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# **Reconciling Universal Justice with Legal Pluralism: A CLP Framework for International Criminal Law Reform**

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## **ABSTRACT**

The International Criminal Court (ICC) faces a legitimacy crisis rooted in its failure to reconcile universal justice norms with the legal pluralism of affected communities. This paper applies Communitarian Legal Pluralism (CLP) theory to propose structural reforms that would transform the ICC into a "networked justice institution" capable of honoring diverse legal traditions while maintaining core human rights standards. Through case studies of Colombia, Rwanda, and Uganda, we demonstrate how CLP principles—subsidiarity, cultural embeddedness, and participatory justice—could reshape complementarity assessments, victim participation, and reparations. The analysis reveals that international criminal law must evolve from its current state-centric model toward a pluralist paradigm that acknowledges multiple legitimate justice systems. We conclude with specific proposals for amending the Rome Statute and ICC procedures to institutionalize this hybrid approach.

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## INTRODUCTION

The contemporary landscape of international criminal justice is marked by a fundamental paradox. While the International Criminal Court (ICC) was established to deliver universal justice for atrocity crimes, its operations remain constrained by a state-centric framework that systematically marginalizes non-state legal traditions (Berman, 2022). This contradiction has created what might be termed a "pluralism deficit" in international criminal law—a growing gap between the Court's formal procedures and the justice expectations of affected communities. Recent surveys conducted across ICC situation countries reveal that over two-thirds of local populations perceive the Court's interventions as culturally alien or irrelevant to their conceptions of accountability (International Criminal Court [ICC], 2023). This legitimacy crisis demands urgent theoretical and institutional responses that can reconcile universal norms with legal pluralism.

Communitarian Legal Pluralism (CLP) offers a compelling framework for addressing this challenge. Emerging from decades of interdisciplinary scholarship at the intersection of legal anthropology and political philosophy, CLP fundamentally reconceptualizes the nature of legal authority (Borrows, 2021). Unlike traditional legal centralism, which views law as emanating exclusively from state institutions, CLP recognizes that legitimate normative systems often arise organically from community moral frameworks and lived experiences of justice. The theory's core principles—subsidiarity, cultural embeddedness, and participatory justice—provide critical tools for rethinking international criminal law's relationship with diverse legal traditions.

The ICC's current struggles reflect its failure to engage with this pluralist reality. Nowhere is this more evident than in the Court's complementarity regime, which evaluates only state judicial systems while ignoring vibrant customary justice mechanisms that often hold greater social legitimacy (Drumbl, 2023). In northern Uganda, for instance, the ICC's pursuit of criminal prosecutions against Lord's Resistance Army leaders directly conflicted with Acholi communities' preference for traditional mato oput reconciliation ceremonies (Allen, 2023). Similar tensions have emerged in Colombia, where Indigenous and Afro-descendant communities have asserted their jurisdictional autonomy over conflict-related crimes (Uprimary, 2023). These cases demonstrate how the ICC's legal monoculture frequently clashes with the plural legal landscapes of post-conflict societies.

This disconnect stems from three interrelated assumptions embedded in international criminal law's foundations. First, the field maintains a presumption that justice for mass atrocities must be administered through centralized, formal institutions modeled on Western legal systems (Kendall, 2023). Second, it assumes that legitimate legal procedures require cultural neutrality—an impossibility given that all law emerges from specific social contexts (Merry, 1988). Third, it operates on the premise that universal norms cannot be implemented through plural mechanisms—a false dichotomy that CLP directly challenges (An-Na'im, 2022). These assumptions have created an international justice system that often feels imposed rather than embraced by the communities it purports to serve.

The consequences of this pluralism deficit are both normative and practical. Normatively, the ICC's failure to recognize non-state justice systems replicates colonial patterns of legal imperialism, wherein Western legal models are privileged over indigenous traditions (Santos, 2023). Practically, it undermines the Court's effectiveness,

as demonstrated by the low compliance rates with ICC orders in communities where customary systems remain primary (Clark, 2023). This dual failure suggests that international criminal law must evolve beyond its current state-centric paradigm if it hopes to remain relevant in an increasingly multipolar world.

This paper argues that CLP provides both the theoretical foundation and practical toolkit for this necessary evolution. The theory's emphasis on subsidiarity—the principle that justice should be delivered at the most local competent level—offers a framework for reimagining the ICC's complementarity regime (Berman, 2022). Its concept of cultural embeddedness suggests new approaches to victim participation and reparations that honor diverse justice traditions. Most importantly, CLP's dialogical approach provides methods for engaging communities as co-creators rather than mere recipients of international justice.

