

# Victims and Prosecutors: Clientelism, Legalism, and Culture at the International Criminal Court

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Prosecutors at the International Criminal Court (ICC) have a dual mission: hold perpetrators accountable for grave international crimes, and deliver justice to victims. To fulfill these mandates, the Office of the Prosecutor must navigate dynamic understandings of justice in disparate post-conflict societies. Yet, few empirical studies have investigated how culture—viewed as a resource for navigating social relations— impacts relationships between ICC prosecutors and victims and shapes participants' expectations of international criminal law. Do prosecutors and victims embedded in distinct relational networks experience international justice differently?

Drawing from 298 interviews with atrocity crime victims in Uganda and Democratic Republic of the Congo and from twenty-seven interviews with ICC officials, this Article reveals how disparate beliefs about, and expectations of, international justice generate epistemological and practical conflicts.

In-depth interviews with ICC victim participants reveal that most victims expect prosecutors to provide non-legal forms of recognition and support, including regular visits to their home communities, updates about trial proceedings, and material assistance. In contrast, ICC prosecutors tend to prioritize legal consistency, procedural uniformity, and retributivism. Some prosecutors view victims' extra-judicial requests as outside the proper scope of ICC activities.

To resolve such conflicts, this Article argues that ICC prosecutors should question principles of legalism and adopt a flexible approach to victim outreach and participation. Moreover, in some contexts, victim out-

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reach may include forms of material support as a proper exercise of the court's obligations under the Rome Statute

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## Introduction

Prosecutors at the International Criminal Court (ICC) depend on the testimony of victims.<sup>1</sup> Survivors of mass violence are vital sources of information during criminal investigations and provide testimonial, documentary, and linkage evidence for trials.<sup>2</sup> Some victims also appear as witnesses during criminal proceedings—sometimes at great personal risk.<sup>3</sup> Prosecutors' ability to appropriately understand and respond to survivors' experiences can impact both the effectiveness and the legitimacy of the court.<sup>4</sup> They must navigate dynamic local understandings of justice in sui

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1. The terms "victim," "survivor," and "victim participant" are used interchangeably in this Article. The terms refer to people who personally survived atrocity crimes—war crimes, crimes against humanity, or genocide—and to those indirectly impacted by these crimes, including children, spouses, and neighbors. Study respondents include people who suffered harms within the scope of the ICC charges in a particular case, and also people who suffered injuries outside the scope of the ICC's charges. Subject to judges' discretion, both types of victims can participate in ICC cases through legal counsel. For a recent discussion of who qualifies as an ICC victim, see generally Nema Milaninia, *Conceptualizing Victimization at the International Criminal Court: Understanding the Causal Relationship Between Crime and Harm*, 50 COLUM. HUM. RTS. L. REV. 116 (2019).

2. See Charles P. Trumbull, IV, *The Victims of Victim Participation in International Criminal Proceedings*, 29 MICH. J. INT'L L. 777, 778 (2008); Brianne N. McGonigle, *Bridging the Divides in International Criminal Proceedings: An Examination into the Victim Participation Endeavor of the International Criminal Court*, 21 FLA. J. INT'L L. 93, 108-14 (2009); Valentina Spiga, *No Redress Without Justice: Victims and International Criminal Law*, 10 J. INT'L CRIM. JUST. 1377, 1384-86 (2012).

3. See Shanee Stepakoff et al., *Why Testify? Witnesses' Motivations for Giving Evidence in a War Crimes Tribunal in Sierra Leone*, 8 INT'L J. TRANSITIONAL JUST. 426, 428-29 (2014); ERIC STOVER, *THE WITNESSES: WAR CRIMES AND THE PROMISE OF JUSTICE IN THE HAGUE* 74-75 (2005); Stephen Cody et al., *Witness Testimony, Support, and Protection at the ICC*, in *AFRICA AND THE ICC: PERCEPTIONS OF JUSTICE* 301 (Kamari M. Clark et al. eds., 2016).

4. See Allison Marston Danner, *Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court*, 97 AM. J. INT'L L. 510, 522-36 (2003); Stephen Cody, *Procedural Justice, Legitimacy, and Victim Participation in*

*generis* conflict situations around the world.<sup>5</sup> Yet, despite the importance of victims to international criminal prosecutions, few empirical studies have investigated the effects of victims' belief systems on international justice, or how cultural conflicts develop between victims and prosecutors.<sup>6</sup> Investigations of victims' experiences are particularly important because officials at international criminal courts frequently claim to carry out prosecutions in their names and to provide them with an influential voice in criminal proceedings.<sup>7</sup> In contrast to domestic criminal prosecutions in common law countries, ICC victims have robust participation rights under Article 68(3) of the Rome Statute, the ICC's founding legal document.<sup>8</sup>

This Article draws on 298 interviews with victims participating in ICC cases in Uganda and Democratic Republic of the Congo (DRC), and twenty-seven interviews with ICC prosecutors and officials in the Netherlands to illustrate how victims' belief systems condition their experiences of international justice. Specifically, the data shows that Ugandan and Congolese victims' involvement with patronage networks in their home countries affect their views of prosecutors and the court. In addition to criminal accountability, ICC victim-participants who live in societies with patron-client relations as a dominant form of social organization desire non-judicial forms of recognition and support, including regular visits to their communities, routine updates, feedback about investigations and trial proceedings, and material gestures of support. In Uganda and DRC, for example, victims' assessments of ICC interventions often hinge on whether court personnel behave in the same manner as a good patron would. Beyond seeking criminal convictions, victims expected openness, generosity, and, in some instances, material support from ICC personnel. For survivors, the legitimacy of judicial proceedings often depended on a prosecutor's ability to behave according to established community standards of care and reciprocity.

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*Uganda, in* THE LEGITIMACY OF INTERNATIONAL CRIMINAL TRIBUNALS 376, 377-78 (Nobuo Hayashi & Cecilia M. Bailliet eds., 2017).

5. See, e.g., Leila Ulrich, *Beyond the 'Global-Local Divide': Local Intermediaries, Victims and the Justice Contestations of the International Criminal Court*, 14 J. INT'L CRIM. JUST. 543, 544 (2016); Jaya Ramji-Nogales, *Designing Bespoke Transitional Justice: A Pluralist Process Approach*, 32 MICH. J. INT'L L. 1, 3 (2010); KAMARI MAXINE CLARKE, *FICCTIONS OF JUSTICE: THE INTERNATIONAL CRIMINAL COURT AND THE CHALLENGE OF LEGAL PLURALISM IN SUB-SAHARAN AFRICA* 89-150 (2009); Matiangai V.S. Sirleaf, *Regionalism, Regime Complexes, and the Crisis in International Criminal Justice*, 54 COLUM. J. TRANSNAT'L L. 699, 699 (2015).

6. For some notable exceptions, see, e.g., Matiangai V.S. Sirleaf, *Beyond Truth and Punishment in Transitional Justice*, 54 VA. J. INT'L L. 223, 226-28 (2014); Jessica Almqvist, *The Impact of Cultural Diversity on International Criminal Proceedings*, 4 J. INT'L CRIM. JUST. 745, 764 (2006); Anushka Sehmi, 'Now that We Have No Voice, What Will Happen to Us?': *Experiences of Victim Participation in the Kenyatta Case*, 16 J. INT'L CRIM. JUST. 571, 572 (2018).

7. See Sara Kendall & Sarah Nouwen, *Representational Practices at the International Criminal Court: The Gap Between Juridified and Abstract Victimhood*, LAW & CONTEMP. PROBS., 2013, at 235, 239-41.

8. See Rome Statute of the International Criminal Court, art. 68(3), July 17, 1998, 2187 U.N.T.S. 90.

Table 1: Congolese and Ugandan Expectations of Support (N=272)<sup>9</sup>

	DRC	Uganda
Victim identifies compensation as a significant motivation for participation in the criminal case	106 (N=132) (80%)	92 (N=140) (66%)
Victim seeks individual payments from the court (either as direct aid or as court ordered reparations)	84 (N=132) (64%)	87 (N=140) (62%)
Victim expects some form of material compensation to result from their participation in the criminal case	99 (N=132) (75%)	109 (N=140) (78%)

Study findings further show that prosecutors' commitment to well-established principles of legalism conditioned court responses to victims' patronage expectations.<sup>10</sup> In general, ICC prosecutors prioritized the court's retributive mandate and focused on convictions and punishment against high-ranking perpetrators. According to victims, this focus on criminal enforcement prevented court personnel from engaging in dialogue with survivors and eroded the ICC's legitimacy.

This Article is not a full-throated defense of clientelism in Uganda or DRC. Patron-client networks, which often structure life for ICC victims, may undermine the rule of law and assist in perpetuating corruption and exploitation. However, global prosecutors working in societies with patronage systems should not dismiss these social networks as inherently corrupt. Patron-client relations need not subordinate people, constrain individual choice, or limit free will.<sup>11</sup> Rather, in some circumstances, social dependencies can provide greater security and independence than either wealth accumulation or financial autonomy. For example, in Uganda and DRC, social interdependencies serve as durable social safety

9. See Interview with Participant from the Victim Participation Study (unpublished transcripts) (on file with author) [hereinafter Interview with VPS Participant].

10. For discussions of legalism, see Kieran McEvoy, *Letting Go of Legalism: Developing a 'Thicker' Version of Transitional Justice*, in TRANSITIONAL JUSTICE FROM BELOW: GRASS-ROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE 15, 16-20 (Kieran McEvoy & Lorna McGregor eds., 2008); ZACHARY D. KAUFMAN, UNITED STATES LAW AND POLICY ON TRANSITIONAL JUSTICE: PRINCIPLES, POLITICS, AND PRAGMATICS 56-57 (2016); Geoff Dancy & Christopher J. Fariss, *Rescuing Human Rights Law from International Legalism and Its Critics*, 39 HUM. RTS. Q. 1, 1 (2017).

11. See, e.g., PATRICK CHABAL & JEAN-PASCAL DALOZ, AFRICA WORKS: DISORDER AS POLITICAL INSTRUMENT 42-43 (1999); Daniel Jordan Smith, *Contradictions in Nigeria's Fertility Transition: The Burdens and Benefits of Having People*, 30 POPULATION & DEV. REV. 221, 222-23 (2004); James Ferguson, *Declarations of Dependence: Labour, Personhood, and Welfare in Southern Africa*, 19 J. ROYAL ANTHROPOLOGICAL INST. 223, 226 (2013); Mareike Winchell, *Economies of Obligation: Patronage as Relational Wealth in Bolivian Gold Mining*, 7 J. ETHNOGRAPHIC THEORY 159, 160 (2017). See generally China Scherz, *Seeking the Wounds of the Gift: Recipient Agency in Catholic Charity and Kiganda Patronage*, THE REQUEST AND THE GIFT IN RELIGIOUS AND HUMANITARIAN ENDEAVORS 47 (Contemp. Anthropology of Religion Ser., Frederick Klaitz ed., 2017).

nets during violence and post-conflict transitions. During conflicts, breadwinners face grave danger to their lives, land, money, and livestock. But patronage networks often survive mass violence and, in doing so, preserve important kinship structures and community ties. Therefore, international criminal prosecutors should recognize patronage networks and clientelism as important cultural systems that both constrain and empower survivors.

Likewise, this Article is not an assault on principles of legalism in international criminal law. Effective international criminal prosecutions require the robust and consistent applications of substantive and procedural criminal law. Paramount to international criminal proceedings must be the defendant's right to a fair trial. Principles of legalism can prove essential in preserving defendants' rights. Even as international criminal courts become more responsive to victims' concerns, legalism remains a bedrock of international criminal law.

Rather than critique either legalism or clientelism, this Article seeks to illustrate how divergent cultural systems can be reconciled in the practice of international criminal law. Continued research on relationships between international prosecutors and local communities can encourage greater victim participation in international justice and make criminal accountability more meaningful to the lives of survivors.

Based on empirical findings, this Article argues that the ICC should adopt a situational approach to victim outreach and participation in Uganda and DRC. This approach should embrace some forms of material support, including gift-giving and symbolic gestures of patronage, as a proper exercise of the ICC's commitment to reparative justice for victims. Meaningful engagement with atrocity crime survivors often requires prosecutors and other court staff to perform non-judicial acts of recognition and support.<sup>12</sup>

However, situational victim participation that includes material support should not be adopted as a general approach to international criminal law. Judicial engagement with patronage networks may be proper in some patron-client societies, but specific programs and forms of victim outreach and support depend on context.

This research underscores the centrality of victims' experiences and draws attention to effects of culture in relationships between ICC prosecutors and victim participants. Belief systems serve as valuable resources for survivors and prosecutors in post-conflict settings. Cultural analysis can help identify particular capacities—styles, skills, and habits—and explain participants' action strategies in international criminal cases.<sup>13</sup> Cultural

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12. See Gaëlle Carayon & Jonathan O'Donohue, *The International Criminal Court's Strategies in Relation to Victims*, 15 J. INT'L CRIM. JUST. 567, 571-74 (2017); Brianne McGonigle Leyh, *Victim-Oriented Measures at International Criminal Institutions: Participation and Its Pitfalls*, 12 INT'L CRIM. L. REV. 375, 393 (2012).

13. See Omar Lizardo & Michael Strand, *Skills, Toolkits, Contexts and Institutions: Clarifying the Relationship Between Different Approaches to Cognition in Cultural Sociology*, 38 POETICS 204, 206-08 (2010). See generally Ann Swidler, *Culture in Action: Symbols and Strategies*, 51 AM. SOCIO. REV. 273 (1986).

analysis also holds promise for pragmatic efforts to make international criminal law more relevant to violence-affected communities.

