

Challenging the ‘Global-Local Divide’: Local Intermediaries, Victims and the Justice Contestations of the International Criminal Court (ICC)

Abstract

This article examines the role of a new category of actors in the ICC’s justice process: so-called ‘local intermediaries’ who have largely been ignored in the research on the Court’s work. Intermediaries are diverse actors, such as community leaders and grassroots organizations, who help the Court with evidence collection and victims’ engagement in its situation countries. While much controversy surrounds the ICC’s engagement with intermediaries, there is a shared analytical framework for making sense of this relationship: the ‘global-local divide’. While many scholars advocate for a combination or even integration of ‘global’ and ‘local’ justice processes, the premise that the important misunderstandings and contestations in international criminal justice happen between the ‘global Court’ and ‘local communities’ is hardly put in doubt. Drawing on fieldwork at the ICC in The Hague, in Kenya and in Uganda, I will argue that the global vs. local framework obscures more than it illuminates about the Court’s victims’ engagement through intermediaries. By developing a theory of interactional justice, the article will show that some of the most important justice contestations happen within the ICC and in the field rather than between the ‘global Court’ and ‘local communities’. In fact, the ICC’s internal contradictions, rather than the much vaunted ‘mischievousness’ of intermediaries, explain much of the Court’s ambiguous victims’ engagement. Ultimately, the article aims to close the empirical gap in research on the ICC’s intermediaries by releasing them from the analytical confines of the global vs. local conceptual framework.

1. Introduction

It has become commonplace to point out that there is an important distance and even mismatch between the International Criminal Court’s (ICC) abstract international justice bureaucracy and the local justice ideas of affected communities and victims in the Court’s situation countries.¹ This distance is often visualized by contrasting sterile images of the Court’s building with colorful rural images of people gathering under trees in the Court’s situation countries.² This idea of a ‘global-

¹ L. Moffett, ‘Elaborating Justice for Victims at the International Criminal Court: Beyond Rhetoric and The Hague’, 13 *Journal of International Criminal Justice* (2015) 281-311, at 286; Justice Hub, ‘My Justice: Mariana Pena’, 27 February 2015, available at <https://justicehub.org/article/my-justice-mariana-pena> (last visited 13 June 2015); See also *Integrated Strategy for External Relations, Public Information and Outreach*, available at http://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6-D4F2B93C7506/185049/ICCPIDSWBOR0307070402_IS_En.pdf.

² See for example the book covers of K.M. Clarke, *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism* (Cambridge: Cambridge University Press, 2009); R. Shaw, L. Waldorf, P. Hazan (eds), *Localizing transitional justice: interventions and priorities after mass violence* (Stanford: Stanford University Press, 2010). See also ‘About the Court/The logo’ at <http://www.constitutionalcourt.org.za/site/thecourt/thelogo.htm>

local divide' is pervasive in scholarship and commentary on the ICC and is embraced by different actors for different purposes.³ NGOs such as the International Federation for Human Rights (FIDH) and REDRESS have emphasized this 'global-local divide' to push the Court to improve its engagement with affected communities.⁴ Yet, other scholars and practitioners use the idea of an inherent cultural mismatch between global and local justice ideas to dismiss the ICC's 'justice imposition' all together⁵ and instead advocate for 'bottom-up' approaches such as community-based justice mechanisms.⁶ While this debate on the clashes between global and local justice processes is well-rehearsed, it has largely overlooked one category of actors: the ICC's local intermediaries.

Intermediaries are actors ranging from individuals such as family members of victims and community leaders to grassroots organizations and national NGOs in the Court's situation countries. They help the Court with evidence collection, victim identification, community outreach and victim assistance. The ICC has constructed this institution of 'intermediaries' for which there is no legal framework or basis in the core texts of the Court.⁷ It defines an intermediary as 'someone who comes between one person and another; who facilitates contact or provides a link between one of the organs or units of the Court or Counsel on the one hand, and victims, witnesses, beneficiaries of reparations and/or affected communities more broadly on the other'.⁸ Importantly, the Court uses the term intermediaries only to designate 'local actors' but not the various international NGOs that fulfill intermediary functions for the Court.⁹

Some scholars and activists see 'intermediaries' as part of the solution to the Court's problem of seeming to be 'aloof'. Intermediaries can bridge the cultural and knowledge gaps between an international justice institution in distant The Hague and local communities in the different African

³ The pervasiveness of the global/local divide in human rights studies has been analysed and criticized by M. Goodale, 'Locating Rights, Envisioning Law Between the Global and the Local' in M. Goodale and S.E. Merry (eds), *The Practice of Human Rights: Tracking Law between the Global and the Local* (Cambridge University Press 2007).

⁴ FIDH, *Five Myths about Victim Participation in ICC Proceedings* (December 2014), available at <https://www.fidh.org/IMG/pdf/cpi649a.pdf> (visited 13 June 2015), at 19.

⁵ The concept of 'global justice' is increasingly associated with international criminal law and its institutions especially the ICC. See S.M.H. Nouwen and W. G. Werner, 'Symposium: Pursuing Global Justice through International Criminal Law', 13 *Journal of International Criminal Justice* (2015) 73-75.

⁶ A. Branch, 'Uganda's Civil War and the Politics of ICC Intervention', 21(2) *Ethics and International Affairs* (2007); A.A. An-Na'im, 'Editorial Note: From the Neocolonial 'Transitional' to Indigenous Formations of Justice', 7 *The International Journal of Transitional Justice* (2013) 179-198, at 197; K. McEvoy and L. McGregor, *Transitional justice from below: Grassroots activism and the struggle for change* (Oxford: Hart, 2008).

⁷ *Guidelines Governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel working with intermediaries*, March 2014, available at http://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/strategies-and-guidelines/Documents/GRCI-Eng.pdf (visited 20 January 2015), at 3.

⁸ Ibid, at 5.

⁹ Ibid, at 6.

countries in which the Court works.¹⁰ Yet, the ‘ICC’s perspective’ on intermediaries is very different. Many actors within the Court see intermediaries as part of the problem rather than part of the solution to its local legitimacy problem. They claim that intermediaries introduce misunderstandings and distortions into the Court’s victims’ engagement by giving wrong or misleading messages to affected communities.¹¹ According to the people, who I interviewed at the Court, ‘direct engagement’ between the ICC and local communities would be preferable to the ‘indirect engagement’ facilitated by intermediaries.¹²

Underlying these different perspectives on intermediaries are two justice paradigms that dominate the literature: ‘legalism’ and ‘justice relativism’. Legalists tie the meaning of justice to substantive and procedural legal principles such as retributive justice and due process, thereby making it possible and desirable for one institution such as the ICC to dispense justice to different countries, conflicts and contexts.¹³ The Court’s ‘NGO advocates’ often embrace a weak form of legalism. While they subscribe to the importance of universal, legal justice, they still believe that the Court’s ‘justice’ needs to be culturally translated and discussed with affected communities.¹⁴ A stronger form of legalism permeates the position presented in the Court’s documents that its lawyers are better placed than intermediaries or local lawyers to explain the Court’s work and to represent victims’ interests.¹⁵ The Court’s critics, on the other hand, often engage in some form of ‘justice relativism’. They challenge the legalistic justice paradigm by arguing that it reflects a particular cultural idea, ‘Western justice’, which is imposed on affected communities whose justice ideas are

¹⁰ Open Society Justice Initiative, *Intermediaries and the International Criminal Court: A Role for the Assembly of States Parties* (2011), available online at <http://www.opensocietyfoundations.org/sites/default/files/intermediaries-20111212.pdf> (visited 8 April 2014); H. Dranginis, ‘The Middle Man: Intermediaries of International Criminal Justice’, *Justice in Conflict*, 21 August 2011, available at <http://justiceinconflict.org/2011/08/21/the-middle-man-the-intermediaries-of-international-criminal-justice/> (last visited 12 May 2015).

¹¹ Interview with Legal Officer, Registry, The Hague, 21 January 2014; Interview with Legal Coordinator, Registry, The Hague, 6 February 2014.

¹² Interview with Counsel, OTP, The Hague, 13 November 2013; Interview with Senior Official, Registry, The Hague, 16 December 2013; Interview with Senior Official, Registry, The Hague, 10 January 2014; Registry Observations in compliance with the Decision ICC-01/04-02/06-54-Conf, *The Prosecutor v. Bosco Ntanganda* (ICC-01/04-02/06-57), 6 May 2013, §3, §§11-13.

¹³ On legalism, see K. McEvoy, ‘Beyond Legalism: Towards a Thicker Understanding of Transitional Justice’, 34(4) *Journal of Law and Society* 411-440.

¹⁴ Justice Hub, ‘My Justice: Mariana Pena’, 27 February 2015, available at <https://justicehub.org/article/my-justice-mariana-pena> (last visited 13 June 2015).

