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FACULTY OF POLITICAL AND SOCIAL SCIENCE
PhD in Political Science and Sociology

No Biases in the Courtroom?

Mapping the Participation of Civil Society Organizations in
the International Criminal Court's Proceedings

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Introduction

The increasing impact of global decision-making processes across policy levels creates an incentive as well as a necessity for civil society organizations (CSOs) to move to this arena to advocate for their demands and concerns. The shift toward multilevel advocacy went in parallel with the consolidation of mechanisms granting CSOs unprecedented opportunities to express their views in global decision-making processes. CSOs throughout the world have not missed the opportunity and have extensively exploited these participation mechanisms, catching the interest of scholars willing to understand the nature of this growing phenomenon (among the others Keck and Sikkink 1998; Risse 2002; 2012; Kissling and Steffek 2008; Tallberg and Jönsson 2010; Bexell, Tallberg, and Uhlin 2010; Kaldor, Moore, and Selchow 2012).

A rich and well-established literature have investigated how and why those opportunities flourished across institutions and issue areas. Comparative efforts explored what drove global decision-making process to promote more or less open participation systems, as well as the normative and practical motivations behind the introduction of such participation mechanisms (Steffek and Kortendiek 2018; Steffek 2013; Tallberg et al. 2013). What has received relatively less attention thus far in the field is the investigation of ‘who’ exploited these opportunities once they were in place. When a policy process opens itself to the input of societal interest groups, it is not at all certain that it will foster the mobilization of diverse sets of interests. Indeed, it remains a matter of debate to what extent the creation of participation mechanisms translated into actual interest mobilization and what kind of participation those mechanisms are able to attract and promote over time. As Lowery and Gray have pointed out in their discussion on population ecology theory in national contexts, the creation of new spaces can trigger mobilization, setting up opportunities for latent actors. Nevertheless, the pattern of interests in society will not translate simply or automatically into the pattern of group mobilization (Lowery and Gray 1995; 2004a; 2015). Therefore, the exploration of the population of actors who actually decided to exploit the increasing opportunities to be vocal in global decision-making processes remains a compelling and open empirical question to investigate.

A first ambition of this study is to test to what extent decades of opening-up of global decision-making processes translated into a diverse interest participation system. Assessing the diversity of interest representation systems represents a traditional concern in political science. Indeed, a biased pattern of mobilization entails that some interests are going to have a disproportionate representation. This concern turns out to be especially significant in the global arena, in which

the existing empirical findings have systematically found a substantial skewness in the pattern of interest representation.

Despite the centrality of the question, a relatively limited number of mapping efforts of global decision-making processes have been conducted so far. This fact can be traced back to two factors. The first is an empirical one, namely the lack of public systematic data on interest participation in this arena. The second one is theoretical: a solid interest and theorization around the mapping of populations of actors advocating different arenas commenced and developed mainly within the interest groups literature. This scholarship started interacting with the transnational advocacy one only in the last years, enriching the scope of the mapping efforts and initiating a fruitful cross-fertilization in this direction. The dissertation moves from the mentioned cross-fertilization and situates itself at the intersection of the two fields. In particular, it aims to contribute to the ongoing debate about the consequences of decades of opening up of opportunities for CSOs to participate in global decision-making processes. Through the realization of a comprehensive mapping of the population of civil society organizations who engaged over time with one global decision-making process: the International Criminal Court's (ICC) one. To do so, the mentioned relevant literatures will be integrated with the insights coming from the international courts and tribunals' literature. Interestingly, it is not uncommon for researches in this field to inquire the boundaries of CSOs' participation in these peculiar institutions and to search for the presence of biases created or reinforced by the existing participation mechanisms. The inclusion of diverse views and perspectives, brought into Court's proceedings by third actors, has increasingly drawn the attention of scholars in the field (Squatrito 2018; Kjersti 2017; K. J. Alter 2014; Haddad 2013; Haslam 2011; Pearson 2006). However, despite they share driving research questions and present relevant complementarity potentials in their ways of facing the issue of interest representation's biases in global decision-making processes, those two strands of literature mostly failed to interact. The scarce interest in these global decision-making processes is even more striking due to the fact that international courts and tribunals not only have been proved to be part of the process of opening up of international organizations, but they emerge to be in the forefront of it (Kuyper and Squatrito 2016; Tallberg et al. 2013; K. Alter 2006). The positioning of international courts as privileged spaces for CSOs' participation makes the analysis of these institutions consequential and particularly suited to widen our understanding of CSOs' engagement in global decision-making processes.

Driving Questions and Main Contributions

Building on the contributions developed in the presented three strands of literature, this dissertation aims to explore the phenomenon of CSOs' participation in the ICC's decision-making process. The analysis will be guided by three main questions. First, once opportunities for CSOs to participate in the ICC's decision-making process are at place, who are the actors that manage to exploit them? Second, among those actors that succeeded in participating in the decision-making process, who had access to it? Who get its position to be taken into account by decision-makers? Lastly, what drives the access of certain actors at the expense of others?

Answering these questions is crucial to provide a more fine-grained understanding of the nature of CSOs' participation in global decision-making processes and it contributes to the development of an informed judgement about the effect of decades of opening up on the inclusiveness. The creation of mechanisms encouraging CSOs' participation attracted most of the same kind of organizations or it managed to mobilize a diversified set of actors and interests? A review of the existing studies on CSOs' engagement in global decision-making processes lean toward the former answer (Chapter 1). It shows how the proliferation of opportunities for third actors to intervene and being influential at this level did not always translate in a diverse cohort of actors that actually did so. The diversity of the population of actors who actually recurred to the participation mechanisms emerged to be strongly mitigated by the persistence of an inherently biased nature of the participation systems. Namely, those at the table are mostly the same (organizations based in developed countries with an international mandate and high resources), and they rather speak the same language. If such a trend is confirmed across different global decision-making processes, it would significantly hinder the relevance of the process of opening up of this arena to the contribution of civil society organizations. The dissertation engages with this ongoing debate and aims to test whether the CSOs' participation in ICC's decision-making process follows the same pattern highlighted in the literature.

In particular, this dissertation aims to enrich the scholarship debate in a threefold way:

First, answering the question about who participated in the International Criminal Court's proceedings in the first twenty years of its existence, I respond to the demand advanced in the literature for more empirical investigations and systematic data on CSOs' participation in global decision-making processes. I do so, providing a systematic empirical analysis of an understudied issue area among global decision-making processes, the international courts and tribunals' one, which has been recognized to be one of the most open to contributions from CSOs. The mapping effort builds on the construction of an original dataset containing the universe of CSOs' interactions with the International Criminal Court's decision-making process through formal

participation mechanisms during the timespan 2002-2020. The descriptive analysis of the population of actors resulting from the data collection allows me to investigate the diversity of the population, looking for the presence of systematic biases in it.

Second, I widen the exploration of participation biases in global decision-making processes, going beyond the expectations retrieved from the existing literature. As the review section is going to show, the analysis of population biases in the literature is often circumscribed to organizational characteristics. This dissertation questions this choice adding to the analysis two further layers of complexity. I introduce the *content of the advocacy* that the CSOs' participating in the ICC's decision-making process aim to deliver, and I conduct the analysis *across different phases of the ICC's decision-making process*. First, investigating how organizations frame their demands, I am able to complement the analysis of who participated with the one of which voices and positions were represented in the arena of interest. Then, comparing the CSOs' populations at the involvement and at the access phase of the ICC's decision-making process, I can explore if and how the nature of the population changes within the decision-making process of interest. While, as I am going to discuss, population analysis is ill equipped to assess the absolute diversity of a certain participation system, operating such distinction I become able to evaluate whether the population at a certain phase is more or less diverse than in the other. Furthermore, because of this distinction, I can investigate which factors are responsible for variations in the population across phases.

Lastly, I complement the quantitative analysis of almost twenty years of CSOs' engagement with the Court with the qualitative case study of CSOs' mobilization around a recent ICC's investigation, the one in Myanmar and Bangladesh. Through qualitative interviews with CSOs advocating for and against the ICC's decision to start an investigation in the countries, I try to reconstruct how organizations enter in contact with the Court's decision-making process in the first place, and what led some of them to recur or not to the participation mechanisms under analysis.

Main Arguments

As clearly emerged from the list of driving questions make clear, this dissertation dedicates extensive attention to the descriptive enquiry of the phenomenon under analysis. This choice rests on the conviction that the exploration of representational biases in global decision-making process has often been driven by concepts and categories that revealed inadequate to grasp the complexity of the phenomenon. Grounding the analysis on a novel systematic empirical

investigation, I aim to detect and overcome these limitations. Starting from the data collection strategies utilized to reconstruct the population of CSOs who participate in the ICC's decision-making process, going through the categories used to make sense of this population, some approaches overlook the complexity of the CSOs' population and risk jeopardizing our understanding of the presence of biases in it.

First, I show how the most commonly used data collection strategies in the existing literature translated into selective exclusion from the analysis of the weakest organizations, whose participation in global decision-making processes ends up being systematically understated. The multilayered data collection strategy utilized in this dissertation resulted to be an effective countermeasure that avoid reproducing and worsening through the mapping effort the biases in the participation system that the research tries to identify. The analysis makes clear how consequential the choice of a certain data collection strategy can be, leading to the exclusion of relevant segments of the population.

Second, throughout the chapters, I will often discuss the use of the meta-categories of 'international' and 'local' to make sense of the CSOs' participation in global decision-making processes. In particular, I argue that this way of thinking about CSOs' participation in global decision-making processes creates more blind spots than it helps figuring out the phenomenon. It is rather common in the literature to evaluate the diversity of CSOs' participation systems in different global arena on the base of the relative presence of local versus international actors and to link the openness of global decision-making processes with their capacity to grant space to local actors, overcoming the supposed overarching presence of powerful international CSOs. However, what comes out clearly from the descriptive analysis conducted in this dissertation is how misleading can be referring to local and international CSOs as uniform categories. Within these categories there are actors having different organizational characteristics, pursuing different goals and aiming to bring in the decision-making process different messages. Therefore, throughout the dissertation, the mandate of civil society organizations in the population is treated as one of the features among others to be explored and not as a category from which to infer actors' characteristics and expected behaviour.

Building on the novel dataset constructed considering the elements just presented, I map the population of CSOs who engaged with the ICC's decision-making process over time. What emerges from the mapping effort is a population of CSOs much more complex and diverse than expected. The ICC's formal mechanisms promoting the participation of CSOs in its decision-making process actually translated into a diverse interest representation system. CSOs from different geographical origins, pursuing different mandates and having more or less technical expertise or resources managed to exploit the opportunities at disposal not only to participate in Court's

procedures, but also to pass through Chambers' selection and to be granted access to the ICC's decision-making process. Such results utterly contradict the access logic at the base of the functionalist exchange theory, which conceives CSOs' access to global decision-making processes as determined by the capacity of CSOs to provide decision-makers with relevant information and call for the development of further explanations.

In this dissertation, I advance the hypothesis that CSOs' access to the ICC's decision-making process is driven by an integrated access logic. In particular, I argue that the inherent dependency of the ICC on external sources of information, idea at the base of the functionalist exchange logic of access just presented, is only one of the pulling factors at play in shaping which, among all CSOs' requests presented in the involvement phase of the ICC's decision-making process, gets to be heard and obtains access. The need to collect relevant information and expertise from participation mechanisms is coupled by the need to use the same channels to re-legitimize the Court's proceedings, promoting a wider participation system. The one is expected to counterweight the other, pulling the Court to undertake a more comprehensive evaluation of how the CSOs present their demands to the Court, more than limiting itself to an evaluation of who present them.

Research Design

As emerged from the previous paragraphs, this dissertation adopts a mixed-method approach. In particular, I combine a quantitative part consisting of a descriptive comparative mapping efforts of the populations of CSOs participating in the involvement and access phase of the ICC's decision-making process and a multivariate analysis of CSOs' access to the latter, with an in-depth qualitative assessment of CSOs' mobilization around one investigation carried out by the Court.

The quantitative analyses conducted in this dissertation points to two goals: 1) map the participation of CSOs in the ICC's procedures over time, searching for the presence of biases within and across phases of its decision-making process; 2) understand the logic behind the Court's selection leading to CSOs' access to its decision-making process. The first aim will be achieved through a descriptive analysis of the population of CSOs that engaged with the International Criminal Court from its institution until March 2020. The analysis is based on a novel dataset developed by the author containing the universe of CSOs' formal interactions with the ICC using two formal participation mechanisms: the Amicus Curiae Brief and the Art.75 Observations. Chapter 2 will provide all the details about the dataset design, the data collection strategy, and the operationalization of the variable used to explore the CSOs' population. For what

concerns the second aim, moving from the explorative to the analytical part of the quantitative section, I conduct a multivariate analysis to test for the efficacy of the integrated access logic in explaining CSOs' access to the ICC's decision-making process.

Then, the qualitative section of the analysis enables me to understand what led different CSOs to engage with the Court in the first place, while checking if and how the dynamics detected in the large N analysis influenced the mobilization practices of the CSOs. In particular, I will reconstruct the processes through which different CSOs get to know about the formal participation mechanisms of the ICC, why they decided to invest time and resources to exploit these opportunities, and how they did so. The analysis of the case study has been carried out using interview material collected by the author during a fieldwork in Myanmar and Bangladesh. Furthermore, the case study allows me to go beyond generalizations and open the black boxes of the categories of CSOs utilized for quantitative analysis to see which actors are there and how they interacted with the Court. Already, the quantitative analysis provided proofs of how blurred the boundaries between these categories of actors are. The case study allows me to reinforce this argument and, through the examination of the several facets characterizing the mobilization of CSOs, to overcome the international versus local rhetoric.

The choice of a mixed method research design contributes responding to two diverging necessities emerging in the literature. The first, already introduced, regards the demand for systematic empirical mapping effort of global decision-making processes as a necessity to test, refine, and improve the existing theorization about CSOs' presence in global decision-making processes and its consequences. The second regards a parallel discussion that is developing in the interest groups' literature, in which a call for more in-depth verification of the patterns unveiled through the large N quantitative analyses is getting stronger. The mixed-method approach of this dissertation, try to make the most out of the two methods, making one complementing the other.

Thesis Outline

This dissertation is organized as follow:

Chapter 1 introduces the existing debate on what it means and why it is beneficial to pursue population mapping efforts and search for the presence of systematic biases within CSOs' participation systems in global decision-making processes. In the chapter, I reconstruct the debate on this topic as developed in different strands of literature: the transnational advocacy, the interest groups and the international courts and tribunals' one. Once I set the stage, I discuss the shortcomings and limitations emerging from this debate and provide the definitional context

driving my own contribution to this topic. The chapter problematizes the issue of data collection strategies used to collect organizational data in global decision-making processes, pointing at the necessity to find instruments calibrated to the diversity characterizing the complex population of actors potentially interested in advocating these arenas. The mapping effort conducted in this dissertation is going to embrace such observations recurring to a multilayered data collection strategy. Then, building on existing theorizations on CSOs' access to global decision-making processes, I introduce my contribution to this ongoing debate.

Chapter 2 presents the methodology used to pursue the descriptive mapping effort at the base of the analysis of CSOs' participation in the ICC's decision-making process over time. An original dataset has been created by the author for this scope. Throughout the chapter, I present how I designed it, how I selected the most appropriate data collection strategy, and how I operationalized the variables of interest. Moreover, I discuss how to overcome the difficulties in collecting organizational data at this level of advocacy, providing concrete examples from this project. As stated before, one of the main contributions of this dissertation is the extension of the analysis of biases beyond actors' characteristics, introducing an analysis of the content of their advocacy. It follows that particular attention has been devoted to explaining how and through which quantitative text analysis tools I classified the content of CSOs' advocacy along the lines of cooperative-contentious framing. Once I defined the dataset design, I present the results of the mapping effort conducted in the involvement phase of the ICC's decision-making process. A detailed descriptive analysis of the population in this phase reveals a multifaceted and diverse population of CSOs. The presence of open participation mechanisms effectively translated in the actual participation of a varied set of actors and messages. Indeed, the analysis confirms how CSOs use formal participation mechanisms to convey both cooperative and contentious arguments.

Chapter 3 investigates what drives access to the ICC's decision-making process, unveiling the logic behind Court's selection. The main argument here is that the Court, in selecting to whom granting access, follows an integrated access logic balancing the need to obtain expert knowledge and relevant information from the participation mechanism with the one of re-legitimizing its proceeding through the same channels. This hypothesis will be tested using a multivariate logistic analysis. The results are going to be validated controlling them against a competing logic widely shared in the reviewed literature, the functionalist exchange one. The latter conceived access as based on an exchange of relevant information. According to this logic, organizations use expert information at their disposal as currency to obtain access. Hence, access is theorized to be driven by CSOs' capacity to convey such knowledge and respond to ICC's demands in this sense. The data speak in favour of the integrated access logic.

The second objective of this chapter is to analyse the population of actors resulting from the selection process and compare it with the one analysed in the involvement phase of the ICC's decision-making process. Court's selection appears not to significantly affect the diversity of the population as it was detected in the involvement phase of the ICC's decision-making process. Organizations pursuing different mandates, having more or less material and human resources at disposal not only managed to engage with the Court, but also succeeded in getting access to the ICC's decision-making process. While no systematic underrepresentation patterns are detected for what organizational characteristics entail, the same cannot be said for the advocacy content. A powerful silencing dynamics came out from the mapping effort, affecting the diversity in the kind of voices that get access to the ICC's decision-making process. Organizations conveying contentious and transformative messages are mostly left out of the access phase, while the Court amplifies those voices in line with the current professionalized and universalistic understanding of what international criminal justice is and what it should achieve.

Chapter 4 aims to complement the quantitative analyses pursued in the precedent chapters with a qualitative case study of the CSOs' engagement with the investigation the ICC started in November 2019 on crimes committed at the border between Myanmar and Bangladesh. The case study I selected allows me to show how motivations, strategies and ways of interaction significantly vary across CSOs in the population. In particular, I aim to shed some lights on the process through which actors become aware of the existence of participation mechanisms, ended up deciding these mechanisms can be valuable instruments to invest time and resources on, and find an agreement on how to exploit these opportunities. To reach this scope, I rely on semi-structured interviews conducted during a fieldwork period in Yangon and Dhaka with local, regional, and international CSOs that mobilized around the Myanmar - Bangladesh investigation. The interviews conducted in the field were coupled with participant observation in relevant events, as well as with online interviews.

1. Mapping CSOs' participation to global decision-making processes.

The interest in the enumeration of the interest groups active in certain decision-making processes or the number of associations present in a given arena is widely diffused across disciplines. The apparently trivial effort of counting organizations in a certain policy process comes with significant practical hurdles. Most of the dataset used for this scope are not off the shelf products. Researchers need to invest time in collecting, sorting, sifting, comparing, and merging information coming from different data sources. Why then so much attention has been devoted to mapping efforts? This interest lies in the belief that a proper representation of different societal interests should be at the base of any democratic deliberation. Assessing the size and diversity of the population of actors participating in a given decision-making process is therefore crucial to assess the plurality of interests voiced within it. Moreover, knowing who is there is pivotal to understand who had the opportunity to shape the output of the deliberation.

As Berkhout (2019) pointy summarized in its contribution for the Palgrave Encyclopaedia on Interest Groups, Lobbying and Public Affairs, it is common for political scientists to approach mapping efforts using population data to address inequalities of interest representation (D. Halpin, Lowery, and Gray 2015) or to assess the closed nature of the political process of interest. Classical examples in this direction are studies exploring the proverbial “bubble” in Brussels, the Old Boys Networks on the Beltway or the “Bell Jar” in The Hague. Building on the topical Schattschneiders’ assertion (Schattschneider 1960, 35), the scholarship on interest representation was interested in confirming or challenging the representation of organized interests as a chorus singing with a strong upper-class accent. The goal of such a field lies in mapping interest representation systems in search of those pervasive biases that are expected to influence which interests are going to be more or less represented in the decision-making process under analysis.

This study shares this motivation and aims to reconstruct the population of civil society organizations that engaged with the International Criminal Court’s decision-making process to assess the diversity of the participation system promoted by the Court through its formal participation mechanisms. In pursuing this mapping effort, I first have to define the boundaries of the population I am interested in; then I need to clarify how I assess the diversity of the population; eventually, I should discuss how I intend to collect the data needed to investigate the presence of biases in the population.