## I. Victims and the ICC

Global prosecutors have often sidelined victims in international criminal prosecutions.<sup>14</sup> For example, during the Nuremberg trials that followed World War II, Chief Prosecutor and United States Supreme Court Justice Robert H. Jackson relied almost exclusively on documentary evidence.<sup>15</sup> Victims had few opportunities to participate in cases or present their suffering during trials.<sup>16</sup> Prosecutors may invoke victims' suffering as the moral justification and impetus for criminal trials.<sup>17</sup> However, actual survivors tend to watch trials from the pews, read about them in newspapers, or tune in to live proceedings through radio or television broadcasts. In the end, only a few victims participate directly in the judicial proceedings. Moreover, prosecutors often define cases with legal narratives that present narrow conceptions of victims' experiences. A testifying witness, for example, may be asked about facts relevant to specific elements of charged criminal offenses, but she may never have the opportunity to describe complicated feelings about these crimes or their

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14. See MARKUS FUNK, *VICTIMS' RIGHTS AND ADVOCACY AT THE INTERNATIONAL CRIMINAL COURT* 81–84 (2010) (detailing the Rome Statute's recognition of victims' rights); Fiona McKay, *Victim Participation in Proceedings Before the International Criminal Court*, 15 HUM. RTS. BRIEF 1, 1–4 (2008); Susana SáCouto & Katherine Cleary, WAR CRIMES RSCH. OFF., *VICTIM PARTICIPATION BEFORE THE INTERNATIONAL CRIMINAL COURT* 1–11 (2007); Susana SáCouto & Katherine Cleary, *Victims' Participation in the Investigations of the International Criminal Court*, 17 TRANSNAT'L L. & CONTEMP. PROBS. 73, 79 (2008) [hereinafter SáCouto & Cleary, *Victims' Participation in the Investigations of the ICC*].

15. See Luke Moffett, *The Role of Victims in the International Criminal Tribunals of the Second World War*, 12 INT'L CRIM. L. REV. 245, 254 (2012).

16. See *id.*; Claire Garbett, *From Passive Objects to Active Agents: A Comparative Study of Conceptions of Victim Identities at the ICTY and ICC*, 15 J. HUM. RTS. 40, 41 (2016); MICHELE PALMER ET AL., *WITNESSES TO NUREMBERG: AN ORAL HISTORY OF AMERICAN PARTICIPANTS AT THE WAR CRIMES TRIALS* 1–10 (1998) (detailing various political and personal interests with peripheral focus on victims' perspectives); *cf.* Eric Stover & Rachel Shigeekane, *The Missing in the Aftermath of War: When Do the Needs of Victims' Families and International War Crimes Tribunals Clash?*, INT'L REV. RED CROSS, Dec. 2002, at 845, 846–47 (discussing the work of forensic scientists in advocating for the victims of war crimes). *But see* Mariana Pena & Gaelle Carayon, *Is the ICC Making the Most of Victim Participation?* 7 INT'L J. TRANSITIONAL JUST. 518, 519 (2013) (“Criticisms regarding the costs and additional work involved in realizing victims' participatory rights have emerged. Questions are being asked as to whether the system is actually meaningful to victims.”); CARLA FERSTMAN, *REDRESS TRUST, THE PARTICIPATION OF VICTIMS IN INTERNATIONAL CRIMINAL COURT PROCEEDINGS: A REVIEW OF THE PRACTICE AND CONSIDERATION OF OPTIONS FOR THE FUTURE* 10, 12 (2012) (noting that “[t]he main challenges . . . concern the amount of time and energy it can take to process each application individually” and that “with regards to minors and deceased persons, the different Chambers have so far failed to provide clarity and predictability for victims”).

17. See Laurel E. Fletcher, *Refracted Justice: The Imagined Victim and the International Criminal Court*, in *CONTESTED JUSTICE: THE POLITICS AND PRACTICE OF INTERNATIONAL CRIMINAL COURT INTERVENTION* 302, 302–04 (Christian De Vos et al. eds., 2015) (“Victims of mass atrocity crimes are invoked by the protagonists of [the International Court of Justice] . . . as one of the primary moral justifications for this unique enterprise.”).

enduring effects on the community. These restrictive trial presentations can woefully undervalue survivors' vibrant and complex lives and their experiences of violence.<sup>18</sup>

However, victim-centered legal reforms in recent decades have granted victims new participation and reparation rights.<sup>19</sup> The ICC now explicitly recognizes a victim's right to express views and concerns during proceedings and to receive reparations following criminal convictions.<sup>20</sup> The court is also the first to establish a Trust Fund for Victims (TFV).<sup>21</sup> Legal developments at regional and national courts have also permitted victims to participate in criminal cases not only as victim-witnesses, but also as civil parties or as a member of a victim group represented by appointed legal counsel.<sup>22</sup>

This expansion of victims' rights has not been without controversy.<sup>23</sup> Judges, victim advocates, and international law scholars have vigorously debated the merits and consequences of this shift toward greater victim inclusion in international justice.<sup>24</sup> Advocates in these debates emphasize

18. See Kendall & Nouwen, *supra* note 7, at 235-52; Jo-Anne Wemmers, *Where Do They Belong? Giving Victims a Place in the Criminal Justice Process*, 20 CRIM. L.F. 395, 411 (2009).

19. See RIANNE LETSCHERT & JAN VAN DIJK, *THE NEW FACES OF VICTIMHOOD: GLOBALIZATION, TRANSNATIONAL CRIMES AND VICTIM RIGHTS* 3-14 (R. Letschert & J. van Dijk eds., 2011); Carolyn Hoyle & Leila Ullrich, *New Court, New Justice? The Evolution of 'Justice for Victims' at Domestic Courts and at the International Criminal Court*, 12 J. INT'L CRIM. JUST. 681, 681-85 (2014); see also Luke Moffett, *Meaningful and Effective? Considering Victims' Interests Through Participation at the International Criminal Court*, 26 CRIM. L.F. 255, 260 (2015) (noting that "[t]he inclusion of victims' interests in international criminal justice mechanisms is important for a number of reasons"); Miriam Cohen, *Victims' Participation Rights Within the International Criminal Court: A Critical Overview*, 37 DENV. J. INT'L L. & POL'Y 351, 358 (2009) ("In many cases the information that leads the Prosecutor to start an investigation *proprio motu* is provided by victims.").

20. See FUNK, *supra* note 14, at 81-82; McKay, *supra* note 14, at 2-3; SáCouto & Cleary, *Victims' Participation in the Investigations of the ICC*, *supra* note 14, at 77-78.

21. See Tom Dannenbaum, *The International Criminal Court, Article 79, and Transitional Justice: The Case for an Independent Trust Fund for Victims*, 28 WIS. INT'L L.J. 234, 243 (2010); see also Anne Dutton & Fionnuala Ni Aoláin, *Between Reparations and Repair: Assessing the Work of the ICC Trust Fund for Victims Under Its Assistance Mandate*, 19 CHI. J. INT'L L. 490, 493 (2019) ("The practice of international justice has made a significant shift from narrowly focused criminal accountability to a broader and more holistic understanding of the totality of victims' justice needs.").

22. See Spiga, *supra* note 2, at 1386 ("The need to incorporate victims' voices in the criminal process has emerged as a component of the mandate of international criminal tribunals."); Trumbull, *supra* note 2, at 782-83. See generally Eric Stover et al., *Confronting Duch: Civil Party Participation in Case 001 at the Extraordinary Chambers in the Courts of Cambodia*, INT'L REV. RED CROSS, June 2011, at 503.

23. See FERSTMAN, *supra* note 16, at 10, 23; Mirjan Damaška, *The Competing Visions of Fairness: The Basic Choice for International Criminal Tribunals*, 36 N.C. J. INT'L L. & COM. REGUL. 365, 365 (2011) ("But since crimes within their jurisdiction are often committed through political structures, support for their operation is not always forthcoming: governments can be hostile to their activity.").

24. See, e.g., STEPHEN CODY ET AL., HUM. RTS. CTR., *THE VICTIMS' COURT? A STUDY OF 622 VICTIM PARTICIPANTS AT THE INTERNATIONAL CRIMINAL COURT* 7-8 (2015); Christine Van den Wyngaert, *Victims Before International Criminal Courts: Some Views and Concerns of an ICC Trial Judge*, 44 CASE W. RESV. J. INT'L L. 475, 476-77 (2011). See generally CONTESTED JUSTICE: THE POLITICS AND PRACTICE OF INTERNATIONAL CRIMINAL COURT INTER-

the benefits of victim participation on investigations and trials.<sup>25</sup> They argue that victims provide valuable information to investigators, verify physical and testimonial evidence, and generate more complete records of killings and other crimes.<sup>26</sup> Furthermore, their participation ensures that survivors' stories remain central during legal proceedings, thereby minimizing detachment from where mass violence actually occurred.<sup>27</sup> Finally, advocates argue that victims' legal representation creates valuable communication channels among judicial chambers, local court intermediaries, and victim communities.<sup>28</sup>

Meanwhile, other scholars point out that empowering victims can significantly complicate criminal proceedings and threaten the rights of the accused.<sup>29</sup> The visibility of victims' stories creates pressure to convict and might even distort judicial standards of criminal proof and culpability.<sup>30</sup> Without proper procedures and guidelines, victim participation can also undermine prosecutorial strategies or cause trial delays. Finally, victim participation costs money.<sup>31</sup> Efforts to include victims can burden limited court resources that may otherwise be used to support other investigations and trials.<sup>32</sup>

Amidst the debates about the relative value of victim participation, the ICC emerged as a grand experiment. Drafters of the Rome Statute, the legal document that created the ICC, granted robust rights to victims.<sup>33</sup> In contrast to prosecutors in previous ad hoc tribunals for Rwanda and the former Yugoslavia, ICC prosecutors and staff defended a more victim-centered approach to international justice.<sup>34</sup> Indeed, victims engage with various sections of the court—the Office of the Prosecutor (OTP), the Victim Participation and Reparations Section (VPRS), the Victims and Witnesses Section, the Office of Public Counsel for Victims (OPCV), Legal Represent-

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VENTIONS, *supra* note 17; Sergey Vasiliev, *Victim Participation Revisited—What the ICC Is Learning About Itself*, in *THE LAW AND PRACTICE OF THE INTERNATIONAL CRIMINAL COURT* 1133 (Carsten Stahn ed., 2015).

25. See Wemmers, *supra* note 18, at 41. See generally REDRESS TRUST, REPRESENTING VICTIMS BEFORE THE ICC: RECOMMENDATIONS ON THE LEGAL REPRESENTATIVE SYSTEM (2015), <http://www.redress.org/downloads/publications/1504representingvictims.pdf> [<https://perma.cc/HCT4-PR5K>].

26. See, e.g., Cohen, *supra* note 19, at 358; McKay, *supra* note 14, at 1; Moffett, *supra* note 19, at 255-56.

27. See Assembly of States Parties, *Report of the Court on the Strategy in Relation to Victims*, ¶ 15, ICC-ASP/8/45, (Nov. 10, 2009) [hereinafter *Report of the Court*].

28. See, e.g., McKay, *supra* note 14, at 1; Luke Moffett, *Elaborating Justice for Victims at the International Criminal Court Beyond Rhetoric and The Hague*, 13 J. INT'L CRIM. JUST. 281, 287 (2015).

29. See Salvatore Zappalà, *The Rights of Victims v. the Rights of the Accused*, 8 J. INT'L CRIM. JUST. 137, 139 (2010); Christine Chung, *Victims' Participation at the International Criminal Court: Are Concessions of the Court Clouding the Promise?*, 6 NW. J. INT'L HUM. RTS. 459, 477 (2008).

30. See Damaška, *supra* note 23, at 371.

31. See CODY ET AL., *supra* note 24, at 7-8.

32. Cohen, *supra* note 19, at 352.

33. See McKay, *supra* note 14, at 1.

34. See *Report of the Court*, *supra* note 27, ¶ 3.

atives for Victims, and the TFV.<sup>35</sup> ICC officials also publicly hold out victims as important stakeholders in court investigations and trials.<sup>36</sup> ICC judges have permitted victims' groups to exercise their right to be heard on issues that affect their personal interests, so long as they present their views "in a manner that is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial."<sup>37</sup> Observers have since closely watched the development of ICC victim programs, support services, and legal representation and used their observations to inform assessments of the value and proper scope of victims' participation in international criminal law.<sup>38</sup>

Despite its legal and institutional commitment to victims, the ICC has struggled to create programs that wholly satisfy survivors and their communities.<sup>39</sup> Cases that include hundreds or thousands of eligible victims with diverse and contradictory views have proven logistically difficult for the court, leading to questions about the quality of representative victim participation.<sup>40</sup> With caseloads outpacing funding, judges are increasingly asked to balance the court's legal obligation to provide meaningful participation against efficiency and due process concerns.<sup>41</sup> As a result, some judges have turned to collective representation to streamline victims' applications and participation, a trend that some victims claim limits opportunities to express their personal concerns.<sup>42</sup>

Compared with previous international courts, the ICC has provided more opportunities for survivors to participate in criminal cases. In 2019, 10,685 victims participated in ICC cases, including more than 4,000 victims in Uganda and more than 2,000 victims in DRC.<sup>43</sup> Yet, more can be done to include survivors in the process.<sup>44</sup> Victim participants in Uganda and DRC, for example, expressed frustration at the prolonged duration of criminal investigations and court proceedings, the exclusive focus on high-

35. See Van den Wyngaert, *supra* note 24, at 479–80.

36. See Fatou Bensouda, Prosecutor Elect of the Int'l Crim. Ct., Statement at the Ceremony for the Solemn Undertaking of the Prosecutor of the International Criminal Court 3 (June 15, 2012), <https://www.icc-cpi.int/NR/rdonlyres/561C232F-3C4F-47AC-91CB-8F78DCC6C3FD/0/15062012FBSolemnUndertaking.pdf> [<https://perma.cc/FF9Z-BHYN>]; Sergey Vasiliev, *Article 68(3) and Personal Interests of Victims in Emerging Practice of the ICC*, in *THE EMERGING PRACTICE OF THE INTERNATIONAL CRIMINAL COURT* 635, 688–90 (Carsten Stahn & Göran Sluiter eds., 2009).

