoedemhe, 2017). The implementation of international criminal law standards in domestic legal practices impacts how states address issues of minority protection and gender-based violence. National legislation stands out as a key area of this influence. Since the adoption of the Rome Statute, as noted by J. Pérez-León-Acevedo (2024), many States Parties have incorporated international crimes into their domestic criminal codes, including genocide, crimes against humanity, and sexual violence. As a result of these legislative amendments, acts such as slavery, forced pregnancy, and forced marriage are now criminalised as separate offenses, moving beyond traditional classifications of sexual violence. While pressure from the ICC was not the sole driver of these reforms, the Rome Statute has served as a key reference point and model for legislative drafting, particularly in post-conflict and transitional periods, where domestic legal systems seek to enhance their international legitimacy and meet required accountability standards.

In addition to legislative texts, the jurisprudence of the ICC influences domestic legal systems through case law. It has become increasingly common for domestic courts and prosecution authorities to draw on concepts of international criminal law such as patterns of criminal responsibility, contextual elements of crimes against humanity, and gender-sensitive interpretations of harm when addressing cases of mass violence and systemic violations. With the ICC's jurisprudence on sexual and gender-based crimes and with the OTP's policy instruments, survivor-centred evidentiary practices have become more common and sexual violence has become recognised as a structural crime rather than an incidental byproduct of conflict. The development does not seem to be a wholesale transfer of doctrine, but rather a gradual shift in how domestic legal actors frame and pursue accountability for group-based and gendered harm. So, the ICC Statute and case law have an impact on domestic legal approaches by influencing legal categories, institutional expectations, and professional practices through which protection of vulnerable groups is pursued.

Achieving social justice for victims

The reparations provided by the ICC can be considered a hybrid legal-social instrument. I. Ullrich (2024) believes that ICC-ordered measures and Trust Fund programs are often designed to mimic social-protection modalities provided by state agencies and NGOs, including cash transfers, psychosocial services, education, and livelihood support. A sociolegal analysis of these programs reveals how implementation partnerships, professional discretion, and community governance shape the sustainability of reparations as safety nets (Brodney, 2016).

Article 75 of the Rome Statute (2002) empowers the Court to issue direct orders, either upon request or *proprio motu*, against perpetrators of the international crimes set

forth in Article 5, to reparation victims or their associates. The Court may also “order that the award for reparations be made through the Trust Fund provided for in article 79”. This legal framework relating to the right of victims of international crimes to compensation is a reflection and affirmation of States’ obligation to compensate victims of gross violations of international humanitarian law (International Committee of the Red Cross, 1946) and Article 24(4) of the international human rights law (Resolution of the United Nations General Assembly No. 61/177, 2006). According to O. Triffterer & K. Ambos (2016), due to the fact that this obligation relates strictly to perpetrators of international crimes, it differs somewhat from obligations addressing States directly. However, the provision for the right to compensation in Article 75 of the ICC Statute, which is directed at perpetrators of international crimes, stems from States’ general obligation to compensate victims of gross human rights violations, particularly since the Trust Fund for Compensation to Victims is administered by the Assembly of States parties to the Rome Statute (2002), Article 79(3). This confirms the commitment and guarantee of States to compensate victims of international crimes in an effective and appropriate manner. However, in all cases, Article 75 of the ICC Statute does not aim to oblige the State of nationality of a perpetrator of an international crime to compensate the victims (Triffterer & Ambos, 2016).

By establishing a right to compensation for victims and their dependents under Article 75, the ICC Statute mandates the Court not only to prosecute perpetrators of international crimes but also to achieve justice for victims (Triffterer & Ambos, 2016). This function of providing compensation acts as a form of social protection, representing a secondary objective of the provision. The scope of application of Article 75 has been expanded by the inclusion of the concept of “victims or in respect of them”, such that compensation may be awarded to persons related to victims of international crimes. The Rules of Procedure and Evidence (2002) supplementing the ICC Statute interpret the concept of victims as meaning “natural persons affected by the commission of any crime within the jurisdiction of the Court”. This interpretation could include the families and heirs of victims, according to the Working Group on the Interpretation and Analysis of Article 75 (Triffterer & Ambos, 2016). Such a broad interpretation reflects the desire of the drafters of the ICC Statute to improve and address the social conditions of those harmed by the commission of international crimes, whether they are victims or other relatives. This is the core of social protection that the ICC Statute seeks, albeit indirectly.