The Chapter is organized as follows. In the first part, I define the boundaries of the mapping effort I am going to pursue through this dissertation. As such, I introduce which actors are included in the population analysis, what it means to pursue a top-down mapping approach, and what constitutes a bias in the analysis.

Afterward, I introduce the global decision-making process at the centre of this dissertation: the International Criminal Court. In this regard, I briefly discuss the Court's history, and how it led to formation of a uniquely open institution toward CSOs. Then, I explain why it represents a promising venue to explore CSOs' participation in global decision-making processes. Eventually, I look at the participation mechanisms that allow CSOs to participate in the ICC's proceeding, introducing the two of them that are going to be at the base of the quantitative analysis: the *Amicus Curiae* and the Art. 75 Observations.

Then, I present how the three strands of literature identified as relevant for this dissertation have investigated the phenomenon of CSOs' participation in global decision-making processes, I discuss their conclusion, and once I have highlighted their main limitations, I present the original arguments developed by the author. I divide the review into two sections. First, I delve into literature expectations about who is expected to participate in global decision-making processes, and then into theorizations about who is more likely to get access and be taken into account.

Eventually, I introduce the difficulties encountered by the existing mapping efforts in collecting data on CSOs' participation in global decision-making. Doing so, I list the most commonly used data collection strategies diffused in the literature, discuss their limitations, and set the basis for overcoming these difficulties.

1.1 Drawing the Boundaries of the Mapping Effort

What is Counted? Defining Civil Society Organizations

As already anticipated, this dissertation concentrates its mapping effort on one category of actors among all the potential ones interested in advocating the International Criminal Court's decision-making process: civil society organizations. What constitutes precisely a civil society organization is highly contested and there is no agreement in the existing literature (Martens 2002). Often the boundaries of the term are adapted to the scope of the research pursued. Such theoretical disagreement requires the author to clarify the boundaries of the civil society organizations' category as used in this dissertation.

Being group-based and non-state actors are used as the main criteria of inclusion in the category. First, I put emphasis on *organizations*. Meaning, only members or affiliates-based actors are included in the definition and consequently in the analysis. This choice led to the explicit exclusion of individuals, firms, and multinational corporations. Second, the organizations have to come from the *civil society*. They do not have to attain political offices, excluding institutions, parties and governmental departments. It follows that other characteristics often utilized to define what is included in the civil society organizations' category - such as the organizational mandate or its aim - are not going to be used as criteria of inclusion/exclusion. No-profit and for-profit organizations are included as well as organizations pursuing both narrow and general interests. Eventually, organizations can have mandates ranging from the sub-local to the international.

Being clear about these definitional choices is pivotal to make future aggregations or comparisons possible. In the next chapter, I come back to definitional issues introducing the design of the original dataset¹. In the meanwhile, the next paragraph integrates the just mentioned criteria with the one of *being active* in the arena of interest.

A Top-Down Mapping Approach

Building on the population ecology theories developed in the national interest group literature (Berkhout 2019; Klüver, Braun, and Beyers 2015; Lowery et al. 2015; Bexell, Tallberg, and Uhlin 2010), the analysis of the population of actors in a policy arena can be conducted using either a bottom-up or a top-down approach. The preference of one over the other has direct consequences on the boundaries of the resulting population.

A bottom-up methodology aims to provide a comprehensive overview of the interests represented in political processes, accounting for the totality of groups that have the potential interest to intervene in a given arena. Therefore, organizations are included in the population for their *potential* to participate in the decision-making processes of interest (Jordan et al. 2012), rather than having actually been active in the arena. Opting for this approach, researchers are able to provide an accurate account of the mobilization potential of specific interest group's segments. Widely used in studies dealing with national arenas, such an approach presents some difficulties when researchers decide to use it to investigate global decision-making processes. The boundaries of who is potentially interested or affected by decision-making processes dealing with global issues are quite intangible. Making a concrete example using the case study analysed in

¹ See Chapter 2, p. 51

this dissertation, I would need to identify all the organizations potentially interested in the International Criminal Court work. Such a population will range from the association of victims from the region interested by crimes against humanity, to the international NGO fighting for a stronger universal jurisdiction for the ICC, including the solidarity group advocating for justice and accountability and the organizations opposing ICC's interference in national affairs. All of these actors are potentially interested in following ICC's activities and eventually will voice their positions using the instruments they retain more adequate. At the same time, not all those actors would opt for using the participation mechanisms the ICC put at disposal of CSOs. Therefore, the bottom-up approach to population analysis is poorly suited to achieve the objective of the current research: delving into the population of civil society organizations that have actually engaged with the ICC's decision-making process.

A top-down approach is better suited to pursue the research objective. In this case, researchers build the population starting from observable, formally registered interactions with the arena of interest. Therefore, this approach starts from an existing political venue – in this case the International Criminal Court's decision-making process - and maps all organizations that have been active in the venues across the timespan of interest. Following this approach, to enter the population, it is not enough for an organization to exist and declare interest in a certain process, as in the case of bottom-up mapping. Organizations have to materialize their interest through an actual mobilization in the arena under analysis. Therefore, using again the ICC as reference, I am going to include in the population analysis only those organizations that exploited formal participation mechanisms to voice their arguments within the ICC's proceedings. Opting for a top-down approach, I limit my observation to CSOs' formal participation, excluding from the picture organizations that engaged with Court's proceeding through other means. For instance, those who voice their position through the media, in the street, or using informal channels are not taken into account in the population.

Searching for Biases in the CSOs' Population

Once I determined the boundaries of the population, I deem necessary to reflect on the goal of this mapping effort – assess the diversity of the ICC's participation system - to discuss the best approach to achieve it.

Despite the search for potential biases in interest representation systems is recognized as a pivotal concern of population studies and is widely investigated in the literature, in the early 2000s (Lowery and Gray 2004b) and later in a dedicated special issue (2015) Lowery and

colleagues rightly pointed out how poorly defined is scholars' understanding of what constitutes a bias. This level of uncertainty and often disagreement led scholars to adopt different empirical methods to assess whether there is a bias or not, leading to diverging conclusions about the diversity of a certain population. The issue revolves around the question if researchers can ascertain whether an interest system is inclusive and representative without having a standard against which to assess the presence of a bias. How should an unbiased system look like? The same authors identify a possible way out from this uncertainty: always assess the level of biases through comparisons (Lowery and Gray 2004b, 21). Whether comparing populations across time, issue areas, or venues cannot tell much about the absolute level of bias in a system, the same comparison provides data to argue whether biases are stronger or weaker at a moment in time, in a certain issue area, venue or phase of the decision-making process.

In this thesis, I build from Lowery and Gray's work to develop my argument about the presence of biases in the population of CSOs that advocated the International Criminal Court over time. Consequently, I do not assess the degree of diversity of the CSOs' population under analysis in absolute terms; instead, I *compare CSOs' populations across different phases* of the ICC's decision-making process. Doing so, I unveil whether the nature of the population remains the same or change - becoming more or less diverse - moving across the different phases of the decision-making process under analysis.

Borrowing the definition developed by Halpin and Fraussen (2017), I split CSOs' engagement with the decision making process under analysis in two distinct phases: the *involvement* and the *access* one. The involvement phase includes all actions undertaken by CSOs themselves to engage with the decision-making process that include no previous acceptance by decision-makers. In this phase, each organization is free to decide whether and to what extent to mobilize and take advantage of the participation mechanisms at disposal to advocate its position. To move from the involvement to the access phase, CSOs have to overtake a threshold. In other words, access has to be granted. Halpin and Fraussen identify such threshold in decision makers' selection (D. R. Halpin and Fraussen 2017, 725-26).

Adding such a layer of analysis enables me to distinguish between different potential factors constraining participation and creating or exacerbating biases in the resulting population. On one hand, indeed, there is the role of structural hurdles organizations must overcome to advocate a global decision-making process that are expected to limit actors' capacity to engage at this level. On the other hand, with the passage from the involvement to the access phase, policy makers become the ones establishing which among those actors willing to voice their views are able to do so. Therefore, I am going first to analyse the nature of CSOs who manage to mobilize and

actually engage with the Court over time. Then, I compare this first population with the one constituted by those organizations who get access to ICC's decision-making process.

1.2 The International Criminal Court

This dissertation focuses its attention and delves into a global decision-making process: the International Criminal Court's one, aiming to reconstruct the evolution of the population of CSOs that participated in its proceedings over time. To understand why I opted for the International Criminal Court to investigate the phenomenon of CSOs' participation, this section provides an overview of the ICC's history accounting for the definition of an institutional design that makes it a privileged arena for CSOs' participation.

The 1990s opened an unprecedented window for political and legal investments into international courts, which resulted in the emergence of the field of international criminal justice (K. J. Alter 2014). Widely referred to as a justice cascade (Sikkink 2011), this period was marked by the coalition of human rights norms around the prosecution of suspected perpetrators of core international crimes: genocide, crimes against humanity, war crimes and (only recently) the crime of aggression. In those years, a revolution in the field signalled a breach with the past of impunity for the most horrific crimes. «Within only a few years, a previously considered utopia became reality: with a number of *ad hoc* courts and the permanent International Criminal Court in The Hague, supranational judges were provided with jurisdiction and courtrooms and started convicting state leaders for crimes committed in other, sovereign jurisdictions» (De Hoon 2017, 592). It was during this decade of rapid institutional and normative expansion that the Rome Statute was mooted, drafted, and approved in July 1998 by the UN General Assembly.

While international crimes were at the centre of the self-perception and symbolism of this new field of law, different legal and institutional formats characterised the courts and tribunals in this space (Christensen 2020, 257). Within this context, the signature of the Rome Statute has been largely referred to as a ground-breaking event that shaped the definition of international criminal law instruments, establishing a unique institution. It represented a crucial step in the ongoing transition toward an international order less based on state sovereignty and more oriented toward the protection of all citizens of the world from abuse of power (Glasius 2008, 44).

Unlike the UN *ad hoc* tribunals for the former Yugoslavia (ICTY) and for Rwanda (ICTR), the Rome Statute created a permanent, treaty-based tribunal able to hold individuals accountable for atrocities under international law. Despite the global reach of the ICC is limited in some significant respects, including its reliance on state cooperation to pursue investigation and arrest suspects, and limited resources to fulfil its role. Nevertheless, its mandate extends farther than any

previous international criminal tribunal (Chappell 2015, 30). Under the Rome Statute, the ICC has jurisdiction over crimes committed within the territory of a state party, or by a national of a state party operating in other countries, or by non-state party actors through a UN Security Council referral. Court's jurisdiction could be triggered through three mechanisms as established by the Rome Statute. A state party can refer a situation to the Prosecutor (Article 14). The UN Security Council can refer a situation to the Prosecutor using its powers under Chapter VII of the UN Charter (Article 13(b)). Alternatively, the Prosecutor can decide to open an investigation in a situation *proprio motu* (on her/his own initiative), in this case the decision is subjected to the authorization of the assigned Pre-Trial Chamber pursuant to Article 15 of the Rome Statute.

Furthermore, for the first time in an international criminal tribunal, victims are allowed to participate in the proceedings and are given the right to seek reparations following a conviction in the form of 'restitution, compensation and rehabilitation' (Article 75) through collective and individual measures. Due to this peculiarity, the ICC has been seen as a pioneer of victims' rights in criminal justice, asserting not only a punitive, but also a restorative function.

ICC's Openness Toward CSOs: Introducing its Participation Mechanisms

With respect to the ICC, many scholars have documented and analysed the role of civil society organizations in crafting and adopting the Rome Statute as well as establishing the ICC, which has been famously referred to as a 'global civil society achievement' (Glasius 2006). At the same time, a sizable literature exists on the role of transnational civil society in changing norms and beliefs about international criminal justice more generally (Handmaker 2018; Squatrito 2018; Kjersti 2017; Haddad 2013; Glasius 2008; Pearson 2006). Much less, however, has been written about how transnational civil society has affected and continues to affect the ICC's daily work and deliberations (Williams, Woolaver, and Palmer 2020; Haddad 2018).

What is remarkable about the ICC is that there is an openness, a porousness to its work that it is unique (Christian De Vos, Kendall, and Stahn 2015b, XVI). The wide and deep level of openness granted by the ICC to CSOs is recognized to be exceptional not only among international courts, but also in comparison with existing global decision-making processes more in general. This status is reflected in the classification operated by the TRANSACCESS database (Tallberg et al. 2013), representing to date the most comprehensive empirical evaluation of International Organizations' openness towards CSOs, in which ICC has gained the highest score in terms of accessibility to its procedures. The Court recognizes civil society organizations as crucial allies in the achievement of justice and accountability. ICC's relation with CSOs is acknowledged starting

from the constitution of the Court and keep to be reaffirmed as crucial by its key actors in public as well as internal meetings and press releases. This recognition comes out from the multiple channels through which this kind of actors are allowed to intervene and voice their views within Court' procedures. Indeed, as the Table 1.1 summarises, various formal participation mechanisms allowing CSOs to have a say in the Court's deliberations are included in the ICC's core legal text.

Table 1.1 Stages of ICC's Decision-Making Process

Stage of Proceeding	Description
<i>Preliminary Examination</i>	The Office of the Prosecutor must determine whether there is sufficient evidence of crimes of sufficient gravity falling within the ICC's jurisdiction, whether there are genuine national proceedings, and whether opening an investigation would serve the interests of justice and of the victims
<i>Pre-trial</i>	Judges confirm suspect's identity and ensure suspect understands the charges and, after hearing the Prosecution, the Defence, and the Legal representative of victims, decide if there is enough evidence for the case to go to trial.
<i>Trial</i>	The Prosecution must prove beyond reasonable doubt the guilt of the accused. Judges consider all evidence, issue a verdict and, when there is a verdict of guilt, issue a sentence.
<i>Appeal</i>	Both the Prosecutor and the Defence have the right to appeal a Trial Chamber's decision on the verdict (decision on guilt or innocence of the accused) and the sentence. The Appeals Chamber decides whether to uphold the appealed decision, amend it, or reverse it. This is thus the final judgment, unless the Appeals Chamber orders a re-trial before the Trial Chamber.
<i>Reparation</i>	Judges can order reparations for the victims. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

Starting from the preliminary examination stage, in which the Prosecutor is called to decide whether and where to intervene with an official investigation, the contribution of CSOs can be crucial. As is the case for other international organizations dealing with human rights violations, the limited staff and material resources at the disposal of the Court risk to compromise the institutional capacity to cover and tackle these dispersed and localized phenomena. Exploring CSOs' contribution to ICC's deliberation at this early stage may represent a promising venue for future research. Indeed, pursuant to Art.15 of the Rome Statute, CSOs can provide the Prosecutor information as whether violations are happening in a situation country and its gravity deserves ICC's intervention. This participation mechanism offers a novel avenue for civil society organizations to influence future ICC's investigations, potentially shaping Prosecutor's actions. Unfortunately, the requests sent pursuant to Art.15 are not publicly available unless the sending organization decides to publish the content of the request on its website or in the press. This lack of transparency, justified by the necessity to protect the organizations that advance the investigation's demand to the Court, hinders for now the possibility of delving into this promising

research venue. At the same time, the high number of submissions annually declared by the Prosecutor in her/his Report on Preliminary Examination Activities signals the success among CSOs of this participation mechanism. To clarify the scale of the phenomenon, it is sufficient to say that between 1 November 2019 and 31 October 2020, the Prosecution office received 813 communications pursuant to article 15 of the Statute².

Once an investigation is officially authorized, CSOs have diverse channels at their disposal to try to influence the Court's decision-making process and voice their positions. Throughout the investigation, CSOs can recur to the Amicus Curiae and the Art.75 Observations to participate in the proceedings. These instruments have been valued for their capacity to promote openness, transparency, and inclusiveness in the Court's proceedings. In fact, existing researches analysing these two instruments refer to them as successful mechanisms for promoting civil society organization's influence. Their presence and promotion are argued to enhance *a priori* the legitimacy of international courts and tribunals (Grossman 2013, 61). During the Rome Statute's negotiation, the debate on the institution of such participation mechanisms was grounded on the need to promote transparency and broader participation in the judicial decision-making. In particular, as Williams (2018, 575) has pointed out, the rationale behind enabling third parties submissions has been identified in the capacity of such participation mechanisms to allow judges to reach better decisions by permitting additional sources of information to be placed before the Court. At the same time, they ensure fair proceedings by allowing the representation of interests that would not be otherwise represented in the deliberation. In this regard, CSOs' contribution to the proceedings is essentially to bridge gaps between the Court's judges and the relevant stakeholders interested in the investigation, allowing different perspectives to emerge and be taken into account. These two specific venues, namely the Amicus Curiae Brief and Art.75 Observation are going to be the object of analysis of this dissertation.

The participation mechanisms just listed do not allow CSOs to act as direct or indirect litigants in the proceedings. Meaning, they cannot file a petition to a court and have their complaint heard. Even in the case of Art.15 Communications, they can only suggest the Prosecutor to open an investigation in a certain situation. Still, they do not have the ability to impose an agenda to the Court through submissions. What CSOs can do using these mechanisms is to participate as third parties to the proceedings. Meaning, they are allowed to voice their position on a case discussed in the Court. In Table 1.2 below, I present the two selected participation mechanisms identifying: 1) the sources of law introducing and regulating the mechanisms, 2) the specific articles and

² Report on Preliminary Examination Activities 2020. Office of the Prosecutor, 14 December 2020, p.10. Available at: <https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>

words used to define these mechanisms in the ICC’s core legal text, and 3) at which stage of the Court’s proceeding CSOs can make use of them.

Table 1.2 ICC’s Formal Participation Mechanisms for CSOs

Name	Sources of Law	Description	Stages of the Proceeding
Amicus Curiae Brief	Rule 103 of Rules of Procedure and Evidence	At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to individuals, groups or organizations to submit any observation on any issue that the Chamber deems appropriate.	Any Stage (pre-trial, trial, appeal, reparation)
Art. 75 Observations	Art.75(3) of Rome Statute	In establishing order regarding reparations, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.	Reparation Stage (after a sentence is emitted)

CSOs aiming to engage with the ICC’s decision-making process through the mechanisms just presented have to go through different phases to reach their goal. Different phases entail different degrees of agency for CSOs as well as different potential impacts of their actions. Clearly define the distinction between these phases is critical to draw conclusions about the nature of the CSO population. As summarized in Table 1.3 below, the participation mechanisms under analysis unfold in two phases. Borrowing the definition developed by Halpin and Fraussen (2017) as introduced above, this participation system can be unpacked in two phases: *involvement* and *access*.

Table 1.3 Formal Participation Mechanisms across Phases of the ICC’s Decision-Making Process

Phases	Agents	Action	Document
Involvement	Civil Society Organizations	CSOs decide to invest time and resources to send an observation to the Court	Amicus Curiae: Written Request Art.75: Written Request
Access	Ruling Chamber	Ruling Chamber grant or reject the request to be taken into account in the decision-making process	Amicus Curiae: Written Decision Art.75: Written Decision

Such definition particularly fits the Amicus Curiae and Art.75 participation mechanisms. Indeed, within the involvement phase interested CSOs can submit as many requests they want to the Court using the two mechanisms at disposal. There are no restrictions as to the number of times a CSO can participate or apply to participate in proceedings through these instruments. Then, once the request has been sent to the Court, it is up to the competent Chamber to grant or reject it by delivering an official response.

The selection process determining who enters the access phase of the ICC's decision-making process is within the discretion of the Chamber alone. Indeed, there are no rules that grant parties in the process or other participants the right to be heard on the admission of potential *amici*. In some instances, Chambers allowed the parties an opportunity to comment before making the admissibility decision, but it remains an exceptional practice. In any case, the position of the parties is not definitive and Chambers have admitted amici in the face of opposition from one or more of them (Williams, Woolaver, and Palmer 2020, 120). In operating this selection, the Chambers are supposed to take into consideration the merits of accepting a particular amicus curiae submission and the potential impact on the proceedings. Which factors drive this selection and whether it causes the amplification of some voices at the expense of others will be extensively discussed in Chapter 3 of this dissertation.