37. See Rome Statute, *supra* note 8, at art. 68.

38. Moffett, *supra* note 19, at 287. See generally McKay, *supra* note 14.

39. See CODY ET AL., *supra* note 24, at 1; LUKE MOFFETT, *JUSTICE FOR VICTIMS BEFORE THE INTERNATIONAL CRIMINAL COURT* 142 (2014).

40. See Vasiliev, *supra* note 24, at 1141–43.

41. See, e.g., Van den Wyngaert, *supra* note 24, at 492–93.

42. See *id.* at 491.

43. Assembly of States Parties, *Report on the Activities of the International Criminal Court*, annex, ICC-ASP/18/9, (Oct. 21, 2019).

44. See generally Mark Findlay, *Activating a Victim Constituency in International Criminal Justice*, 3 INT'L J. TRANSITIONAL JUST. 183 (2009); Sarah Nouwen, *Complementarity in Uganda: Domestic Diversity or International Imposition?*, in *THE INTERNATIONAL CRIMINAL COURT AND COMPLEMENTARITY: FROM THEORY TO PRACTICE* 1120, 1121 (Carsten Stahn & Mohamed M. El Zeidy eds., 2014).

level perpetrators, and the lack of victim support services.<sup>45</sup> Many claimed that ICC investigators and prosecutors seldom visited their communities.<sup>46</sup> As a result, victims said they had insufficient opportunities to discuss grievances or to receive updates about their cases.<sup>47</sup> Others expressed concern that community intermediaries working with court officials did not adequately represent their views.<sup>48</sup> Some victims also reported that ICC officials did not treat them with respect.<sup>49</sup>

## II. Methods

Under the Rome Statute, ICC officials have an obligation to provide opportunities for victims to share their concerns with the court.<sup>50</sup> Yet ICC officials commonly expressed concerns that outreach programs give false expectations to victims and create misunderstandings about the kinds of support and compensation the court can provide.<sup>51</sup> Although victims can receive assistance through the TFV, or as ordered in reparations decisions, their expectations often far exceed ICC capacity.<sup>52</sup> ICC officials acknowledged that it has been challenging to manage victims' expectations.<sup>53</sup> This research sought to understand victims' experiences with the ICC and to uncover tensions between ICC officials in The Hague and victims in Uganda and DRC.<sup>54</sup> The research was the first empirical study to systematically gather comparative interview data about victim participants across multiple countries and cases.<sup>55</sup>

The research was conducted by the author and by other researchers as part of the Atrocity Response Program (ARP) at the Human Rights Center (HRC) in the University of California, Berkeley School of Law.<sup>56</sup> The author personally conducted 168 of the study interviews, including thirty interviews in DRC, 121 interviews in Uganda, and seventeen interviews in the Netherlands. Established in 1994, the HRC has conducted atrocity crime investigations with victims and witnesses in more than a dozen countries, including the United States, Iraq, Rwanda, Burma, and the former

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45. See CODY ET AL., *supra* note 24, at 4.

46. See *id.* at 52-53.

47. See *id.*

48. See *id.* at 4, 43, 66.

49. See *id.* at 55, 66.

50. See Rome Statute, *supra* note 8, at art. 68.

51. See Van den Wyngaert, *supra* note 24, at 494-95.

52. See Rome Statute, *supra* note 8, at arts. 75, 79.

53. See CODY ET AL., *supra* note 24, at 5.

54. See *id.*

55. The study also included interviews with ICC victim-participants in Ivory Coast (N=127) and Kenya (N=204). Fewer victims in these countries sought the ICC to engage in patronage. In Ivory Coast, for example, most victim-participants said their primary motivation for participation was legal accountability and punishment. See *id.*

56. The author served as the director of Atrocity Response Program, and designed and supervised the research. *Id.*

Yugoslavia.<sup>57</sup> ARP specifically worked with investigators, prosecutors, and victim advocates at the ICC to recommend specific policy measures that protect vulnerable populations of victims and witnesses, and that hold perpetrators accountable.<sup>58</sup>

For this study, ARP researchers conducted semi-structured, in-depth interviews with a diverse cross-section of victim participants in four African countries.<sup>59</sup> The goal was to better understand victims' perceptions and expectations concerning the ICC.<sup>60</sup> Between July 2013 and February 2014, ARP conducted interviews in the Netherlands (N=27), Uganda (N=151), and DRC (N=147).<sup>61</sup> The victim-respondents represented various demographic groups.<sup>62</sup> Our interviews varied in length from twenty minutes to more than two hours, with an average interview lasting thirty to forty minutes.<sup>63</sup> All respondents volunteered to participate, and all interviews were anonymous and confidential.<sup>64</sup>

**Table 2: Study Population of Respondents<sup>65</sup>**

	DRC	Uganda
Women	72 (N=147)	75 (N=151)
Men	75 (N=147)	76 (N=151)
Age range	18-83 (N=147)	18-78 (N=151)
Former child soldier	52 (N=147)	20 (N=151)
Survivor of mass violence attack	95 (N=140)	124 (N=132)
Reported death of a loved one	122 (N=140)	74 (N=132)
Total number of respondents	147 (N=147)	151 (N=151)

Although a significant literature explores victim participation at the ICC, empirical work on victims is still relatively rare, possibly due to several limitations. First, the large number of victims in many ICC cases makes it difficult to document all of their diverse views. Victim-participants can number in the thousands. As just one example, 5,229 victims participated in the ICC case against Jean-Pierre Bemba, the former Vice

57. *Human Rights Center: Atrocity Response Program*, BERKELEY L., <https://humanrights.berkeley.edu/programs-projects/past-projects/atrocity-response-program> [<https://perma.cc/2J6Z-59U9>] (last visited Sept. 11, 2020).

58. *Id.*

59. While HRC researchers conducted interviews in DRC, Ivory Coast, Kenya, and Uganda, this Article relies only on data from DRC and Uganda.

60. See CODY ET AL., *supra* note 24, at 2.

61. *Id.*

62. *Id.* at 3.

63. *Id.* at 9.

64. *Id.*

65. Interview with VPS Participant, *supra* note 9.

President of DRC.<sup>66</sup> Second, many atrocity crime victims live in remote villages or towns with poor infrastructure or ongoing conflict, which hinder their accessibility to the ICC.<sup>67</sup> Third, language can be another barrier for researchers. Many victims speak only local languages or dialects, forcing researchers to identify trusted interpreters. This, in turn, makes comparative qualitative research difficult and expensive. Finally, qualitative research on vulnerable populations presents many ethical considerations, particularly with regard to security and risks of re-traumatization, and thus requires thorough institutional and human subjects review.

In spite of these challenges, documenting victims' experiences and the personal meanings attached with their participation in international criminal prosecutions is essential to fulfilling the objectives of international criminal courts.

Respondents in this study included victim participants in ICC cases against members of the Lord's Resistance Army (LRA) in Uganda<sup>68</sup> and against accused warlords like Thomas Lubanga Dyilo, Germain Katanga, Mathieu Ngudjolo Chui, and Bosco Ntaganda from DRC.<sup>69</sup>

**Table 3: Self-Reported Ethnic Affiliation in DRC<sup>70</sup>**

Hema (North)	12 (N=132)
Hema (South)	59 (N=132)
Bira	18 (N=132)
Lendu	14 (N=132)
Alour	11 (N=132)
Total	114 (N=132)

Due to security concerns and to imperfect information about affected communities and victim applicants, a random sample of victim-participants was not possible. Instead, researchers recruited victim volunteers using purposive sampling in rough proportion to their appearance in the victim population.<sup>71</sup> Researchers intentionally recruited respondent volun-

66. Prosecutor v. Gombo, ICC-01/05-01/08, Case Information Sheet (Mar. 21, 2016).

67. See CODY ET AL., *supra* note 24, at 2.

68. See Prosecutor v. Kony & Otti, ICC-02/04-01/05, Case Information Sheet (Sept. 10, 2015); see also Prosecutor v. Dominic Ongwen, ICC-02/04-01/15, Case Information Sheet (Feb. 4, 2021).

69. See Prosecutor v. Dyilo, ICC-01/04-01/06, Case Information Sheet (Mar. 2021); Prosecutor v. Katanga, ICC-01/04-01/07, Case Information Sheet (Mar. 20, 2018); Prosecutor v. Chui, ICC-01/04-02/12, Case Information Sheet (Feb. 27, 2015); Prosecutor v. Ntaganda, ICC-01/04-02/06, Case Information Sheet (Mar. 2021).

70. Interview with VPS Participant, *supra* note 9.

71. See generally Dolores C. Tongco, *Purposive Sampling as a Tool for Informant Selection*, 5 ETHNOBOTANY RSCH. & APPLICATIONS 147 (2007); Charles Teddlie & Fen Yu, *Mixed Methods Sampling: A Typology with Examples*, 1 J. MIXED METHODS RSCH. 77 (2007).

teers based on intentional criteria that included geographic location, ethnic affiliation, ICC case affiliation, applicant status, and sex. This methodology allowed the author and other interviewers to collect information from a diverse range of victims involved with ICC proceedings, and to incorporate views and concerns from more marginalized members of victim groups. In the end, victim respondents represented all major ethnic groups, age cohorts, and political factions. They included widows, child soldiers, and survivors of sexual violence.

**Table 4: Self-Reported Ethnic Affiliation in Uganda<sup>72</sup>**

Acholi	28 (N=140)
Iteso	28 (N=140)
Lango	49 (N=140)
Gimara	9 (N=140)
Lugbara	9 (N=140)
Kumam	3 (N=140)
Madi	4 (N=140)
Total	130 (N=140)

Researchers wanted to understand how victims made sense of their participation in ICC cases: Did they feel they had a voice in ICC proceedings? How did they view the court? Did they trust court officials? Did they feel respected by ICC personnel? Researchers also inquired about the physical security of participants who applied to join ICC cases and their expectations with regard to reparations, including monetary compensation. Respondent answers provided information about their belief systems and how such beliefs conditioned their interactions with the ICC.

All interviewers asked a series of structured questions designed to explore the social, psychological, and material dimensions of respondents' experiences with the court. Additionally, interviewers asked unstructured follow-up questions to further explore respondents' understandings and to identify salient issues beyond the structured questionnaire.

To mitigate any dangers to respondents or exacerbated risks of ongoing tensions between individuals or groups, researchers worked closely with community intermediaries to understand local political dynamics and assess social and political sensitivities prior to conducting the interviews. Before interviews, intermediaries also reviewed questionnaires and provided translation advice or methods to better explain complex concepts, such as reparations. Investigators sought advice on where to hold meetings to avoid inadvertently compromising confidentiality. To minimize risks of re-traumatization, researchers did not ask respondents about any specific

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72. Interview with VPS Participant, *supra* note 9.

harms they might have suffered, although many interviewees raised such harms on their own.<sup>73</sup>

The community intermediaries, who spoke English or French in addition to any other language spoken by the respondents, provided interpretive assistance when needed.<sup>74</sup> Intermediaries already known to community members helped to establish rapport, and their presence potentially encouraged more candid responses from local residents. Respondents reported that using intermediaries put them at ease and assuaged security concerns by limiting their exposure to unknown outsiders.

The lack of professional translation, however, had drawbacks. Intermediaries sometimes struggled to translate complicated ideas or language, resulting in confusion. In addition, interview conversations ambiguously shifted back and forth between the first person and second person. Given these realities, researchers edited victims' statements for grammar and clarity, but also sought to preserve the original meaning and substance of each statement within the context of the entire conversation.

Nearly all interviews were recorded, always with the permission of the respondent. Study researchers encrypted and password-protected audio files in the field. Once back at the University of California, Berkeley, researchers transcribed and coded interviews using *Atlas.ti*, a qualitative coding software.<sup>75</sup> Researchers used both inductive and deductive coding methods to develop the final coding scheme, which included 206 qualitative codes. First, the author created a series of substantive codes based on the questions in the structured questionnaire. Next, the author developed additional codes by reading the interviews and identifying common themes.

To check for veracity, researchers also created a data set that included sixty-seven dichotomous or ordinal variables to record demographic characteristics of the population and generate internal counts of victims' answers to specific questions. These confirmed patterns corresponded to the interview data.