In the context of achieving social justice for victims of international crimes through the right to reparation, the Trust Fund was established under Article 79 of the ICC Statute to provide reparations and assistance to victims of international crimes prosecuted by the ICC. The Trust Fund has two main functions: providing reparations and direct assistance to victims following ICC judgments. According to the interpretation of O. Triffterer & K. Ambos (2016), the ICC provides various forms of reparations depending on the specific harm suffered by victims. These include:

1. Individual reparations, such as financial compensation and Assistance. They are broad programs that provide psychological, physical, social, and economic support, such as housing, healthcare, or scholarships for victims, even in the absence of a conviction. For example, in the Lubanga

case (Democratic Republic of the Congo), Thomas Lubanga, leader of the Union of Congolese Patriots (UPC), was convicted in 2012 of recruiting and using child soldiers during the Ituri conflict (1998-2003) (The Prosecutor v. Thomas Lubanga Dyilo, 2020). The ICC sentenced him to 14 years in prison, and Trial Chamber II approved a collective service compensation program consisting of three reparation areas: medical treatment, psychological rehabilitation, and social and economic support. The Chamber stated that the proposed program is appropriate to meet the diverse and evolving needs of direct and indirect victims, based on their unique circumstances. Under this program, compensation was paid to child soldier victims, and former child soldiers received vocational training, education, psychological support, and community reintegration programs. The commencement of collective reparations in the Lubanga case was characterised as a significant milestone, particularly for victims who had suffered substantial harm during childhood and required a prolonged period of recovery demanding considerable resilience. Representatives of the Trust Fund for Victims further emphasised that the protection of victims’ identity and well-being remains a priority, with the aim of ensuring access to reparations with due regard for their personal safety.

2. Collective reparations, which include community programs, mental health services, and the rebuilding of infrastructure, such as schools and hospitals. In the Katanga case (Democratic Republic of the Congo), militia leader Germain Katanga was convicted in 2014 of war crimes, including the 2003 attack on the village of Bogoro, in which numerous civilians were killed. (Prosecutor v. Germain Katanga, 2017) The ICC sentenced him to 12 years in prison, and victims received individual reparations of \$250 each to address direct harm. The court also approved the disbursement of funds to build homes and schools to rebuild affected communities, and to provide agricultural tools and vocational training to help families regain social and economic stability.

3. Symbolic reparations: these include public apologies, the construction of memorials, or the determination of remembrance days to acknowledge the suffering of victims and restore their dignity. In the Al Mahdi case (Mali) concerning the destruction of cultural heritage, Ahmad al-Faqi al-Mahdi, a member of Ansar Dine, was convicted in 2016 of war crimes related to the destruction of several buildings considered and protected as an important part of the cultural heritage of Timbuktu and Mali, and which were not military objectives (Prosecutor v. Ahmad Al Faqi Al Mahdi, 2022). He was sentenced to nine years in prison and ordered to pay €2.7 million as reparations. The ICC also supported the reconstruction of destroyed mosques and shrines protected by UNESCO. The court also notified the people of Timbuktu, the people of Mali, and the rest of the international community of Mr. Al Mahdi’s apology, which he offered during his trial, as a form of symbolic reparations.

It can be said that ICC reparations represent a fascinating hybrid of punitive justice and restorative social policy. According to M. Lostal (2021), criminal courts are unconventional vehicles for administering social services, but the Trust Fund’s work in providing psychological support, education, and infrastructure blurs the line between legal remedy and social development. The harm caused by international crimes is not solely individual, but collective and societal, damaging the very fabric of society. So, reparations are not only about

compensating individual losses, but about restoring the functional capacity of societies that have been broken by conflict through judicially-mandated social reconstruction.

Encouraging of national accountability

Rome Statute of the International Criminal Court (2002) states in its preamble that “the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”. This is confirmed by Article 1, which states that the Court “shall be complementary to national criminal jurisdictions”. This is known in the jurisprudence of international criminal law as the principle of complementarity. This principle means that national courts have the priority to prosecute and punish perpetrators of international crimes set forth in Article 5 of the ICC Statute. If national courts are unable or unwilling to do so, in accordance with the provisions of Article 17 of the ICC Statute, the ICC shall have jurisdiction. In other words, the principle of complementarity within the ICC Statute aims to achieve a balance between respect for State sovereignty and the establishment of an international judicial authority by granting States the primary right to prosecute perpetrators of international crimes.