Analysing the population of actors in both phases allows developing a meaningful comparison on the nature of the CSOs' participation system across different phases of the ICC's decision-making process. This comparison enables me to test not only whether systematic biases exist in the population under analysis, but also to determine whether they are already present in the involvement phase or they are the product of the selection operated by the Court's Chambers.

Which type of CSOs decided to engage with the Court as amici or presenting observations on reparation issue? Which demands did they advance through these mechanisms? Are they representative of the variety of stakeholders and arguments that gravitate around the ICC's proceedings? In this regard, the population analysis of who ended up exploiting these participation mechanisms is crucial to understand to what extent the ICC's institutional openness toward CSOs actually translated in a diversified participation system.

1.3 Who Participates in Global Decision-Making Processes? Existing Debates and their Pitfalls.

In the following paragraphs, I present and discuss literature's expectations about the nature of civil society organizations' participation in global decision-making processes in general, and in the international courts and tribunals' procedures in particular. Keeping the distinction between the expected nature of the CSOs' population in the involvement and in the access phase of the decision-making process of interest, I introduce hypotheses and empirical results emerging from existing analyses on CSOs' engagement with global decision-making process.

As I have shown, in the involvement phase, the choice to mobilize using formal participation mechanisms lies in the hands of CSOs. Therefore, I focus on factors triggering organizational choice to mobilize and exploit formal participation mechanisms to be vocal in global decision-making processes.

Transnational Advocacy Literature

Within transnational advocacy literature's debate, questions about the presence of biases in interest representation systems immediately followed efforts to understand how increasing mechanisms for CSOs' participation substantiated in practice. It is relevant to notice how, despite the rising interest in the topic, the advancement of population studies global decision-making processes is still sporadic in comparison with population studies on the national and European level³. In particular, the effort is significantly hold back by the lack of systemic data available. Therefore, the promotion of further empirical investigations in this direction is highly encouraged in the existing literature and is needed to achieve a better understanding of the actual consequences of the opening up of new opportunities for CSOs' engagement in global decision-making processes.

Starting from the 2000s, researchers mapped the population of actors who exploited participation mechanisms promoted by international organizations (for instance the WTO, see Dellmuth and Tallberg 2017; Hanegraaff, Beyers, and Braun 2011; Piewitt 2010; for IMF see Belloni and Moschella 2013) and international conferences (see Hanegraaf 2014; Uhre 2014;

³ For instance, Slovenia: Novak and Fink-Hafner 2019; Italia: Pritoni 2017; Denmark: Binderkrantz, Fisker, and Pedersen 2016; UK: Jordan and Greenan 2012. For comparative efforts, see the Intereuro (<https://www.intereuro.eu/>) and Interarena (<http://interarena.dk/>) projects' publications. For analyses on the European level see Hanegraaff and Berkhout 2019; Berkhout et al. 2015; Wonka et al. 2010; Coen and Richardson 2009; Dür and De Bièvre 2007.

Henry et al. 2019). Other significant efforts compared interest representation systems at the national and transnational level (Berkhout and Hanegraaff 2019). Most often, however, the interest in population diversity revolved around the relative presence of different types of actors. A clear example is represented by numerous analyses investigating whether business groups are more likely to be present in different global decision-making processes than civil society groups (Berkhout and Hanegraaff 2019; Hanegraaff and Berkhout 2019; Petersson et al. 2019; Hanegraaff, Beyers, and Braun 2012; Piewitt 2010). Less frequently, the research core of mapping efforts is limited to one type of actors.

This research goes in this direction, exploring the population of civil society organizations active in the arena of interest while looking for the presence of biases within this category of actors. This choice is grounded on the belief that, as Stroup and Wong convincingly noted, CSOs advocating at the global level are not a homogeneous group of relatively powerless actors. Stark differences exist among them in terms of their relative authority within the environment in which they operate (Stroup and Wong 2017). First, civil society organizations present substantial differences in terms of resources they can count on to pursue their advocacy goal. Putting organizations having an annual budget comparable to the one of a small state together with voluntary-based organizations having one paid employee risks reproducing a misleading picture of the phenomenon. Recognizing the heterogeneity of this group of actors, the choice to search within the civil society organization category for patterns of amplification or silencing of certain voices at the expense of others becomes of pivotal importance.

Secondly, CSOs advocating global decision-making processes are not homogeneous either for what concern the kind of positions they aim to bring in. Organizations turning to global decision-making processes to voice their views do so for a variety of reasons and consequently approach these venues with different goals. As widely discussed in the existing literature, global arenas are not an exclusive domain of 'progressive' universalistic actors. On the contrary, this space is cohabited by both conservatives, nationalist actors advocating for limiting global interference in national affairs, as well as actors promoting radical positions against the current status quo in the different global decision-making processes. The question remains whether this variety of actors and voices actually decided to exploit the participation mechanisms at their disposal and whether they were successful in doing so.

Looking at the populations resulting from the mapping efforts currently available in the literature, they emerged to be formed by pretty homogeneous actors. Such populations are characterized by a set of enduring imbalances and limitations that significantly affect the diversity of actors that enter this level of advocacy. Not only participation emerges to be limited, it is usually

limited in ways that reproduce and reinforce existing imbalances and structural inequalities (I. M. Young 2001, 680).

This picture of limited participation along the lines of structural biases revolves around three elements that are pinpointed by the transnational advocacy literature as determinant in understanding which kind of actors are able to advocate global decision-making processes. 1) *Geography*: the geographical origin of the organization as well as the proximity to the decision-making location; 2) *Knowledge*: the degree of awareness and human resources organizations can count on; 3) *Resources*: the degree of material resources organizations have at disposal. In the following paragraphs, I delve into these three elements to clarify how each of them is expected to be determinant in limiting or fostering organizational ability to advocate global decision-making processes.

First, geography matters. Precedent mapping efforts have pointed out the role of space in determining who is able to mobilize in the global arena. CSOs' participation systems in global decision-making processes are expected to reproduce and exacerbate the global north / global south divide. In fact, organizations based in the global north have been repeatedly registered as more present than organizations from the global south in international for a and institutions (Tallberg et al. 2014; Bexell, Tallberg, and Uhlin 2010; Steffek, Jens, Kissling, and Nanz 2008; Beckfield 2003; Spiro 2000; Fried 1997). The presence of this systematic pattern leads to the expectation that civil society organizations coming from developed countries profited more from the increase in participation opportunities in global decision-making processes. Motivations behind this pervasive bias lie in the fact that organizations from the global north can count on wider founding opportunities, both through donors as well as mobilizing public opinion (Hanegraaff et al. 2015) to sponsor their advocacy. At the same time, organizations pursuing an international mandate are supposed to be more inclined to advocate for their demands in global decision-making processes.

Another factor related to geography is represented by the proximity to where the decision-making process takes place. As existing mapping efforts have shown (Uhre 2014; Hanegraaff, Beyers, and Braun 2012, 193), being based closely to the headquarter or the venue in which the decision-making process occurs, has an influence on CSOs' likelihood to engage. Proximity may increase organizations' opportunities and capacity to organize informal or formal meetings with decision-makers, to participate in consultancy meetings and to be promptly informed about what is going on at the process of interest.

The second strong determinant that is supposed to shape the nature of CSOs' participation in global decision-making processes regards organizational knowledge. Starting from the basics,

organizations must be aware of how the decision-making process works and what mechanisms they have at their disposal to advocate their views. The presence of a population of CSOs aware and interested in the decision-making process of interest and its policy-making is a prerequisite for any cooperation to emerge (Steffek 2013). As the paragraph dedicated to the participation mechanisms at the ICC will confirm, the first obstacle in expanding CSOs' participation is represented by making organizations aware of the opportunities at their disposal to participate. Knowing that a decision on an issue of interest is going to be taken in an international setting and that organizations can voice their position about it using dedicated mechanisms is the ground zero of any mobilization process.

Moreover, they need to be knowledgeable about the issue at stake to critically engage with the decision-making process of interest. When dealing with global decision-making processes, it is often the case that the issues at stake are complex, technical, or extremely formalized. Therefore, specialization and professionalization are conceived as essential characteristics that organizations must satisfy to be able to engage (Tallberg, Dellmuth, and Agné 2018; Rasmussen and Gross 2015; Martens 2005). Human resources, meaning qualified staff with expert knowledge and competence in the relevant fields, add to and are interlinked with material resources as fundamental assets to increase organizational capacities to exploit the participation mechanisms at their disposal. As I am going to address in the next chapter with the operationalization of this organizational characteristic, there can be a static and a dynamic understanding of CSOs' knowledge. The human resources element represents the static view, capturing the capacity of an organization in a given moment in time to have internal competence to advocate on a certain issue. At the same time, however, knowledge comes with experience too. One organization can surely learn from a trial and error process of interaction with the decision-making process of interest. Such multiple interactions contribute to building a cumulative knowledge that can foster organizational capacity to advocate the arena of interest.

The third and last point refers to the material resources of organizations. Advocacy is an expensive endeavour. As widely identified in the literature, organizations need to be able to bear the costs of sustained advocacy (among the others Hanegraaff, Vergauwen, and Beyers 2019; Halpin and Thomas 2012; Lowery 2007). If this holds true at the local and national level, it can represent a real hurdle when organizations try to advocate global processes. Indeed, the resource threshold needed by CSOs to be able to exploit the participation mechanisms at their disposal is supposed to be extremely high in these settings. It always takes money to do research, hire policy staff, hold collaborative campaign meetings, and connect the information necessary to make any sort of advocacy claim (Stroup and Murdie 2012). Moving to the international level, most of the time organizations need to move to another country or continent to be able to participate in

consultancy meetings or to have face-to-face contact with key personnel or other stakeholders. The slowness characterizing many global decision-making processes add to the already mentioned factors. CSOs need to invest substantial resources over the course of many years to keep monitoring the process and maintain contact with other relevant actors (Hanegraaff, Vergauwen, and Beyers 2019, 4). Such activities trigger costs and time that CSOs need to have as a premise to even try to access the field. Therefore, it does not come with surprise that among CSOs, resourceful ones tend to be conceived as more equipped to overcome these thresholds at the expense of non-resourceful groups.

The combination of these factors is supposed to shape the population of CSOs engaging in global decision-making processes, fostering an unbalanced interest representation system (Hanegraaff, Beyers, and Braun 2011).

International Courts and Tribunals' Literature

As I have explained in the paragraph dedicated to the ICC's participation mechanisms, third actors' participation and intervention became a standard in international courts and tribunals' proceedings. The openness toward this kind of actors assumed a specific relevance in these settings. Indeed, despite Courts remain not representative institutions because of the requirements of independence and impartiality. Nevertheless, the judges proved to be open and attentive to consider societal positions and interests when adjudicating. The opportunities for third party to participate in the proceedings can serve as a vehicle allowing these voices and interests to enter the judicial process.

However, the presence of advanced participation mechanisms does not necessarily translate in a wide and diversified participation system. Even in these favourable settings, the existing literature describes the international courts and tribunals' participation systems as 'limited', structurally disadvantaging some groups more than others. The idea of participation in this setting is structurally limited by phenomena of exclusion. As Glasius (2006, 143) rightly pointed out, «the most intractable form of exclusion is that by class, means, education and information. Global institutions and global civil society should be able to do more to include the voices of the poorer, less educated people with a clear stake in the negotiation».

In line with what emerged from transnational advocacy literatures, studies dealing with CSOs' engagement with international courts and tribunals have pointed to resources, knowledge, and geography as drivers able to predict how the phenomenon of inclusion/exclusion from

international courts and tribunals' decision-making processes substantiated (J. W. Kuyper and Squatrito 2016, 166).

International criminal procedures can be surely described as highly technical processes, requiring organizations willing to follow and intervene in their proceedings to understand and be familiar with the legal language in general and with international criminal law in particular. The international criminal law field experienced a substantial expansion following the justice cascade of the 90s. The discipline has undergone in the following decades a process of standardization and professionalization that influenced substantially how international criminal procedures unfold. Alongside, an increasing number of CSOs interested in this field and willing to influence its proceedings adapted their organizational features and strategies to mirror such a professionalization and standardization process. One of the elements certifying this tendency is the relevance given by the same organizations when interacting with international criminal law's institutions to their pedigree of experience in diverse national and international law processes. The rhetorical use of such precedent interactions is supposed to bolster organizational status, certifying its expertise on the issue. Some examples from the participation mechanisms of the International Criminal Court can help elicit this point:

«REDRESS takes up cases on behalf of individual survivors at the national and international level. It has extensive experience in interventions before national and international courts and tribunals, including at the international level, the United Nations Committee against Torture and Human Rights Committee, the European Court of Human Rights, the Inter-American Commission on Human Rights, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia. It has also intervened, together with the Uganda Victims' Foundation, in proceedings in relation to admissibility in the Case *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen* before the International Criminal Court⁴».

«SALC brought urgent court proceedings to compel the South African government to arrest and surrender Al-Bashir. Although SALC successfully obtained an urgent interdict, the government failed to comply therewith, leading to the PTC II's [Pre Trial Chamber II] case regarding South Africa's failure to arrest and surrender Al-Bashir. SALC was admitted as *amicus curiae* by the PTC II in that matter. SALC *therefore* has unique insight into the legal questions before the Appeal Chamber⁵».

⁴ N. ICC-01/11-01/11-148, "Application by Lawyers for Justice in Libya and the Redress Trust for leave to submit observations pursuant to rule 103 of the rules of procedure and evidence".

⁵ N. ICC-02/05-01/09-339, "Request by Professor Bonita Meyersfeld and the Southern Africa Litigation Centre (SALC) for leave to submit observations on the merits of the legal questions in: The Hashemite Kingdom

What is highlighted in these extracts can be assimilated to the dynamic conception of knowledge as discussed in the transnational advocacy literature's review. This organizational characteristic can be described as a 'learning process', based on the experience CSOs accumulated through repeated interactions.

Moreover, international criminal procedures are not open-and-shut cases. They can last years, if not decades. Organizations interested in engaging with such processes are expected to spend organizational time and resources over such a long period to be able to intervene if the proceeding goes in an unwanted direction or be ready to respond to any call for submissions the judges may open during the proceeding. This second circumstance is quite illustrative in showing the impact of being able to follow the entire procedure on mobilization capacity. During the proceedings, the ruling Chambers can open a call for submission of Amicus Curiae Briefs and Art.75 Observations on a particular issue of interest for the Court's deliberation. As such, in these circumstances, the Chamber is proactively asking for third opinions and is willing to welcome submissions. The CSOs' capacity to exploit these opportunities is strictly interlinked with the steps taken to publicise those calls are crucial. Often the call is located within a scheduling order or issued orally at a status conference, so that only those following proceedings closely or notified by informal channels are aware of the call (Williams, Woolaver, and Palmer 2020, 123). It comes with no surprise that such an attitude risks to exclude potentially valuable amicus curiae that learn of the call too late to apply or remain unaware of the opportunity.

Eventually, international criminal law has been widely accused of being distant institutions. Most of the time, international proceedings take place miles away from where the human rights violations occurred. The major international law institutions have their headquarters in the global North while deliberating on crimes committed mostly in the global South. Therefore, affected communities' organizations often are based far away from the trial location.

These identified thresholds are theorized in the existing literature to carry out a discriminative role in selecting *a priori* which are the organizations that are able to exploit formal participation mechanisms in International Courts and Tribunals' proceedings (Glasius 2008; Kuyper and Squatrito 2016).

of Jordan's appeal against the "Decision under article 87 (7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and Surrender [of] Omar Al-Bashir" lodged on 12 March 2018. Italics added by the author.

A Framework of CSOs' Participation to ICC's Decision-Making Process

Building on the theorizations developed in the transnational advocacy and the international courts' literatures, it seems there is little space for a diversified CSOs' participation in the International Criminal Court's decision-making process. Existing studies are unanimous in identifying geography, knowledge, and resources as key determinants accounting for biases in CSOs' participation system in global decision-making processes. In the next chapter, I conduct a population analysis of the CSOs who engaged with the formal participation mechanisms of the ICC in its involvement phase. Through this analysis, I aim to empirically test the hypotheses advanced by the presented literature, while introducing the investigation of how the actors in the population decided to frame their demand in their formal engagement with the Court.

To reach the first goal, I refer to the *geography* factor in a twofold way. On the one hand, organizations with an international mandate and western-based are supposed to be more equipped to engage with ICC's procedures; on the other, the proximity with the headquarter or the venue where the decision-making process takes place is expected to play a significant role in influencing CSOs' capacity to engage. Then, the *knowledge* factor is going to be operationalized as the human capital dimension of resources: in particular, I take into consideration if the CSOs have in-house legal expert/s, and/or personnel devoted to the ICC and/or personnel located in The Hague. At the same time, I pay attention to the experience organization cumulated over repeated interactions with the decision-making process of interest. Eventually, *resource* factor meaning the material capability organizations can count on to pursue their activities, operationalized as the annual budget at their disposal.

For what concerns the second, I develop a dictionary-based index allowing me to assess where in continuous scale contentious – cooperative each request finds itself in. This operationalization of the content of CSOs' requests enables me to test which kind of messages organizations conveyed to the Court using the participation mechanisms under analysis. The necessity to look into this further dimension comes from the assumption that the population of civil society organizations advocating global decision-making processes is not a coherent or unified entity. On the contrary, it is harshly divided on issues such as the international criminal justice. The position of organizations potentially interested in taking part in the ICC's decision-making process can easily range from the full support for the Court and its investigation to the open contestation of it. The point became to what extent this range of positions was actually reflected and incorporated in the ICC's decision-making process.

Is there a bias in terms of which kind of messages CSOs convey when they choose to use such participation mechanisms? One of the core principles of democratic political deliberation is that contrasting and diverging arguments should be included and discussed in the process of decision-making. Inclusion of arguments, rather than simply inclusion of different type of organizations is specifically consequential in an international context in which decisions taken at the global decision-making processes potentially mobilize multiple and diverging interests. Hence, it is relevant to understand to what extent the interest representation system is dominated by cooperative, information-exchange arguments or there is space for contentious and critical voices to be presented through formal participation mechanisms.

International criminal law's trials can be extremely technical and, as I am going to discuss throughout the dissertation, CSOs' participation to these processes often assumes the form of expert legal consultancy. However, this is not always the case. Through a systematic analysis of the text of CSOs' requests, I aim to understand if and how transformative and contentious messages find a way into the participation mechanisms under analysis.

The capacity for the Court to incorporate different and even opposing perspectives in its deliberations should be encouraged. If the Court is serious in its aim of being open to the input of civil society and affected communities, it is expected to do so independently of the fact that they are aligned or not with the Court's position. Indeed, the presence of critical actors who decided to take part in the deliberation and invest time and resources in doing so, instead of limiting themselves to fight the process from the outside, represents a recognition of the Court as a legitimate arena in which they can voice their positions. Therefore, in my attempt to assess the diversity of the participation system promoted by the Court over time, I do not limit myself to looking for the presence of different types of CSOs, but I also investigate the presence of different voices and positions within these channels.

1.4 Who Gets Access to Global Decision-Making Processes?

In the previous section, I have discussed the literature's expectations about the nature of potential biases in the population of civil society organizations that engaged with the Court in the involvement phase of its decision-making process. In this first phase of interaction, the only obstacle to the CSOs' involvement has been identified in the organizational awareness of the existence of the participation mechanisms and their willingness to dedicate resources and time to exploit the available opportunities. Moving to the access phase of the ICC's decision-making process, the agency moves from the CSOs to the Ruling Chambers in charge of selecting among

the received requests those that they consider are desirable for the proper determination of the case. Therefore, the population's biases resulting from this selection are shaped by the demands and needs of the Court.

In the following paragraphs, I introduce the existing debate about the drivers of access in global decision-making processes, discuss it, and present original contribution of the author to this topic. First, I introduce the functionalist exchange mechanism as it developed both in the transnational advocacy literature and in the international courts and tribunals' one. Then, I single out the potential limitations of this approach in the case under analysis and present an alternative logic of access, which I argue is better suited to explain Court's selection of who is going to be granted access to its decision-making process: the integrated one.