Although researchers conducted the study as ethically and rigorously as possible, some methodological limitations remained. First, as with any study employing a non-random sampling frame, researchers could not con-

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73. The Committee for the Protection of Human Subjects at the University of California, Berkeley approved the study protocol. Approval to conduct interviews was also obtained from local authorities when required. Informed consent was orally obtained from all respondents. Neither monetary nor material incentives were offered for participation, although researchers provided travel reimbursement to respondents who journeyed to interview sites. Interviewees were also offered sodas, pastries, or tea, as well as lunch during the interviews.

74. In Uganda, local languages or dialects included Acholi, Ateso Gimara, Kumam, Lugbara, Lango, and Madi. In DRC, local languages included Congolese Kiswahili, Hema, and Lingala.

75. *Atlas.ti* is a coding software widely used in the social sciences. It allows researchers to mark text with overlapping codes, organize multiple texts and coding schemes, and visualize data.

fidently generalize study findings to all atrocity crime survivors. Some affected communities were unfortunately but inevitably excluded from our study, even though researchers interviewed a broad cross-section of victim participants from a large number of communities affected by the crimes prosecuted at the ICC. The most glaring absence in the data is the lack of victim respondents from the Kitgum District in northern Uganda. Evidence suggests that both the LRA and the Ugandan government committed atrocity crimes in the district, and so we expect residents to have experienced high levels of violence.<sup>76</sup> However, at the time of this research, the ICC had not recruited victim-participants from Kitgum District, apparently due to a lack of volunteer intermediaries needed for outreach and education programs. Because the court had no intermediaries to facilitate introductions to members of affected communities or to aid in recruiting volunteers—and also because no Kitgum District victims had yet applied to participate as ICC victims—research focused on other affected communities in northern Uganda. Moreover, other communities could not be reached because roads were lacking or made impassible by inclement weather. In a few cases, travel to particular communities was deemed too unsafe either due to concerns about the potential risk of revealing victims' association with the ICC, or due to reported instability and violence in the area. For example, due to security concerns for both victims and researchers, most interviews in the eastern DRC were conducted in Bunia, a city under protection by United Nations Peacekeeping forces.

Second, we cannot be sure that all intermediaries acted in an unbiased manner or remained neutral in the recruitment of respondents. Some might have had independent motives to selectively recruit participants or to inaccurately translate interviews, and in either case, these efforts might have had the potential to skew study results. Edging against this potential selection bias, respondents expressed diverse and critical views during interviews, suggesting that any existing intermediary bias did not prevent respondents from critically evaluating the court or their participation in ICC cases.

Third, the time and cost required to participate in the interviews might have created a bias in volunteer participants. Most interviews were scheduled during the work week. People most able to forego work to speak with researchers could harbor experiences different than the general population of victims. Given the high rates of unemployment and poverty in some areas, it is also possible that some respondents attended interviews as an opportunity to eat, drink, and pass the day with other local residents. It is unclear how this selection bias among volunteer participants might impact the findings.

Fourth, as with any qualitative interview study, respondents might have been influenced by a desire to please the interviewer, a phenomenon

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76. See *Survivors of Uganda's LRA Insurgency*, BRIT. BROAD. CO. NEWS (Apr. 10, 2012), <https://www.bbc.com/news/world-africa-17657995> [<https://perma.cc/7ZVC-LKUQ>].

known as “social desirability” bias.<sup>77</sup> Researchers worked to make clear their independence from the ICC, but many respondents still viewed researchers as affiliated with the court. As a result, respondents might have been more hesitant to attack court programs or actions. Respondents might also have wanted to please court intermediaries, who often had high social standing in their community. Further, while interviews are a common methodology in cultural analysis, respondents might have been unwilling to discuss specific aspects of their cultural belief systems.<sup>78</sup>

Researchers do not have any assurances that respondents’ stories and concerns accurately represented their own experiences. At times, for example, respondents would recount events and only later explain to researchers that they had not personally witnessed those events. Still, when pressed by researchers, most respondents defended the veracity of this testimony as facts “known to the community.”<sup>79</sup> In many cases, respondents said they were representing stories of other members of the community who could not come for an interview. Although researchers asked respondents to limit their answers to first-hand experiences, we cannot be sure how many reports included hearsay.<sup>80</sup>

Finally, in some cases, respondents might have had ongoing personal safety concerns or fears of reprisals that prevented them from honestly answering interview questions.

### III. Culture as a Resource

Diverse approaches to cultural analysis complicate efforts to write about culture and cultural conflicts among prosecutors and victims.<sup>81</sup> For decades, scholars have debated the meaning of culture.<sup>82</sup> A comprehensive review of the field of cultural analysis is beyond the scope of this Article.<sup>83</sup> However, a brief review of three approaches to cultural analysis provides a framework for understanding interview data in this study. Scholars study culture as a (i) shared meaning, (ii) worldview, and (iii) resource.<sup>84</sup> While scholarship adopting any of these approaches can offer valuable contribu-

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77. Allison J. Pugh, *What Good Are Interviews for Thinking About Culture? Demystifying Interpretive Analysis*, 1 *AM. J. CULTURAL SOCIO.* 42, 42 n.4 (2013).

78. See *id.* at 54.

79. CODY ET AL., *supra* note 24, at 11.

80. Hearsay, while not always admissible in legal proceedings, has been found useful in some cultural analyses. See Susan Cotts Watkins & Ann Swidler, *Hearsay Ethnography: Conversational Journals as a Method for Studying Culture in Action*, 37 *POETICS* 162, 167–68 (2009).

81. See, e.g., Stephen Vaisey, *Socrates, Skinner, and Aristotle: Three Ways of Thinking About Culture in Action*, 23 *SOCIO. F.* 603, 603 (2008); Orlando Patterson, *Making Sense of Culture*, 40 *ANN. REV. SOCIO.* 1, 4 (2014).

82. Simona Giorgi et al., *The Many Faces of Culture: Making Sense of 30 Years of Research on Culture in Organization Studies*, 9 *ACAD. MGMT. ANNALS* 1, 4–20 (2015).

83. See Lizardo & Strand, *supra* note 13, at 204; Stephen Vaisey, *Motivation and Justification: A Dual-Process Model of Culture in Action*, 114 *AM. J. SOCIO.* 1675, 1676 (2009).

84. See Corey M. Abramson, *From “Either-Or” to “When and How”: A Context-Dependent Model of Culture in Action*, 42 *J. THEORY SOC. BEHAV.* 155, 157–59 (2012); Patterson, *supra* note 81, at 13–15.

tions to the study of international justice, this Article instead views culture primarily as a resource used by prosecutors and victims to navigate social situations and institutions of international justice.

Anthropologists and other social scientists have studied culture as a system of shared meaning for decades.<sup>85</sup> They have adopted an interpretive approach to describe codes, narratives, and symbols that comprise the dynamic webs of social meaning. Influenced by the pioneering work of anthropologist Clifford Geertz, this interpretivist approach seeks to provide a “thick description” of a particular way of life.<sup>86</sup> Interpretive cultural analysts vividly document the ways in which symbols and rituals cultivate group solidarity and coordinate social action.<sup>87</sup> For Geertz, the culture of writing illustrates a “pattern of meanings embodied in symbols.”<sup>88</sup> Cultural articles, events, and rituals are objects of analysis to understand culture and its effects on law, social structure, and the dynamics of dispute resolution.<sup>89</sup> For interpretivists, culture provides common understandings that facilitate interpersonal communication and social action. Meanings circulate through symbols and reinforce certain cognitive and linguistic frames that shape people’s perceptions of society and its norms.<sup>90</sup> In particular, interpretivists emphasize ceremonial practices, customs, beliefs, and forms of storytelling as essential mechanisms for the construction and reproduction of inter-subjective meanings.<sup>91</sup>

Application of the interpretivist approach to international criminal law would place cultural events and rituals at the center of cultural analysis. Prosecutions and criminal trials, for example, may be studied as events and rituals in order to identify and describe shared symbols and social meanings that represent and reinforce group coherence.

However, such interpretative approaches often overlook the inconsistency in cultural belief systems and thereby risk misrepresenting culture as static and coherent. In effect, thick descriptions discount cultural adaptation and growth because identifying shared meaning requires bypassing cultural contradictions and disengaging with power and politics. In addition, interpretive approaches fail to explain how culture translates into action. Scholars describe culture as a holistic model of shared meaning, an approach that tends to eliminate questions about how particular beliefs gain traction or motivate social change.<sup>92</sup>

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85. See CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURE: SELECTED ESSAYS* 4 (1994).

86. See *id.* at 7.

87. See generally *id.*; EMILE DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY* (1893); EMILE DURKHEIM, *THE ELEMENTARY FORMS OF THE RELIGIOUS LIFE* (1912).

88. GEERTZ, *supra* note 85, at 89.

89. INTRODUCTION TO SOCIOLOGY: UNDERSTANDING AND CHANGING THE SOCIAL WORLD (2010), <https://pressbooks.howardcc.edu/soci101/part/chapter-1-sociology-and-the-sociological-perspective/> [<https://perma.cc/J6U5-LJBK>].

90. See generally Erving Goffman, *The Presentation of Self in Everyday Life*, in *SYMBOLIC INTERACTION: A READER IN SOCIAL PSYCHOLOGY* 171 (Jerome G. Manis & Bernard N. Meltzer eds., 3d ed. 1978).

91. See Swidler, *supra* note 13, at 273.

92. See *id.*

A second approach views culture as an orienting worldview. Culture provides ideas, values, and motivations that shape goals and the decision-making process.<sup>93</sup> Sociologist Max Weber, for example, emphasized the ways that cultural ideas shape values and motivations in particular historical moments.<sup>94</sup> Weber wrote that “very frequently the ‘world images’ that have been created by ‘ideas’ have, like switchmen, determined the tracks along which action has been pushed by the dynamic of interest.”<sup>95</sup> For Weber, culture motivates social actions because it is a system of interrelated values.<sup>96</sup> In other words, culture orients individuals to particular goals and also shapes their beliefs about how to achieve those goals.

The worldview approach, like the interpretive approach, views culture as a relatively coherent system of values and goals. However, recent cultural analysis acknowledges cultural heterogeneity and analytical contradictions in the study of culture. Shared cultural understandings may guide everyday actions and decisions, but they do not command them.<sup>97</sup> Sociologist C. Wright Mills, for example, argued that cultural “vocabularies” allowed people to rationalize their social actions.<sup>98</sup> Similarly, sociologist Pierre Bourdieu argued that culture fosters particular motivations and orientations that condition an individual’s actions and strategies while navigating through different social worlds.<sup>99</sup> Building on these worldview approaches, Steven Vaisey has argued for a dual process model of culture that addresses both motivations and justifications.<sup>100</sup> According to Vaisey, culture helps people make sense of their choices and motivates them to pursue particular goals.<sup>101</sup>

Viewing culture through the worldview approach shifts analytic attention from cultural analysis of events and rituals to an investigation of social motivations and goals. Culture remains tied to historically grounded orientations.<sup>102</sup> A worldview approach to international justice, for example, would focus on how culture facilitates goal setting and social motivations for prosecutors and victims in particular communities. Rather than studying criminal trials as events or rituals, worldview scholars might seek to understand how shared understandings condition the motivations and aspirations of trial participants.

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93. See MAX WEBER, *ESSAYS IN SOCIOLOGY* 280 (H. H. Gerth & C. Wright Mills eds., 1946).

94. See *id.*

95. *Id.*

96. See TALCOTT PARSONS, *SOCIETIES: EVOLUTIONARY AND COMPARATIVE PERSPECTIVES* 5-11 (Alex Inkeles ed., 1966).

97. See Paul DiMaggio, *Culture and Cognition*, 23 *ANN. REV. SOCIO.* 263, 264 (1997).

98. See C. Wright Mills, *Situated Actions and Vocabularies of Motive*, 5 *AM. SOCIO. REV.* 904, 906-07 (1940).

99. See generally PIERRE BOURDIEU, *DISTINCTION: A SOCIAL CRITIQUE OF THE JUDGEMENT OF TASTE* (1984) [hereinafter *BOURDIEU, DISTINCTION*]; PIERRE BOURDIEU, *THE FIELD OF CULTURAL PRODUCTION: ESSAYS ON ART AND LITERATURE* (1993).

100. See Vaisey, *supra* note 83, at 1676.

101. See *id.*

102. See Swidler, *supra* note 13, at 279.

Finally, a third approach views culture as a resource.<sup>103</sup> Accordingly, culture is neither a stand-alone model nor a coherent system of shared meaning within a particular group.<sup>104</sup> Rather, culture is a “toolkit,”<sup>105</sup> allowing people to imagine certain social strategies and also constraining what a person might view as possible or appropriate in a given setting.<sup>106</sup> The resource approach to culture emphasizes context dependency and outright rejects the idea that cultural preferences directly motivate individual social actions.<sup>107</sup> Cultural beliefs enable or constrain a person’s capacity to act in particular way at a particular moment, but they do not explicitly determine a person’s motivations or social actions. Put differently, culture fosters special capacities for adapting to particular social settings.<sup>108</sup>

Culture viewed in this manner acts as an organizing force in the development of social practices, not as a straightforward cognitive logic. It constructs and refashions repertoires for behavior and thought by endowing a catalogue of capacities for action that can be mobilized in different environments to achieve new goals.<sup>109</sup> When a person lacks a particular cultural tool, they inevitably find it more difficult to achieve social ends that requires such a tool.<sup>110</sup> In this way, culture disciplines individual actions and social patterns, even if it does not compel individual motivations or behavior. “Cultural systems,” according to sociologist Ann Swidler, shape the worlds that people choose to live in, and so “[t]here are not simply different cultures: there are different ways of mobilizing and using culture, different ways of linking culture to action.”<sup>111</sup>

A cultural resource approach to international criminal law investigates how groups endowed with varying cultural toolkits and experience evaluate efforts to hold perpetrators accountable for international crimes. As global prosecutors and local victims utilize distinctive toolkits tailored to their individual settings, culture shapes how each participant navigates ICC investigations and prosecutions.<sup>112</sup>

In recent years, the culture as a resource approach has also benefited from research demonstrating that emotions guide moral judgements and actions. Scholars have shown that people make moral choices based mainly on intuition, rather than as a result of rational deliberation.<sup>113</sup> Belief systems and values give people implicit understandings about what

103. See *id.* at 283; Ann Swidler, *What Anchors Cultural Practices*, in *THE PRACTICE TURN IN CONTEMPORARY THEORY* 74, 87–88 (Theodore R. Schatzki et al. eds., 2001).