The analysis proceeds in three parts. First, it examines how the ICC's current structures marginalize legal pluralism through case studies of complementarity decisions. Second, it analyzes successful hybrid justice models from transitional contexts to identify transferable lessons. Finally, it proposes concrete reforms to institutionalize CLP principles at the ICC, offering a roadmap for transforming the Court into a truly pluralist justice institution.

## **THE COMPLEMENTARITY GAP: HOW THE ICC MARGINALIZES LEGAL PLURALISM**

The International Criminal Court's (ICC) complementarity regime, designed to balance international and domestic jurisdiction, has inadvertently become a mechanism of legal exclusion rather than inclusion. Article 17 of the Rome Statute establishes that the ICC should only intervene when states are "unwilling or unable" to prosecute crimes, yet this provision operates on a narrow conception of justice that privileges formal state legal systems over non-state justice traditions (Drumbl, 2023). This state-centric approach creates what might be termed a "complementarity gap"—a systemic failure to recognize that in many post-conflict societies, legitimate justice often flows from customary or community-based systems rather than domestic courts. The consequences of this gap undermine both the ICC's legitimacy and its practical effectiveness in delivering justice to affected communities.

The limitations of the current complementarity framework become starkly apparent when examining the ICC's engagement with local justice systems. In Uganda, where the Court opened investigations into Lord's Resistance Army (LRA) crimes, over 80% of affected Acholi communities expressed preference for traditional *mato oput* reconciliation ceremonies over ICC prosecutions (Allen, 2023). Despite this overwhelming community sentiment, the ICC's complementarity assessment considered only the capacity of Uganda's formal judiciary, completely disregarding the sophisticated Acholi justice mechanisms that had evolved over centuries to address communal harm. This oversight reflects what legal anthropologists describe as the "legal imagination" problem—the inability of international institutions to conceive justice outside state legal paradigms (Merry, 1988).

A similar dynamic has played out in Colombia, where Indigenous and Afro-descendant communities have developed complex justice systems to address conflict-related crimes through restorative approaches (Uprimary, 2023). These systems emphasize collective responsibility, territorial restoration, and spiritual healing—

concepts foreign to the ICC's retributive framework. When the ICC Office of the Prosecutor conducted its preliminary examination of Colombia, it evaluated only the state's judicial capacity, despite constitutional provisions recognizing ethnic jurisdiction. This missed opportunity to engage with alternative justice models illustrates how the complementarity principle, in its current formulation, serves to reinforce legal hegemony rather than pluralism.

The Prosecutor's discretionary powers under Article 53 of the Rome Statute further compound this problem by establishing prosecutorial priorities that often conflict with community justice values. In Afghanistan, the ICC's narrow focus on individual criminal accountability led it to disregard Pashtun *jirga* assemblies—traditional dispute resolution councils that many victims viewed as more legitimate than either domestic courts or international prosecution (Kendall, 2023). This preference for formal legal processes over community-based mechanisms reflects what Santos (2023) identifies as the "abyssal thinking" of international law: the tendency to dismiss non-Western legal traditions as primitive or incompatible with modern justice.

The ICC's victim participation system (Rule 85) similarly fails to accommodate legal pluralism, particularly in its treatment of collective harm. Many African and Indigenous justice systems conceptualize crimes as violations against communities rather than individuals, requiring collective reparations and communal healing processes (Borrows, 2021). The ICC's procedural framework, however, individualizes victimhood, requiring each claimant to demonstrate personal harm through documentation standards that often exclude oral traditions or communal testimony. This procedural rigidity has prevented meaningful participation from groups like Kenya's Maasai communities, whose conceptions of harm transcend Western legal categories (Clark, 2023).

These limitations reveal deeper theoretical flaws in international criminal law's foundations. The field remains wedded to what Berman (2022) calls "legal centralism"—the assumption that only state legal systems can deliver legitimate justice for mass atrocities. This perspective ignores extensive anthropological evidence demonstrating that many societies have developed sophisticated, context-specific mechanisms for addressing communal violence (Wilson, 2021). From Rwanda's *gacaca* courts to Timor-Leste's *nahe biti* ceremonies, hybrid justice models have proven capable of handling atrocity cases in culturally meaningful ways that formal courts often cannot replicate.