¹⁵ See for example Redress, *Representing Victims before the ICC: Recommendations on the Legal Representation System* (April 2015), available online at <http://www.redress.org/downloads/publications/1504RepresentingVictims.pdf> (last visited 13 June 2015), at 9; Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights, *The Prosecutor v. Dominic Ongwen* (ICC-02/04-01/15-350), Pre-Trial Chamber II, 27 November 2015, at §§19-24; Avocats sans Frontières, *Modes of Participation and Legal Representation* (November 2013), available online at http://www.asf.be/wp-content/uploads/2013/11/ASF_IJ_Modes-of-participation-and-legal-representation.pdf (last visited 13 June 2015) at 27.

very contextual: they depend on their local culture, personal beliefs, gender, age or the injury they suffered.¹⁶

In this way, both justice paradigms sustain the myth that justice ideas at the ICC are narrow and uniform and simultaneously essentialize local justice ideas and practices. Of course, few scholars subscribe to either 'legalism' or 'justice relativism' in its pure form. Instead, many scholars advocate for a holistic justice response or a 'justice balance' that combines global and local justice practices.¹⁷ Yet, in doing so, they reaffirm and reinforce three assumptions underlying the global-local divide: first, that the 'global' and the 'local' are real things out there rather than simply normative claims to different types of legitimacy, second, that the global-local divide is a sound analytical framework for analyzing the ICC's relationship with actors in its situation countries such as intermediaries and third, that the most important justice contestations happen between the 'global Court' and 'local communities' rather than elsewhere. In this article, I will challenge those assumptions by developing a theory of interactional justice, which makes the empirical process through which justice concepts and practices evolve and change at the ICC analytically visible. Rather than taking the existence of the 'local' and the 'global' as real places out there for granted, interactional justice helps us to explore how ideas of the 'local' and the 'global' are constructed and then deliberately conflated in the production of international criminal justice for victims.

In doing so, I draw on my interview data and observations at the ICC in The Hague, in Kenya and in Uganda as well as extensive study of the Court's documents. During an internship at the Court between October 2013 and February 2014, I conducted 27 formal interviews and 4 informal interviews with the Court's practitioners. Overall, I interviewed 5 ICC judges, 11 Registry staff members (VPRS [4], VWU [1], OPCV [2], OPCD [2] and TFV [2]), three employees of the Office of the Prosecutor (OTP), one of the Presidency and two of the Chambers, as well as five victims' lawyers. In Kenya and in Uganda, I interviewed over 50 local ICC staff members, intermediaries, local partners and civil society representatives from June to September 2014. Interviewee selection focused on those practitioners involved in the Court's victims' and intermediary engagement, which means that the sections of the Registry are overrepresented in the data. I also used snowball sampling, asking interviewees for further contacts at the Court, which may have created further

¹⁶ A. Branch, 'Uganda's Civil War and the Politics of ICC Intervention', 21(2) *Ethics and International Affairs* (2007) 179-198; Mahmood Mamdani, 'Responsibility to Protect or Right to Punish?', 4(1) *Journal of Intervention and Statebuilding* (2010) 53-67.

¹⁷ P. Gready and S. Robins, 'From Transitional to Transformative Justice: A New Agenda for Practice', 8 (3) *The International Journal of Transitional Justice* (2014) 339-361, at 340, 344/45; *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies: Report of the Secretary-General* (S/2004/616), 23 August 2004, §8, §26; Dustin N. Sharp, 'Addressing Dilemmas of the Global and the Local in Transitional Justice', 29 *Emory International Law Review* (2014-2015) 72-117, at 74.

biases.¹⁸ For collecting my interview data, I used a semi-structured interview technique that combined open questions with probing questions about particular justice concepts.

Ultimately, the article argues that the way our thinking about international justice is habitually structured through meta-categories of ‘global’, ‘local’, ‘top’ and ‘bottom’ creates many blind spots such as justice contestations within the ICC and the ‘non-local’ of victims and intermediaries. Once we explore the Court’s victims’ engagement through a more nuanced theory of justice as an interactional process, it emerges that the fault lines of justice contestations run not only between the ICC and affected communities, but also through the Court and victim communities. In fact, as soon as we examine ‘the Court’ more closely, it rapidly dissolves into different actors and institutions that pursue diverse and conflicting justice agendas. Intermediaries are simply one more category of actors in this interactional process with substantial power to label victims and define their justice interests for the Court on the one hand, but with contestable claims to ‘local legitimacy’ on the other. In this way, the article uses an empirical discussion of the role of intermediaries in the Court’s victims’ engagement as an entry point into a broader conceptual rethinking of the global-local divide.

2. The ICC’s Engagement with Local Intermediaries: Challenging the ‘Top-Down’ and ‘Global-Local’ Binaries

While the Court’s intermediaries have received scant attention in ICC scholarship,¹⁹ the role of such ‘local’ actors is conventionally analyzed through two related frameworks: ‘transitional justice from below’ and the ‘global-local divide’. The underlying idea of ‘transitional justice from below’ scholarship is that the meaning and practice of justice is too often dictated by the powerful, with little consideration of the justice ideas of affected communities. As McEvoy and McGregor observe ‘the term “from below” is increasingly used to denote a “resistant” or “mobilising” character to the actions of community, civil society and other non-state actors in their opposition to powerful hegemonic political, social or economic forces.’²⁰ In contrast, the relationship between the ICC and African communities is often framed as ‘transitional justice from above’: a

¹⁸ ‘Statistics How To’, available online at <http://www.statisticshowto.com/snowball-sampling/> (last visited 21 January 2016).

¹⁹ One notable exception is E. Haslam and R. Edmunds, ‘Managing a New Partnership: Professionalization, Intermediaries and the International Criminal Court,’ 12 *Criminal Law Forum* (2012) 871–903. See also C.M. De Vos, ‘“Someone Who Comes between One Person and Another”: Lubanga, Local Cooperation and the Right to a Fair Trial,’ 12 *Melbourne Journal of International Law* (2011) 217–236; E. Baylis, ‘Outsourcing Investigations’, 14 *Los Angeles Journal of International Law and Foreign Affairs* (2009) 121–147; Déirdre Clancy, ‘“They told us we would be part of history”: reflections on the civil society intermediary experience in the Great Lakes region’, in C. De Vos, S. Kendall and C. Stahn (eds.), *Contested Justice: The Politics and Practice of International Criminal Court Interventions* (1st ed. Cambridge: Cambridge University Press, 2015) 219–248.

²⁰ K. McEvoy and L. McGregor, *Transitional justice from below: Grassroots activism and the struggle for change* (Oxford: Hart, 2008), at 3.

relationship in which ‘justice is reduced to a good to be delivered by foreign institutions and organizations.’²¹

A related prism for exploring the role of local intermediaries is the ‘global-local divide.’ While the ‘top-down’ lens focuses our attention on the differences in power between the ‘top’ and the ‘bottom’, the ‘global-local divide’ alerts us to the contrast in culture and ideas between the ‘global’ and the ‘local.’ The literature is littered with vocabulary of the ‘global’ and ‘local’ and some scholars even speak of a ‘local turn’ in Transitional Justice (TJ).²² In this context, the institution of ‘mediator’ or ‘intermediary’ has become salient for studying the relationship between international and local norms and practices.²³ Anthropologists have identified community leaders and grassroots organizations as ‘intermediaries’ that can help to ‘translate’ or ‘vernacularize’ international norms such as human rights and accountability into locally accepted norms and practices.²⁴ Acharya developed the concept of ‘norm localization’ to analyze this process of translation: ‘it may start with a reinterpretation and re-representation of the outside norm, including framing and grafting, but may extend into more complex processes of reconstitution to make an outside norm congruent with a preexisting local normative order.’²⁵ Boesenecker and Vinjamuri have explored how different civil society actors navigate between international norms and local practice in TJ, ranging from active adaptation and dissemination of global norms to normative contestation and outright rejection.²⁶

A. Where is the ‘global’ and the ‘local’ in international criminal justice?

While these two frameworks reveal the normative tendency underlying ICC scholarship of either promoting ‘global’ or ‘local’ justice practices, they are analytically problematic as they tend to reify the ‘global’ and the ‘local’ as self-evident categories for making sense of the ICC’s

²¹ A. Branch, ‘Uganda’s Civil War and the Politics of ICC Intervention’, 21(2) *Ethics and International Affairs* (2007), at 194.

²² See C. De Vos, S. Kendall and C. Stahn (eds.), *Contested Justice: The Politics and Practice of International Criminal Court Interventions* (1st ed. Cambridge: Cambridge University Press, 2015), available at <http://ebooks.cambridge.org/ebook.jsf?bid=CBO9781139924528> (last visited 18 January 2016) at 7; See also Frédéric Mégret, ‘In whose name? The ICC and the search for constituency’, in C. De Vos, S. Kendall and C. Stahn (eds.), *Contested Justice: The Politics and Practice of International Criminal Court Interventions* (1st ed. Cambridge: Cambridge University Press, 2015).

²³ Ibid; S.E. Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago, IL: University of Chicago Press, 2005); A.P. Boesenecker and L. Vinjamuri, ‘Lost in Translation? Civil Society, Faith-Based Organizations and the Negotiation of International Norms’ 5 *The International Journal of Transitional Justice* (2011) 345-365; A. Acharya, ‘How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism,’ 58(2) *International Organization* (2004) 239–275.

²⁴ S.E. Merry, ‘Transnational Human Rights and Local Activism: Mapping the Middle’, 108 (1) *American Anthropologist* (2006) 38-51.

²⁵ A. Acharya, ‘How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism,’ 58 (2) *International Organization* (2004), at 244.

²⁶ A.P. Boesenecker and L. Vinjamuri, ‘Lost in Translation? Civil Society, Faith-Based Organizations and the Negotiation of International Norms’ 5 *The International Journal of Transitional Justice* (2011), at 345.

relationship with affected communities. Yet, where exactly the ‘global’ and the ‘local’ are, is far from clear. In his seminal article, Archarya designates the regional and domestic norms of ASEAN (Association of Southeast Asian Nations) as ‘local beliefs and practices’.²⁷ Vinjamuri and Boesenecker, on the other hand, see the ‘local level’ as distinct from the ‘national’ and the ‘regional’ level.²⁸ When I conducted my ‘field’ research in Uganda, finding the ‘local level’ was not that easy. The ICC has its field office in Kampala, hundreds of kilometers away from Northern Uganda, where the violence underlying the ICC’s cases unfolded. Still, many NGOs who I interviewed in Kampala saw themselves as part of the ‘local,’ if only because they are not part of the ‘global’ or ‘international’.