104. Swidler, *supra* note 103, at 86–87.

105. Swidler, *supra* note 13, at 273.

106. See *id.* at 283.

107. See *id.* at 275.

108. See *id.* at 281, 284.

109. See *id.*

110. See *id.* at 277, 281.

111. ANN SWIDLER, *TALK OF LOVE: HOW CULTURE MATTERS* 23 (2001).

112. Swidler, *supra* note 13, at 277.

113. See generally Vaisey, *supra* note 83; Jonathan Haidt, *The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment*, 108 *PSYCH. REV.* 814 (2001).

kinds of actions they should or should not take.<sup>114</sup> Likewise, culture guides prosecutors and victims through embodied disposition, habits, and cultural competencies that condition their actions and responses.<sup>115</sup> Situational contexts also impact the effects of these emotions and belief systems.<sup>116</sup> In effect, cultural understandings and values drive judgments, but they mostly do so unconsciously. Explicit thinking and reflection on how values inform decisions and actions are only afterthoughts when people are asked to explain their decisions and behaviors.<sup>117</sup>

This Article identifies dominant values and beliefs among prosecutors and victims involved in ICC cases. It then discusses how these cultural capacities order each group's respective strategies of action. However, culture develops over time, and so do its dynamic effects. Heterogeneity and inconsistency should be expected in any cultural analysis. Neither prosecutors' legalism nor victims' clientelism are entirely consistent. Cultural capacities do not serve as conclusive frameworks that dictate practices or explain all social actions taken by individual group members. As culture evolves and people act in the world, there will always be ongoing opportunities for critical engagement and social change.

#### IV. Clientelism in Uganda and DRC

Liberal democratic societies often associate the paramount values of agency and social action with individuality, self-sufficiency, autonomy, dignity, and personal responsibility.<sup>118</sup> In many parts of the world, however, people proudly make "declarations of dependence" and openly pursue relationships with patrons and benefactors.<sup>119</sup> This empirical fact can be deeply uncomfortable for people living in liberal societies.<sup>120</sup> Customarily, people in liberal institutions view patronage systems as a form of corruption, subordination, or servitude. However, dependence does not necessarily constrain individual choice or free will. Relationships between patrons and clients may offer valuable opportunities to increase family security and personal agency, particularly in resource-scarce or unpredictable environments.<sup>121</sup> Personal attachments to a plurality of powerful people can provide a great deal of control, refuge, and even opportunities for

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114. See Stephen Vaisey, *Is Interviewing Compatible with the Dual-Process Model of Culture?* 2 AM. J. CULTURAL SOCIO. 150, 151 (2014).

115. See, e.g., Scott Beazley et al., U.N. OFFICE ON DRUGS AND CRIME, THE STATUS AND ROLE OF PROSECUTORS: A UNITED NATIONS OFFICE ON DRUGS AND CRIME AND INTERNATIONAL ASSOCIATION OF PROSECUTORS GUIDE 74 (2014). See generally BOURDIEU, *DISTINCTION*, *supra* note 99; PIERRE BOURDIEU, *THE LOGIC OF PRACTICE* (1990).

116. See Aliza Luft, *Theorizing Moral Cognition: Culture in Action, Situations, and Relationships*, 6 SOCIOLOGY 1, 1, 10-11 (2020).

117. See Vaisey, *supra* note 83, at 1675-76, 1699, 1795.

118. See JAMES FERGUSON, *GIVE A MAN A FISH: REFLECTIONS ON THE NEW POLITICS OF DISTRIBUTION* 142-43 (2015).

119. *Id.* at 143, 153.

120. *Id.* at 143, 161.

121. *Id.* at 145.

social mobility.<sup>122</sup> Therefore, rather than struggle against relations of hierarchical subordination, people in many societies invest extraordinary effort in seeking out patrons precisely for their safeguards and benefits.<sup>123</sup>

Dependence as a cultural strategy makes particular sense in unstable situations, including many post-conflict contexts.<sup>124</sup> A person's ability to join multiple, overlapping dependencies guarantees at least some limited claims on several benefactors, which can preserve a social safety net. Patron-client relationships, in fact, can provide more protection than independent financial wealth in regions afflicted with reoccurring violence. Patronage networks regularly distribute social risk among their members, thereby serving as an especially resilient form of social insurance in precarious environments.<sup>125</sup>

Surviving poverty and food insecurity during conflict, for example, often requires complex relations of interdependence.<sup>126</sup> To survive, men and women look to hierarchical chains of interdependence, in which they assume positions variously as clients and patrons. In parts of Uganda, many residents pursue interdependence rather than capital accumulation.<sup>127</sup> In turn, people with financial resources invest to build social networks and gain greater "wealth in people."<sup>128</sup> Having "wealth in people" generates reciprocal effects for patrons and clients alike.<sup>129</sup> For the wealthy, their efforts to maintain their influence and prestige generate competition in an "economy of affection."<sup>130</sup> Because a patron's status rests on the clients' assessments of their generosity and the patron's ability to provide meaningful support and opportunities, affluent individuals in patron-client societies frequently aim to convert financial resources into human connections and care.<sup>131</sup> On the reciprocal end, clients personally select benefactors who can best guarantee safety or economic opportunity.<sup>132</sup> Indeed, in many places, shifting chains of support largely deter-

122. *Id.* at 146-48.

123. See PATRICK CHABAL & JEAN-PASCAL DALOZ, *AFRICA WORKS: DISORDER AS A POLITICAL INSTRUMENT* 28, 38 (1999); Ann Swidler & Susan Cotts Watkins, *Ties of Dependence: AIDS and Transactional Sex in Rural Malawi*, 38 *STUD. FAM. PLAN.* 147, 150 (2007).

124. Dependencies, of course, are not unique to unstable or illiberal societies. Various kinds of dependencies exist in liberal societies as well, including partner-associate relationships in law firms, professor-research assistant relationships in universities, mentor-mentee relationships in public interest and corporate organizations, etc.

125. See Swidler & Watkins, *supra* note 123, at 150-51.

126. See, e.g., Anna Macdonald, *Transitional Justice and Political Economies of Survival in Post-Conflict Northern Uganda*, 48 *DEV. & CHANGE* 286, 295-96 (2017); Zinaida Miller, *Effects of Invisibility: In Search of the 'Economic' in Transitional Justice*, 2 *INT'L J. TRANSITIONAL JUST.* 266, 288 (2008).

127. See CHINA SCHERZ, *HAVING PEOPLE, HAVING HEART: CHARITY, SUSTAINABLE DEVELOPMENT, AND PROBLEMS OF DEPENDENCE IN CENTRAL UGANDA* 2 (2014).

128. Jean-Pascal Daloz, "Big Men" in *Sub-Saharan Africa: How Elites Accumulate Positions and Resources*, 2 *COMPAR. SOCIO.* 271, 280 (2003).

129. *Id.* at 280-81.

130. GORAN HYDEN, *NO SHORTCUTS TO PROGRESS: AFRICAN DEVELOPMENT MANAGEMENT IN PERSPECTIVE* 8-11 (1983).

131. *Id.* at 8-9.

132. See PHEBE LOWELL BOWDITCH, *HORACE AND THE GIFT ECONOMY OF PATRONAGE* 38 (2001).

mine a client's social opportunities and community standing. Connection to an important patron can become the fulcrum of social recognition and a gateway to employment and social advancement.<sup>133</sup>

Cultural belief systems in parts of northern Uganda and eastern DRC reflect such a system of interdependence. Survivors, who often live in dire poverty, search for willing patrons to provide protection and represent their interests to the broader public.<sup>134</sup> Meanwhile, patrons seek out survivors as loyal clients to not only reinforce their status in society but also to fulfill their sense of social obligation to aid other members of their community.<sup>135</sup>

Beyond expectations of reciprocity or status rewards, affluent people in Uganda and DRC also view patronage as the right thing to do.<sup>136</sup> Redistribution is not only transactional. Patrons do not provide for clients simply as a calculated political strategy.<sup>137</sup> Patronage has a moral dimension, and a patron's gifts reflect that they have a heart.<sup>138</sup> Communities expect decent people to care about the welfare of "their people" and to feel responsibility for their well-being.<sup>139</sup> As such, wealthier residents contribute to school fees, pay for meals, or offer small gifts in part because they feel an ethical duty to do so.<sup>140</sup> These acts of patronage emanate from a moral economy and a human impulse to nurture and care for others.<sup>141</sup>

This moral dimension of patronage complicates victims' views of international prosecutors and the court. "We are like the children of [the] ICC," said one victim.<sup>142</sup> "So the ICC should think of us, and find a way to feed us. . . . Before judgment is passed on the rebels, the ICC should think about giving us some [small] assistance, . . . in the form of compensation."<sup>143</sup> For some survivors, ICC victim outreach programs provide comparable economies of affection. Many view the court as a prosperous global institution with sufficient resources to assist victims as clients. Therefore, when victim-participants submit ICC applications, it may not be to join accountability efforts.<sup>144</sup> Victims volunteer for a wide range of reasons, including truth seeking, remembrance, reconstruction, and aspirations for direct compensation.<sup>145</sup> Regardless, all victims are marked in society by their allegiance to the court. Some join ICC cases at great personal risk to their

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133. See FERGUSON, *supra* note 118, at 148.

134. *Id.* at 145-46.

135. See *id.* at 144-46.

136. See Swidler & Watkins, *supra* note 123, at 151.

137. *Id.*

138. See SCHERZ, *supra* note 127, 25-28.

139. *Id.* at 19.

140. See Bryan Cave & Leighton Paisner, *The Responsibility of Wealth—Should Rich People Give Away Their Money?*, LEXOLOGY (Nov. 6, 2015), <https://www.lexology.com/library/detail.aspx?g=2d8eab24-05db-41a1-9ba0-9fc517100dff> [https://perma.cc/A53P-HJX8].

141. See SCHERZ, *supra* note 127, at 19, 25-28.

142. Interview with VPS Participant, *supra* note 9.

143. *Id.*

144. See *id.*

145. See discussion *supra* Part II.

own safety and that of their families. In exchange for their support and risk-taking, survivors expect the ICC to behave like a reasonable benefactor by contributing to hierarchical chains of support.

For example, one victim-participant said: “They are not recognizing us fully. Although we are doing voluntary work, something must be given to us. Because the work we are doing, we are doing it for the court.”<sup>146</sup> Another victim said: “I am getting fed up. I have a feeling that . . . they [might] just want to use us—[that is,] use [our] application[s] for their personal gain or to fulfill their selfish interests.”<sup>147</sup> A third victim matter-of-factly stated: “I heard that when you participate in the ICC cases, you’ll be paid.”<sup>148</sup> Many Ugandan and Congolese victims actively sought to build relationships with the ICC because they viewed the court as a potential source of material support and expected ICC officials to treat them with the same reciprocal generosity as other benefactors. As one victim explained, “[i]f [volunteers are] not given reparations, it is just like chicks without a mother hen. . . . If the chicks are abandoned by their mother, the chicks will just die of hunger.”<sup>149</sup>

Victims do, in fact, provide significant value to the court. When ICC field representatives organize town hall meetings or personal consultations, victims dutifully attend and engage with court officials. Some even sacrifice daily wages or forgo necessary agricultural work to participate. Victim-participants fulfill their responsibilities as good clients in what many believe to be a relation of interdependence with the court. Thus, victims presume that ICC prosecutors and other court officials will provide some gestures of kindness and material support. “We have lost all our things,” said one victim,<sup>150</sup> “if they were respecting us, they could have done something better for us. At least give us some small thing.”<sup>151</sup> Another disappointed victim explained: “What I [am] saying is that I have my children, I would explain my situation to the court so that I can be helped.”<sup>152</sup> For some victims, the lack of visits and gestures of support led them to believe that the court officials are dishonest: “Since people from the court have not come, nothing has been coming, no development has been coming from there, so I consider these people to be deceiving me.”<sup>153</sup> Another victim expressed similar concerns:

We feel we are being deceived. When officials of [the] ICC come, they can come once in three to four years. They take so long to come back. And ever since their visit, there is nothing. No formal assistance of any form has been given to us. So, we see, you register [with the court], but get nothing.<sup>154</sup>

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146. Interview with VPS Participant, *supra* note 9.