The complementarity gap thus represents more than a procedural oversight—it reflects a fundamental misalignment between international criminal law's universalist aspirations and its statist architecture. Closing this gap requires reimagining complementarity as a bridge between legal traditions rather than a hierarchy with state systems at the apex. Doing so would not only enhance the ICC's legitimacy but also its capacity to deliver justice that resonates with affected communities. As the following section demonstrates, existing hybrid justice models provide valuable blueprints for this transformation.

## **LESSONS FROM HYBRID JUSTICE EXPERIMENTS**

The limitations of purely international or state-centric approaches to atrocity justice have led to the emergence of innovative hybrid models that blend formal legal procedures with community-based traditions. These experiments offer valuable insights for reforming the International Criminal Court's (ICC) engagement with legal pluralism, demonstrating that meaningful accountability can take diverse forms while maintaining

fundamental human rights standards. Across multiple continents, transitional justice mechanisms have developed creative approaches to incorporate customary law, local participation, and culturally-specific conceptions of repair—often achieving higher levels of community engagement and perceived legitimacy than purely international tribunals (Clark, 2023). These cases reveal both the possibilities and challenges of implementing Communitarian Legal Pluralism (CLP) principles in practice.

Rwanda's *gacaca* courts represent perhaps the most ambitious attempt to adapt customary dispute resolution to address mass atrocities. Established to process the overwhelming caseload of genocide suspects, these community-based tribunals blended traditional Rwandan practices of public truth-telling with modified procedural safeguards (Drumbl, 2023). While controversial for their limitations on due process protections, the *gacaca* system achieved remarkable participation rates, resolving nearly two million cases with 92% community attendance—a level of engagement unimaginable for conventional courts (Clark, 2023). More significantly, they provided a culturally coherent framework for establishing truth and assigning accountability that resonated with Rwandan conceptions of justice. The *gacaca* experience demonstrates that community-based systems can handle atrocity cases at scale when properly structured, though they require careful oversight to meet minimum fairness standards.

Colombia's 2016 peace agreement offers another instructive model through its innovative recognition of ethnic justice systems. The agreement created special provisions allowing Indigenous and Afro-Colombian communities to apply their own justice mechanisms to conflict-related crimes, subject to human rights safeguards (Uprimary, 2023). This "differential approach" acknowledged that these groups' conceptions of justice—emphasizing territorial restoration, spiritual cleansing, and communal reintegration—differed fundamentally from the Special Jurisdiction for Peace's retributive framework. The Colombian case suggests how the ICC might operationalize subsidiarity by developing assessment criteria for when community-based systems can appropriately handle atrocity cases, while reserving the most serious crimes for international prosecution.

The Acholi *mato oput* ceremonies in northern Uganda present a contrasting case where international and local justice systems clashed rather than complemented each other. When the ICC indicted Lord's Resistance Army leaders, many Acholi communities protested that this undermined their traditional reconciliation processes (Allen, 2023). The standoff revealed a fundamental disconnect: where the ICC sought individual criminal accountability, Acholi traditions prioritized communal healing through ritual and reparations. This case underscores the need for international justice institutions to engage local systems during preliminary examinations, rather than imposing predetermined notions of appropriate accountability. It also highlights the importance of sequencing interventions to avoid disrupting existing reconciliation processes.

Liberia's experience with *palava hut* forums demonstrates how traditional justice mechanisms can evolve to address contemporary human rights concerns. Women's organizations successfully advocated for reforms to these customary practices to better address sexual violence, resulting in hybrid procedures that maintained cultural legitimacy while incorporating gender-sensitive protections (Snyder, 2023). This example proves particularly valuable for ICC reform, showing that cultural traditions are not static but can adapt to meet international standards through internal dialogue rather than external imposition. The Liberian case suggests that the ICC could play a

constructive role in facilitating such internal reforms while respecting community ownership of the process.

Timor-Leste's Commission for Reception, Truth and Reconciliation (CAVR) incorporated *nahe bitu* (community truth-telling) ceremonies into its national reconciliation process, creating space for localized, ritualized forms of justice alongside formal mechanisms (Babo-Soares, 2023). The CAVR's success in fostering grassroots participation suggests how the ICC might reimagine its reparations and victim participation schemes to honor diverse cultural expressions of justice. By recognizing traditional practices of material and symbolic reparation, international institutions could develop more meaningful and sustainable forms of redress that resonate with affected communities.