When I went to Gulu and Lira, the largest and second largest towns in Northern Uganda, I thought I had arrived ‘at the local level’. Most NGOs based in Gulu and Lira claim to be ‘local’ or ‘grassroots’. And yet, the conflict-affected communities they work with and which make them the bearer of ‘local perspectives’ are elsewhere: in the ‘villages’ and the ‘rural areas’. This ambiguity is also manifested in a recent article by Phil Clark on civil society engagement with Transitional Justice in Uganda. He quotes an NGO leader in Gulu complaining about the lack of local ownership of transitional justice policies: ‘At Juba, our situation got hijacked by all these foreign groups like Amnesty [International] and ICTJ [International Center for Transitional Justice], using our case to support the ICC and say that there should always be international trials. But what about the voices of local people...?’.²⁹ Yet, is he actually part of the ‘local’? For his civil society colleague from a ‘rural community-based’ organisation in Lango sub-region, he is not. Instead, he is part of ‘those big NGOs in Gulu [who] now just do what the government tells them...’³⁰

While my interviewees in Uganda talked a lot about the differences between local and international NGOs, they are actually similar in many ways. Most NGOs, whether designated as ‘local’ or ‘international’, rely on external funding and are therefore privy to international donors and the language of international development. Everyone, from international to grassroots organization, claims to ‘mainstream gender’ in their activities and to apply ‘best practices’ and ‘monitoring tools’. Many of the ‘local’ organizations based in Gulu or Lira also have international staff. International organizations, on the other hand, are often staffed with national and local staff on the

²⁷A. Acharya, ‘How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism,’ 58 (2) *International Organization* (2004), at 241.

²⁸A.P. Boesenecker and L. Vinjamuri, ‘Lost in Translation? Civil Society, Faith-Based Organizations and the Negotiation of International Norms’ 5 *The International Journal of Transitional Justice* (2011), at 347.

²⁹Phil Clark, ‘“All these Outsiders Shouted Louder Than Us”: Civil Society Engagement with Transitional Justice in Uganda’, Working Paper SiT/WP/03/15, Security in Transition, available online at http://www.securityintransition.org/wp-content/uploads/2015/11/CS-and-TJ-working-paper_Uganda.pdf (visited 20 January 2016), at 8.

³⁰*Ibid*, at 9.

ground. This means that both local and international organizations are caught in a complex amalgam of international donor pressure, national constraints and local politics. For example, in Kenya and Uganda, my informants felt that both international and local NGOs had fallen prey to ethnic politics. One former partner of the Trust Fund for Victims (TFV) claimed: 'All the programme managers of Care International are Acholi, out of the 11 organizations sub-granted only 3 are remaining and they were all three Acholi. It became ethnic actually.'³¹ In Kenya, a civil society representative lamented:

Civil society became a mirror of the collapsed political system...Even with Red Cross which is supposed to be neutral, I heard that they were supporting certain groups rather than others...There are some organizations where 75% of people came from one community and the perception from the public was "they will never help us because they come from there".³²

This suggests that the 'global' and the 'local' are not self-evident spaces or levels but claims that different actors make to particular forms of legitimacy. As Carsten Stahn argues, the local is an ambiguous category: 'it provides a discursive space to accommodate the divide between 'inside' and 'outside' in the struggle over political authority and legitimacy.'³³ In this struggle, the 'global' stands for power, expertise and international networks, while the 'local' stands for 'understanding', grounded-ness and community support. This is reflected in the way many Transitional Justice actors claim to be part of both the 'global' and the 'local.' A good example is the Justice and Reconciliation Project (JRP) in Gulu. It makes a strong claim to represent the local by 'working with grassroots communities' and 'bringing local voices to the table.'³⁴ Yet, JRP was also founded through a partnership with the Liu Institute for Global Issues based in Canada, has international as well as local staff and is funded almost exclusively by foreign sources. It also makes claims to 'TJ expertise' independent of local perspectives.³⁵ Nonetheless, the 'global' and the 'local' are usually presented as mutually exclusive categories and are used without further explanation.

³¹ Interview with former TFV Partner, Kampala, 7 July 2014.

³² Interview with Intermediary, Kisumu, 26 August 2014.

³³ Carsten Stahn, 'Justice civilisatrice? The ICC, post-colonial theory, and faces of 'the local'', in C. De Vos, S. Kendall and C. Stahn (eds.), *Contested Justice: The Politics and Practice of International Criminal Court Interventions* (1st ed. Cambridge: Cambridge University Press, 2015), at 47.

³⁴ Justice and Reconciliation Project (JRP), 'History', available online at <http://justiceandreconciliation.com/about/history/> (last visited 21 January 2016).

³⁵ *Ibid.*

B. Who is controlling whom?: Powerful court versus weak intermediaries?

Both ‘transitional justice from below’ and the ‘global-local divide’ rely on an oversimplified understanding of how power and ideas operate in international criminal justice and thereby obscure more than they illuminate about the ICC’s relationship with intermediaries. In a complex and diverse institution that works in nine different countries at the same time with limited staff and resources, power does not only ‘sit’ at the ‘top’.³⁶ Rather, power is relational and contextual in the ICC’s work as the Court depends on local intermediaries for its field engagement. The OTP has admitted that ‘it is not an exaggeration to say that the prosecutions themselves are impossible without the assistance of intermediaries.’³⁷ In situation countries such as Kenya and Sudan, where the government is hostile to the ICC’s involvement and state cooperation is often wanting, the Court heavily depends on the help of in-country actors for nearly all of its operations. The Court’s dependence on local support, knowledge and access means that intermediaries have considerable power to influence the ICC’s victims’ engagement.

A senior official at the Registry told me:

We have a new situation or case somewhere, we have to immediately, sometimes very quickly for us...but even quicker, of course, for the prosecutor, we have to be able to work there. We can’t just walk into the places, where we think that the victims are and say “hi, here we are.” We have to rely on local people to lead us to the victims and especially local people who potentially have the trust of and knowledge of the victims.³⁸

Yet, victims and witnesses are often widely dispersed in rural areas across the country in places that are difficult and dangerous to access for the Court’s personnel.³⁹ This means that there are often only one or two organizations that can act as intermediaries leaving the ICC little choice in selecting them.⁴⁰ As a legal representative of victims (LRV) explained, ‘they are in a situation where others are dependent on them, lawyers, victims, everybody is dependent on those intermediaries.’⁴¹ Lack of field staff also implies that the Court cannot control how intermediaries such as community leaders or relatives engage with victims. A Registry official pointed out,

³⁶ 18 countries if we include preliminary examinations.

³⁷ Prosecution’s Submissions in Response to Trial Chamber’s Oral Request of 10 February 2010, *Lubanga* (ICC-01/04-01/06-2310-Red), Trial Chamber I, 25 February 2010, §12.

³⁸ Interview with Senior Official, Registry, The Hague, 16 December 2013.

³⁹ *Report of the Court on the Revised Strategy in relation to victims: Past, present and future*, ICC-ASP/11/40, 5 November 2012, footnote 19.

⁴⁰ Interview with Legal Officer, Registry, The Hague, 12 November 2013.

⁴¹ Interview with Legal Representative of Victims, Telephone Interview, 15 January 2014.

‘because we have to rely on them and we are not always there when they talk to the victims, we cannot control what they say...’.⁴²

The Court has published guidelines on the use of intermediaries to alleviate some of these concerns.⁴³ Yet, the guidelines have so far done little to increase the Court’s control over intermediaries. They are not only vague on the question of their enforcement, but also leave the relationship between the Court and most of its intermediaries unclear. In fact, it seems that the guidelines are deliberately vague to accommodate the different ways the organs and units of the Court conceptualize and use intermediaries. An OTP official explained to me: ‘that was one of the difficulties to draft one protocol on intermediaries whereby everyone understands something completely different.’⁴⁴ The guidelines only apply to intermediaries working under a contract with an organ or unit of the Court or Counsel. Their application to intermediaries without contract, including the significant number of intermediaries that are ‘self-appointed’ or chosen by victims or witnesses, will be determined on a case-by-case basis.⁴⁵ It is noteworthy that none of the intermediaries interviewed for this research in Kenya and Uganda indicated that they had a contract with the Court.

Indeed, official contracts would put into law an arrangement, where de facto only one party, the intermediaries, bears obligations. As a Registry officer observed, ‘we can have contracts. The thing is you have to be careful because we don’t offer much. Normally in Kenya, we do not offer anything, which has been a problem. It is hard to say, “We don’t offer you anything, but this is what you are going to do for us and then sign here”’.⁴⁶ Not surprisingly, some intermediaries in Kenya have become frustrated with the Court’s approach towards them. One interviewee put it like this: ‘The intermediary question is one of those ones which make me extremely angry. With the Court, we have had discussions since 2011 and what do they come up with? Some bloody guidelines which intermediaries are supposed to sign...What for? You don’t offer us security...Literally, nothing of that [their work] is compensated by the Court.’⁴⁷ Another intermediary complained, ‘when you are reading the newspaper, the cases are not going well...I feel that if anything happens to that case, let the prosecutor come herself to the victims and tell

⁴² Interview with Senior Official, Registry, The Hague, 16 December 2013.