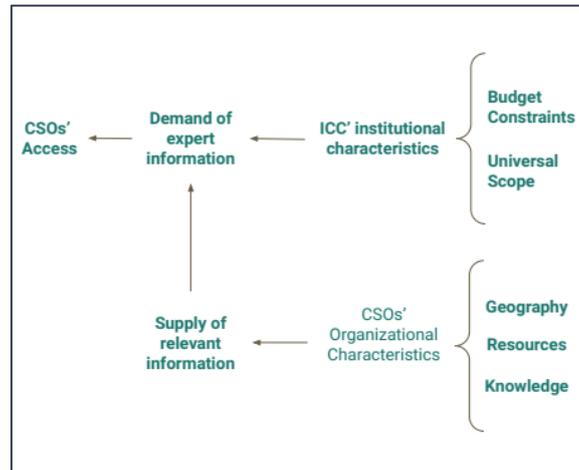
The Functionalist Exchange Logic

It is widely shared in transnational advocacy and interest groups literatures the logic linking decision makers' propensity to admit CSOs' contribution in global decision-making processes with their expectation of gaining benefits from this exchange. This logic is at the base of classical works such as the one on international environmental governance by Raustiala (1997) or the one by Bouwen (2004) on the European Union. In particular, the latter explains how - while CSOs seek access to international organizations to influence their choices - international organizations trade it with relevant information. According to this logic, the main drivers of access derive from CSOs' capacity to fulfil through their participation and involvement in the decision-making process those functions that the policy makers and their institutions are unable or less well positioned to satisfy themselves.

CSOs' access to global decision-making processes has been portrayed as driven by functionalist demands (Tallberg, Dellmuth, and Agné 2018; K. Raustiala 2017; Chalmers 2013; Liese 2010; O'brien et al. 2000). In particular, CSOs' contribution is often linked to their capacity to bring in expert knowledge (Steffek 2013). Information becomes the key currency in this interaction, shaping the role of CSOs along the line of an expertise function. As it is often argued in the literature, CSOs are expected to dedicate a considerable amount of their resources and efforts to gathering and disseminating information, resulting in built-up expertise in the technical, social and also legal disciplines relevant to the determination of the policy process (Hall and Deardorff 2006; K. Raustiala 2001). The complexity of the issues tackled by global decision-making processes, linked with the structural limitations characterizing this arena in terms of resources and capacity to autonomously collect relevant information, makes the CSOs wanting to

provide policy expertise for free valuable partners (Kal Raustiala 1997, 27). Therefore, access to global decision-making processes is provided selectively: as Tallberg argued, the phenomenon results in a “tailor-made access” (Tallberg et al. 2013, 237).

Figure 1.1 Functionalist Exchange Logic



Policy makers are expected to prioritize and favour actors that use participation mechanisms to provide valuable information (see Figure 1 above), conceived in this picture as ‘access goods’ (Bouwen 2004). This information exchange becomes especially valuable in issue areas and decision-making processes characterized by considerable technical and specialized complexity. It those do not come with much surprise that the functionalist exchange logic of access travelled naturally, and it is widely discussed in the international courts and tribunals literature.

These peculiar global decision-making processes are characterized by participation mechanisms particularly open toward CSOs, among which the ones promoted by the ICC were revealed to be the most open (Tallberg et al. 2013). The undisputable presence of numerous and porous participation mechanisms governing access for different actors, among which CSOs, has been described by recent researches as an essential feature of international courts and tribunals (K. J. Alter 2014; Cichowski 2006). However, despite this formal openness, international courts have been accused of favouring certain forms of civil society participation at the expense of others, fostering a ‘limited participation system’. International courts and tribunals are in great need of expert information from third parties to function and to fulfil their role. This demand contributed to the promotion of generous participation mechanisms. Indeed, CSOs are expected to possess information that judges do not have or otherwise would fatigue to collect. To cite some of them: legal expertise, local knowledge, and sector-specific information. The increasing volume of relevant jurisprudence, both of national and international tribunals, presents a great challenge to judges. They are required to be familiar with relevant international conventions, state practice,

general principles of law, decisions, and actions of international organisations, as well as the judicial decisions of international tribunals and national courts. At the same time, the crimes the Court is called to investigate occur in complex contexts, with historical, social, and political dimensions most of the judges – if not all – have no experience or familiarity with (Williams, Woolaver, and Palmer 2020, 95). The geographical distance from the sites where the violations occurred, combined with the structural lack of resources the Court has to face, makes this information critical to gather. CSOs' contribution through their participation in ICC's decision-making process became pivotal to bring in the Court's deliberations a diverse set of societal perspectives that would otherwise be missing from judicial proceedings. Therefore, the participation of third parties both as legal experts and as specialists of the context under investigation has always been valued as critical for the same functioning of the Courts. The complexity characterizing the ICC's decision-making process, combined with the dependence of the Court on such information, creates the right conditions to foster a functionalist exchange between decision-makers and third actors and to promote accordingly tailor-made access mechanisms.

Expertise and knowledge emerge as the driving factors influencing CSOs' capacity to get access to global decision-making processes. Similarly to what I described for the involvement phase, the characteristics of the CSOs are strictly interlinked. When thinking about which actors are going to be more knowledgeable and specialized in a topic, such professionalization and specialization goes hand in hand with the amount of material and human resources organizations can count on. As well as with the opportunities given by the context in which the organizations operate. Building on this consolidated debate, in my analysis, I will control for the hypothesis that:

H_c: International, knowledge-rich and resourceful CSOs are more likely to get to the access phase of the ICC's decision-making process.

A cautionary note is necessary at this point. As I am going to argue throughout this dissertation, there is no such thing as a unitary local (Stahn 2015, 46) or international category of actors. I do not argue that specific groups, such as the so-called local, national, or international CSOs, are homogeneous categories, voicing the same demands and concerns. Rather, I am interested in illustrating empirically whether and how some voices get to be systematically overrepresented to the detriment of others.

Shed a spotlight on the advocacy content of CSOs' participation in global decision-making processes remains one of the main contributions of this dissertation to the current debate on the topic. While less discussed in the existing literature, some expectations exist on the kind of voices

and framing that are expected to be heard and taken into account in global decision-making processes.

As processes of both dominance and resistance, global decision-making processes often end up amplifying some voices and silencing others. Some manage to use those channels to get their voice heard internationally. Others are outvoiced by stronger, yet more globalised, voices (S. Nouwen and Ten Kate 2018, 46). This process of amplification and silencing of voices as described by Kate and Nouwen is not conceived as the inevitable consequence of a technical development. When existing researches stress how the ICC is more prone to welcome CSOs willing to exert an expertise function within its procedure more than other ones (Haslam 2011), the Court operates a choice that can cause processes of amplification or silencing. This trend seems to be interlinked with the process of 'professionalization' in the field of international criminal justice that I have already discussed. This trend manifests itself with the development of a transnational class of international criminal law professionals operating within civil society, which marginalize counter-hegemonic voices that might otherwise emanate from the participation of non-state actors in international criminal law (Hondora 2018). A participation model driven by 'relevant subject-specific knowledge, experience and training' risks dismissing critical voices and contesting discourses that do not fit with the Court's institutional worldview or do not share the same values and goals. As a proof of such a trend, existing studies point to the fact that a significant proportion of CSOs engaging with International Courts are international actors (Kent and Trinidad 2017, 238) that have acquired sophisticated legal knowledge of international criminal law through their repeated involvement in international criminal proceedings.

The Integrated Logic

Investigating the access phase of the ICC's decision-making process, I try to unveil what drives the selection operated by the Court's Chambers and which consequences such selection had on the resulting CSOs' population. As far as it is the most tested and applied logic of access in the literature, the limits of the functionalist exchange logic of access have been discussed leading to the formulation of alternative logics. In the following, I present some of those alternatives to then show how they contributed to the development of the original integrated access logic introduced in this dissertation. What pull policy makers to be more prone to accept CSOs' access to the decision-making process? The analysis of interest groups' access to different European's venues proved to be a fertile ground to provide answers to this question. In particular, the 'reputational incentives' mechanisms started to emerge from the analysis of this context. It is expected to shape interest groups' likelihood to be granted access to different EU's decision-making process. In this

regard, Binderkrantz and al. argued that policy makers' propensity to promote the access of a diverse population of actors to EU consultation can be traced back to an effort to increase institutional reputation (Binderkrantz, Blom-Hansen, and Senninger 2021). According to the authors, consultations are seen as part of a self-legitimization process strengthening the overall reputation of the Commission and may help legitimize Commission proposals and, consequently, its moral and legal-procedural reputation.

Reputational incentives are expected to be particularly relevant for the institution under analysis. Indeed, the ICC is undeniably facing a legitimacy crisis that is supposed to push the Court to implement re-legitimation strategies. First, I outline the boundaries of this legitimacy crisis; then, I circumscribe the definition of legitimacy according to the scope of this research; eventually, I present how the legitimacy crisis is expected to influence Court's behaviour counterweighting the need for relevant information theorized by the functionalist exchange logic.

In the last decade, International Criminal Justice has been increasingly criticized on issues ranging from its lack of procedural justice to challenges of normative legitimacy. The most debated point of critique on the ICC has been the accusations of targeting Africa, building on the fact that in the first ten years of existence of the Court all the situations under investigation but one were located in the African continent⁶. While the Court's interventions in African conflicts are often explained by the high rate of African States Parties to the Rome Statute, and the fact that most of the situations are self-referrals, images and perceptions matter. Building on this narrative, some supporters have recently turned hostile, adding to the Court's political challenges (Vinjamuri 2016). Riding on charges of colonialism and imperialism, the critique culminated in the threat of a mass exodus of States Parties from the Court in late 2016. Burundi withdrew in 2017, the Philippines declare their intention to withdraw in 2018, as well as South Africa and Gambia.

An equal, if not more critical challenge to the international criminal justice project is the frequent rejection and distain from those in whose names justice is done. There is a rising friction in the relationship between those advocating and representing international criminal law, its institutions and ideas in international politics on the one hand, and the societies most affected by its practices on the other (Lohne 2020, 51–52). For survivors of violence coded as international crimes, international criminal justice has been accused of being 'too little, too late', of destabilizing and disrupting peace negotiations, and of crowding out alternative paths towards peace, justice and reconciliation in the aftermath of mass violence. At the base of this mismatch, there is the

⁶ Namely: Democratic Republic of Congo, Uganda, Darfur, Kenya, Central African Republic I, Libya, Côte d'Ivoire, Mali, Central African Republic II, Georgia, Burundi.

accusation that the Court is promoting an allegedly universalistic vision of justice which is grounded and rooted in a western conception of what justice is and should aim to (Fraser and Leyh 2020). Over the past decade, an emerging body of literature has sought to ground this critique that begins from the normative premise that the Court should be more responsive to the contexts in which it works (Allen 2008; Schwöbel 2014; Christian De Vos, Kendall, and Stahn 2015a). Third World Approaches to International Law (TWAIL) critiques (Anghie and Chimni 2003) perceive the Court as an entity that exports a cosmopolitan vision of justice, it look at the reach and orientation of international criminal justice and contesting impact and effects of international courts and tribunals, such as marginalisation of claims, perpetuation of inequalities (Stahn 2015, 53).

Coming back to the core of this dissertation, understanding to what extent participation mechanisms recreate this sense of distance became crucial. In particular, the critique in this area is to amplify - granting access through participation mechanisms - those voices sharing a universalistic and professionalized understanding of international criminal law, at the expense of actors willing to bring in different conceptions.

This growing sense of distance, (Clarke 2009; Christian De Vos, Kendall, and Stahn 2015a; Clark 2018) which threatens the ICC's legitimacy in the eyes of its relevant agents, is expected to influence Court's behaviour. Where protests and opposition occur, decision makers are pushed to invest in legitimation strategies. Resistance to global decision-making processes is seen in the literature as a reason to reconsider the procedures (Anderson, Bernauer, and Kachi 2019), deliberative bodies (Rocabert et al. 2019), and media presentation of those processes (Schmidtke 2019). Legitimacy dynamics around global decision-making processes are thus recognized to be linked with their internal structure. Since the involvement of CSOs in global decision-making processes through formal participation mechanisms has been recognized as the most feasible way to get these processes accountable to the wider public (Macdonald 2008), for the scope of this research, I focus on the capacity of participation mechanisms to be used as re-legitimation instruments.

Introducing the concept of legitimacy, it is crucial to define the boundaries of its use in this context. While referring to the legitimacy crisis and processes of re-legitimation, I limit my investigation to a sociological approach to legitimacy. Therefore, I am concerned with whether the ICC's decision-making process is acknowledged as rightful, appropriate, or just by its own stakeholders or relevant agents (Marchetti 2008; Lisa Maria Dellmuth and Tallberg 2015; Tallberg and Zürn 2019). Building on this conceptualization, decision-making processes facing a dynamic of de-legitimation are expected to shape rules, procedures, or policies in the attempt to strengthen their legitimacy through better conformance to democratic norms (Ecker-Ehrhardt

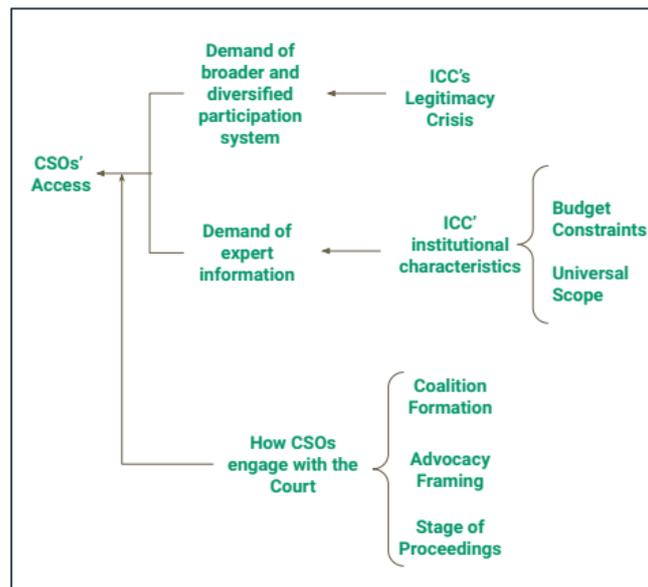
2018; Tallberg et al. 2014; Grigorescu 2007). What gains centrality in this path toward legitimation or re-legitimation are the processes through which the decision-making processes justify their power and come to be reflective (not necessarily representative) of the societies they are enforcing power on.

As a response to presented stimuli, I argue that the Court is going to strengthen opportunities for civil society organizations, widening the spectrum of organizations getting access to its decision-making process to enhance the perceived legitimacy of its procedures. Hence, I take a step forward existing theorization trying to assess how reputational incentives are influencing CSOs' access beyond institutional venues that do not lead toward influence. Policymakers are indeed expected to exploit venues loosely coupled to the actual formulation of proposals and amounting to little more than window-dressing to grant access to a diversified set of actors, while they kept favouring expert information exchange when it comes to the core of the decision-making (Binderkrantz, Blom-Hansen, and Senninger 2021, 484). On the contrary, introducing the integrated logic of access, I am willing to show how re-legitimation needs are substantially shaping the population of actors that are granted access to the ICC's decision-making process.

I advance the hypothesis that the inherent dependency on external sources of information by the ICC, at the base of the functionalist exchange logic of access just presented, is only one of the pulling factors at play in shaping which, among all CSOs' requests presented in the involvement phase of the ICC's decision-making process, get to be heard and obtain access. The need to collect relevant information and expertise from the participation mechanisms is coupled by the need to use the same channels to re-legitimize the Court's proceedings, promoting a wider participation system.

Hence, to understand what drives access to ICC's decision-making process, I need to develop a more encompassing logic, balancing and accounting for both these pulling factors. An evident tension exists between those two competing needs the Court has to take into account while selecting who gets to be heard in its decision-making process. As a result of this tension, I argue that the Court's selection is going to be driven by an integrated access logic which balance and intertwines the two necessities. Figure 1.2 below is a graphical representation of this logic.

Figure 1.2 The Integrated Access Logic



Following the integrated access logic, the Court’s Chambers are expected to undertake re-legitimation strategies, adapting its procedures to this challenge. In particular, the Court is expected to use participation mechanisms to grant access to a more diversified set of actors, going beyond the functionalist trade between information and access. Still, this pulling factor is counterweighted by the persisting necessity to collect technical and expert information from the same channels. Hence, Court’s choice cannot anymore be driven by CSOs’ characteristics as described by the functionalist exchange theory: the more capability to bring in information, the more access. Conversely, it is expected to ground its choice on a more comprehensive evaluation of *how* the CSOs present their demands to the Court, more than limiting itself to an evaluation of *who* present them.

To empirically test how this logic is expected to work in practice, I unpack it in three causal mechanisms that I am going to introduce in the following paragraphs. In particular, I argue that with whom CSOs decide to co-sign their request with (coalition formation); how CSOs decide to frame their demands (advocacy framing); and when they decide to do so (stage of proceeding) are the causal mechanisms helping explaining Court’s selection and consequently the nature of CSOs’ population at the access phase of the ICC’s decision-making process.

Coalition Formation

The first causal factor that I expect to play a role in influencing the CSOs' likelihood to be granted access to the ICC's decision-making process is coalition formation. Generally speaking, coalition formation is one of the most prominent strategy employed by CSOs across policy arenas (Hanegraaff and Pritoni 2019; Junk 2019a; Beyers and De Bruycker 2018; Mahoney 2007). As largely proven by interest groups literature, CSOs are not lone wolves. On the contrary, they usually work in packs (Mahoney and Baumgartner 2015, 214) and largely recur in coalition formation (Hojnacki et al. 2012, 389; Nelson and Yackee 2012; Baumgartner et al. 2009, 180; Nownes 2006). Coalition formation is expected to increase the capacity advocacy groups to have an impact on policy making by combining organizational resources and know-how (Heaney 2006) to compensate for individual weaknesses (Klüver 2011; Lindgren and Persson 2011; Betsill and Corell 2008). While this consolidates as a shared position across the literature, the success of active coalition formations in attaining CSOs' preferences is rarely put to an empirical test (Junk 2019b, 660). To what extent coalition formation is able to enhance organizational capacity to get access to the decision-making process of interest remains a relative blind spot in this literature.

Existing studies offer some guidance on who is expected to use such a strategy. They suggest that coalitions should be considered as 'weapon of the weak': weaker actors emerge to be more likely to cooperate with others and actors with lower resources on the issue emerged to benefit more from cooperating (Hanegraaff and Pritoni 2019, 199; Junk 2019b; Beyers and De Bruycker 2018; Holyoke 2009). Indeed, actors who have internally what it supposedly takes to get access to the decision-making process are keen to believe that their chances will not significantly increase if they decide to form an alliance. On the contrary, they are aware of the costs associated with coalition formation: coalitions must be coordinated; they entail compromise on actors' demands and positioning; and individual organizations cannot claim credit for success to their members. Hence, the costs associated with coalition building are perceived to be higher than the potential gains. Other things being equal, these groups are thus likely to prefer to work alone (Hanegraaff and Pritoni 2019, 202). Applying these expectations to the case under analysis, I can foresee how CSOs aiming to engage with the ICC, especially when they lack information and expertise, are likely to coordinate their efforts with other groups. Both expectations – CSOs' tendency to work in groups and coalitions as a weapon of the weak - are confirmed by data: most of the organizations in the population opted for joining a coalition in their interaction with the Court (57%) and organizations that have a lower degree of expertise emerge to recur more in such an instrument (69%). Since the core interest of this research revolves around the diversity of the population of CSOs, a further step is needed to understand if and how the coalition strategy

can promote diversity, enhancing actors' capacity to get access to ICC's decision-making process. Once I know whether an organization decided to advocate the Court sending a common request, it becomes pivotal to understand with whom it decides to do so. Does this choice matter in getting access to the decision-making process?

The existing literature did not devote extensive attention to the role of coalition diversity in fostering access. The contributions by Phinney (2017, 3) and Junk (2019a, 661) helps providing some guidance. Building of their works, coalitions putting together actors coming from different backgrounds and representing different interests are supposed to supply to policy makers different informational resources with higher credibility. Namely, due to their capacity to collect information and preferences of different stakeholders, diverse coalitions are expected to be able to reduce policy makers' uncertainty regarding the consequences of their decisions.