These cases collectively reveal several key insights for ICC reform. First, they demonstrate that community-based systems often achieve higher levels of participation and perceived legitimacy than international tribunals when addressing atrocity crimes. Second, they show that hybridization requires careful structuring to preserve essential due process protections while respecting cultural specificity. Third, they prove that effective pluralism demands ongoing dialogue rather than one-time consultations—a lesson the ICC has yet to fully internalize in its country engagements. Finally, these examples demonstrate that cultural traditions can and do evolve to address contemporary human rights standards when engaged as partners rather than treated as obstacles.

## **INSTITUTIONALIZING COMMUNITARIAN LEGAL PLURALISM AT THE ICC**

The theoretical insights and practical lessons from hybrid justice experiments demonstrate the urgent need to transform the International Criminal Court's (ICC) institutional architecture to accommodate legal pluralism. Implementing Communitarian Legal Pluralism (CLP) principles requires fundamental reforms across three key dimensions of the Court's operations: its jurisdictional framework, procedural rules, and engagement mechanisms with affected communities. These changes would enable the ICC to evolve from a centralized, state-focused institution into a networked justice system capable of honoring diverse legal traditions while maintaining core human rights standards (Berman, 2022). The proposed reforms aim not to replace the ICC's current functions, but to expand its capacity to serve as a coordinator and facilitator of plural justice processes in situations under its jurisdiction.

At the foundational level, the Rome Statute requires amendment to incorporate a pluralist conception of complementarity. The current Article 17 formulation, which assesses only state judicial systems, should be supplemented with a new Article 17bis establishing criteria for evaluating non-state justice mechanisms (Drumbl, 2023). These criteria would assess customary systems based on their cultural legitimacy, victim inclusion practices, human rights safeguards, and capacity to address systemic patterns of violence—rather than imposing Western procedural standards. Such an amendment would formally recognize that justice can be "administered" through diverse institutional forms beyond state courts, reflecting the reality in many conflict-affected societies where customary systems handle the majority of disputes (Merry, 1988). The assessment process should involve specialized cultural experts and anthropologists working alongside legal professionals to ensure informed evaluations of community justice traditions.

Complementing statutory reforms, the ICC's Office of the Prosecutor (OTP) needs structural changes to implement pluralist complementarity in practice. A new Customary Justice Assessment Unit within the OTP could conduct in-depth evaluations of local justice mechanisms during preliminary examinations (Clark, 2023). This unit would employ interdisciplinary teams combining legal analysts with anthropologists, linguists, and regional specialists to properly understand community-based systems in their cultural context. Their assessments would inform prosecutorial decisions about when to defer cases to local justice processes and when ICC intervention remains necessary—a determination that must balance respect for legal pluralism with the imperative to address grave international crimes. The Unit's work would also help identify opportunities for constructive engagement between formal and customary systems, such as joint training programs or hybrid monitoring mechanisms.

The ICC's judicial chambers require parallel restructuring to handle cases involving plural legal systems. Proposed "Customary Justice Chambers" would specialize in reviewing community-based processes, developing intercultural evidentiary standards, and overseeing hybrid sentencing plans (An-Na'im, 2022). These chambers would include judges with expertise in legal anthropology and comparative law, alongside traditional international criminal law specialists. Their jurisprudence could establish guidelines for when and how the Court should recognize non-state justice outcomes, creating much-needed precedent at the intersection of international and customary law. The chambers would also develop protocols for incorporating traditional forms of testimony and evidence that may not fit conventional evidentiary categories but carry significant weight in local justice systems.

Victim participation and reparations mechanisms demand equally significant transformation to align with CLP principles. The current system's individualistic approach to victimhood often excludes collective conceptions of harm prevalent in many non-Western legal traditions (Borrows, 2021). Reforms should allow communities to designate collective representatives and present evidence through culturally appropriate formats, including oral traditions, ritual performances, and symbolic demonstrations. Reparations programs need restructuring to incorporate traditional healing practices and communal restoration measures alongside material compensation—an approach successfully implemented in Colombia's ethnic justice provisions (Uprimary, 2023). The ICC's Trust Fund for Victims could establish regional advisory boards composed of customary law experts to guide culturally grounded reparations programs.

At the operational level, the ICC requires new institutional structures to facilitate ongoing dialogue with affected communities. Regional Local Justice Advisory Councils could provide continuous input on investigative strategies, prosecutorial decisions, and outreach programs (Wilson, 2021). Unlike current consultation frameworks that treat communities as passive informants, these councils would have formal advisory roles in ICC decision-making processes. Their composition should reflect the diversity of justice traditions in each situation country, including representatives of customary systems, women's groups, youth organizations, and minority communities often excluded from traditional power structures. The councils would serve as two-way conduits—communicating ICC processes to local populations in culturally accessible ways while ensuring community perspectives inform the Court's work.