⁴³ *Guidelines Governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel working with intermediaries*, March 2014, available at http://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/strategies-and-guidelines/Documents/GRCI-Eng.pdf (visited 12 December 2014).

⁴⁴ Interview with Counsel, OTP, The Hague, 13 November 2013.

⁴⁵ *Guidelines Governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel working with intermediaries*, March 2014, available at http://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/strategies-and-guidelines/Documents/GRCI-Eng.pdf (visited 12 December 2014), at 3.

⁴⁶ Interview with Legal Officer, Registry, The Hague, 12 November 2013.

⁴⁷ Interview with former Intermediary, Nairobi, 30 June 2014.

them. I'm done with being the bearer of bad news.'⁴⁸ The case she referred to, the Kenyatta case, indeed collapsed a few months after the interview, in December 2014.

While ICC practitioners often try to downplay the involvement of intermediaries in the Court's work, these actors crucially shape its victims' engagement on the ground. Some of the victims' lawyers and Court officials I talked to were quick to emphasize that they *only* use intermediaries for very limited tasks, for example to identify victims.⁴⁹ Yet, victim identification is neither a limited nor a simple, technical task; rather it potentially gives intermediaries substantial power in deciding who is recognized as a victim before the ICC and who is not. In many ICC cases, victim identification is more akin to looking for a needle in a haystack. An intermediary in Western Kenya told me, 'the biggest problem was that we have never had a documentation, or let's say a mapping of victims, we never know who we talk about when we are talking about victims...'⁵⁰ The LRV in Kenya (case two) was able to identify only several hundred out of the 20,000 victims he was supposed to represent with the help of local intermediaries. He observed, 'we know they exist but we are dealing with a territory of 4 or 5 million people...how do we find the 20,000 people within the 4 or 5 million?''⁵¹

The difficulty of victim identification suggests that it can act as a mechanism of the exclusion or inclusion of victims on the basis of political, ideological or ethnic biases of intermediaries. Intermediaries may, wittingly or unwittingly, lead the Court to certain groups of victims more than to other groups. A Kenyan civil society representative pointed out, 'that has definitely happened here. There are certain intermediaries that work only with certain victims... they make the claim that they work with all victims but in truth they work with only a particular type of victim and they... recognize [only] a particular type of victimhood.'⁵²

Yet, intermediaries may not only influence who is identified as a victim but also how and which 'victims' interests' are conveyed in the court room. Limited resources, security concerns and court deadlines mean that victims' lawyers and the Court's staff do not always consult directly with victims. A LRV told me,

⁴⁸ Interview with Intermediary, Nairobi, 2 July 2014.

⁴⁹ Interview with ICC Field Staff, Nairobi, 23 June 2014; Interview with Victims' Counsel, The Hague, 24 November 2013; Interview with Counsel, OTP, The Hague, 13 November 2013. See also FIDH, *Five Myths about Victim Participation in ICC Proceedings* (December 2014), at 25; Avocats sans Frontieres, *Modes of Participation and Legal Representation*, November 2013, at 18.

⁵⁰ Interview with Intermediary, Western Kenya, 22 August 2014.

⁵¹ Interview with Legal Representative of Victims, The Hague, 24 November 2013; See also The Hague Trials, 'Fergal Gaynor, the man who speaks for 20,000 Kenyatta case victims at the ICC', 26 February 2014, available online at <https://thehaguetrials.co.ke/article/fergal-gaynor-man-who-speaks-20000-kenyatta-case-victims-icc> (last visited 22 January 2016).

⁵² Interview with Civil Society Representative, Nairobi, 19 June 2014.

if you are a legal representative of 3000 victims and you have ten representatives [intermediaries] each of them is in contact with 300 victims, if you have to answer to the Court what the interests are of these victims, you will ask those representatives [intermediaries] because you cannot personally contact all your clients so you are not sure that the answer you will have is really the common answer of all those victims or whether it is indeed the idea of the intermediary...⁵³

The VPRS also often consults with intermediaries ‘on issues pertaining to the security and well-being of victims’ rather than with victims themselves.⁵⁴ This suggests that ‘outside the Court’ actors such as intermediaries can influence not only the selection of victims for the Court’s participation and reparation processes, but also the representation of their interests in the court room.

C. Intermediaries between or beyond the ‘Global’ and ‘Local’?

From a ‘global-local perspective’, local intermediaries either help to translate the Court’s justice norms into local norms or they reinforce the pre-existing gap between the global and the local. While some scholars and advocates see the ICC’s intermediaries as justice translators, the Court’s discourse on intermediaries is very different. Despite the fact that the Court established the category of intermediaries and actively solicits the help of these actors usually without compensating them, intermediaries are portrayed as a liability for the Court. Part of the reason for this ‘intermediaries as liability’ discourse can be found in the first trial of the ICC, the Lubanga trial, where the first prosecution witness suddenly interrupted his testimony and said, that it was all false and that he was coached by intermediaries to lie to the Court.⁵⁵ Since then, defence counsel have on numerous occasions challenged the Court’s use of intermediaries and demanded the disclosure of their identities, alleging that intermediaries have tampered with witnesses and unduly influenced victims.⁵⁶ In its ‘Decision on Intermediaries’ of 31 May 2010, Trial Chamber I noted that ‘the precise role of the intermediaries (together with the manner in which they discharged their

⁵³ Interview with Victims’ Lawyer, Telephone Interview, 15 January 2014.

⁵⁴ Annex A of Thirteenth Periodic Report on the general situation of victims, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* (ICC-01/09-01/11-1792-AnxA), 23 January 2015, §2. See also its Tenth Period Report and Fourteenth Periodic Report.

⁵⁵ Transcript, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-T-236-Red2-ENG, 27 January 2010, at 20/21.

⁵⁶ See for example Defence Application to restrain legal representatives for the victims a/1646/10 & a/1647/10 from acting in proceedings and for an order excluding the involvement of specified intermediaries, *Situation in the Darfur, Sudan in the case of the Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (ICC-02/05-03/09-113), Pre-Trial Chamber I, 6 December 2010, §§14-20; Judgment pursuant to Article 74 of the Statute, *Situation in the Democratic Republic of the Congo in the case of the Prosecutor v. Thomas Lubanga Dyilo* (ICC-01/04-01/06-2842), Trial Chamber I, 14 March 2012, §§ 178-182; Institute for War & Peace Reporting, *ICC Intermediaries Allegedly Concocted Evidence* (12 February 2010), available at <http://iwpr.net/report-news/icc-intermediaries-allegedly-concocted-evidence> (last visited 13 June 2015).

functions) has become an issue of major importance in this trial...'⁵⁷ When asked about intermediaries, my interviewees at the OTP became reticent: 'Intermediaries is a very crucial and sensitive thing for us, so I would not like to go into detail'⁵⁸, one said.

But this 'intermediaries as liability' discourse is not limited to court room allegations; it also permeates the Court's engagement with affected communities. The Court has a special regime of victim participation, reparation and outreach and the Court's Registry needs intermediaries to help identify victims and assist them with filling out victim participation and reparation forms. Many people I talked to at the Registry claimed that intermediaries have caused problems for the Court's field work. They are said to make unwarranted promises of assistance to victims, and to misrepresent the Court's work. Some have even bribed victims and witnesses. A Registry officer contended, 'and we also have to worry that by kind of legitimating the work of a grassroots intermediary, they may take that document and wave it around in their home town or village and become gatekeepers and little emperors, which we have also seen happening'.⁵⁹ Many ICC officials expressed that if the Court had more resources and field staff, 'direct engagement' between the Court and affected communities would be preferable to the indirect contact arranged through intermediaries.⁶⁰

But this claim is based on the assumption that the Court is a homogenous actor that brings one clear justice vision and practice to its situation countries that intermediaries can subsequently distort. That the Court tries to portray itself in that way is not surprising.⁶¹ More surprising is that much of the ICC literature, including critical scholars, simply accepts the ICC's self-representation. Many ICC scholars and commentators confidently talk about the 'Court's agenda' and the 'Court's strategy', thereby presuming that the Court is a coherent and unitary actor in its own right. Admittedly, the 'unitary actor' assumption is not omnipresent. Some scholars have portrayed the Court as torn by bureaucratic competition and conflicting interests between its different organs and sections.⁶² Kaye, for example, claimed that 'Moreno-Ocampo [the former prosecutor], interpreting the independence of the OTP broadly, challenged the registrar not to raid his bailiwick and continually picked battles with the registrar's staff on everything from human

⁵⁷ Redacted Decision on Intermediaries, *Situation in the Democratic Republic of the Congo in the case of the Prosecutor v. Thomas Lubanga Dyilo* (ICC-01/04-01/06-2434-Red2), Trial Chamber I, 31 May 2010, §135.

⁵⁸ Interview with Attorney, OTP, The Hague, 29 November 2013.

⁵⁹ Interview with Legal Officer, Registry, The Hague, 12 November 2013.

⁶⁰ Interview with Senior Official, Registry, The Hague, 16 December 2013; Registry Observations in compliance with the Decision ICC-01/04-02/06-54-Conf, *The Prosecutor v. Bosco Ntanganda* (ICC-01/04-02/06-57), Registry, 6 May 2013, §3, §§11-13.

⁶¹ *Report of the Court on the public information strategy 2011-2013*, ICC-ASP/9/29, 22 November 2010, §8, §§12-14.