If the functionalist logic would apply, I should expect coalitions of international CSOs' bringing in the decision-making process expert information to be the most likely to be granted access. ON the contrary, if the re-legitimation logic would be the only one driving access, I should expect the Court to be more attentive to grant access to coalition formed by local actors, which are the ones that mostly accuse the Court of being distant from their demands, undermining its legitimacy.

According to the integrated logic, instead, I expect Court's Chambers to be more prone to grant access to mixed coalition so that they can claim to promote a more diverse participation system while at the same time collect expert information from the same source. Granting access to mixed coalitions of actors, the Court is going to widen the spectrum of voices and organizations taken into account in the proceeding, increasing the legitimacy of the procedures, while bringing into the process valuable information already shared among different stakeholders.

Therefore, I expect that:

H₁: CSOs presenting their demands to the Court through a mixed coalition are more likely to get access of the ICC's decision-making process than those organizations opting for homogeneous ones.

Advocacy Framing

The second mechanism I am going to analyse regards how CSOs decide to frame their advocacy toward the ICC and the consequences of this choice on the selection process operated by the Court. Do the Court's Chambers incorporate and discuss critical voices or tend to dismiss them? Discussing the kind of voices that are supposed to be dominant or at least prevalent in global decision-making processes, Betsill and Corell argue that the selected actors are likely to be those that do not promote directly conflicting agendas or those that do not frame the issue under

discussion in very different terms from the current discussion (Betsill and Corell 2008, 41). Therefore, they expect a substantial eradication of contentious or transformative demands from the side of formal participation: actors that aim to participate in global decision-making processes are supposed to be going through an adaptation process. They have to moderate their attitude, behaviour, and demands (Martens 2005) and they must confront with formal rules (Ottaway 2001, 227). To get access, they have to act as experts; consequently, CSOs cannot be perceived as being too engaged or too vocal in their advocacy endeavours. Alternative and contentious arguments remain outside of the formal CSOs' interaction within decision-making processes. These expectations shape the way in which the content of CSOs formal engagement with global decision-making process is conceived (Betsill and Corell 2008; Hadden 2015). On one hand, there are the "NGO diplomats", supposed to be the ones exploiting formal participation mechanisms promoting cooperatively framed arguments, and providing expertise and information to policy makers. On the other hand, there are the "activists", supposed to protest on the streets, online or through the media to convey transformative and contentious arguments about the policies and ideas pursued by global decision-making processes. What are in fact two faces of the same phenomenon have been too often treated and analysed as two different phenomena.

While contentious and transformative arguments find no structural space in the theorization of CSOs' formal engagement with global decision-making processes within the transnational advocacy literature, they are largely debated and comparatively well theorized in research dealing with CSOs' engagement with international law decision-making processes. Literature exploring International Courts and more generally Transitional Justice mechanisms often stressed how international justice institutions have become arenas in which contrasting ideas of justice have been articulated and negotiated by a range of domestic and international actors. In the different contexts in which instruments of transitional justice are implemented, including prosecution by International Courts, the presence of such spaces of discussion enables CSOs to have an addressee for their opinions, fostering interest mobilization and creating *spaces of contention* (Rangelov and Teitel 2011). Such institutions have been even described as *discursive terrains* (Rajagopal 2003, 23) providing important spaces for different actors to negotiate and challenge the meanings and implications of international criminal law decision-making processes. In particular, the universality of international criminal law's principles and mechanisms has been challenged by CSOs, who started to exploit the participation mechanisms at their disposal to convey transformative or contentious demands on the topic. These demands are often rooted in the alleged oversimplification and unhelpful generalization pursued by ICs of what justice means for different people and societies in different conflicts and circumstances and the related poor ability to 'deliver' justice in a one-size-fits-all and top-down manner. The

presence of such a structural use of ICs' participation mechanisms as discursive terrains led many scholars to pay attention to the role of *communicative function* – in opposition to an expertise function – pursued by third parties within these institutions.

The opening up of ICs toward CSOs is therefore recognized to provide space both for an *expertise* and a *communicative* function of CSOs. As seen above, through the first, CSOs provide information or expertise with the aim of improving the quality of judicial outcomes. They can be information about cases from other tribunals, about national jurisprudence relevant for the case, or arguments as to the state of customary international law on the issue under investigation. Through the second, CSOs are expected to bring in the discussion public interest-oriented arguments, community interests, or to bring in point of view and demands that otherwise would remain outside of the proceeding discussion. Such a communicative function often is framed along the line of transformative or contentious messages with the aim of adding to the current debate alternative points of view, or to present their positions about the direction the decision-making process is taking.

As I have lengthily discussed, international criminal law has been accused to be a monolithic and hegemonic imposition of a conception of justice that is embedded in western society and history. What is promising about the picture emerging from the involvement phase of the ICC's decision-making process it is the presence of diverse civil society organizations, bringing in different backgrounds and voices. This diversification of actors and messages has the potential to make the institutional setting more porous to different interpretation of justice not only outside but also inside the same institution and its decision-making process. In these terms, the ICC could be seen as no longer neutral bodies that carry out collective sovereign wills, but an arena in which different actors can debate on the very formation of collective wills (Rajagopal 2003, 86).

This emerging diversified picture confirms the literature's expectations, certifying how ICC's formal participation mechanisms foster both expert and communicative functions for CSOs. However, the same literature is almost unanimous in arguing that it exists a hierarchy among those functions. While both types of advocacy framing are present, when is the Court's turn to select to whom it grants access, expert and communicative advocacy framing are not equivalent. As Williams et al. concluded, it is as experts rather than as advocates that the tribunals have most often considered CSOs' submissions to be able to assist their judicial determinations (Williams, Woolaver, and Palmer 2020, 195).

Therefore, CSOs are supposed to moderate the tone and content of demands - operating a shift from the 'traditional' image of activists engaged in contentious politics to a more neutral and diplomatic attitude – because of the belief that this attitude will be more effective in obtaining

access to the international courts' decision-making processes. Kjersti talks about this process of neutralization of CSOs voices and demands as largely present also at the ICC. CSOs participating in the ICC decision-making process are supposed to mute their moral cries and start behaving like diplomats. Formally dressed, using law as the *lingua franca*, attending receptions, and networking with other professionals – aspiring to *behave* like diplomats – is supposed to be part of the everyday lives of global justice advocates in The Hague (Kjersti 2017, 14). As a result, the communicative function is supposed to become marginal in the formal interaction between CSOs and ICC procedures (Williams, Woolaver, and Palmer 2020; Haddad 2018; Kjersti 2017). The picture delineated by this theorization, while recognizing the possibility for CSOs to engage with ICC decision-making process promoting transformative and contentious arguments, at the same time confines the presence of such messages in the involvement phase.

H₂: CSOs framing their requests in a contentious way are less likely to get to the access phase of the ICC's decision-making process.

Stage of Proceeding

Whereas CSOs are contributing to nearly all phases of the global decision-making process, significant variation in terms of factual and perceived opportunities by those actors persists according to the phase in which they aim to be vocal (Steffek and Kortendiek 2018; Tallberg, Dellmuth, and Agné 2018; Steffek 2013). The definition of different stages of the decision-making process evolved in the field of comparative politics, where it has become a standard tool for policy analysis. It distinguishes the phases of decision-making, standardizing the procedure through a certain degree of abstraction necessary to model the non-linear nature of the policy process. For the purpose of this research, I will only focus on the two stages of this process that are related to the formal participation mechanisms I am analysing: the formulation stage, and the implementation one. Steffek defined the formulation stage as the “core” one in decision-making processes (Steffek 2013, 1009), expecting decision makers to be eager to defend their deliberations from CSOs' influence. Transposed to the ICC's context, I expect the *amicus curiae* sent during the trial and appeal to be particularly scrutinized. Indeed, these stages directly concern the core competence of the judges – whose have to determine the individual criminal responsibility of the accused – and have a greater focus on evidence and factual submissions. On the contrary, judges are expected to be more prone to accept CSOs' submissions presented during novel or interlocutory stages such as the pre-trial stage (in particular when issues of state cooperation, jurisdiction and admissibility are included) and the reparation one (Woolaver and Williams 2006, 138–41).

It can be useful to remind how Amicus Curiae Briefs can be sent by CSOs at any moment during the investigation (pre-trial; trial; appeal; sentencing; reparation), enabling CSOs to voice their arguments across all stages of the ICC's decision-making process. Instead, the Art.75 Observations pertain and are limited to the reparation stage. Organizations can send requests under Art. 75 after the sentence was delivered, when the Court discusses how to provide reparations to the victims.

H₃: CSOs advocating at the reparation stage of the ICC's decision-making process are more likely to be selected by Court's Chambers and get to the access phase.

Therefore, building on the integrated logic of access as just described, I should expect CSOs' population at the access phase of ICC's decision-making process to remain diverse in terms of who get to be selected by Court's Chambers in comparison with the population analysed in the involvement phase. The selection process is expected to pay attention in granting access to a heterogeneous group of organizations as a result of the preference for mixed coalition formation. Hence, organizations coming from different geographical areas, pursuing local as well as international mandates and possessing different degrees of specialization are expected to be present at the access phase. What is expected to change moving from the involvement to the access phase of the ICC's decision-making process is a process of silencing of contentious and transformative voices. Chapter 3 introduces both an empirical investigation of the integrated logic of access as well as a comparison between the CSOs' population in the involvement and in the access phase to test whether Court's selection is responsible for the creation of biases in the directions presented.

1.5 Collecting Population Data: Common Strategies and their Pitfalls

Before moving on to the analysis, I want to discuss the consequences of the use of different data collection methods to map populations of CSOs participating in global decision-making processes. Going through the existing mapping efforts, I try to figure out which are the most commonly used data collection strategies and I discuss their capacity to grasp the phenomenon in which I am interested.

As I have already argued, one of the first constraining factors holding back the multiplication of mapping efforts in this arena regards the limited availability of systematic and comprehensive data. The presence of registers or official documentation reporting the list of CSOs' interventions in global decision-making processes is rare. Secondly, even when those lists are publicly available, collecting organizational information can result a tricky task to accomplish. This paragraph is

going to dig into this second challenge providing some guidance on which are the main traps to avoid when selecting among data collection strategies. I stress how consequential can be the choice of an approach which does not take into account the variety characterizing the population of actors advocating global decision-making processes.

I stress this point, because the choice to pursue limited data selection criteria in this setting can jeopardize the evaluation of the presence of biases in the CSOs' participation system, compromising the goal of the mapping effort. In particular, I argue that the most commonly used data collection strategies in the existing literature translates in the selective exclusion from the analysis of the weakest organizations, whose participation in global decision-making process ends up being systematically understated. If confirmed, such a trend is going not only to reproduce in the analyses that researchers conduct the biases already existing in the interest representation system, but also risks worsening them. Therefore, finding a proper data collection strategy is crucial to avoid the chance of excluding relevant segments of the population that the mapping efforts are interested in describing. Such potential exclusion becomes even more problematic when it systematically affects certain actors, compromising researchers' capability to investigate objectively population's diversity. The goal of measuring to what extent global decision-making processes are more or less able to attract and engage not only with the usual suspects, but also with actors supposedly at the margin of the interest system, is threaten by inappropriate data collection strategies.

In this section, I try to list some of the challenges researchers face when conducting population analysis of global decision-making processes. First, it is hardly impossible to define the boundaries of the population of actors across the globe who are potentially interested in engaging in a certain decision-making process. Who are those affected or willing to be vocal at a UN climate change conference? Global issues are potentially of interest for a multitude of actors, whose boundaries are unclear. A common strategy to overcome this limitation is to recur to existing datasets such as the Yearbook of International Organizations (Union of International Associations 2019) in which CSOs list their interests in different international organizations. Using this dataset as a proxy, researchers expect that actors interested in advocating different global decision-making processes are likely to be registered in the Yearbook, which becomes a key source for retrieving organizational characteristics useful to reconstruct the population of interest.

There are some structural limitations in using such instrument to carry out population analysis of global decision-making processes, which can lead to erroneous conclusions. First, the inclusion of CSOs in the Yearbook is voluntary. It depends on organizational awareness that this dataset exists, and on organizational interest in being inserted in its. Second, the focus of the YIO lies in collecting information on 'transnational or global organizations', neglecting the role played

by national organizations that advocate global decision-making processes. On the contrary, as the existing literature has convincingly shown and as I am going to confirm in the next chapter, national organizations represent a substantive part of the population advocating the Court over time, making their inclusion fundamental to reach any tentative population analysis in this context. Existing empirical analyses (Hanegraaff, Beyers, and Braun 2012), and this same dissertation go in the same direction, showing how global decision-making processes are far from being exclusive domains of transnational actors. Local and national-based organizations constitute a substantial proportion of the participation systems of global decision-making processes. Therefore, the methods used to study population at this level of advocacy should be able to grasp and analyse this part of the phenomenon.

Moving beyond Yearbook of International Organizations, the other most commonly used data source for collecting organizational information is represented by CSOs' website. Researchers often rely on the information publicly available on the organizational websites to retrieve organizational characteristics. In choosing such an approach, particular attention has to be devoted to the fact that in context such as global decision-making processes it is reasonable to expect that substantial technological and resource divides are present across actors. A concrete example from this study can help clarify the entity of the selection bias I am talking about. In collecting data for this study, I immediately faced the limits imposed by differentiated access to resources and technological facilities by the subjects of my study. Indeed, as soon as I started collecting data, it became immediately evident the disparity of information available between international, resourceful organizations and small local ones. While all organizations in the population actually managed to engage with the ICC's formal participation mechanisms, among them striking differences are present and have to be taken into account. Many organizations within the population do not have a website. Some only have a Facebook page, others only a publicly available telephone number. Such existing divides create evident problems when, to retrieve organizational information, I tried to rely on the information provided by organizations' websites, searching there for organizational characteristics and information on their advocacy work. Using the data collection from this dissertation as an example and as I am going to show in detail in the next chapter, if I retrieve organizational characteristics using only the YIO and CSOs' website, I capture only a limited fraction of the population of actors who engaged with the ICC over time. Building on this example, it becomes clear how the use of limited data sources adds to the thresholds organizations have to face if they want to advocate this arena a further artificial layer of exclusion. Throughout this dissertation, I argue that without a critical approach to data collection methods, mapping efforts end up creating themselves further biases in interest representation system. In conducting this research, I recognize these difficulties and limitations

and make a concrete attempt to overcome them. In the next chapter, I present a multilayered data collection strategy, which engages with the presented difficulties and avoids reinforcing the existing biases in interest representation.

1.6 Conclusions

This chapter has outlined the theoretical framework of this dissertation. First, I introduced why it is relevant to conduct mapping efforts of global decision-making processes and do so in a way that does not reinforce already existing biases. Assessing the capacity of global decision-making processes to reflect through their participation system the complexity of positions and types of actors potentially affected by their decision is at the core of many research efforts. Population analyses at this level should be adequate to grasp this complexity and overcome the practical data collection hurdles characterizing this arena. The multilayered data collection strategy presented in this dissertation aims to fully recognize these challenges and to identify a strategy that leaves no groups behind.

Second, I introduced how the literature discussed about the composition of CSOs' population participating in global decision-making processes. For what concerns the kind of CSOs that are expected to exploit the participation mechanisms, three factors have been identified as responsible of the lack of diversity in the population: geography, knowledge, and resources. Whether these factors are responsible for the presence of biases in the ICC's decision-making process is going to be tested in the next chapter.

Third, moving from the involvement to the access phase of the ICC's decision-making process, I introduced the logic and causal mechanisms determining which among all the organizations mobilizing in the involvement phase are granted access and get to be taken into account in Court's deliberation. In particular, I argued that an integrated logic is expected to drive ICC's behaviour in selecting which CSOs get access to its decision-making process. Building on this logic, the Court is expected to balance two competing needs in operating this choice: the necessity to collect relevant information through the participation mechanisms and the need to re-legitimize its deliberation through the same channels.

2. CSOs' Participation to ICC's Procedures over Time: Constructing a Novel Dataset

In the last decade a productive cross fertilization between transnational advocacy and interest groups literature led to an increasing number of studies trying to map populations of actors in (or across) different global decision-making processes. However, despite this trend, systematic mapping efforts at this level continue to be scarce compared to the explosion of participation opportunities in the global decision-making processes' arena. The demand for further empirical investigations is driven by questions about the capacity of this increasingly open level of advocacy to promote actual diversified participation systems. Once the opportunities are in place, who are the actors that manage to exploit them? Who ended up sitting at the table and having her voice heard in the decision-making processes? The question of diversity becomes of high relevance when discussing global decision-making processes. As Uhre recalls, if those institutions have to be truly global, it is important that they engage with a broader spectrum of civil society (Uhre 2014, 67). Answering these questions is crucial to provide a more fine-grained understanding of the nature of CSOs' participation in global decision-making processes and is consequential for an informed judgement about the empirical effect of decades of opening up on the inclusiveness of global decision-making processes.

As I discussed in the theoretical chapter, existing studies modelling CSOs' participation in different global decision-making processes gave a rather pessimistic answer to these crucial questions. Despite the presence of favourable participation mechanisms, the population of CSOs who managed to actually exploit these opportunities emerge to be constituted by a homogeneous set of actors, characterized by a rather similar geographical origin, level of human and material resources. This trend is expected to be fostered by the high threshold in terms of organizational capacities a CSO has to satisfy in order to even be able to engage at this level of advocacy. Indeed, advocating the global arena is depicted as a highly demanding and costly enterprise that only some organizations are capable to pursue.

This dissertation aims to contribute to this debate, responding to the demand for empirical data in this domain. To do so, I broaden the spectrum of mapping efforts conducted at this level of advocacy through a systematic empirical investigation of the population of civil society organizations that engaged with a global decision-making process: the International Criminal Court one⁷. Did the generous formal participation mechanisms for CSOs translate into a diverse CSOs' participation system within ICC's procedures? Or, as expected by the literature, the

⁷ For an exhaustive understanding of the case selection logic, please go back to the dedicated section in chapter 1.

constraining factors limiting CSOs' possibilities to engage at this level reproduced a participation system biased along the lines of geography, knowledge, and resources? And eventually, does the nature of CSO's population change across different phases of ICC's decision-making process as a product of decision-makers selection strategies? Or representation biases are there irrespectively? To answer these questions, I reconstruct and analyse the universe of civil society organizations' formal interactions with the ICC over time and across different phases of its decision-making process.

The mapping effort and the related analyses is based on a novel dataset developed by the author. This chapter delves into the construction of this dataset, explaining its design and data collection strategy, before discussing the resulting population of CSOs who engaged with the Court over time. The construction and analysis of the original dataset will result in a comprehensive picture of the CSOs' formal interactions with the Court in the first twenty years of its existence, enabling me to empirically inform the discussion about the supposed promotion of a limited participation system by the Court. What emerges from this explorative descriptive analysis built on the novel data collection conducted by the author is a diversified population of CSOs, characterized by different organizational endeavour, expertise and mandates. No systematic underrepresentation pattern has been detected, attesting how a variegated set of organizations have been able to overcome the hurdles and managed to advocate the Court's proceedings.

Furthermore, the creation of a novel systematic dataset on the participation of CSOs in ICC's procedures allows the author to put emphasis on how such data are collected. I stress the potential impact of the some of the most used data collection strategies on the composition of the resulting population. As this empirical analysis is going to show, the enormous differences existing within the category of civil society organizations proves to be a serious challenge for the achievement of an exhaustive data collection. Indeed, there is the concrete risk of systematically overlooking the weakest part of CSOs' population, which information are harder to retrieve through the commonly used methodologies. Throughout this chapter, I engage with these challenges and outline how I intend to overcome them using a multilayered data collection strategy. Since my objective is to analyse the diversity of the CSO's population in the arena of interest, it is crucial not to leave out parts of the population only because they are off the data collection grid. The descriptive analysis below proves how consequential is the choice of a comprehensive data collection strategy on the resulting population analysis.

The chapter is structured in four sections. First, I introduce the novel dataset developed by the author, clarifying the definitional choices drawing the boundaries of the object of the analysis. Second, I discuss the chosen data collection strategy and explore its consequences. Then, I enlist

and discuss the variables of interest included in the dataset and their operationalization. Eventually, I analyse the population of CSOs who decided to formally interact with the Court over time resulting from the presented data collection. In particular, I discuss the nature of the resulting CSOs' population who engaged with the Court at the first phase of its decision-making process, the involvement one.