According to L.E. Carter (2013), complementarity is a powerful tool for national judicial authorities to maintain control over criminal matters and limit the intervention of the ICC. Additionally, the principle provides a strong incentive for national jurisdictions to prosecute international crimes, which aids the ICC’s goal of ending impunity for atrocities. To elaborate, complementarity affects professional domestic communities. A domestic prosecutor develops charging policies based on international crimes and trains prosecutors in international crime investigations; a judge relies on ICC reasoning to justify novel doctrines; a bar association educates lawyers about victim involvement; a medical professional or social worker prepares expert reports. (Office of the Prosecutor, 2024) In general, international obligations become operational domestic social protection through these professional practices.

In the context of the principle of complementarity, the Pre-Trial Chamber I of the ICC decided on 11 October 2013 that “the case against Mr. Al-Senussi was currently subject to domestic proceedings conducted by the competent Libyan authorities and that Libya was genuinely willing and able to conduct such an investigation” (The Prosecutor v. Saif Al-Islam Gaddafi, 2013). The ICC judges therefore concluded that the case was inadmissible before the Court, in accordance with the principle of complementarity set forth in the ICC Statute. In some cases, the effects of complementarity and ICC pressure become visible in the legal and political responses of states. For example, Colombia has suffered from a long-running violent conflict for nearly six decades. the conflict has spread over generations, affecting wide swaths of Colombia’s population and resulting in millions of victims. As wrote A. Björkdahl & L. Warvsten (2021), the Colombian armed forces, paramilitary groups, and other forces all contributed to the conflict’s complexity. A final agreement to end the conflict and establish a stable and long-lasting peace was signed in November 2016. In fact, the ICC played a major role in Colombia’s peace process, forcing the Colombian judiciary to comply with ICC requirements while maintaining its judicial sovereignty at the same time.

The Colombian judicial system adapted international judicial norms and practices to its domestic context, resulting

in an emergent, hybrid, intersubjective understanding of justice. A key outcome, the Victims’ Agreement, incorporated elements of reparation, retribution, and restoration, and was acknowledged by the ICC Prosecutor as sufficient retribution (International Criminal Court, 2016). In addition, the Colombian justice system strategically adopted the anti-impunity international norm into its domestic sentencing regime to avoid ICC pressure. Consequently, a hybrid sentencing regime differentiated between political crimes and Rome Statute crimes that were not eligible for amnesty/pardon, preventing ICC admissibility (Björkdahl & Warvsten, 2021). In this case, ICC pressure generated positive complementarity by adoption of measures and policies on domestic prosecutions for human rights violations, which supports the fact that the Court can influence national accountability systems indirectly.

However, the ICC may sometimes be necessary because national courts are not always an available and effective option. In E. Piccolo Koskimies’s (2026) view, there may be a clear justification for accepting cases before the ICC when national courts are unwilling to prosecute perpetrators of international crimes, particularly when the perpetrators are state leaders who control the national judicial system. In the case of Ahmed Harun (the Minister of Interior in the former Sudanese government headed by Omar al-Bashir) and Ali Kushayb (the commander of the Janjaweed forces supporting the former Sudanese government), the Pre-Trial Chamber issued a preliminary ruling on admissibility on the basis that certain incidents in Darfur under investigation in Sudan did not involve the “same conduct” as the ICC case (The Prosecutor v. Ahmad Muhammad Harun (“Ahmad Harun”), 2007). This means that international crimes may have been committed by the concerned parties but have not been investigated by the national judiciary in Sudan. This prompted the Pre-Trial Chamber to rule that the ICC has jurisdiction to prosecute both Ahmed Harun and Ali Kushayb. There are instances in which national authorities may be willing but unable to pursue and prosecute perpetrators of international crimes for reasons that may include an inability to arrest the accused, obtain evidence, lack of necessary resources, or the collapse of the judicial system as a whole due to the ongoing conflict (King, 2015).

Clearly, national courts within a State have an objective and timeframe framework for initiating and pursuing prosecution against perpetrators of international crimes. This is expected, given their sovereign jurisdiction to prosecute perpetrators of crimes in general. On the other hand, another institution, the ICC, awaits and monitors the performance of these national courts in dealing with international crimes. However, at some point, the wait for the ICC must end, allowing it to commence proceedings in The Hague to accomplish what national courts have failed to do. L.E. Carter (2013) wrote, that given the role of the ICC under the principle of complementarity, it encourages national judicial authorities to prosecute perpetrators of genocide, war crimes, and crimes against humanity by developing their national capacities and enacting the necessary legislation. The benefits of such improvements to society as a whole are indisputable, as they create a more just and equitable legal system. Furthermore, the principle of complementarity reinforces the notion that States bear the primary responsibility for protecting their citizens from mass atrocities. This is in line with the concept of the Responsibility to Protect, which

emphasises states' obligations to protect human rights (Report of the International Commission..., 2001).