⁶² B.J. Schiff, *Building the International Criminal Court* (Cambridge: Cambridge University Press, 2008) at 149.

resources to witness protection.’⁶³ Yet, this analysis usually stops at the level of bureaucratic politics and does not really investigate what such conflicts mean for the integrity of the Court’s justice vision and practice. The following section, on the other hand, will show that once we explore ‘the Court’ more thoroughly, its promise to bring ‘justice to victims’ disintegrates into diverse and conflicting justice claims pursued by its various practitioners including intermediaries.

3. The ICC’s Victims’ Engagement through an Interactional Justice Lens

An interactional justice approach helps to challenge the premise that justice ideas and practices at the Court are uniform and neatly correspond to a ‘global’ or ‘Western’ notion of justice. Much ICC scholarship is premised on a stable notion of justice – the meaning of justice may be the product of legal doctrine, professional deformation, culture or personal belief – but once established the essence of justice is relatively stable and bounded. Interactional justice, on the other hand, claims that the meaning of justice at the ICC is in flux. It puts the Court’s bureaucrats, lawyers and intermediaries at the centre of the justice analysis. In other words, the meaning of ‘ICC justice’ is neither written in the Court’s legal statutes or philosophical treatise nor in the hearts and minds of affected communities, rather it is continuously shifted and redefined through the mundane institutional discourses, every-day practices and communicative interactions of the Court’s practitioners. Interactional justice thus situates a constructivist interpretation of ‘justice’ within an institutional analysis of the ICC as a *sui generis* Court with new actors such as victims’ lawyers and intermediaries that push for different justice visions.

Interactional justice also implies that the boundaries of who can and who cannot influence the ICC’s justice concepts and practices are porous and do not neatly fall along ‘inside’/‘outside’ lines. Viewed through an interactional justice lens, intermediaries neither look like ‘translators’ nor ‘distorters’ that stand ‘in-between’ the Court and affected communities. Rather, they are simply another category of actors within the Rome Statute system. The term ‘Rome Statute system’ is widely used to refer to all the actors involved in implementing the Rome Statute which includes the Court, States Parties, the TFV, international NGOs and ultimately intermediaries.⁶⁴ Once we look at the Court’s relationship with affected communities from a ‘Rome Statute system’ perspective, the boundaries between ‘inside’ and ‘outside’ the Court become more fluid as debates about the ‘global’ and ‘local’ are reproduced and refracted within the Court. In fact, a closer

⁶³ D. Kaye, ‘Who’s Afraid of the International Criminal Court? Finding the Prosecutor Who Can Set It Straight’, 90 *Foreign Affairs* (2011) 118-129.

⁶⁴ Telephone Interview with CICC Member, 3 July 2013; Telephone Interview with REDRESS Member, 19 July 2013. See also *Court’s Revised Strategy in Relation to Victims*, ICC-ASP/11/38, 5 November 2012, § 4, at footnotes 5, 6.

analysis of the Court's victims' engagement reveals that it works precisely through the conflation of 'the global' and 'the local'. For example, contradictory claims to 'local ownership' and 'impartial, global justice' permeate the Court's outreach strategy and create a lot of confusion for victims on the ground.

A. Dissecting 'ICC Justice': 'Local Ownership', 'Neutral Victims' Engagement' and other Justice Contestations

From the perspective of affected communities and intermediaries, the ICC often looks like an internally fragmented institution. These internal divisions can cause more problems in the field than the supposedly inherent divisions between the Court and local communities or the distortions and misunderstandings allegedly introduced by intermediaries. This can be illustrated with the example of the Court's outreach programme. The Court acknowledges that 'lack of understanding and misperceptions of the Court's purpose and activities among affected communities can undermine the ICC's legitimacy'.⁶⁵ It conducts community outreach 'to clarify misperceptions and misunderstandings and to enable affected communities to follow trials'.⁶⁶ Yet, this often looked rather different from the perspectives of the intermediaries and civil society actors whom I interviewed in Kenya and Uganda. An intermediary in Uganda, who participated in several of the Court's outreach sessions observed:

In all these outreach sessions where people raise questions about the Office of the Prosecutor, the PIDS [outreach] people would not respond....So many times it is us from the civil society who would respond to the questions from our own understanding of how the Prosecutor's office works... All these different sections and departments operate like this. They look at themselves as independent of each other. Notwithstanding that they sit in the same building, share same office space...For heaven's sake if you are going to do an outreach session perhaps they need to sit down and agree. And say "for purposes of field outreach this should be our strategy". So that you don't leave people's minds lingering about whether this is the same Court or not.⁶⁷

⁶⁵ *Report of the Court on the public information strategy 2011-2013*, ICC-ASP/9/29, 22 November 2010, §8c. See also *Integrated Strategy for External Relations, Public Information and Outreach*, available at http://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6-D4F2B93C7506/185049/ICCPIDSWBOR0307070402_IS_En.pdf (last visited 15 June 2015).

⁶⁶ ICC Website, 'Outreach', available at http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/outreach/Pages/outreach.aspx (last visited 15 June 2015).

⁶⁷ Interview with Civil society representative, Kampala, 28 July 2014.

One of the Court's outreach personnel in Uganda expressed, 'when I go to the field, when they ask questions about OTP [Office of the Prosecutor], ideally because I'm from the Registry, I am not supposed to answer. But for an ordinary person, you come all the way from Kampala to the deep village to say that you don't have an answer. It does not make any sense. It is very confusing for them and you feel it.'⁶⁸

But there are not only divisions between different field sections, or between the headquarters and the field; there are also very different and even conflicting ideas about outreach within the 'Court proper'. As an NGO officer lamented, 'there are a lot of people within the Court who do not conceive the Court as being something in the field. They think that the important stuff is happening in The Hague'.⁶⁹ Initially, the OTP was even opposed to community outreach *per se*, interpreting it as an obstacle to its desired 'low-profile' approach in the Court's situation countries.⁷⁰ By definition, outreach activities such as town hall meetings interfered with the prosecutor's preference for discreet investigations and minimal visibility in the field.⁷¹ Field activities such as outreach have even been discursively framed as *non-core* mandate in the Court's budget negotiations.⁷² During the 2012 budget negotiations, proposals demanding that *non-core* activities such as outreach and victim participation should be funded by voluntary contributions rather than the Court's regular budget were floated.⁷³

Yet, this preference for 'removed justice' collides with other voices at the Court that insist on the importance of 'local engagement'. 'Local justice' is usually considered to be 'the other' of international criminal justice as the latter follows a very different rationale than the former: its legitimacy derives precisely from its distance to and rationalization of the horrors of crime.⁷⁴ But the ICC or at least the Registry is also consumed by the ideology of 'local ownership.' As the ICC's outreach coordinator told me 'the idea is ownership. In each community in which you go, you involve the local actors to be part of the process, this is the only way they will own what you

⁶⁸ Interview with ICC Outreach Officer, Kampala, 22 July 2014.

⁶⁹ Interview with Alison Smith, Legal Counsel at the NGO No Peace without Justice, 30 March 2012.

⁷⁰ S. Darehshori, 'Lessons for Outreach from the Ad Hoc Tribunals, the Special Court for Sierra Leone, and the International Criminal Court', 14(2) *New England Journal of International and Comparative Law* (2008) 299-307.

⁷¹ Human Rights Watch, *Courting History: The Landmark International Criminal Court's First Years*, July 2008, available at http://www.hrw.org/sites/default/files/reports/icc0708_1.pdf (last visited 15 June 2015), at 118.

⁷² CICC, *Letter to states parties on the 2012 budget*, 6 July 2012, available at http://www.iccnw.org/documents/CICC_Letter_on_the_2012_ICC_Budget_-_6_July_2011.pdf (last visited 15 June 2015).

⁷³ Victims' Rights Working Group, *The Implementation of Victims' Rights before the ICC*, 2011, available at http://www.vrwg.org/VRWG_DOC/2011_VRWG_ASP10.pdf (last visited 15 June 2015), at 4, 5; *Report of the Committee on Budget and Finance on the work of its seventeenth session*, ICC-ASP/10/15, 12-21 December 2011, §25.

⁷⁴ Phil Clark, 'Distant Justice: The Politics of the International Criminal Court in Africa', Oxford Transitional Justice Research Seminar Series, 27 October 2014, available at <https://podcasts.ox.ac.uk/distant-justice-politics-international-criminal-court-africa> (last visited 21 January 2016).

are bringing, they will own the message, they will own the programme.’⁷⁵ A legal officer at the Registry insisted, ‘in my experience, I don’t think the legal process in and of itself is meaningful for victims. I think it is really about the engagement with a legal representative, consistently not one off, and the concept of being treated [well] is important, maybe for the first time ever.’⁷⁶ Once we acknowledge that the ‘global’ and the ‘local’ are claims rather than spaces, we also find them playing out within the Court.