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

Victims who were aware of the existence of ICC's TFV often felt even more betrayed by the ICC's refusals to provide assistance. "There is a special basket called the Trust Fund that people give to," reported one victim,<sup>155</sup> "they contribute money to help the vulnerable victims in different countries, and they promised for our case that they would help us with a cow, at least for dairy, and then an ox to plow for cultivation."<sup>156</sup> Another interviewee said: "There is some money from the Trust Fund for Victims. That is a small pocket of money from the court. It should be directed for medical treatment because most of the victims have suffered the aftereffects of the war. Cancer. Operations. Bullets."<sup>157</sup> A third victim said: "At least we should be helped, so that we can wait for our case. Let something be done for us."<sup>158</sup>

Affluent patrons in Uganda and DRC gain a combination of material, symbolic, and emotional reward by taking on dependents and supporting their clients. Yet, as patrons gain social standing from their new recruits, their clients also assume new obligations to provide for those below them. Where patron-client relations exist, people tend to assume both roles, and thus when an organization capable of aiding victims refuses to engage in expected patronage, victims may feel that this denial impacts more than just their personal circumstances. Families and other dependents may question ICC's trustworthiness and the value of working with ICC prosecutors. Years of anticipation involving trials and reparations can cause deep victim frustration.

Contact with international organizations often creates funding opportunities that reinforce patron-client relations in Uganda and DRC.<sup>159</sup> Clients may, in fact, affiliate with court officials precisely because these officials have links to foreign governments and international non-governmental organizations. As a result, when victims discover an existing ICC affiliation, many assume that relationships of patronage are already in place. This assumption distorts victims' perceptions of court intermediaries, who serve as unpaid volunteer liaisons to affected communities and meet regularly with ICC field staff. When intermediaries explain that the court does not provide compensation or reparations during criminal proceedings, they face skepticism, and even distrust, from some victims in their home communities. "When the court fails to do something, it [is] not them who suffer anything . . . [T]he consequences fall back on the intermediaries," explained one victim.<sup>160</sup> Another victim, who volunteered as a court intermediary, explained his dilemma:

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155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. See Ann Swidler, *Dialectics of Patronage: Logics of Accountability at the African AIDS-NGO Interface*, in *GLOBALIZATION, PHILANTHROPY, AND CIVIL SOCIETY: PROJECTING INSTITUTIONAL LOGICS ABROAD* 200 (David C. Hammack & Steven Heydemann eds., 2009).

160. Interview with VPS Participant, *supra* note 9.

[An ICC official] was promising support. I mean, economic kinds of support, like school fees and family support. . . . Then she went away. . . . Now anytime I go to my village, they ask me [about this promised support]. . . . Each time I go in a suit, or I go in a new shirt, or I go with new shoes[,] [t]hey say, “it [is] our money [you are spending].”<sup>161</sup>

Lack of court support generates mistrust between victims and court intermediaries because it is difficult for victims to believe that a wealthy foreign court would provide no aid to survivors. Their strongly held belief in the ethics of interdependence prevents victims from imagining an institution that works on behalf of victims in such a heartless manner.

Justice mechanisms in Uganda and DRC also function as extensions of established patron-client networks in some contexts. Thus, patronage and accountability may be inseparably linked in the minds of some survivors. Given the weakness of judicial institutions and uneven bureaucratic authority in Uganda and DRC, many victims need benefactors to act as powerful advocates in order to achieve justice after mass violence. While resourced organizations—civil society organizations; development-centered, non-governmental organizations (NGOs); political parties; state agencies; and international courts—offer alternatives to traditional patronage networks, few victims actually believe that justice can be achieved without any local sponsorship. One victim said: “When a court case delays like that, people are always maneuvering to manipulate the case or taking bribes to end it.”<sup>162</sup>

Survivors pragmatically evaluate available options for seeking justice and accountability in Uganda and DRC.<sup>163</sup> In these assessments, a strategy to develop overlapping hierarchical dependencies may be just as promising for securing criminal convictions and reparations as a strategy to mobilize through institutionally weak or geographically distant judicial institutions. For victims, patronage and justice are not mutually exclusive, and their demands for legal accountability often accompany hopes for reparations and expectations of support and compensation. Most victims pursue diverse goals simultaneously. One victim, for example, said: “I did go [to the ICC] for reparations, but I also wanted justice [and] . . . lasting peace for our children and the community. . . .”<sup>164</sup> Understandably, victims tend to view the court as a kind of benefactor who will help them pursue a range of social goals in exchange for participation in criminal prosecutions.

Court-sanctioned support for victims, however, has consequences for rule of law and peace-building efforts. Some forms of ICC support, such as direct payments to victim-witnesses, risks undermining defendants’ procedural protections and fair trials. Others could exacerbate tensions between local groups. For example, one victim said: “According to what we under-

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161. *Id.*

162. *Id.*

163. See Stephen Cody & Alexa Koenig, *Procedural Justice in Transnational Contexts*, 58 VA. J. INT’L L. 1, 3 (2018).

164. Interview with VPS Participant, *supra* note 9.

stood from Gulu region [in northern Uganda], people benefitted [from engagement with the ICC]; . . . but at our end here, we did not benefit.”<sup>165</sup> Perceptions of favored treatment or differences in material support can trigger inter-group conflicts. Other forms of support inevitably disappoint victims due to resource constraints. Given the scale of atrocities in ICC cases, the court cannot be a panacea for victims’ extensive needs. Further, financial support for victims can taint the court’s legitimacy in international circles because lawyers, diplomats, and donors may view such acts as inappropriate for a criminal court.

Still, acts of court patronage can also create new forms of belonging, attachment, and support that fulfill both the victims’ expectations and the ICC’s victim-oriented reparative mandate. Neglecting victims’ cultural expectations for the sake of judicial purity, consistency, and neutrality can endanger the court’s legitimacy in victims’ communities. In contrast, ICC officials’ engagement with patronage networks may allow eligible victims to meaningfully participate in trials, while preserving the ICC’s standing in violence-affected communities. Some forms of care and support can satisfy victims’ expectations without corrupting judicial functions or compromising the ICC’s retributive criminal mandate.

## V. Legalism at the ICC

Principles of legalism inform decision-making at the ICC. This reflects a commitment to international criminal law and an orientation toward formality, bureaucratic authority, and objective rationality.<sup>166</sup> Legalism also emboldens ICC prosecutors to focus on established standards of international criminal law, criminal procedure, and criminal trials. According to John Czarnetzky and Ronald Rychlak, “[t]he ICC as an institution is the result of absolute faith in a nonpolitical, *legalistic* model of justice: where human rights violations have occurred, prosecutions *must* take place either [at] the national level or in the ICC.”<sup>167</sup> Legalism can also compel prosecutors to prioritize substantive and procedural certainty over victims’ values and local relationships and, in so doing, potentially overwrite local expectations and preferences for alternative justice mechanisms.<sup>168</sup>

Critics of legalism argue that its framework universally imposes a top-down approach at the expense of alternative social considerations.<sup>169</sup> As a dominant cultural belief system in international criminal law, legalism

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165. *Id.*

166. See Kieran McEvoy, *Beyond Legalism: Towards a Thicker Understanding of Transitional Justice*, 34 J.L. & SOC’Y 411, 414-15 n.13 (2007) (citing JUDITH SHKLAR, LEGALISM 2 (1963)).

167. John M. Czarnetzky & Ronald J. Rychlak, *An Empire of Law: Legalism and the International Criminal Court*, 79 NOTRE DAME L. REV. 55, 61 (2003) (emphasis in original).

168. See Ruti G. Teitel, *Humanity’s Law: Rule of Law for the New Global Politics*, 35 CORNELL INT’L L.J. 355, 371-73 (2002).

169. See McEvoy, *supra* note 166, at 421-29; Thomas W. Smith, *Moral Hazard and Humanitarian Law: The International Criminal Court and the Limits of Legalism*, 39 INT’L

threatens to halt judicial innovation and isolate law from local social contexts.<sup>170</sup> Pursuant to such legalism, the ICC's chief concerns are the consistent application of the rule of law, procedural uniformity, and retributivism.

The capacity of the OTP, compared to other sections of the court, demonstrates legalism's supremacy in ICC proceedings. One court official said:

The OTP is really the organ with the muscles, you know? It is the powerful organ because it is the one dealing with states. It is the one to win the political deals. It is the one doing the dirty job. It is the one bringing the cases to the court.<sup>171</sup>

Another ICC official explained that while the OTP will often have dozens of staff working on a situation, the Registry—the ICC's administrative body responsible for victim programs—only has one or two people conducting victim outreach and education. One respondent said: “[OTP officials] don't really care about what the victims want or do not want. They just pay lip service to the so-called victims' mandate in order not to have the NGOs jumping on them.”<sup>172</sup>

The culture of legalism is also illustrated by court officials' discussion of victim participation programs, which are often viewed as peripheral to the work of the court. One official said: “[The] ICC is not an international humanitarian organization.”<sup>173</sup> Another explained:

We are not against [victim participation]. We just insist on certain high principles as a condition [of participation] . . . Article 68(3) [of the Rome Statute] authorizes the participation of victims, but it is only participation. They are not a party. It [is] for them to explain their views and concerns without any prejudice against the expeditiousness of the trial and the rights of the defense.<sup>174</sup>

Yet another ICC official explained: “You have quite a lot of people interested in getting rid of the victims for political reasons—judicial reasons, mainly . . . [T]hey do not want another player, particularly with a different perspective, to come messing in what they believe to be their power, their proceedings, their court.”<sup>175</sup> According to some prosecutors, allegiance to the criminal mandate of the court and judicial efficacy required the court to narrow the scope of victim-related engagement in most cases. Not all ICC officials agreed, however. One official said:

Victims have been [falsely used] as a reason for delayed proceedings . . . . But it is a very good excuse to get rid of them. The OTP has been delaying the proceedings much more than the victims, but you cannot get rid of the

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POL. 175, 177–78, 182 (2002); Richard H. Pildes, *Conflicts Between American and European Views of Law: The Dark Side of Legalism*, 44 VA. J. INT'L L. 145, 161 (2003).

170. See McEvoy, *supra* note 166, at 414–15.

171. Interview with VPS Participant, *supra* note 9.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

OTP whereas you can get rid of the victims.<sup>176</sup>

Some non-OTP court officials went so far as to describe the OTP's approach as exploitative of victims: "We have heard a lot that victims are so important, but that is a lot of lip service. . . . What [OTP officials] do is very different. . . . They want to be the master of the victims, especially at the beginning [of prosecutions]."<sup>177</sup>

Legalism favors clear narratives in prosecutorial efforts in order to establish culpability for international crimes. As a result, ICC prosecutors can view victim participation—rightly or wrongly—as a liability during trial. Victims can complicate well-ordered storylines and prosecutorial strategies. One respondent said: "So [prosecutors] have a certain perspective. The victims have a different one. And [it is] interesting in the proceedings to have that [difference in perspectives]. The problem is that, first of all, the OTP does not want to be challenged, so it [is] trying to get rid of them."<sup>178</sup> Another ICC official said:

It is true that the prosecutor might have a very partial view because he [is] only interested in that thing, that guy, that region, whereas in fact, the situation is much more complex. And that [is] something which annoys me a lot. It [is] the simplification of the situation by the OTP.<sup>179</sup>

In short, legalism urges ICC prosecutors to craft uniform histories of violence divorced from victims' conflicted perspectives.

ICC officials also expressed concern about the ways that adversarial judicial proceedings' restricted victims' participation. One ICC official said: "[A]dversarial proceedings are really something between the prosecutor and the defense. The place of the victims is extremely limited. Logically, they should not be there."<sup>180</sup> Another said: "In this system you have mainly two parties: the defense side—the accused or suspect, and the opposite—the OTP. And *they* fight. They are parties. And the victim can only participate."<sup>181</sup>

Judges further reinforce the ICC's culture of legalism. With growing caseloads, judges have tended to limit victim participation to improve judicial efficiency. "I would say that judges are afraid to allow too much victim impact [on the legal proceedings]. . . . They are afraid of not exercising enough control," explained one ICC official.<sup>182</sup> Another said: "It all depends on the judges. And we have to be creative with whatever decision the judges deliver in order to implement it in the most beneficial way for the victims."<sup>183</sup> A third argued that judges need "to tailor the participation [of victims]. . . . There were so many victims. They realized that financially

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176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.* (emphasis added).

182. *Id.*

183. *Id.*

it was real difficult.”<sup>184</sup> In recent years, narrowly tailored models of representative victim participation began to replace alternative approaches that offered more direct forms of victim participation. One ICC official explained:

You have a lot of victims in the situation and the court has jurisdiction over all those victims. . . . So basically [you go] from something [that] is enormous . . . to a very, very limited case. And the way the court is going to interact with the victims, it [is] only with this limited group of victims.<sup>185</sup>

Legalism also has practical consequences beyond the court’s headquarters in The Hague. The ICC budget for victims’ legal representation, for example, allocates insufficient resources for regular communications with victims’ communities. “Victims, especially in Uganda and Congo, got very little information,” reported one ICC official.<sup>186</sup> Regarding victim outreach in DRC, another interviewee said: “It [is] really, really difficult to meet victims directly unless you make them come to you.”<sup>187</sup> Another ICC official explained:

When you have your views and someone is listening to them and can present them to court, I think it [is] beneficial to victims. . . . [But] most of the victims I meet with, their needs are purely socio-economic. They live in poverty. They need education. Some people need medical care. Those are the things they tell you in meetings and you cannot do anything about it.<sup>188</sup>

Legalism can also inhibit discussions about alternative forms of victim-ICC collaboration. As a result, in conversations with victims seeking legal counsel, prosecutors often prioritize retributive objectives and conformity with court procedures. Prosecutors strive to achieve consistency and efficiency in criminal investigations and prosecutions; but in doing so, they can inadvertently ignore local preferences for social dependencies and material support. Meanwhile, states’ parties and court donors continue to give the OTP the lion’s share of funding, and judges prefer streamlining victim participation, often bypassing outreach, education, and dialogue in victims’ communities.<sup>189</sup> An unwavering commitment to legalism by many ICC officials effectively subordinates victims’ situational needs and pluralistic considerations of international justice to aspirations for criminal verdicts and criminal punishments.