2.1 The Dataset Design

The construction of the original dataset revolves around five pillars.

First, the scope of the mapping analysis is limited to one of the different subjects who have advocated the Court over time: the civil society organizations. In fact, the original dataset developed for this dissertation aims to map the universe of *civil society organizations' formal interactions with the International Criminal Court across phases of its decision-making process*. Some definitional clarifications are needed to set the perimeter of this mapping effort. The next paragraphs are going to draw the boundaries of the subject of this data collection, clarifying the motivations behind this choice. To do so, I unpack the various components of the object of this analysis, starting with defining the boundaries of what in the dataset has been conceived as part of the *civil society organizations* category.

The dataset collects information on *organizations*, meaning that only members or affiliates-based actors are included in the sample, excluding individuals, firms, and multinational corporations. In fact, a valid study of the presence of individuals in the ICC's decision-making process would require a substantially different data collection approach distant from the interest of the current study, which is based on organizational characteristics. For what concerns firms and multinational corporations, who are getting increasing attention in population studies, they are substantially absent from ICC's decision-making process. While numerous CSOs are currently advocating for corporations' accountability to be included in ICC's jurisdiction, no investigations have reached so far the trial stage, making them irrelevant so far for the object of this analysis⁸.

I included in the dataset only organizations coming from the civil society, meaning they do *not attain political offices*, excluding institutions, parties, or governmental departments. It can be worth noticing how CSOs resulted as the most active category of actors within the ICC decision-making process over time, outnumbering the interventions by States, International

⁸ Among the most recent publications on the issue, see Pietropaoli 2020; Payne, Pereira, and Bernal-Bermúdez 2020. For an analysis of the implications for business accountability at the ICC of the Policy Paper released in 2016 by the Office of the Prosecutor on Case Selection and Prioritization, see Bernaz 2017.

Organizations, or Agencies as well as Individuals. Civil society organizations substantial presence in this arena allows conducting a meaningful analysis searching for the presence of biases within CSOs' population.

The dataset includes all the civil society organizations that respond to the broad definition just presented. No normative criteria have been used in this definitional stage. In particular, civil society organizations have been included independently from their organizational mandate or their aims. The inclusion/exclusion of national based organizations from the analysis of transnational advocacy phenomena has been debated for a long time in the literature. In this regard, I share the concerns advanced by many authors about the risk of excluding a category of actors that has been proven central and largely present in the global arena (Beyers and Hanegraaff 2015; Hanegraaff, Beyers, and Braun 2012, 4). Consequently, in the construction of the dataset for this analysis, I included civil society organizations pursuing international, regional, and local mandates. The same applies for different aims pursued by the CSOs: both organizations pursuing general and particular interests are included in the population. These choices are grounded on the belief that characteristics such as mandate and the organizational aims are variables to be investigated rather than criteria of inclusion or exclusion from the population of interest.

Second, among the CSOs that interacted with the ICC over time, only those who have advocated the Court using the formal participation mechanisms at their disposal were selected and inserted into the dataset. To understand the *formal interactions* with the ICC over time, I am interested in including in the dataset all organizations that actually made it to the table, succeeding in being present in the decision-making process. Therefore, I will reconstruct the population of CSOs who engaged with the ICC using a *top-down mapping approach* (Beyers and Hanegraaff 2015; Lowery, Gray, and Monogan 2008)⁹. This mapping strategy implies that I start by identifying the political venues I am interested in, then I include in the population all organizations that materialize their potential to become active in such a venue across a specific time-span (in this analysis: 2002-2020). The outcome of this selection includes all those civil society organizations that actually showed interest in seeking influence in the ICC's decision-making process, sending a request to the Court at least once through the two participation mechanisms under analysis: the Amicus Curiae Briefs or the Art. 75 Observations¹⁰.

It is significant to note how throughout the ICC's activities, CSOs can exploit different channels to express their views and be vocal about the Court's deliberations. Aside from the Amicus Curiae

⁹ An encompassing definition of the top-down approach to population analysis and its consequences has been presented in Chapter 1, p. 15.

¹⁰ Chapter 1, p.18-20

Briefs under Rule 103 of Rules of Procedures and Evidences and the Observations pursuant to Article 75 of the Rome Statute, CSOs have other venues at their disposal to try to advocate the Court. For example, they can participate in the annual ICC-CSOs roundtable; they can try to influence national delegates participating in the Assembly of State Parties; or they can send an Article 15 communication to put pressure on the Court to start an investigation. However, while these mentioned venues allow CSOs' intervention, they are limited to the agenda-setting phase of the ICC's deliberation, and the publicly available data do not allow evaluating whether these interactions have been considered by the Court. In contrast, the chosen participation mechanisms allow organizational views to be heard and potentially influence the Court's deliberation on the situation under investigation during trials. The selected venues are the only ones for which there are comprehensive and accessible data on CSOs' participation. The transparency characterizing these mechanisms allows clearly to distinguish two phases, making possible not only to analyse the capacity of CSOs to advocate the Court in the involvement phase, but also to disclose which among the CSOs' requests were actually taken into account by the Court. These characteristics make them fit the purpose of this study: to disclose the nature of the participation of CSOs in the ICC's procedures, while looking for the presence of biases within and across phases of its decision-making process.

Third, for what concern the temporal scope of the dataset, it covers an extended period starting from the institution of the International Criminal Court in 2002 to March 2020, providing systematic longitudinal data on participation. In this regard, it represents an ambitious project that can help shedding lights on the evolution of CSOs' participation in the ICC's decision-making process in the first 20 years of its existence. Because no requests have been sent to the attention of the Court before 7 September 2006, the resulting observations are distributed across fourteen years.

It is relevant to highlight how no institutional changes have interested the participation mechanisms under analysis in the selected time span. While this proposition holds true for what concerns institutional norms, the Court's practices were not still throughout the period. As I will show in the section of this chapter dedicated to the descriptive analysis of the CSO's population in the involvement phase, the Court recently changed the way it conceived and used these participation mechanisms over time, with potentially consequential effects on the participation of CSOs in its decision-making process. Nevertheless, the institutional norms regulating CSOs' participation remained the same, allowing the author to treat them as a constant across the period interested by this analysis.

Fourth, the chosen unity of analysis for the construction of the original dataset is the civil society organization by request. Consequently, if a request is promoted by multiple organizations,

each organization will be counted as one observation. I did not opt for the request as the unit of analysis because I aim to map the diversity (or its absence) within the population of actors who participated in the decision-making process of the ICC. As such, I am interested in unpacking those requests sent by coalitions of actors to investigate which organizations mobilized over time through the participation mechanisms provided by the Court, looking at the characteristics of each actor involved. Accordingly, out of a total of 106 Amicus Curiae and Art.75 Observations sent by civil society organizations to the ICC over time, I ended up with a dataset containing 186 observations. For each observation, I collect data both on the request, and on the organization promoting it. The next paragraph is going to provide detailed description of the selected variables and their operationalization.

The last pillar driving the construction of the dataset regards its data collection strategy. The core idea is to promote an inclusive mapping and minimize the risk of reinforcing biases by using limited data collection strategies. To do so, it is crucial to recognize the huge diversity characterizing the population of CSOs potentially interested in advocating the Court, embrace such diversity, and consequently shape the data collection strategy in a way that can reflect it. The multilayered data collection strategy that I am going to introduce in the next paragraph is meant to reinforce this principle, pursuing all the efforts needed to make the dataset a faithful transposition of the universe of actors who advocated the Court over time, avoiding phenomena of exclusion.

A Multilayered Data Collection Strategy

Conducting population analyses at the global level can be a challenge: the frequent unavailability of publicly accessible data on CSOs' participation, and even in the case such data are present, the uncertainty about the completeness of the information have been presented in the literature as serious impediments to the task. The widely recognized difficulty in collecting viable data at this level makes the exceptionality of the ICC in this regard a remarkable opportunity. The outmost transparent participation system provided by the ICC, indeed, gives researchers the rare opportunity to work with the universe of actors engaging with the Court through certain participation mechanisms. In fact, each request - which is not classified as confidential¹¹ - sent to the Court through the instruments of the Amicus Curiae Brief and the

¹¹ Only 7 observations out of 186 were classified as confidential at the time of the analysis. Some requests originally classified as confidential have been reclassified as public over the years. For what concerns the requests still classified as confidential, the archive shows only the date of the request, the name of the promoting organization/organizations and whether the request have been granted access or not. For these requests, I have no access to the text of the request.

Art.75 Observation is publicly available and accessible through the open online archive of the Court: the 'Legal Tools'¹². The existence of such an official instrument allows me to conduct an archival analysis that resulted in the collection of the requests sent to the ICC using such participation mechanisms over time. Building on this data, I selected those requests in the list that have been sent by civil society organizations in line with the definition I presented above.

Once I extracted the list of civil society organizations' formal interactions with the ICC's decision-making process, I need to collect information about those organizations in the population. Data on organizational characteristics are far from being easily retrievable. This claim stands true for population analyses across advocacy levels but becomes particularly tricky when we have to deal with populations including not only organizations having different degrees of resources but also having structurally different access to technological facilities and information. The concrete risk in mapping populations having such characteristics is to systematically neglect the weakest part of the population, which I try to grasp. As I am going to explore further in the analysis below, the most used data selection approaches in studying the advocacy population in global decision-making processes faced this problem.

In building the dataset for this research, I devoted great attention in identifying a data collection strategy able to incorporate the extreme differences existing in the population under analysis, finding adequate solutions to limit the risk of reproducing biases. To reach this goal, I apply a multilayered approach, substantiating in a four-step data collection process. First, I resorted to the existing databases such as the Yearbook of International Organizations to search for organizational information. Second, in case the organization does not have a record in the cited database or does not contain enough information, I consulted the CSOs' website. Those two steps usually constitute the data collection strategies of most of the mapping efforts in the literature. What emerged in the case under analysis is that this approach was not nearly enough to capture the complexity of the population.

As the descriptive analysis below is going to show, most of the organizations in the population are not registered in the YIO, and many of them have no website from which I can retrieve organizational characteristics (meaning they have no website at all, or it does not contain needed information). Consequently, if I limit my data collection to these two steps, I ended up excluding

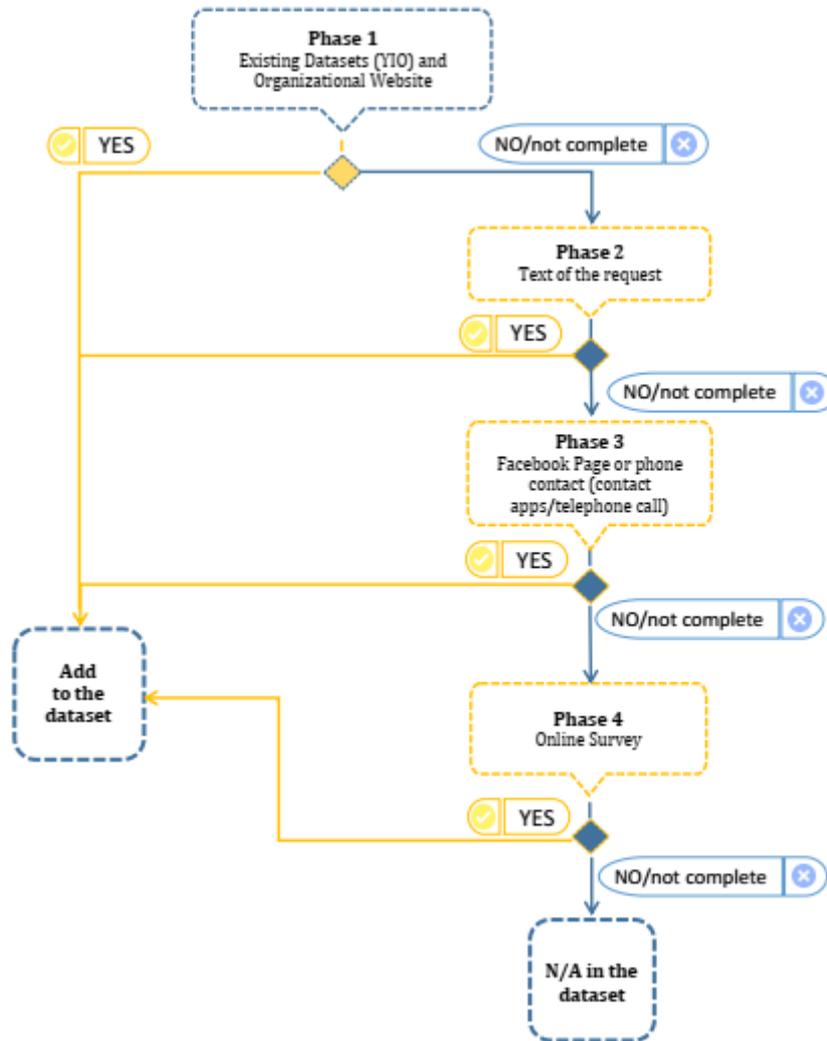
¹² See: <https://www.legal-tools.org/>. As stated in the presentation of the project: "The Legal Tools are the leading information services on international criminal law. They equip users with legal information, digests and an application to work more effectively with core international crimes cases (involving war crimes, crimes against humanity, genocide or aggression). By being freely available in the public commons, the Tools equalize access to international criminal law information, thus empowering practitioners and levelling preconditions for criminal justice in both richer and materially less resourceful countries. The Legal Tools are a significant contribution to national capacity development in criminal justice for core international crimes".

from the analysis a substantial part of the population: numerically speaking, out of 186 observations contained in the dataset, only 130 result having an organizational website. Then, the observations dramatically drop to 63 in case I only take into consideration organizations present in the YIO database. The latter result is not surprising. As discussed in the theoretical chapter, the YIO is developed focusing on transnational actors while neglecting the role of national organizations, which on the contrary revealed to be a substantial component of the CSOs who engaged with the ICC over time. Moving to the former result concerning the limited presence of organizational websites in the population, the lack of resources and the technological divide are the natural suspects in explaining this trend.

Rather than seeing these results as a setback in the data collection process, I suggest dedicating more attention to the presence of such divides among the actors in the population. For instance, the technological divide is a more complex phenomenon than we are used to think. Having no website does not necessarily mean that organizations have no access to technological facilities from which researchers can retrieve organizational characteristics. While many organizations have no website - that implies costs for the domain and specific competences in building and adorning it - most of the organizations have a Facebook page and almost all of them have a public telephone number that can be connected to applications such as WhatsApp or Telegram through which researchers can enter in contact with the organization. Putting again at the forefront the goal of an inclusive data collection strategy, as researchers, we need to problematize the use of website as reference point, while exploiting the numerous alternatives at disposal to retrieve organizational characteristics. To move forward with the data collection, I exploited those different platforms.

Such a further step in many cases enabled me to establish a contact with organizations in the population about which I have no other information and to invite them to participate in the research project. In order to make the most out of these other platforms, I needed to retrieve at least a telephone number or the name of prominent members of the organizations in the population. To do so, I took advantage of the transparency of the Court's procedures to look for organizational information within the text of the requests they sent to participate in the ICC's decision-making process. Indeed, it is rather common for organizations to use the requests to introduce themselves, providing the Court with basic organizational information. Such sources revealed to be extremely useful not only for retrieving contacts of the organizations, but also more general information about their scope and goals.

Figure 2.1 Data Collection Strategy



Only through these further steps was it possible to retrieve information about all the organizations present in the population. In the case the information retrieved were still not sufficient for the scope of the research, I invited those organizations to take part in an online survey. I distributed the survey in English and French, which are the two official languages of the ICC that organizations can use in their communication with the Court. The choice to use such a multilayered approach was rewarded by the capacity to bring in the analysis actors that would have been neglected by the usual data collection strategies and therefore excluded from the analysis. In this regard, it is remarkable to notice the responsiveness of the organizations that were asked to complete the online survey to obtain otherwise inaccessible organizational information. Researchers who conducted online surveys in analogous population analyses tend to highlight a higher response rate from those organizations that have enough resources and staff enabling them to dedicate time to such effort. Therefore, resource bias has been often assumed in the analysis of the survey results. Using the online survey instrument as a last resort tool in

case I was not able to retrieve organizational information through the other steps, I avoid reproducing this distortion. It follows that I ask to participate in the online survey only those organizations that usually remain outside the radar of population analyses. Organizations contacted, despite sometimes being reported to have limited staff, were prone to participate because they were rarely asked about their advocacy work and were willing to share their efforts. This result represents an important achievement by itself because without this effort I would not be able to collect any information about those organizations, forcing me to exclude them from the analysis.

The just presented multilayered approach to data collection, putting at the forefront the willingness of being as much inclusive as possible, entails a particularly time consuming process. Still, the effort seems critical for the goal of this study. It allows searching for the presence of biases in the CSOs' population at this level of advocacy, while it avoids reproducing or strengthening biases and inequalities already in place.

Before moving to the operationalization of the variables, I deem useful to spend a few words about two further difficulties that emerged during the data collection. In particular, I faced them when I reached the last phases of the data collection strategy that involves direct contact with the organizations. I believe they are worth being discussed for their general relevance and for their potential contribution to the improvement of data collection strategies: the language issue and the data protection one.

Dealing with an institution global in its scope, such as the ICC, entails a great diversification not only in organizational resources and expertise, but also in the preferred languages of the CSOs involved in the process. The necessity to deal with this further layer of complexity resonate with the ongoing debate on the role of translation in international law theory and practice (Koomen 2014; Namakula 2014). While this study is not going to delve into this specific issue, I had to confront with the role of language both during the quantitative data collection as well as during the interviews for the qualitative case study. For instance, a couple of organizations I asked to fill out the online survey demanded the translation of the questionnaire in a different language that they feel more comfortable with (in this case, Farsi). The reason given is that they do not want to misinterpret the meaning of the questions. Such answer cannot be reduced to a limited knowledge of ICC's official languages (English and French) – indeed, the preliminary communications between me and the organizations as well as the official contact with the Court were held in those languages. Points that are more substantial can be lost in translation. The multiplicity of cultural understanding and attitudes that are corollary to linguistic diversity often goes overlooked. To make an example, a pivotal concept in the field of the analysis such as *justice* is not at all universal in its meaning. People's cultural context inevitably influence its

understanding of justice and consequently, its preferred methods to achieve what is perceived to be the aims of justice (Oyugi and Owiso 2020, 249). As De Hoon noted:

«In the legalist international criminal justice discourse, ‘justice’ is often assumed to be an objective notion: a determinable and universal ideal that can be ‘done’ and even ‘delivered’, in particular, through a criminal trial. An understanding of ‘justice’ as an objective notion suggests that justice means the same thing for different people and societies. However, social psychological research as well as research in communities that are affected by mass atrocities shows that justice is inherently subjective, and that social psychological and cultural differences as well as diverse historical, political and social contexts prevail regarding what is considered justice, for whom, by whom, how to choose one interpretation of justice over another, and whose justice is taken into consideration at the cost of another’s»¹³.

When, as researcher, I talk with organizations coming from different cultural and linguistic background, the challenge becomes making sure to create a common understanding, avoiding inferring universal value to a subjective understanding of the pivotal concepts of this study. Close questions such as the ones employed in an online survey emerged to be poorly suited for capturing such nuances and avoiding potential misinterpretations. Recognizing this shortcoming and my linguistic limitation, I was not able to overcome such hurdles for the quantitative data collection. Therefore, the organizations ended up replying only those questions they feel comfortable with. Nevertheless, I was better capable of dealing with this complexity while I conducted qualitative interviews for the case study, during which it was possible to set a common ground with the interviewees and clarify whenever needed any mismatch with the concepts utilized in the conversation.