But even those, who champion the ‘local’ within the Court, find themselves caught in contradictory claims: they want a two-way engagement with victims that is nonetheless neutral and detached. While the head of the outreach unit insists that community outreach is ‘strictly neutral’ and only provides information to local communities,⁷⁷ the Court’s website and reports also claim that outreach aims ‘to promote understanding and *support...of the ICC*’ and to create local ownership.⁷⁸ It is questionable whether ‘neutrally engaging’ with local communities is possible and whether it will go a long way towards creating local support for the Court. In our interview, a senior Registry official acknowledged that victims’ engagement cannot be ‘strictly neutral’. Nevertheless, she emphasized that the role of outreach is not to ‘win over’ affected communities: ‘we always say we are not trying to persuade individual victims to apply for participation or reparations. Our role is to explain and facilitate...’⁷⁹ Yet, one victim’s lawyer had a different impression of the Court’s victims’ engagement in the field:

NGOs say: “You should do more for victims. You should improve the current situation of intermediaries” and so on... So for the Court, if only 20 victims show up [to a meeting], they feel it is a failure. I think the organization of the Court, of the Registry and so on and a lot of NGOs feel that there is a problem, if only a small group of victims comes to the Court. They think it is a success, if 5000 victims sign a statement that they want to participate...⁸⁰

⁷⁵ Interview with ICC Outreach Coordinator, Nairobi, 23 June 2014.

⁷⁶ Interview with Legal Officer, Registry, The Hague, 12 November 2013.

⁷⁷ Email Communication with Head of Outreach unit, 1 May 2012; See also Regulations of the Registry, Regulation 5bis, 5 December 2013, available at <http://www.icc-cpi.int/iccdocs/registry/Regulations-of-the-Registry-Eng.pdf> (last visited 15 June 2015).

⁷⁸ ICC Website, ‘Outreach’ (emphasis added), available at http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/outreach/Pages/outreach.aspx (last visited 15 June 2015); ICC Public Information and Documentation Section, *Outreach Report 2010*, available at <http://www.icc-cpi.int/iccdocs/PIDS/publications/OUR2010Eng.pdf> (last visited 15 June 2015), at 25; Interview with ICC Outreach Coordinator, Nairobi, 23 June 2014.

⁷⁹ Interview with Senior Official, Registry, The Hague, 16 December 2013.

⁸⁰ Telephone Interview with Legal Representative of Victims, 15 January 2014.

In practice, the Court is walking a fine line between ‘neutral outreach’ and ‘advocacy’ for the Court. Especially in situation countries where there is a lack of judicial developments, the Court’s staff and intermediaries are under pressure to come up with a vision of what the ICC can do for victims in the absence of trials. It is difficult to keep affected communities interested in the ICC when there are no proceedings for years or when the Court cannot answer the questions that people find most pressing. An intermediary in Kenya complained, ‘the Court’s message is boring. Key messages have never changed: what is the Court? What is the mandate of the Court? What does the VPRS do? What does the Trust Fund do? They are not willing to engage with all the questions they [the affected communities] have... “What happens to other perpetrators? What’s going on with the compulsion of witnesses?”’.⁸¹ One ‘hook’ for keeping people engaged in the process is to refer to the Trust Fund for Victims’ assistance programmes: ‘When we go to do outreach, we explain, “even if there is no guilty verdict, there is no trial, there is nothing... there is something being done in Northern Uganda. The Trust Fund is already implementing 18 projects in Northern Uganda”’.⁸² But, of course, statements like this raise victims’ expectations. Some victims have even claimed that the Court’s staff promised them assistance and reparations for participating in the process.⁸³

Beyond these ambiguities between ‘local ownership’ and ‘neutral justice’, the Court’s internal divisions also reflect more fundamental contestations on what type of justice the ICC can and should deliver in its situation countries. I should clarify though that the meaning of justice is usually not openly discussed at the Court or litigated on in the court room. Many of the Court’s practitioners are not even aware that their colleagues have rather different justice ideas. For example, one senior official at the Registry told me, ‘For me, there are no different meanings of justice. Justice is justice. Justice means conformity to the moralities and the law. The meaning of justice per se is always the same and it cannot be changed... if you are a practitioner, the notion of justice is quite clear; what is right and what is fair... to be simple’.⁸⁴

However, as soon as we introduce the idea that justice does not only mean conformity to the law but also to morality, the practitioners I interviewed often did not find it that ‘simple’ to settle what is ‘right and fair’ in international criminal justice. In fact, another senior Registry official presented exactly the opposite idea of how the concept of justice functions at the Court: ‘It does not mean one thing. It means different things to different people... Talking about justice for victims is soft if

⁸¹ Interview with Intermediary, Nairobi, 30 June 2014.

⁸² Interview with ICC Outreach Officer, Kampala, 22 July 2014.

⁸³ Human Rights Center, *The Victims’ Court? A Study of 622 Victim Participants at the International Criminal Court*, UC Berkeley School of Law, available online at https://www.law.berkeley.edu/wp-content/uploads/2015/04/VP_report_2015_final_full2.pdf (last visited 21 January 2016), at 44.

⁸⁴ Interview with Senior Official, ICC Registry, The Hague, 10 January 2014.

you like, it is how different people see it but it does not say that in the Statute. In a way, it does not mean anything.⁸⁵

Another colleague pondered:

I don't know to what extent the idea of justice that this Court is applying can be called „international concept of justice”. Article 21.3, for example, speaks about internationally recognized human rights, something that is supposed to be recognized all over the world and the Court has used that article many times to find that there are some rights that are internationally recognized. But a concept of justice that is internationally recognized, I don't know which one it is.⁸⁶

This suggests that the concept of justice at the Court is rather fluid and unstable. The Court itself does not provide any policy or legal definition of justice. The consequence is that different ICC practitioners embrace rather different justice visions. For some, justice is a narrow concept tied to the judicial process in the court room: court room justice. As one of the Court's lawyers emphasized:

If I take the hard core criminal lawyer to which I would count myself, my concept of justice is, in the context of the ICC, in the context of what I am doing, to look at the crimes that have been committed. I look at the evidence in front of me and I look at whether I can connect the crimes, the evidence and the perpetrator. If that is the case, I will seek a conviction for the perpetrator for these crimes and whatever comes out that is for me justice because this is what this institution is bound to be doing.⁸⁷

His colleague at the OTP disagreed:

Justice is not a legally defined concept. It's a very broad concept. I have noticed in my years of experience that judges often say, 'it's in the interest of justice to do one thing or the other and I also more and more got the impression that they do that when there is no other legal basis to do so...It's very difficult to define it. I don't think there is any reason why it should be limited to any procedural function.⁸⁸

⁸⁵ Interview with Senior Official, ICC Registry, The Hague, 16 December 2013.

⁸⁶ Interview with Legal Officer, ICC Registry, The Hague, 4 February 2014.

⁸⁷ Interview with Legal Adviser, ICC Presidency, The Hague, 8 January 2014.

⁸⁸ Interview with Counsel, OTP, The Hague, 13 November 2013.

Other Court officials also felt that such a narrow concept of justice is not enough. Former ICC judge Elizabeth Odio-Benito, for example, argued that there is a disconnect between ‘court room justice’ and the lived realities and justice needs of victims: ‘Our notions of judicial justice are incomprehensible for those who are unable to survive without a permanent place to live in, without enough money to take care of their families’ basic needs and without full recognition of the atrocities committed against them.’⁸⁹ Some Court officials also articulated justice visions for the Court’s victims’ engagement that were somewhat independent of court room proceedings: ‘Now in terms of concepts of justice, what we are trying to do, at least in Kenya where we have more resources than in other situations, we are trying to do this civic engagement, this civic development, this civic education.’⁹⁰

The Court’s TFV even aims at ‘transformative justice’ in the Court’s situation countries.⁹¹ As the TFV notes in its submission to the Chamber on the Court’s reparation principles: ‘in the aftermath of war crimes, crimes against humanity and genocide, it will often not be appropriate to restore the *status quo ante* that gave rise to such crimes, in particular because the majority of victims of such crimes will likely have been the powerless and dispossessed at the time the conflict erupted’.⁹² The TFV therefore suggests that the Chamber explicitly addresses ‘transformative reparations’ in its reparation principles: ‘reparations that support women’s economic empowerment can contribute to transformative justice by placing them in a better position to break with historic patterns of subordination and social exclusion’.⁹³

An image of a rather divided institution emerges from this analysis: local ownership, civic education, transformative justice or detached court-room justice? The Court’s justice goals are far from clear. This is reflected in the observation of one interviewee: ‘we are one institution but we are many different voices within one institution with different objectives and different priorities.’⁹⁴ In a talk at the University of Oxford, ICC Judge Cuno Tarfusser contended, ‘I feel we have no

⁸⁹ E. Odio-Benito, ‘Foreword’ in C. Ferstman, M. Goetz and A. Stephens (eds), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity* (Leiden, Martinus Nishoff Publishers, 2009).

⁹⁰ Interview with Legal Officer, Registry, The Hague, 12 November 2013.

⁹¹ For a more thorough analysis of the transformative justice concept at the ICC, see C. Hoyle and L. Ullrich, ‘New Court, New Justice?: The Evolution of ‘Justice for Victims at Domestic Courts and the International Criminal Court’, 12(4) *Journal of International Criminal Justice* (2014) 681-703.

⁹² Observations on Reparations in Response to the Scheduling Order of 14 March 2012, *Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v. Thomas Lubanga Dyilo* (ICC-01/04-01/06-2872), Trust Fund for Victims, 25 April 2012, §73.

⁹³ Trust Fund for Victims’ First Report on Reparations, Lubanga (ICC-01/04-01/06-2803-Red), Trust Fund for Victims, 1 September 2011, §34; UN Women, *Progress of the World’s Women: In Pursuit of Justice* (2011), available online at

<http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2011/progressoftheworldswomen-2011-en.pdf> (visited 16 June 2015), at 98.