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184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. See David Scheffer, *The Rising Challenge of Funding Victims’ Needs at the International Criminal Court*, JUST SEC. (Dec. 3, 2018), <https://www.justsecurity.org/61701/rising-challenge-funding-victims-international-criminal-court/> [https://perma.cc/AZJ2-9D28].

## VI. Distrust and International Justice

Culture matters in the practice of international criminal law.<sup>190</sup> Belief systems act as resources and repertoires for prosecutors and victims, endowing each group with certain kinds of cultural capacities, strategies, and orientations to social action. Prosecutors, drawing from a cultural toolkit closely aligned with principles of legalism, tend to frame international justice as individual criminal accountability for legally defined international crimes.<sup>191</sup> In contrast, victims in Uganda and DRC, drawing from a cultural toolkit closely aligned with principles of clientelism, tend to develop strategies of action conditioned by an ethics of interdependence. Among both global prosecutors and local victims, cultural beliefs shape justice-seeking strategies and actions.

Still, these cultural differences are not irreconcilable. As discussed above, culture affects social action in dynamic ways. Its effects are not coherent or consistent. Belief systems change in global institutions and also in local communities. This cultural contingency provides space for constructive dialogue between international prosecutors and survivor communities. It is possible, even desirable, for the ICC and other international criminal courts to simultaneously pursue legalism, engage with clientelism, and consider other objectives of international criminal justice. Indeed, the Rome Statute negotiators understood both the legal and the sociological complexities of achieving justice after conflict.<sup>192</sup> For this reason, they valued retributive and reparative approaches, envisioning a dual role for the ICC in post-conflict situations. Even as treaty drafters crafted language to prioritize victim inclusion and reparations, they also pushed for robust legal accountability to end impunity.<sup>193</sup> The ICC continues to reflect these dual aims: the court seeks criminal accountability for perpetrators of atrocity crimes and meaningful reparative justice for victims. Regrettably, however, most international prosecutors tend to focus on the former, sometimes at the expense of the latter.

Current ICC outreach and education programs establish hierarchical relationships that resemble patron-client relations for some victim partici-

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190. See, e.g., SVERKER FINNSTRÖM, *LIVING WITH BAD SURROUNDINGS: WAR, HISTORY, AND EVERYDAY MOMENTS IN NORTHERN UGANDA* 109 (2008); Shahrzad Fouladvand, *Complementarity and Cultural Sensitivity: Decision-Making by the International Criminal Court Prosecutor in the Darfur Situation*, 14 INT'L CRIM. L. REV. 1028, 1043 (2014); Erin Baines, *Spirits and Social Reconstruction After Mass Violence: Rethinking Transitional Justice*, 109 AFR. AFFS. 409, 411 (2010).

191. See Mark A. Drumbl, *Collective Violence and Individual Punishment: The Criminality of Mass Atrocity*, 99 NW. U.L. REV. 539, 549-50 (2005); Saira Mohamed, *Deviance, Aspiration, and the Stories We Tell: Reconciling Mass Atrocity and the Criminal Law*, 124 YALE L.J. 1628, 1640-41 (2014).

192. See FANNY BENEDETTI ET AL., *NEGOTIATING THE INTERNATIONAL CRIMINAL COURT: NEW YORK TO ROME, 1994-1998*, at 12 (2014); David J. Scheffer, *The United States and the International Criminal Court*, 93 AM. J. INT'L L. 12, 14-15 (1999) (detailing the legal complexities of the United States joining the ICC).

193. See Laurel E. Fletcher, *A Wolf in Sheep's Clothing? Transactional Justice and the Effacement of State Accountability for International Crimes*, 39 FORDHAM INT'L L.J. 447, 466-67 (2016).

pants. When victims enter into a relationship with the court, many expressed that such a relationship creates reciprocal obligations and requires particular kinds of moral behavior.<sup>194</sup> Given cultural commitments to the ethics of interdependence in Uganda and DRC, victims who pledge themselves to the ICC and its mission often expect acknowledgment as dependents of the court and subsequent entitlements to social recognition, symbolic expressions of support, and material gifts. In other words, when ICC officials approach survivors from societies structured by patron-client networks to participate in legal processes and criminal trials, they enter into relationships that demand more than legalism. Fixation on legalism and dismissal of community expectations can undermine victims' confidence in ICC prosecutions.

Legal scholars should resist temptations to treat victims' expectations of patronage as mere cultural pathology or to misread them as corruption. Prioritizing interdependencies between people over criminal punishment against perpetrators is a rational and effective social strategy, especially in situations where dire poverty, inequality, and instability are pervasive. Ugandan and Congolese victims enter into patron-client relationships as productive forms of social organization.<sup>195</sup> While declarations of dependence may clash with liberalism and legalism, they also offer undeniable social utility for many violence survivors. Aspirations for some types of material support should not be dismissed as a desire for parochial arrangements of social domination or victims' misunderstanding of international criminal law. Patronage and interdependence address realities of living with ongoing violence and structural deprivation in many places around the world.<sup>196</sup> Rather than view patronage as anachronistic or as an artifact of colonial paternalism, scholars should examine how clientelism can offer pragmatic solutions to victims after violence. Patronage networks might satisfy material needs for care, repair, and reconciliation in ways that legal judgments from international courts cannot. If international criminal law truly seeks to be victim-oriented in places like northern Uganda and eastern DRC, then some engagement with patron-client networks may be necessary to foster trust between victims and court prosecutors.

## VII. A Framework for Situational Victim Engagement

Patronage systems present unavoidable dilemmas for international criminal courts collaborating with survivors in DRC and Uganda. The ICC depends on local court intermediaries to aid investigations, organize outreach and education programs, and facilitate victim participation in ICC cases.<sup>197</sup> Yet, these local brokers are deeply embedded in complex hierar-

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194. See CODY ET AL., *supra* note 24, at 35 (noting that “[r]espondents were split as to whether or not the ICC had shown them appropriate respect”).

195. See *id.* at 32–33, 86.

196. See Said Graiouid & Taieb Belghazi, *Cultural Production and Cultural Patronage in Morocco: The State, the Islamists, and the Field of Culture*, 25 J. AFR. CULTURAL STUD. 261, 263–64 (2013).

197. See CODY ET AL., *supra* note 24, at 9–10.

chical dependencies.<sup>198</sup> In effect, the ICC cannot operate without patronage networks—at least in certain parts of Uganda and DRC.

Yet, ICC participation in patronage networks can also generate conflicts. Court engagement with patronage can threaten vertical institutional relationships between municipal governments, state agencies, and the court. It can also threaten horizontal relationships between victims' groups, civil society organizations, and state political parties. Both kinds of conflict can jeopardize ICC investigations and prosecutions.

To address these conflicts, this Article sets forth a framework for situational victim engagement. Situational engagement is an approach to ICC victim participation in Uganda and DRC that defends some outlays of material support as legally and ethically appropriate. No international criminal court operates as a pure judicial institution, particularly when officials seek to work closely with survivors and must navigate post-conflict politics. However, prosecutors should be transparent when engaging with clientelism and be careful to avoid actions that could significantly compromise judicial independence or fair trials.

An emphasis on non-material acts of victim engagement, including victim recognition, community-based dialogue, and collaborative assistance programs, would satisfy many survivors' expectations of patronage while also avoiding judicial actions that arouse suspicion and compromise the ICC's autonomy or integrity. The court, in most cases, can square victim participation programs and victim expectations of patronage without sacrificing procedural or substantive standards of criminal prosecutions.

Patronage exists on a spectrum, and opportunities to provide material support to victims' communities should not require the dissolution of legal cornerstones. Few ICC prosecutors, for example, would object to travel reimbursement for remote, indigent victims wishing to attend ICC outreach meetings or to meal reimbursement during ICC workshops or consultations.<sup>199</sup> Perhaps the other end of the spectrum is direct cash payments to victims in exchange for their participation as prosecution witnesses in ICC cases. While all prosecutors will likely object to such payments, the point is that between these two poles, many prospects exist to implement ethical acts of situational engagement that not only respond to victims' belief systems but also align with international law and Rome Statute principles. The framework below offers instructive guideposts for ICC practices in Uganda and DRC, which may well be applicable in other patron-client societies.

As discussed above, many victims in Uganda and DRC expect the court to act as a good patron.<sup>200</sup> In their experience, patrons enter into relationships with clients based on ethics of interdependence and display moral responsibility for their dependents. Patrons tend to gain social

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198. *See id.* at 4, 11.

199. *See id.* at 1.

200. *See id.* at 36.

standing in their communities when they have “wealth in people.”<sup>201</sup> Clients, in turn, gain opportunities from their relationship with an important person who cares about them. These patron-client relationships implicate reciprocal obligations that provide mutual security during periods of instability. In comparison with alternative strategies, such as capital accumulation or reliance on weak domestic institutions, these hierarchical dependencies can be especially resilient and durable in post-conflict settings. ICC prosecutors who adopt three innovative roles in victim engagement can satisfy many victims’ expectations without compromising core judicial values or the court’s retributive mandate. Specifically, ICC prosecutors and officials can serve as (1) opportunity brokers, (2) community allies, and (3) justice advocates. By embracing these roles, ICC prosecutors can reconcile disparate expectations between legalism and clientelism.

#### A. Opportunity Brokers

Gift giving is a central feature of most patronage arrangements. In Uganda and DRC, patrons frequently pay school fees, distribute food staples, or purchase building materials for clients.<sup>202</sup> Some patrons may also gift a rooster or livestock, such as a goat or cow.<sup>203</sup> ICC prosecutors cannot provide gifts as patrons do. However, small symbolic gifts—meals, sodas, coffee, tea, cakes, or mementos—may be appropriate in some contexts as gestures of gratitude or hospitality.

More substantial gifts of material aid should be avoided for at least three reasons. First, the court must be transparent with survivors about its own limitations. The ICC is not a humanitarian or development organization, and does not have sufficient resources to meet all of victims’ psychological, medical, and material needs. Second, material gifts can create or exacerbate intergroup tensions in post-conflict settings. ICC officials should strive to assuage intergroup conflicts and avoid acts likely to foment resentment or create perceptions of partiality. Third, gift giving can undermine perceptions of judicial autonomy and impartiality. As an international criminal court, the ICC must ensure fair trials for defendants and avoid perceptions of bias.

Despite these potential hazards, the court already funds a number of victim-related programs, including some direct victim support initiatives. Article 79 of the Rome Statute, for example, empowers the TFV to provide material assistance to victims.<sup>204</sup> The TFV funds projects that support violence-affected communities by providing reparative medical surgeries and distributing individual or collective reparations that judges order after con-

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201. Anders Themnér, *Former Mid-Level Commanders in Big Man Networks*, in *AFRICAN CONFLICTS AND INFORMAL POWER: BIG MEN AND NETWORKS* 205, 207 (Mats Utas ed., 2012).

202. CODY ET AL., *supra* note 24, at 37.

203. *Id.*

204. Rome Statute, *supra* note 8, at art. 79.

victions.<sup>205</sup> To avoid perceptions of partiality, many of these projects operate under domestic umbrella organizations, and, as a consequence, victims may not be aware that they are beneficiaries.<sup>206</sup> Furthermore, victims directly participating in ICC cases are generally ineligible to benefit from TFV projects, even though many join ICC cases precisely to receive such benefits. Paradoxically, the central ICC mechanism designed for victim support labors to avoid supporting victims directly involved in ICC cases. As a result, some victim-participants complain that the court fails to recognize or address their needs throughout the judicial proceedings, even though they are addressing the needs of other conflict victims.<sup>207</sup>

Situational victim engagement urges the ICC to evolve from a direct provider of development assistance and victim services into an opportunity broker for survivors and affected communities. As a broker, the court can increase transparency about its activities and achieve greater impact for victims. The modest budget of the TFV will likely generate more far-reaching and comprehensive victim assistance by serving as the central referral agency and coordinator of victim-related services. The ICC's investment in partnerships with development organizations, humanitarian groups, and NGOs that specialize in psychological support for traumatized populations will likely expand counseling and support resources in victim communities. Partner organizations are better-positioned to navigate the community belief systems and patronage networks of a particular locale. They often have extensive networks within the development sector and can introduce victim-representatives to key regional operators. NGOs also frequently work closely with civil society organizations, citizen journalists, and community leaders, whose input could improve the ICC's responsiveness to vulnerable victims and witnesses. Additionally, such individuals are well-positioned to lobby government agencies and international donors for material aid. Authorizing public partnerships will notify victims that the ICC seeks to leverage its political and symbolic capital to aid in communities' reconstruction efforts.