For what concerns the data protection issue, it is in part related to the peculiar composition of the CSOs’ representation system at the ICC, which includes associations or groups that are particularly vulnerable due to their exposure to retaliations for their activism. To be able to reach those vulnerable organizations, researchers have to pay special attention not only in how to collect data, but also in how to store and protect them. Assuring the use of a safe University-owned server, as well as providing participants with a clear GDPR compliance statement, helped overcome most of the advanced requests. Still, in one case, a coalition of Afghan organizations was recommended by their legal representative not to reply to the survey I submitted for security concerns. These examples unveil how there are hurdles that cannot be completely overcome,

¹³ De Hoon 2017, 595–96. See also Kamari Maxine Clarke (2009), *Fictions of Justice. The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa*, Cambridge University Press, New York. Sarah Nouwen and Wouter Werner (2010), *Doing Justice to the Political: The International Criminal Court in Uganda and Sudan*, 21 *European Journal of International Law*, p.941–965. John Rawls (1991), *Justice as Fairness: Political Not Metaphysical*, 14 *Philosophy & Public Affairs*, p.223–251.

even with an attentive approach to data collection. Being aware and problematize these aspects should be at the base of each attempt to map such diversified populations of actors.

Operationalization of the Variables

Once I have defined the design of the dataset and its related data collection strategy, I am going to introduce the variables contained there. The quantitative analysis part of this dissertation aims to achieve two goals: 1) map the CSOs' participation in the ICC's procedure over time, searching for the presence of biases within and across phases of its decision-making process; 2) understand the logic behind the Court's selection leading to CSOs' access to its decision-making process. Following this scheme and building on the theoretical framework presented in the previous chapter, the dataset is going to include two sets of variables.

Both transnational advocacy and international courts and tribunals' literatures agree with the relevance of organizational characteristics to unveil the presence of systematic biases in the population under analysis. Therefore, the first set of variables included in the dataset aims to operationalize the three broad features identified by the literature – geography, knowledge, resources – in measurable variables.

The second set, instead, is functional to understand what drives access to ICC's procedures. Following the integrated access logic advanced by the author, it is not sufficient to know who request access, what matter is how the request was presented. To grasp and test this logic, I operationalize the causal mechanisms identified in the theoretical framework: advocacy framing, coalition formation, and stage of proceeding.

Starting from the organizational characteristics, I opt for unpacking the geography element in two different variables. The **Mandate** one intends to grasp the geographical scope of the advocacy work of each CSOs, accounting for the wideness of the area interested in organizational activities and advocacy. Accordingly, it can assume three values: *Local*, if the organization focuses its work only on the national or subnational level; *Regional*, in case the organizational work concentrates on a specific set of countries located in the same geographical region; *International*, when the organization operates simultaneously on different continents and regions. Instead, through the **Headquarter** variable I aim to collect information about the location of the headquarter of the organization. This further specification is important to capture where the organization is based and consequently to know the environment in which it operates as well as the founding and support opportunities that come with the residence in a country instead of another. It is common for large CSOs to have more than one headquarters. For instance, an organization present in the

dataset such as FIDH (International Federation for Human Rights) has multiple headquarters around the globe and can advocate the Court both as FIDH well as one of its national bases, FIDH Mali. In such cases, I insert the main headquarter in the dataset, unless otherwise explicitly indicated in the request sent to the Court.

Table 2.1 Operationalization of the Variables

Variable	Description
<i>Organizational Characteristics</i>	
Mandate	<i>The scope of the organizational work is:</i>
Local	National or subnational
Regional	Set of country in the same region
International	Different continents and regions
Headquarter	<i>Location of the main headquarter:</i>
North America	
South America	
Europe	
Africa	
Middle East	
Asia	
Oceania	
Level of Expertise	<i>Additive index. Organization having n° of the following features:</i>
No Features	
One Feature	- in-house legal expert
Two Features	- ICC dedicated staff member
All Features	- Personnel located in the Hague
Repeated Players	<i>N° of previous formal interactions with the ICC through the participation mechanisms under analysis</i>
0-12	
Resources	<i>Amount of organizational annual budget:</i>
Low	0 to 50.000 \$
Medium	50.000 – 1 million \$
High	Above 1 million \$
<i>Requests Characteristics</i>	
Advocacy Framing	<i>Unsupervised scaling of the text of CSOs' requests along their degree of cooperativeness – contentiousness using QTA tools</i>
Coalition Type	<i>Composition of the coalition</i>
No Coalition	Negative case
Local Coalition	Only CSOs pursuing local/regional mandate
Mixed Coalition	CSOs pursuing both local/regional and international mandate
International Coalition	Only CSOs pursuing international mandate
Stage of Proceeding	<i>Whether request has been sent at the pre-trial/trial stage (0) or at the reparation stage (1) of proceeding</i>
0-1	

To grasp the complexity of the knowledge element, I deem useful to distinguish between a static description of the expertise at disposal of the organization and a more dynamic

representation of the experience accumulated by the organization at the moment of the request. This distinction is operationalized through two variables. The first, called **Level of Expertise**, is composed of an index aimed at detecting the presence (or absence) of specific competences within the organizational structure of each CSO. I selected three features that are supposed to foster organizations' capacity to advocate the ICC. CSOs willing to advocate the Court are indeed expected to be familiar with the international law's vocabulary and procedures in general. Secondly, they are expected to be aware and understand the ICC's procedures and how its CSOs' participation mechanisms work. Eventually, they should be able to closely follow the evolution of the trial across the various stages and years of the proceedings. Those high thresholds just listed are supposed to discourage a wide participation while favouring the presence of specialized organizations in this arena. Accordingly, I operationalize the *Level of Expertise* variable looking at whether organizations have 1) *at least an in-house legal expert included in their permanent staff*; 2) *staff members devoted to follow and advocate the International Criminal Court*; 3) *personnel located in The Hague*. The result is a cumulative index ranging from 1 (No Features) to 4 (All Features), accounting for the presences of the selected features in each organization. While the *Level of Expertise* is expected to remain relatively stable over time, organizations can cumulate experience through reiterated interactions with the arena they aim to advocate. In particular, through the **Repeated Player** variable, I want to grab the experience cumulated by the organization at the moment of the requests. To do so, I control if the organization is pursuing a first-time interaction - no other requests have been sent to the ICC beforehand by the promoting CSO. Otherwise, I count the number of previous interactions the organization has had with the Court through the mechanisms under analysis until the moment of the request.

The last element regards the material resources that the organization has at its disposal. Consequently, I operationalized the **Resources** variable as the annual budget at disposal of the civil society organizations in the dataset. The annual budget has been largely used in previous mapping effort and proved to be a useful proxy to measure the material endeavour of the organizations in the population under analysis. However, while organizations are prone to sponsor their qualifications, to show how extended are their activities and to promote their goals both in their website and in the Court's requests, the same cannot be said for what concerns their financial endeavours. Only a residual part of the population under analysis publishes its financial statement yearly, some provide general accounts of their budget, others not even mention it. Due to this lack of transparency, I ended up having non-homogeneous data concerning this organizational characteristic. Hence, I had to decide whether to keep narrower categories, entailing a significant increase in missing data or to opt for wider ones, meaning less distinctness between the categories. I choose the latter options and accordingly I classify as *Low* the CSOs'

budgets ranging from 0 to 50.000 dollars; as *Medium* the budgets from 50.000 to 1 million dollars; and as *High* the budgets above 1 million dollars.

The second set of variables departs from the organizational characteristics to focus on how the formal interaction with the Court happened, singling out three main features.

The first element, the ***Advocacy Framing*** variable, looks at the content of the requests sent by CSOs to the Court assessing the degree of cooperativeness and contentiousness present in the language used by the organizations. To do so, I analyse the text of each request sent by CSOs to the ICC over time using quantitative text analysis tools¹⁴. In particular, I employ a dictionary-based approach combined with sentiment analysis tools to scale the requests on the base of the latent variable I am interested in: the degree of cooperativeness - contentiousness of the arguments presented by the CSOs in their written requests to the Court. Such a technique implies the manual construction by the researcher of a dictionary through which different values and weights are assigned to words. The dictionary is then used to inform the sentiment analysis and assess how a document is positioned across the variable of interest.

I built the *Advocacy Framing* variable as a one-dimensional quantity expressed using a relatively language-specific and fixed set of lexical resources: the requests sent to the Court by CSOs. I measure it by applying a manually constructed dictionary of cooperative and contentious words and terms (ranging from -3 to +3) to the texts of the requests sent by CSOs using the *sentimentr* package.

To build the tailored dictionary, I used as a reference point the Lexicon Sentiment Dictionary¹⁵ to start developing an ad-hoc list of relevant words. Previous analyses conducted in the social science field have stressed the need for custom-made dictionaries (Soroka, Young, and Balmas 2015; Grimmer and Stewart 2013; L. Young and Soroka 2012; Loughran and McDonald 2011), highlighting how this customization step is crucial to make the analysis accurate. Indeed, there is the need to identify and remove frequent words that are specific to the domain of interest and that usually do not have positive or negative connotations in the context under analysis. Just to provide some examples, terms such as accuse, litigate, dispute, abuse, violate, etc. are widely utilized in international criminal law investigations and do not carry in this specific context a meaning that shifts a sentence toward being more contentious. On the other side of the variable of interest, terms such as “desirable, proper, appropriate” can be valued as cooperative words.

¹⁴ For further specifications about the technique utilized in this analysis, look at Appendix 2.

¹⁵ To better understand how the lexicon dictionary has been conceived and construct as well as exploring the various research projects in which it has been employed see <https://rdr.io/cran/lexicon/>

However, those exact words are contained in the Rule 103 of the Rules of Procedures and Evidences describing the Amicus Curiae Briefs, stating that:

“At any stage of the proceedings, a Chamber may, if it considers it *desirable* for the *proper* determination of the case, invite or grant leave to a State, organisation or person to submit, in writing or orally, any observation on any issue that the Chamber deems *appropriate*”.

Consequently, these words are going to be frequent across the corpus of text I am analysing without carrying a cooperative meaning. Then, the same careful selection has to be conducted to deal with domain-specific sentiment words. Indeed, often there are words in the domain area that are used to refer to positive or negative aspects or features.

The resulting dictionary is then used by the *sentimentr* package as a reference to build the sentiment analysis. I chose this particular package since it allows my analysis to integrate the tailored dictionary-based approach with a sentiment analysis tool able to account and weight for *valence shifters*. With valence shifter, I intend negators, amplifiers, and deamplifiers, which respectively reverse, increase, and decrease the impact of a polarized word. In the presence of *valence shifters*, the entire sentiment of the text I am analysing may be reversed or overruled, resulting in an incorrect evaluation of the dictionary if they are not taken into account (Naldi 2019, 6). Therefore, in assessing the score of each request on the divide cooperative-contentious, the detection and correct evaluation of such words came out to be central for the scope of the analysis. The resulting value assigned to the text of each request consists of the mean score of all sentences that compose a single request across the cooperative-contentious variable.

The last point is worth noting, it is how the requests under analysis have been sent to the Court either in English or in French, the two official languages of the Court. Since dictionary-based approaches are language sensitive, when official English translations were not publicly available in the Court’s online archive, I recurred to the Google Translate tool to be able to analyse all requests in the same language. The validity of such an approach has been lengthy discussed and validated in the existing literature on quantitative text analysis (Vries, Schoonvelde, and Schumacher 2018).

The second element aims to grasp another aspect of how the requests were sent to the Court: whether the organizations send it by themselves or as part of a wider coalition. In this analysis, I look at the phenomenon of coalition formation using a behavioural approach: I focus on the activities pursued by the coalition on a specific policy issue (Junk 2020). Namely, the decision to draft and file a common request to the Court using the formal participation mechanisms at disposal. In particular, the ***Coalition Type*** variable is interested in detecting which type of coalition (if any) the CSOs in the dataset opted for. To grasp this dimension and look at the

composition of the coalition CSOs opted for, I operationalized four possible coalition types. The negative case, if the CSO opted for joining no coalition. Whether the CSO opted for being part of a homogeneous coalition formed only by organization pursuing a local/regional mandate or only international mandate. Alternatively, if the CSO opted for being part of a mixed coalition, implying the presence of CSOs pursuing both international and local / regional mandate in it.

The last element grasps when CSOs decided to advocate the Court. In particular, at which stage of the ICC's decision-making process they opted for the formal participation mechanisms to voice their arguments. Accordingly, the **Reparation** variable identifies whether the CSO sent the request during the pre-trial and trial stage (0) or it did so during the reparation stage (1).

Although it is crucial to classify the observations contained in the dataset according to certain characteristics, I deem it useful here to highlight how the necessary use of categories and types to systematize the analysis of CSO's participation does not have to be confused with internal homogeneity. In particular, using the just presented operationalization, I avoid reproducing the dichotomy local versus international that often permeate discussions on diversity in ICC's decision-making process and beyond, assuming the actors within these categories to be homogeneous in their nature. As such, throughout the dissertation, I never treat the CSOs' mandate as a predictor of CSO's behaviour. On the contrary, I explore without previous assumptions how each organization advocate the Court. What emerges from the analysis of the population object of this dissertation is how there is no unitary local or international. Organizational characteristics and how organizations decide to advocate the Court vary significantly among actors pursuing the same mandate.

2.2 Who participates? Mapping CSOs' diversity in the Involvement Phase of ICC Decision-Making Process

Building on the information contained in the novel dataset, I am now able to proceed with the analysis of the population of the CSOs who managed to advocate the Court in its involvement phase. First, I proceed with a descriptive analysis of the population and its characteristics, searching for the presence of biases along the lines debated in the literature. This mapping effort is determinant to understand who, among all the potential CSOs interested in the ICC's work, decided, and succeed in exploiting the formal participation mechanisms at their disposal. These new data allow for the examination of the diversity in the context of CSOs' participation in the ICC's decision-making process that simply could not be addressed via existing data sources. Exploring this population and its diversity, I can contribute to the debate on CSOs' participation

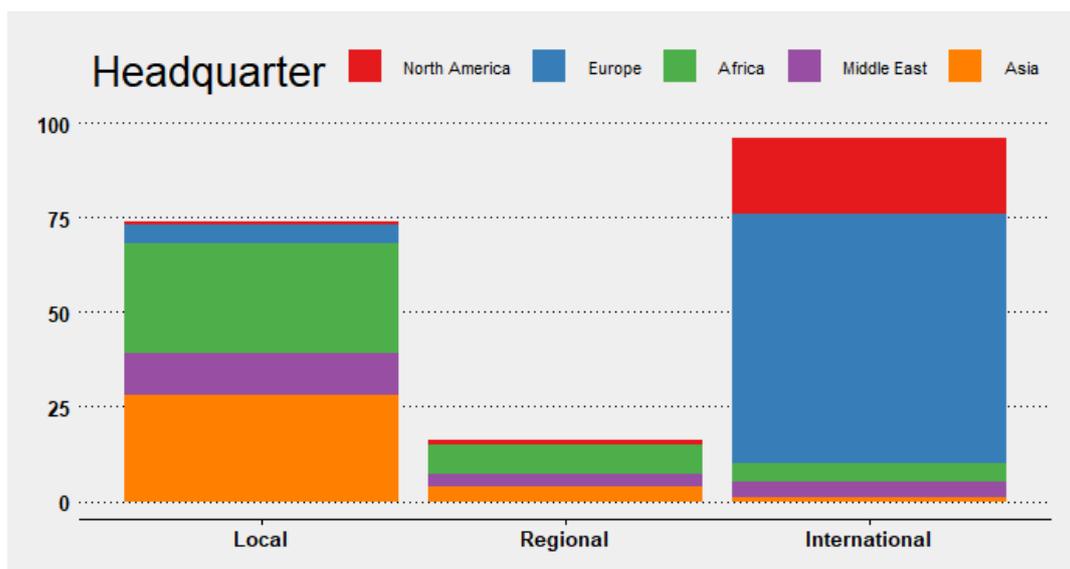
in ICC’s decision-making process and test whether the generous participation mechanisms offered by the Court effectively translated into a diversified participation system. Or, as argued by different research about the Court, it ended up promoting a limited participation system favouring certain actors at the expense of others.

It is often blur what exactly constitutes a bias and I singled out comparison as a possible way out from this indeterminateness. Through this mapping effort I set the stage for understanding how the CSOs’ population varies across phases of the ICC’s decision-making process, leaving to the next chapter the actual comparison. In the next paragraphs, I explore the data on CSOs’ formal engagement with the ICC over time using organizational characteristics as references to orient my analysis. Then, I go further trying to understand how diverse the voices present in the population were, widening the mapping effort toward the content of CSOs’ advocacy.

Geography

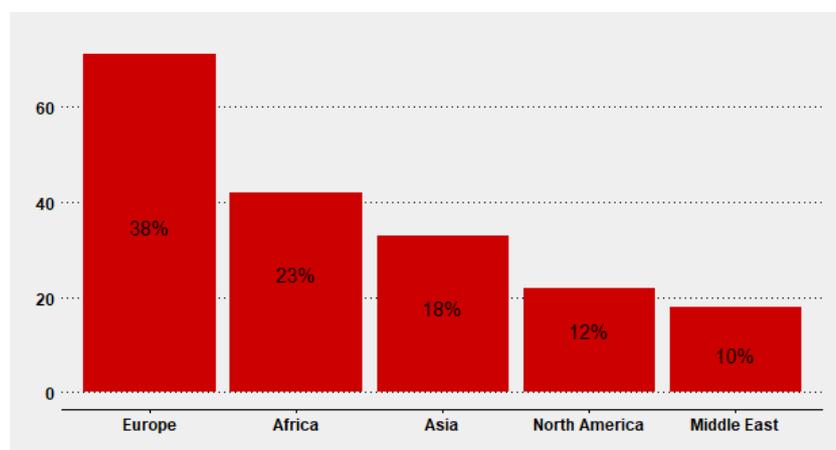
The first expectation is that ICC’s procedures are dominated by CSOs pursuing an international mandate and organizations coming from the global north, those actors indeed are expected to be more capable of exploiting formal participation mechanisms. To test such expectation, I operationalize the geography element using two complementary variables. Doing so, I am able to grasp both the variation in the geographical scope of CSOs’ advocacy work (*Mandate*) as well as in the geographical location of the organizations headquarter (*Headquarter*). The Figure 2.2 below illustrates how different organizational mandates and headquarters’ location are distributed across the observations contained in the dataset.

Figure 2.2 Distribution of Organizational Mandates and Headquarter Locations



The distribution of both variables comes out as relevant in the analysis of the population's diversity. For what concerns the Mandate level, the literature's expectations regarding the overarching presence of CSOs pursuing international mandate among those opting for advocating the Court through the formal participation mechanisms under analysis are not confirmed by data. Indeed, there is substantial equality between the number of organizations that pursue an international mandate (51%) and those that pursue a local or regional one (49%). Consequently, no structural biases toward so called international CSOs can be inferred from the data. In contrast, Figure 2.2 presents a surprisingly diverse CSOs' participation system.

Figure 2.3 CSOs' Distribution across Headquarters Locations



The second relevant observation that can be extracted by looking at the data is about the diversity of the CSOs' population in terms of its distribution across geographical origins. In the attempt to interpret the presented results, there is the need to remind the reader that the observations contained in the dataset are limited to the requests sent through the Amicus Curiae Briefs and Art.75 Observations. Consequently, they concern cases under investigation, concluded, or that are in the pre-trial phase of the Court's deliberation. The complete absence of organizations from South America can be related to the fact that no current or past cases of the Court involved this world region¹⁶, while attesting a substantial absence of mobilization by organizations based in this region to advocate the investigations pursued by the Court until 2020.

Existing population studies dealing with global decision-making processes tend to highlight the outnumbering presence of organizations coming from "developed" countries compared to

¹⁶ Venezuela, Colombia and Bolivia have been interested by preliminary examinations, but nor of them reached the trial phase yet. Participation by Latin American CSOs is concentrated in this pre-investigation phase as witnessed by the frequent and numerous art. 15 Communications sent to the Court [EVIDENCES].

organizations based in the global south (Hanegraaff et al. 2015; Uhre 2014; Tallberg et al. 2013; Steffek, Jens, Kissling, and Nanz 2008; J. Smith 2005; J. Smith and Wiest 2005; Beckfield 2003). In particular, this trend has been interpreted as part of the broader pattern of “Western hegemony” characterizing this level of advocacy (Bexell, Tallberg, and Uhlin 2010, 11). However, the concept of Western hegemony is ill suited to reflect the diversity characterising the population emerging from the current analysis. As we can see in Figure 2.3 below, organizations coming from Africa, Asia, and Middle East are far from being irrelevant in the population under analysis.