⁹⁴ Interview with Legal Officer, Registry, The Hague, 12 November 2013.

identity: Are we an international organization? An NGO? A human rights court? An academic institution? I think we are first and foremost a criminal court. But this is a minority perception at the Court'.⁹⁵ In a nutshell, the Court does not need intermediaries to introduce misunderstandings into the ICC's justice process or 'local perspectives' to warp its global justice mission; its own justice ambivalence goes a long way in explaining the tensions between the Court and affected communities. Instead, the Court appears to create a convenient scapegoat. It outsources its mandatory responsibilities of victims' engagement to intermediaries, for which they do not provide adequate compensation much less security. It confuses them with ever changing participation regimes and contested justice visions emanating from the different sections they work with and then blames them for failing to achieve the impossible: 'managing expectations' of a victim population that often has no other avenue to seek redress.⁹⁶ It is hard to escape the impression that intermediaries are set up to fail and serve as a convenient buffer for a Court which does not know what exactly the purpose of its victims' engagement is.

B. Problematizing the Local: 'Non-Local' Victims and Victim-Intermediaries

An interactional analysis of the Court's justice process suggests that the 'global' as represented by the ICC is much more internally contested and complex than the meta-categories of 'global' and 'local', 'top' and 'bottom' indicate. What about the 'local'? Claims to 'care about the local' not only imbue the Registry's victims' engagement, they have also come to shape the Court's work more generally as reflected in the debates on whether or not the Court should hold at least parts of its trials 'in situ' ('on site').⁹⁷ In the Ruto and Sang case, 9 out of 14 judges voted in favour of holding the opening statements in Kenya (Nairobi) or Tanzania (Arusha), only narrowly missing the two-third majority required for changing the seat of the Court.⁹⁸ It is noteworthy that all the

⁹⁵ Judge Cuno Tarfusser, 'The ICC Today: Achievements, Strengths, Weaknesses, Challenges – A Critical Insight', Oxford Transitional Justice Seminar Series, available online at <https://www.law.ox.ac.uk/events/icc-today-achievements-strengths-weaknesses-challenges-critical-insight> (last visited 21 January 2016).

⁹⁶ 'Expectation Management' has become the new buzzword among civil society, academics and the Court's practitioners as the way to improve the ICC's victims' engagement. See Independent Panel of experts report on victim participation at the International Criminal Court, July 2013, available at <http://www.redress.org/downloads/publications/130711%20panel%20report%20FINALfor%20dissemination.pdf> (last visited 29 October 2015), §60, §73; Queen's University Belfast's Human Rights Centre (HRC) and University of Ulster's Transitional Justice Institute (TJI) Submission on Reparations Issues pursuant to Article 75 of the Statute, *The Prosecutor v. Germain Katanga* (ICC-01/04-01/07-3551), Trial Chamber II, 15 May 2015, §2-3; *Integrated Strategy for External Relations, Public Information and Outreach*, available online at http://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6-D4F2B93C7506/185049/ICCPIDSWBOR0307070402_IS_En.pdf (last visited 21 January 2016).

⁹⁷ See for example Recommendation to the Presidency to hold the confirmation of charges hearing in the Republic of Uganda, *The Prosecutor v. Dominic Ongwen* (ICC-02/04-01/15-300), Pre-Trial Chamber II, 10 September 2015; Prosecution's submissions on conducting the confirmation of charges hearing *in situ*, *The Prosecutor v. Dominic Ongwen* (ICC-02/04-01/15-264), Pre-Trial Chamber II, 10 July 2015, at §3, §7.

⁹⁸ Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place where the Court Shall Sit for Trial in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* (ICC-01/09-01/11-875-Anx), 26 August 2013.

judges present supported the principle of ‘bringing the proceedings of the Court closer to the affected communities and to where the alleged events occurred’.⁹⁹

Yet, once we unpack this principle, it becomes clear that the concept of the ‘local’ can be misleading. Most obviously, neither ‘Arusha’ nor ‘Nairobi’ represents ‘the local’ in the ICC’s victims’ engagement. A victim participation study by the University of Berkeley, for example, found that ‘few [victims] knew the location of the court’s headquarters.’¹⁰⁰ In Kenya, many ‘believe the ICC is headquartered in the United States or the Kenyan capital, Nairobi.’¹⁰¹ This already suggests that for some victims in Kenya, trials in the capital Nairobi are almost as abstract as in the United States or in The Hague. Second, international crimes often involve mass population displacement which means that ‘affected communities’ are often widely dispersed and far away from where the ‘alleged events occurred’. Thus, the ‘local’ is often different places at the same time. In other words, if ever there was a relatively coherent ‘local’ in the first place, the type of crimes that the ICC pursues tends to destroy it.

Finally, in Kenya, the idea of the ‘local’ may have contributed to the marginalization of ‘non-local’ victim groups such as ‘integrated IDPs’. ‘Integrated IDPs’ are Internally Displaced Persons who live outside of IDP camps.¹⁰² They live ‘dispersed among communities – whether with relatives and friends or in rented accommodation usually in urban and peri-urban areas.’¹⁰³ Many ‘integrated IDPs’ are ‘integrated’ in name only as they have not found a durable solution to their displacement. The loss of their assets, employment and social networks has pushed many into abject poverty.¹⁰⁴ There has been widespread neglect of these ‘outside of the camps’ IDPs both in international humanitarian efforts and in the Kenyan government’s assistance and compensation programmes.¹⁰⁵ Part of this neglect is due to the way the idea of the ‘local’ glosses over their

⁹⁹ Ibid, at §10.

¹⁰⁰ Human Rights Center, *The Victims’ Court? A Study of 622 Victim Participants at the International Criminal Court*, UC Berkeley School of Law, available online at https://www.law.berkeley.edu/wp-content/uploads/2015/04/VP_report_2015_final_full2.pdf (last visited 21 January 2016), at 3.

¹⁰¹ Ibid, at 59.

¹⁰² The Kenyan IDP act defines IDPs as follows: “internally displaced person” means a person or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, large scale development projects, situations of generalized violence, violations of human rights or natural or human—made disasters, and who have not crossed an internationally recognized State border’, *Kenya: Act No. 56 of 2012, The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012* [Kenya], 4 January 2013, available at: <http://www.refworld.org/docid/511219962.html> (last visited 16 June 2015), at 2204/2205.

¹⁰³ Prisca Kamungi, ‘Municipalities and IDPs Outside Camps: The case of Kenya’s ‘integrated’ displaced persons’, Brookings Institute, May 2013, available online at <http://www.brookings.edu/~media/research/files/reports/2013/05/kenya%20displacement/idp%20municipal%20authorities%20kenya%20may%202013%20final.pdf> (last visited 24 January 2016), at i.

¹⁰⁴ Ibid.

¹⁰⁵ Kenya Human Rights Commission, ‘A Tale of Force, Threats and Lies: ‘Operation Rudi Nyumbani’ in Perspective’, 28 October 2008, <http://resource.khrc.or.ke:8181/khrc/bitstream/handle/123456789/58/IDP%27s%20Resettlement%20Monitoring%20Report-%20DRAFT%20OCT%202028.pdf?sequence=1> (last visited 21 January 2016).

precarious ‘non-local’ status. For example, the plight of ‘integrated IDPs’ in Western Kenya (formerly Western and Nyanza Provinces) has been ignored at least in part because the assumption is that these people ‘returned’ to their ‘ancestral’ homeland in Western Kenya. Yet, as the victims’ lawyer in the Kenyatta case remarked, ‘a significant number of these victims had few genuine links there, and were left with a feeling that they were unwanted intruders into the lives of others’.¹⁰⁶ Fear has prevented them from going back to where the crimes displaced them. There are many tensions between ‘integrated IDPs’ and their ‘host communities’ but the idea of the ‘local’ and ‘ancestral’ subsumes them all into one organic whole and has allowed the Kenyan government to get away with failing to help its citizens.

Another good example for elucidating how misleading the category of the ‘local’ can be is the Court’s use of victim-intermediaries. As the Court does not have the resources and staff for its preferred ‘direct engagement’ with victims, some of its officers and LRVs have opted for another strategy to deal with the perceived problem of intermediaries: using victims rather than civil society organizations as intermediaries. A LRV assistant in Kenya explained: ‘Rule number one is kill gate keeping as much as possible so that the people you identify to play a role... they have to be our clients, they are victims, so you do not have an outsider engage in affairs of participating.’¹⁰⁷

Underlying this preference for victims as intermediaries is the premise that the more local the Court goes, the more legitimate it will be, a premise that is also integral to the ‘global-local divide’.¹⁰⁸ In practice, the Court works as if involving ‘those vested with leading roles in the affected communities...for example...community leaders, chefs de village, or staff members of local NGOs’ will by definition legitimate its process.¹⁰⁹ Late ICC Judge Hans Peter-Kaul even suggested that ‘elders or self-chosen representatives of African villages affected by the crimes in question’ rather than lawyers should represent victims’ interests before the Court.¹¹⁰ The notion that institutions are perceived as more legitimate, if they correspond to local values and beliefs is

¹⁰⁶ Victims’ response to the Prosecution’s notice of withdrawal of the charges against Uhuru Muigai Kenyatta, *Prosecutor v. Uhuru Muigai Kenyatta* (ICC-01/09-02/11-984), Trial Chamber V (B), 9 December 2014, at §§15-16.

¹⁰⁷ Interview with Legal Assistant, Nairobi, 25 June 2014.

¹⁰⁸ Interview with ICC Outreach Coordinator, Nairobi, 23 June 2014.