The court may also cultivate partnerships with other international organizations supporting victims and thereby leverage their services, training, and outreach capabilities. Large international organizations have significantly more money, staff, and expertise to dedicate to victim services and reconstruction efforts than do the ICC or other international courts.<sup>208</sup> Relationships with independent humanitarian or victim organizations can also provide valuable information to court investigators and prosecutors about the social dynamics in affected communities. Finally, ICC prosecutors and appointed representatives for victims can collaborate with national governments to channel additional resources and development opportunities to victims' communities. State governments ultimately

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205. See generally Assembly of States Parties, *Regulations of the Trust Fund for Victims*, ICC-ASP/4/Res.3 (2005).

206. See *id.* ¶ 67.

207. See CODY ET AL., *supra* note 24, at 33.

208. See INT'L CRIM. CT., OUTREACH REPORT 2009, at 14 (2009).

have final responsibility for past failures to protect domestic populations and for subsequent reconstruction efforts. Given the perceived power of ICC prosecutors, they can often direct attention to victims' needs and encourage states and their agencies to do more for survivors' communities.<sup>209</sup>

## B. Community Allies

Independent of their gift giving, patrons often are valued allies in local communities. In Uganda and DRC, a patronage relationship implicitly signals that a patron cares about other community members. Giving time and attention alone are moral actions. ICC prosecutors should recognize this moral dimension of patronage and expand victim recognition and community dialogue in order to be perceived as community allies who care about affected communities. Beyond direct material aid, victims often want ICC prosecutors to recognize their suffering and stand beside them.<sup>210</sup> Such social recognition requires more than infrequent visits to their community. Recognition is an iterative process. Many victim participants welcome regular community meetings and phone or text updates about developments in their cases.<sup>211</sup> However, true recognition, many victims say, requires an ongoing dialogue about hardships and the ability to redress harm inflicted in victims' communities.<sup>212</sup> Personal visits may not always be enough. However, they mark an important step in the ongoing recognition process for victims.

**Table 5: Respondents Views of the ICC, (N=298)<sup>213</sup>**

	DRC	Uganda
Reported feeling respected by the ICC	29 (N=147) (20%)	85 (N=151) (56%)
Reported having trust in the ICC	18 (N=147) (12%)	53 (N=151) (35%)
Reported a positive view of ICC intervention	17 (N=147) (12%)	54 (N=151) (36%)
Reported positive effects from their participation	10 (N=147) (7%)	54 (N=151) (36%)

Prosecutors' recognition of victims' suffering and participation in ICC cases can be complicated. Social stigmas often attach to those identified as crime victims, particularly sexual violence survivors or former child soldiers. In some cases, victims' rehabilitation can depend on not being

209. See *id.* at 13; MOFFETT, *supra* note 39, at 142.

210. Interview with VPS Participant, *supra* note 9.

211. *Id.*

212. *Id.*

213. *Id.*

publicly recognized by court officials.<sup>214</sup> However, many victim-participants reported that social acknowledgement from ICC officials mattered to them as much as convictions or compensation.<sup>215</sup> Victim-participants sought more visits from ICC officials and more opportunities to engage with court officials about their cases.<sup>216</sup> Still, according to study victims, to become an ally of survivors required more than “just words.”<sup>217</sup> Survivors often expected visits and dialogue to result in more tangible material support.<sup>218</sup> Full recognition for many required compensation for the losses they had suffered during the violence. Therefore, the court’s complementary roles as an opportunity broker and community ally are inevitably linked in the minds of many victims.

**Table 6: Respondents Seek Recognition of Suffering (N=298)<sup>219</sup>**

	DRC	Uganda
Reported joining their ICC case to have harms recognized	58 (N=147) (39%)	108 (N=151) (72%)
Reported that reparations are necessary to recognize harms (and criminal convictions alone are insufficient)	76 (N=147) (52%)	109 (N=151) (72%)

Court communication also played a central role in victims’ view of ICC prosecutors. Victim-participants appreciated opportunities to express their views and concerns with court legal representatives, prosecutors, and judges. For most victim participants, however, official visits to their communities still mattered most.<sup>220</sup> Victims requested regular conversation in non-judicial contexts, such as in town hall meetings or in personal consultations in their villages.<sup>221</sup> Despite applying to participate in legal proceedings, few victims sought to express their views in a foreign courtroom.<sup>222</sup> Victims remarked on the long distance and difficult travel from their homes to ICC headquarters in the Netherlands. Most said that their appointed lawyer or an ICC staff representative could adequately represent their stories during legal proceedings. Thus, victims preferred to speak with ICC representatives—including prosecutors, legal representatives, VPRS field staff, and lawyers in the OPCV—in their home villages, towns, and neighborhoods, where intermediaries, chiefs, and elders could

214. See Peter J. Dixon, *Reparations and the Politics of Recognition*, in *CONTESTED JUSTICE: THE POLITICS AND PRACTICE OF INTERNATIONAL CRIMINAL COURT INTERVENTIONS*, *supra* note 17, at 326-27.

215. Interview with VPS Participant, *supra* note 9.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

facilitate conversations in an already familiar place.<sup>223</sup> Face-to-face encounters with prosecutors and other court personnel played a particularly important role in building relationships based on trust and respect for victims.

**Table 7: Communication Seeking Among Victim-Respondents (N=298)<sup>224</sup>**

	DRC	Uganda
Identifies recognition as the primary motivation for participation	23 (N=147) (16%)	30 (N=151) (20%)
Seeks increased communication with the court	36 (N=147) (24%)	95 (N=151) (63%)
Seeks increased visits to their community	38 (N=147) (26%)	112 (N=151) (74%)

Victims also reported that meaningful recognition required more than singular expressions of concerns during judicial proceedings. After killings, sexual violence, and looting had devastated community life, victims wanted ICC prosecutors to bear witness to their long-standing suffering.<sup>225</sup> While victims documented their stories in ICC applications for lawyers and judges, any chance to exercise meaningful recognition of their experiences during trial required deliberation with court officials.<sup>226</sup> Therefore, interactions with investigators, prosecutors, judges, and ICC field staff in victims' communities would help to assure survivors that they had allies in the court, which would contribute to the court's positive victim assessment.

### C. Justice Advocates

Patrons in Uganda and DRC also serve as advocates for their clients. Weak institutions in Uganda and DRC often prevent poor victims, when acting alone, from achieving justice through local courts or government agencies. In interviews, for example, many victims described criminal justice in Uganda and DRC as corrupt and argued that the success or failure of a criminal prosecution depended on the kinds of people involved in the case.<sup>227</sup> As a result, victims looked to patrons to campaign for justice on their behalf. Patrons, for example, might leverage political capital to see legal cases properly investigated, tried, or dismissed. Powerful patrons could either champion or undermine domestic criminal justice.

Similarly, victims in Uganda and DRC did not presume judicial authorities at the ICC were unbiased. To the contrary, victims expected

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

bias from the court's prosecutors and judges.<sup>228</sup> Moreover, they welcomed partial decision-making as a means to counter power imbalances against high-ranking perpetrators.<sup>229</sup> Justice for many victims relied on properly calibrated judicial prejudice. In the eyes of many victims, neutral procedures and judges can jeopardize prospects for convictions and reparations. Therefore, victims often wanted prosecutors and judges to exhibit biases in their favor. They needed powerful people on their side to achieve justice.<sup>230</sup>

While victims sought allies and advocates in their pursuit of criminal accountability and reparations, many also watched vigilantly for signs of corruption within the court. When proceedings stalled or accused perpetrators traveled freely, victims proclaimed that the ICC was crooked.<sup>231</sup> For most victims, the value of judicial institutions, including the ICC, depended on a balance between symbolic and material rewards. Like patron-client networks, victims made pragmatic assessments of the court's relative worth. They compared progress in their cases with alternative paths to justice and compensation. Therefore, most victims expected ICC prosecutors to serve as advocates for justice during trial and also in securing reparations and other forms of material support for reconstruction.

The court should never operate outside of the law, and understandably, it cannot champion all victims' visions of justice, especially when such advocacy can undermine fair trials for the accused. However, the local presumption that one needs powerful advocates to achieve justice creates an opportunity for ICC prosecutors to align with victims in advocacy for greater accountability, reparations, and victim support. Court officials can fulfill victims' expectations without compromising legal principles, including the accused's due process. Even the most generous patrons cannot deliver everything to their clients. What makes them good patrons, however, is a willingness to invest resources and time to advance client interests and goals.

In this regard, the ICC already operates as a good patron in many respects. It lends public support to victim-centered justice, appoints legal counsel at no cost to victims, and facilitates an array of victim participation programs and consultations.<sup>232</sup> Strong public advocacy by the court also draws attention to the plight of survivors in numerous conflict and post-conflict situations worldwide.

While the court is unable to fully realize the role of a development organization, ICC prosecutors can now embrace broader roles as opportunity brokers, community allies, and justice advocates. Situational victim engagement requires global prosecutors to take on roles outside of the traditional boundaries of criminal prosecutions. Through situational vic-

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228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. See *About, INT'L CRIM. CT.*, <https://www.icc-cpi.int/about> [<https://perma.cc/P6JW-Y3EL>] (last visited Sept. 11, 2020).

tim engagement, they can strengthen relationships between survivors and the court, reinforce ICC legitimacy in victim communities, and effectively support broader processes of reconstruction and transitional justice.

## Conclusion

This Article spotlights the importance of culture as a “toolkit” for prosecutors and victims in the practice of international criminal law. Legal scholars rightly continue to call for more attention to context and national efforts to make international justice more responsive to survivors.<sup>233</sup> Yet, few empirical studies investigate how belief systems endow judicial participants with differing cultural resources or examine how these differences condition participants’ strategies and social actions in criminal cases. The research in this Article begins to address this gap in cultural analysis by documenting how culture shapes prosecutors’ and victims’ search for justice at the ICC. Drawing on 298 interviews with atrocity crime survivors and twenty-seven interviews with ICC officials, this Article shows how the divergence between legalism and clientelism generates conflicts between prosecutors and victims during ICC proceedings.

Many Ugandan and Congolese victims expect non-legal forms of recognition and support from ICC prosecutors. This recognition includes regular visits to their home communities, dialogue about trial proceedings, and forms of material support.<sup>234</sup> For many victims, an assessment of the court’s effectiveness and legitimacy hinges on whether victims believe that the behavior of prosecutors and other court officials conforms with local ethics of interdependence. Victims often perceive the ICC as more than a judicial body tasked with criminal prosecutions. They view it as a well-resourced institution capable of extensive support for the reconstruction of their lives. For many victims, sustaining partnerships with court officials takes priority over criminal prosecutions.<sup>235</sup> Ongoing relationships and personal visits from court officials are important signs of social recognition and respect. However, for most victim participants, real acknowledgment requires that prosecutors and other court officials also work with them to secure reparations and other material support.

In contrast, ICC prosecutors tend to focus on criminal investigations and prosecutions. They place emphasis on principles of legalism—legal consistency, procedural uniformity, and retributivism—and generally cast off victims’ extra-judicial requests for support as beyond the proper scope of ICC activities. Some ICC officials also express concern that regular visits and discussions with victims undermine judicial independence and

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233. See Ramji-Nogales, *supra* note 5, at 4; William W. Burke-White, *Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice*, 49 HARV. INT’L L.J. 53, 86 (2008); Stephanos Bibas & William W. Burke-White, *International Idealism Meets Domestic-Criminal-Procedure Realism*, 59 DUKE L.J. 637, 689 (2010); see also Jenia Iontcheva Turner, *Nationalizing International Criminal Law*, 41 STAN. J. INT’L L. 1, 43 (2005).

234. See CODY ET AL., *supra* note 24, at 73.

235. See *id.* at 37.

raise unrealistic expectations about what remedies the ICC can deliver.<sup>236</sup> Some say that the ICC, as a criminal court, must avoid humanitarian projects and development partnerships.<sup>237</sup>

However, the Rome Statute's twin mandates for retributive and reparative justice provide ICC prosecutors with flexibility to allow for local belief systems. In Uganda and DRC, for example, ICC officials could engage more with patronage systems and even provide small gifts and symbolic gestures as a part of victim outreach and participation programs. Unwavering legalism cabins discussion about alternative victim-ICC partnerships.

This Article sets out a framework for situational victim engagement that encourages ICC prosecutors to take on roles as opportunity brokers, community allies, and justice advocates. Doing so would satisfy victims' expectations of patronage without compromising the prosecutors' commitment to procedural and substantive legal protections. In many instances, ICC prosecutors should be able to adapt to victims' expectations without sacrificing their impartiality or the court's autonomy. However, prosecutors should be careful to avoid court-directed support that exacerbates tensions between groups or creates unrealistic expectations for victim-assistance.

The court need not become a humanitarian organization to engage with local communities in ways that are culturally appropriate for survivors in those communities. More flexible approaches to victim outreach and participation, potentially including forms of material support, are a proper exercise of the court's obligations under the Rome Statute. Meaningful victim participation requires prosecutors and other ICC officials to adapt to local victims' expectations whenever possible without endangering the standards of international criminal law and fair trials. Legalism should not be allowed to completely overshadow victims' notions of justice. If global prosecutors truly seek to hold perpetrators accountable and deliver justice to victims, then international courts must invest more resources and time in listening to victims and developing partnerships in local communities.

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236. See *id.* at 5.

237. See Sara Kayyali, *Rigging the System: Government Policies Co-opt Aid and Reconstruction Funding in Syria*, HUM. RTS. WATCH (June 28, 2019), <https://www.hrw.org/report/2019/06/28/rigging-system/government-policies-co-opt-aid-and-reconstruction-funding-syria> [<https://perma.cc/ME7K-Y8EP>].