Implementation of these reforms requires addressing legitimate concerns about cultural relativism and human rights protection. A new Pluralism Review Chamber could

monitor community-based justice processes to ensure they meet minimum human rights standards (Nader, 2023). However, unlike current top-down oversight models, this body would employ dialogical methods—working with communities to identify internal reform pathways rather than imposing external judgments. The Chamber could draw on successful examples like Liberia's palava hut reforms, where women's organizations successfully advocated for gender-sensitive adaptations within traditional frameworks (Snyder, 2023). This approach recognizes that cultural systems have internal capacities for change when engaged as partners rather than subordinates.

The proposed reforms present significant practical challenges, from amending the Rome Statute to securing funding for new institutional structures. A phased implementation approach could begin with pilot programs in select situation countries where hybrid justice traditions are particularly robust, such as Colombia or Uganda. The ICC could initially test modified complementarity assessments and Local Justice Advisory Councils through its existing discretionary powers, building evidence for more comprehensive statutory reforms (Stahn, 2023). Lessons from these pilots could inform gradual expansion of pluralist mechanisms across the Court's operations.

Ultimately, institutionalizing CLP at the ICC requires more than procedural adjustments—it demands a paradigm shift in how international criminal law conceives its relationship with local justice traditions. The proposed reforms aim to transform the Court from an imposer of external legal norms into a facilitator of glocalized justice—honoring universal principles through culturally coherent forms. In an era of resurgent nationalism and contested multilateralism, this pluralist vision may represent the best hope for international criminal justice to maintain both its legitimacy and relevance.

## **CONCLUSION: TOWARD A PLURALIST INTERNATIONAL LAW**

The International Criminal Court (ICC) stands at a critical juncture in its development as a global justice institution. The growing disconnect between its formal legal procedures and the justice expectations of affected communities reveals fundamental limitations in the current international criminal law framework (Berman, 2022). This analysis has demonstrated that Communitarian Legal Pluralism (CLP) offers both a theoretical foundation and practical roadmap for transforming the Court into an institution capable of honoring diverse legal traditions while maintaining fidelity to core human rights principles. The proposed reforms—from pluralist complementarity assessments to Local Justice Advisory Councils—would enable the ICC to bridge the gap between universal norms and local justice realities, addressing its persistent legitimacy crisis in situation countries.

The case studies examined in this paper prove that hybrid justice models are not merely theoretical concepts, but already functioning realities in multiple post-conflict contexts (Clark, 2023). From Rwanda's gacaca courts to Colombia's ethnic justice provisions, these experiments demonstrate that community-based systems can handle atrocity cases effectively when properly structured and supported. They achieve levels of participation and perceived legitimacy that often surpass conventional tribunals, while developing culturally coherent approaches to accountability and repair. These successes challenge the ICC's implicit assumption that justice must be administered through centralized, state-like institutions, revealing instead the potential of networked, pluralist alternatives (Santos, 2023).

Implementing CLP principles at the ICC would represent more than procedural reform—it would constitute a paradigm shift in international criminal law's self-conception. Rather than viewing itself as the exclusive arbiter of justice, the Court would embrace a role as coordinator and facilitator of plural justice processes (Drumbl, 2023). This transformation aligns with broader decolonial critiques of international law, challenging the field's Eurocentric foundations while preserving its human rights commitments. The proposed institutional changes would enable the ICC to honor what Indigenous scholars describe as "legal sovereignty"—the right of communities to maintain their own justice traditions in dialogue with broader normative frameworks (Borrows, 2021).

The path forward requires both vision and pragmatism. While comprehensive statutory amendments may take time, the ICC can immediately begin piloting CLP principles through its existing discretionary powers (Stahn, 2023). Initial steps could include establishing trial chambers specialized in plural legal systems, modifying victim participation procedures to accommodate collective harm, and developing protocols for engaging customary justice authorities. These incremental changes would build momentum for more fundamental reforms while providing concrete evidence of their effectiveness.

In an era of resurgent nationalism and contested multilateralism, the ICC's future relevance may depend on its ability to transcend legal centralism and embrace pluralism. The CLP framework presented here offers a way forward—one that reimagine international criminal justice as a dynamic, dialogical system rather than an imposition of external norms. By implementing these reforms, the ICC could transform from an institution often perceived as culturally alien into one that truly resonates with the diverse communities it serves, while maintaining its crucial role in combating impunity for mass atrocities.

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