¹⁰⁹ Decision Establishing Principles on the Victims’ Application Process, *The Prosecutor v. Bosco Ntanganda* (ICC-01/04-02/06-67), Pre-Trial Chamber II, 28 May 2013, §27; FIDH, *Five Myths about Victim Participation in ICC Proceedings*, December 2014, available at <https://www.fidh.org/IMG/pdf/cpi649a.pdf> (last visited 16 June 2015), at 25; Advocats sans Frontières, *Modes of Participation and Legal Representation*, November 2013, available at http://www.asf.be/wp-content/uploads/2013/11/ASE_IJ_Modes-of-participation-and-legal-representation.pdf (last visited 16 June 2015), at 17.

¹¹⁰ Hans-Peter Kaul, ‘Victims’ Rights and Peace’, in T. Bonacker, C.J.M Safferling (eds.), *Victims of international crimes: an interdisciplinary discourse* (Hague: T.M.C Asser Press, 2013), at 226.

part of many sociological definitions of legitimacy.¹¹¹ However, this sociological perspective is often conflated with the idea that involving ‘local actors’ per se makes justice initiatives more democratic.¹¹² While the participation of victims in justice initiatives can be seen as a ‘democratic’ or rather ‘deliberative’ element, de facto representation of victims through victim-intermediaries is more problematic. After all, many victim-intermediaries such as priests, community leaders and elders are not democratically elected. Rather, their legitimacy often derives from traditional power structures that are often contested especially in transitional periods.¹¹³ My interviews revealed different perceptions on the relevance of traditional authorities to justice processes in Kenya. As one intermediary in Western Kenya told me,

With Kenya, we embraced the Western system wholeheartedly. Our traditional structure? Is there any community in Kenya that still has the traditional kings? You hardly find that. Because of corruption and materialism, the issue of our community elders is not very valid maybe except only... among the Kalenjin. That’s the only community... I can think of that has respect for the elders irrespective of whether the elder has money or power.¹¹⁴

Yet, another intermediary told me,

They can do that reconciliation through the national media or they can hold meetings with the traditional men, the elders, the village elders, like we have the Kisii council of elders. The President and the Deputy President can come and sit with the council of elders and say we are sorry for what we did to your people and we beg for your forgiveness... The Kisii people are good in forgiving, so are the Luos.¹¹⁵

Whether victim-intermediaries hold more legitimacy than civil society organizations or the Court’s officials is thus often not clear.

What is clear is that the opportunities associated with ‘intermediary status’ at the Court have reproduced many of the same dynamics that the Court alleged with regard to civil society organizations. In Western Kenya, victim-intermediaries were encouraged to organize themselves in IDP networks as a way of building their capacity to mobilize victims and inform them about the ICC. These victim-intermediaries have benefitted from their role as leaders of IDP networks in

¹¹¹ Suchman, for example, defines legitimacy as ‘a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions’. See M.C. Suchman, ‘Managing Legitimacy: Strategic and Institutional Approaches’, 20(3) *Academy of Management Review* (1995) 571-610, at 574.

¹¹² See also Marlies Glasius, ‘Do International Criminal Courts Require Democratic Legitimacy’, 23 (1) *The European Journal of International Law* (2012) 43-66.

¹¹³ A.R. Iliff, ‘Root and Branch: “Tradition” in Grassroots Transitional Justice’, 6 *The International Journal of Transitional Justice* (2012) 253-273, at 256.

¹¹⁴ Interview with Intermediary, Western Kenya, 22 August 2014.

¹¹⁵ Interview with Intermediary, Western Kenya, 23 August 2014.

ways that other victims have not. An NGO leader in Kisumu said: 'The Court does not give anybody money so we had numerous programmes where we then would include them [intermediaries]...So we looked at it in terms of building their capacity but also...in terms of an opportunity [for them] to get some little money.'¹¹⁶ These opportunities have led to infighting in IDP networks between different intermediaries and a 'scramble for victims' to sustain their intermediary status and the benefits associated with it.¹¹⁷ As one intermediary confided to me, 'people are beginning to realize that case two will collapse. There is a scramble for victims so everyone wants to grab them to do this and that and the next pet project is SGBV [Sexual and Gender-Based Violence]'.¹¹⁸ When I went to a scheduled meeting between a victims' lawyer and victims in Migori town in Western Kenya, half of the expected victims did not show up due to leadership challenges in the Migori IDP sub-network.¹¹⁹

By becoming intermediaries, these victims become part of a class of 'victims' experts' and consequently more similar to the Court's staff and international NGOs. As one of the ICC's victims' lawyers observed:

The policy of the Court with intermediaries is to train intermediaries, to organize them, in fact to make them almost agents of the Court. This is a complex development because on the one hand, you can say it is a good thing that intermediaries are trained and so on, but it is also creating much more distance between the intermediaries and victims by narrowing the distance between the intermediaries and the Court.¹²⁰

The 'local' in international criminal justice thus takes on quite particular forms as the Court tries to absorb 'its other.' Whether this makes the ICC's justice more meaningful to victims is, of course, an entirely different question.

To sum up, the 'global-local divide' is not only predicated on a simplified image of the 'global' as represented by the ICC, but also of the 'local', as we can see once we examine the role of victim-intermediaries more closely. The Court assumes that using victims as intermediaries is more legitimate because victims share the same interests with regard to the proceedings. My research on victim-intermediaries in Western Kenya suggests that these actors are not necessarily more legitimate given the disunity of the victim population; they have also reproduced similar problems

¹¹⁶ Interview with Intermediary, Kisumu, 26 August 2014.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ The Star, 'Migori, Nyanza IDPs differ over Sh3.4 million, available at <http://www.the-star.co.ke/news/article-171828/migori-nyanza-idps-differ-over-sh34-million>.

¹²⁰ Interview with Victims' Lawyer, Telephone Interview, 15 January 2014.

which have accrued from working with civil society actors such as gate-keeping and competition for resources.

4. Conclusion

This article has tried to destabilize the notion of the ‘global-local divide’ in international criminal justice by introducing a new figure into the debate: the ICC’s local intermediaries. Once we situate the ICC’s victims’ engagement through intermediaries within a broader interactional justice analysis, it transpires that intermediaries are simply another player within the Rome Statute System. Is the idea that justice concepts and practices evolve through an interactional process really new? It may seem obvious that justice like every other concept is socially constructed and that those people who interpret and implement it, the Court’s practitioners inside and outside the court room, play a central role in its construction. Besides, in a new and diverse institution we can expect this construction process to be messy, dynamic and contested. Yet, my reading of the literature suggests that the field of international criminal justice has been largely insulated from constructivist analysis of justice concepts. This insulation is due to the fact that its justice debate is in a deadlock between two justice paradigms: the legalist paradigm which sees justice as an objective and self-evident concept derived from legal principles such as a fair trial and its critics, who claim that international courts impose a Western understanding of justice onto people whose justice ideas are relative to their local culture and personal ideas.

In this article I have tried to break the deadlock in what is often at heart a debate between advocates of ‘global, Western justice’ and ‘local, customary justice’ by showing that it is built on false premises. Neither paradigm reflects how justice is actually interpreted, used and implemented within global institutions such as the ICC or within affected communities. An interactional justice analysis, on the other hand, alerts us to the fact that the ICC is a diverse institution in which the concept and practice of justice evolves through the definitions and redefinitions, pushes and pulls, strategies and miscalculations of the Court’s different practitioners in The Hague and in the field. The Court is still unsure and divided about the kind of justice it can and should promote in the countries it works in. ‘Local justice’ is also complex, because ‘the local’, a contentious category in the first place, further fragments through mass crimes as illustrated by the precarious position of the ‘non-local’ victim and the contested authority of victim-intermediaries. It is thus not clear, whether the ICC becomes more legitimate in the eyes of affected communities by turning selected victims into intermediaries, thereby making them actors within the Rome Statute System.

What are the broader implications of this analysis for the ICC’s legitimacy? Justice contestations at the Court have been either ignored or mistaken for bureaucratic competition or clashes between

‘civil law’ and ‘common law’ lawyers at the Court.¹²¹ To the extent that justice contestations at the ICC are acknowledged, they are seen as ‘bad for justice.’¹²² Yet, justice contestations can be ‘good for justice’ in two ways. First, they help to debunk the myth of the moral certainty of law. The idea that one can impose an impartial and rational justice structure on complex and protracted conflicts has always been a dangerous illusion of international criminal justice. It threatens to misrepresent international conflicts, their causes and remedies. Justice contestations reflect the reality that there will always be competing ideas of what ‘justice for victims’ means in a particular case. Second, in practice, justice contestations unsettle the ritualistic fashion in which legal practitioners apply justice procedures and thereby may open up deliberative spaces for more reflected justice-making at international criminal justice institutions.

¹²¹ David Kaye, ‘Who’s Afraid of the International Criminal Court? Finding the Prosecutor Who Can Set It Straight’, 90 *Foreign Affairs* (2011) 118-129, at 123; Brianne McGonigle Leyh, *Procedural Justice? Victim Participation in International Criminal Proceedings* (Intersentia, 2011), at 10, 234; Luke Moffett, ‘Elaborating Justice for Victims at the International Criminal Court: Beyond Rhetoric and The Hague’, 13(2) *Journal of International Criminal Justice* (2015) 281-311.

¹²² *Independent Panel of experts report on victim participation at the International Criminal Court*, The Hague, April 2013, available online at http://www.iccnw.org/documents/Independent_Panel_of_Experts_Report_on_Victim_Participation_at_the_ICC.pdf (last visited 24 January 2016), at §4.