In general, the complementarity principle works through legal mechanisms to promote global governance (Adigun, 2021). Essentially, it creates a dynamic whereby the threat of international intervention prompts domestic legal reforms, effectively outsourcing the "peer review" of national justice systems to an international body. As a result, social protection is directly affected, since a functioning, impartial judiciary is a cornerstone of public trust and confidence. Indirectly, the complementarity principle fosters national legal institutions by urging states to strengthen their courts to avoid ICC intervention. Any social protection system is built on these institutions, which ensure that citizens' rights are protected every day, creating a more stable economic and social environment.

Conclusions

This article examined how the ICC may contribute indirectly to social protection. This is accomplished by promoting legal equality, recognition of vulnerable groups, reparations, and complementarity as key legal mechanisms outlined in the ICC Statute through, which this influence occurs. The paper concludes with several findings that demonstrate the ICC's indirect contribution to social protection through normative dissemination, institutional incentives, and victim-centred legal mechanisms rather than direct welfare provision:

First, the ICC contributes to accountability by limiting the immunity of State agents and affirming the principle of legal equality. However, as international criminal accountability remains selective, politically contingent, and unevenly enforced, ICC does not produce stable social orders, nor does it address entrenched impunity. Instead, the ICC provides authoritative reference points for accountability claims within domestic and transnational legal discourse by articulating and institutionalising legal expectations that challenge absolute impunity.

Second, this article does not demonstrate that ICC criminalisation strengthens societal safeguards against discrimination, violence, or exploitation for vulnerable groups. It rather illustrates how the Rome Statute and ICC jurisprudence recognise group-based and gendered harms as international concerns and justiciable crimes. In national legal systems, this determination impacts how violence against women, children, and protected groups is classifying, investigated, and prosecuted.

The results of the study showed that the ICC contributes to social protection not by ensuring accountability or safeguarding vulnerable groups in practice, but by developing the legal and institutional frameworks through which protection is claimed, contested, and pursued. Through its rules, judicial interpretations, and complementarity-based legal mechanisms, the Court influences how national institutions understand the concepts of responsibility, victimhood, and legally recognised harm. While these contributions do not guarantee tangible results in the field of social protection, they do create the conditions that make achieving such results possible. Future research should focus on empirically assessing how ICC-related legal norms are implemented within national jurisdictions and how they influence concrete social protection outcomes. In particular, comparative and interdisciplinary studies incorporating qualitative and quantitative data would help to better evaluate the practical effectiveness, limitations, and contextual variability of the Court's indirect impact.

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Роль міжнародного кримінального суду у досягненні соціального захисту

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Анотація. Актуальність дослідження зумовлена зростанням ролі міжнародного кримінального права у забезпеченні не лише покарання за міжнародні злочини, але й формування ширших механізмів соціального захисту в постконфліктних суспільствах. Метою роботи було визначення того, яким чином Міжнародний кримінальний суд (МКС) може опосередковано сприяти досягненню соціального захисту через свої правові та інституційні механізми. У дослідженні застосовано аналітико-інтерпретаційний підхід у межах соціально-правової методології з аналізом норм Римського статуту, судової практики та політик Офісу прокурора. У результаті встановлено, що МКС здійснює непрямий вплив на соціальний захист через низку взаємопов'язаних правових механізмів. Зокрема, принцип правової рівності, закріплений у статті 27 Римського статуту, сприяє подоланню безкарності, змінюючи очікування щодо відповідальності політичних еліт та формуючи довіру до правосуддя. Визнання вразливих соціальних груп у статтях 6 і 7 забезпечує юридичну кваліфікацію колективного насильства, включно із гендерно зумовленими злочинами, що впливає на розвиток національних підходів до їх розслідування та переслідування. Система репарацій, передбачена статтею 75, функціонує як гібридний інструмент, поєднуючи елементи кримінальної відповідальності та соціальної підтримки, спрямованої на відновлення постраждалих осіб і спільнот. Принцип комплементарності, закріплений у статті 17, стимулює держави до реформування національних правових систем, посилення судових інституцій та впровадження міжнародних стандартів відповідальності. Сукупно ці механізми сформували інституційні та нормативні передумови для соціального захисту, хоча їх вплив є опосередкованим і не гарантує безпосередніх результатів. Практична цінність дослідження полягає у можливості використання його результатів для вдосконалення національних правових політик у сфері захисту жертв та забезпечення відповідальності за міжнародні злочини

Ключові слова: справедливість; рівність; звірства; безкарність; інституційна реформа