Looking more in depth at the distribution of headquarters location in the observations - as illustrated in the Figure 2.3 above - organizations based in Europe stand out as the category of CSOs that engaged the most with the ICC until March 2020 (38%). Such a result is in line with existing reflections on the role of *proximity* in enhancing mobilization. Different studies on CSOs’ participation in global decision-making processes have already shown how the location of an institution’s headquarter, or more broadly the location where the decision-making process takes place, shapes the composition of the population able to actually engage in the process (Uhre 2014; Hanegraaff, Beyers, and Braun 2012, 193). The ICC seems to confirm this pattern, favouring the participation of those organizations closer to The Hague.

European organizations are then followed by African based CSOs, attesting to 23% of the CSOs’ formal interaction with the Court. The high number of African CSOs is not surprising. It plainly reflects the skewness of the ICC’s investigations, which before 2019 were located in the African continent in ten out of the eleven situations under investigation¹⁷. For this very reason, the fact that Asian and Middle East based organizations reached respectively 18% and 10% of the total population in just a couple of years deserved to be highlighted. The Court’s decisions to open investigations in the Myanmar-Bangladesh¹⁸ situation and the Afghanistan¹⁹ one, as well as the ongoing deliberation by the pre-trial Chamber I called by the Prosecutor to rule on the scope of the territorial jurisdiction of the ICC in the Palestine situation²⁰ have all taken place between 2018 and 2020. The intense participation of CSOs coming from these world regions in such a short time period is reflected in Figure 2.4 below. The three mentioned situations drove the mobilization of an unprecedentedly high number of CSOs, which compensated in a few years the lack of Middle

¹⁷ Namely: Democratic Republic of Congo, Uganda, Darfur, Kenya, Central African Republic I, Libya, Côte d’Ivoire, Mali, Central African Republic II, Georgia, Burundi.

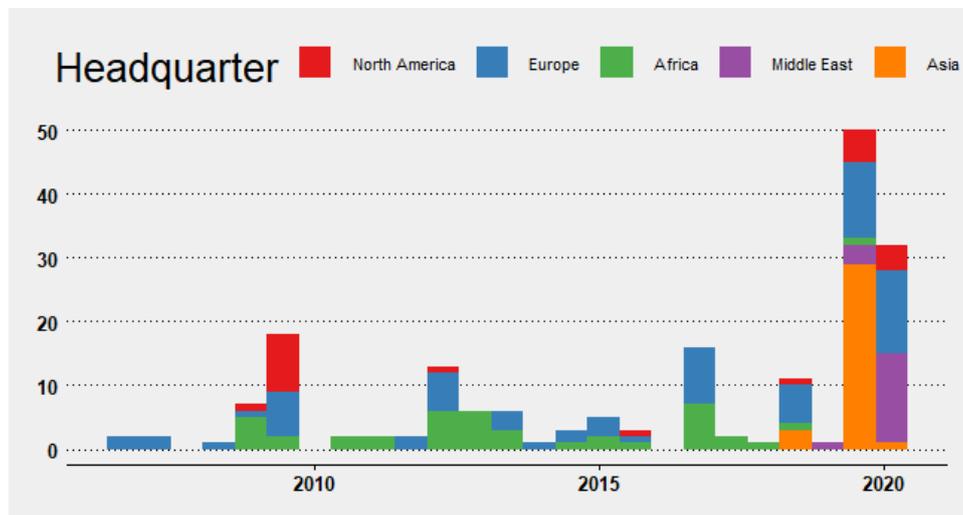
¹⁸ N. ICC-01/19-27, “Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar”.

¹⁹ N. ICC-02/17-138, “Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan”.

²⁰ N. ICC-01/18, “Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I”

East and Asian CSOs' interaction with the Court in the previous period, having a significant impact on the diversity of the geographical origin of CSOs that engaged with the Court over time.

Figure 2.4 CSOs' Participation over Time



What can explain this peak in CSOs engagement? Surely, the salience and highly contentious nature of these situations played a role. For instance, the decision taken by the Pre-Trial Chamber II not to proceed with the investigation into the Afghanistan situation claiming that it would not serve the interests of justice caused a public outcry that resulted in the mobilization of dozens of Afghans and international CSOs asking for the decision to be reverted. The reasons the Pre-Trial Chamber gave for its assessment were that it would be too difficult to conduct investigations and that an unsuccessful investigation would hurt both victims' expectations of justice and the legitimacy of the Court. When the Prosecutor appealed the decision to the Appeal Chamber, which eventually overturned it, a consistent number of CSOs decided to recur to the Amicus Curiae Briefs to voice their concern about the Pre-Trial Chamber's interpretation of the interest of justice. The same can be said about the two other situations, which generated fierce debates on the boundaries of the ICC's jurisdiction. In the Myanmar case, indeed, the alleged crimes were committed by citizens of a non-state party, and in the Palestine case, the alleged crimes occurred within a territory that, despite being a signatory of the Rome Statute, has not been universally recognized as a State.

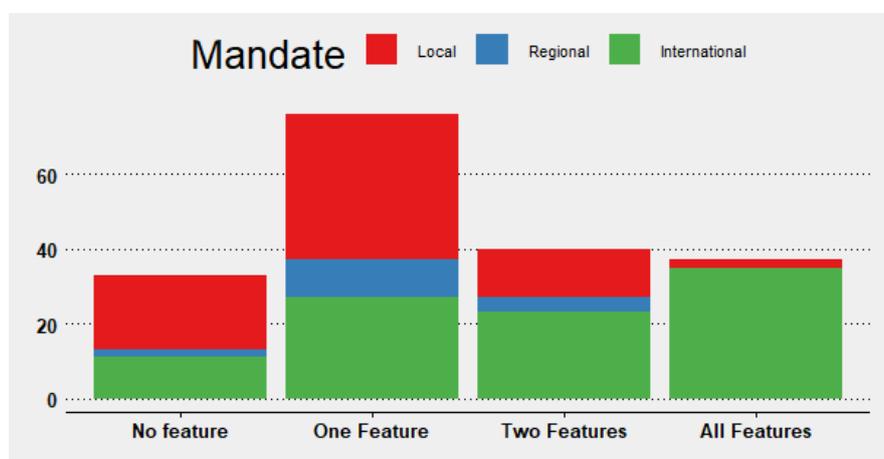
At the same time, and more relevantly for the interest of this analysis, the peak overlaps with a change in the Court approach to one of the participation mechanisms under analysis. The ICC standard approach to the Amicus Curiae requests has been characterized over time by the practice of never asking for submissions, leaving the CSOs free to determine the moment and issue on which they want to express their views to the Court through the Amicus Curiae. Although

no changes were introduced in the mechanism’s norm regulation, recently the Court Chambers recurred more proactively to this instrument, asking for Amicus Curiae’s submissions. In the Palestine case, the Pre-Trial Chamber asked for the submission of Amicus Curiae presenting views and observations on the Court’s territorial jurisdiction, in particular about the confirmation that the ‘territory’ over which the Court may exercise its jurisdiction under article 12(2)(a) comprises the West Bank, including East Jerusalem, and Gaza²¹. In the Afghanistan case, the Appeal Chamber encouraged the submission of Amicus Curiae and – whether possible – the presence of the amici at the oral hearings’ session dedicated to the discussion about the opportunity to open an investigation in the country²². As Figure 2.4 clearly shows, CSOs enthusiastically responded to these initiatives. It still cannot be said whether the identified explosion in CSOs’ mobilization was triggered by these more proactive initiatives or is simply the result of the salience of the situation currently under investigation. Surely, this change in the Court’s approach to Amicus Curiae Briefs represents a potentially consequential trend that deserves to be monitored in the future.

Knowledge I: Level of Expertise

Being aware of the advocacy opportunities, knowing how and when to exploit them, being able to understand and replicate to the highly technical and complex legal language governing the ICC’s procedures have been identified as basic thresholds for even being able to advocate the Court. Therefore, an organization engaging with ICC’s procedures is expected to possess certain degree of expertise.

Figure 2.5 CSOs' Distribution across Levels of Expertise



²¹ N.ICC-01/18-14, “Order setting the procedure and the schedule for the submission of observations”

²² N.ICC-02/17-97 , “Decision on the participation of amici curiae, the Office of Public Counsel for the Defence and the cross-border victims”

In Figure 2.5, I look at the distribution of the observations across the Level of Expertise variable, accounting for the presence of different expertise within the organization in the population. Those actors who managed to mobilize successfully are not mostly specialists as expected. On the contrary, the majority of the observations (58%) resulted to have no, or only one, of the features included in the Level of Expertise variable. Organizations having personnel dedicated to follow and advocate ICC's procedures and based or having offices in The Hague are present side by side with organizations not specialized in international law or not even having a legal expert within their permanent staff. The Figure 2.5 above clearly displays the absence of a systematic bias in the population toward knowledge-rich organizations.

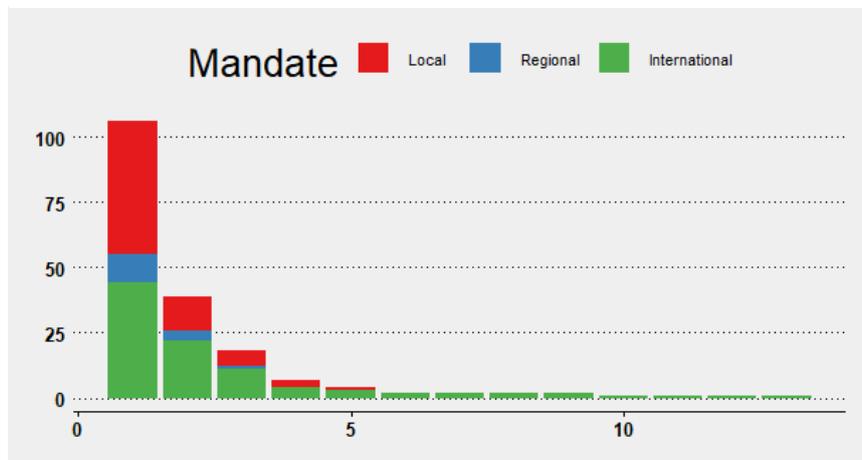
It follows that organizations have decided to engage with the Court and were successful in doing so even in the case they were not experts in the field. Besides, at a second look, I cannot avoid noticing how the distribution across levels of expertise is not equally distributed across organizations pursuing different mandates. CSOs pursuing a local mandate result to be more likely to fulfil zero or one of the organizational characteristics under analysis, while CSOs pursuing an international mandate emerge to be generally more equipped to advocate the ICC's decision-making process. Despite this trend, there is no clear-cut separation between the categories. There are organizations pursuing local mandates that are pretty specialized, having not only ICC's dedicated staff, but also in few cases staff and offices located in The Hague. At the same time, there are organizations pursuing international mandate whose are not specialized in international criminal law. Coming back to the full picture, systematic biases toward expert organizations cannot be identified in the population of CSOs that advocated the ICC in the involvement stage of its decision-making process.

Knowledge II: Repeated Players

Through the Level of Expertise variable presented above, I introduce a static representation of organizational expertise at the time it decided to interact with the Court. However, not each interaction is the same. In particular, I argue that organizations can accumulate expertise through repeated interactions with the Court. A CSO can augment its capacity to advocate the Court, not only equipping itself with the features described above, but also through the factual engagement with the ICC's decision-making process. I conceive this reiterated interaction as a 'learning process' through which CSOs accumulate experience and consequently expertise on how to better advocate this particular arena. To grasp the presence of cumulative experience across the CSOs'

population in the involvement phase, I look at the distribution of the Repeated Player variable within it.

Figure 2.6 Participation Volatility at the ICC



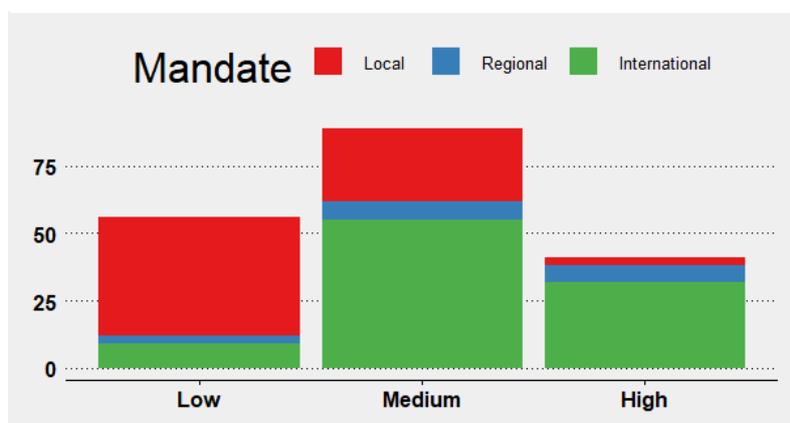
The figure 2.6 above graphically represents how the observations in the dataset are distributed across the number of requests the organizations have sent to the Court in the time span under analysis. This visualization makes it clear how CSOs' engagement with the ICC over time has been characterized by a high degree of volatility. Until now, the CSOs in the population exploited the opportunities to engage with the Court mostly once. This stands true even though, as I have already stressed, there are no formal limitations regarding the number of requests an organization can send through the mechanisms I am analysing. Most of the actors emerged to be occasional and especially one-time players in this context. On the contrary, repeated players going through an iterative interaction with the Court are an extremely rare species.

Such a distribution runs against the narrative of a CSOs' population dominated by repeated players, acting as gatekeeper organizations in the ICC's decision-making process. The concept of gatekeepers has been largely used in the context of the ICC. CSOs at the core of the campaign for the institution of the Court are often referred to as gatekeepers in the ICC's decision-making process. Their close relation with the Court's apparatus has been criticized by multiple researches, claiming that their privileged position toward the Court threatens their position as outsiders independent actors who are supposed to monitor the institution (Haddad 2018). However, what emerges from the analysis of the participation mechanisms is how these organizations did not have in this context the same impact imputed to them in other spheres of the ICC's work. The usual suspect such as Amnesty International, the International Commission of Journalists or FIDH, despite using these mechanisms, did not do so more than other organizations. Again, the data reinforces the picture of a participation system characterized by the presence of actors having different degrees of expertise.

Resources

Resources can be considered the starting point for each analysis on the presence of biases in a given population. It seems evident the correlation between the resources organizations can count on for their advocacy work and the CSOs' capacity to be present in a certain arena. Global decision-making processes, such as the one under analysis, are expected to make no exceptions in this regard. On the contrary, the slowness of International Criminal Court's procedures, that generally take several years to be completed, makes the advocacy effort even more costly in this context. Organizations must closely follow the trial and invest resources in this scope over the course of many years, making the availability of resources a potentially significant constraint in the advocacy of CSOs. Looking at how the observations in the dataset are distributed across levels of resources, even in this case a rather diversified picture emerged (Figure 2.7). The figure below resembles a normal distribution, with the medium range of resources coming out as the most common category. At the same time, it is interesting to notice how those with a low level of resources outnumber CSOs having a high-level budget, challenging the image of a participations system monopolized by big resourceful actors.

Figure 2.7 CSOs' Distribution across Degrees of Resources



Once I have gone through the descriptive analysis of who engaged with the Court over time, I shift the attention toward how those interactions happened. The analysis of the population of CSOs who managed to formally engage with the Court over time proved that the ICC's participation system was able to attract and mobilize a various and non-homogeneous set of actors. Now, I would like to broaden the search for potential biases by looking at whether the ICC has been as much responsive in mobilizing not only different types of actors, but also different kinds of voices. In particular, I am interested in showing whether transformative or contentious demands can be found in the involvement phase of the ICC's decision-making process.

Advocacy framing

Different CSOs exploit the opportunity to engage with the decision-making process differently: to express positions; to signal their existence; to show their members that they are active in the field of interest; etc.. Organizations decide how to frame their demands accordingly. This choice becomes inherently part of the organizational strategy's selection and is supposed to have consequences on the overall success of the organizational advocacy effort. I have underlined how the Court publicly praises an open participation system willing to hear from different voices and perspectives. The mapping effort conducted in the precedent paragraphs already shows how CSOs having radically different organizational characteristics actually managed to formally engage with the ICC's procedures. What I am interested in discussing with the introduction of the *Advocacy Framing* variable is whether this openness toward diverse organizations runs in parallel with the inclusion of diverse messages, bringing in the ICC's decision-making process transformative and contentious arguments. What kind of messages have been conveyed by the CSOs part of this diverse participation system?

The lack of empirical analyses of this phenomenon stands on the assumption that organizations exploiting formal participation mechanisms are going to use them to deliver cooperative arguments that can grant them more chances to be heard. Such an assumption comes with the risk of neglecting the presence of a more transformative or even contentious use of these channels for participation. I aim to overcome this assumption, claiming that there are no cooperative or contentious advocacy strategies. I expect CSOs engaging with formal participation mechanisms provided by the ICC to convey both cooperative and contentious arguments through these channels.

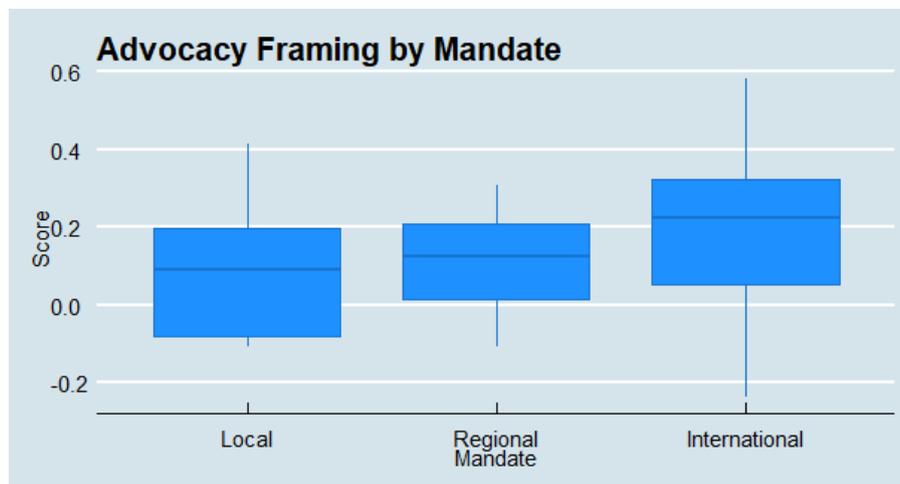
To assess the scale of the phenomenon and test for the relative presence of cooperatively and contentiously framed requests in the population of CSOs' formal interaction with the ICC over time, I look at the distribution of the *Advocacy Framing* variable across the observations. What results from the descriptive analysis of the involvement phase of ICC's decision-making process is that 23.7% of the overall requests presented by CSOs were framed in a contentious way²³. This first finding proves that contentious advocacy is not confined to informal strategies of advocacy; they find a space also within formal participation mechanisms. CSOs do not use the latter only to

²³ In order to assess whether a request is contentious, I use as parameter a resulting score of the dictionary-based approach attesting below the 0.

perform a cooperative information exchange. Instead, they exploit these opportunities also to convey transformative and contentious demands.

Moreover, even if all types of CSOs have used contentious framing, it can be consequential to notice how organizations that pursue a local mandate tend to recur more frequently and more intensively to transformative and contentious framing than the other categories of CSOs (Figure 2.8). More analyses are needed to understand whether this trend can be related to the debated tensions between a localized conception of justice and the universal approach pursued by ICC' officials. Regardless of the type of organization opting for this framing, the very fact that the data provide evidence in this direction makes the formal participation mechanisms promising channels through which organizations can voice transformative and contentious demands that would otherwise remain outside of the judges' evaluation of the case under investigation.

Figure 2.8 Advocacy Framing Distribution across Organizational Mandates



Data selection's impact on population biases

The descriptive analysis above presents some compelling results. It shows how the ICC's participation mechanisms are not accessible exclusively by big resourceful CSOs, but there is room for a variety of actors and voices. Before moving in the next chapter to understand which among those diversified interactions were considered by the Court, I want to go back for a moment to the issue of the data collection strategies. If the resulting population looks the way it does, it is also because of the attentive data collection strategy pursued for this dissertation. How does this picture change if I apply different data selection strategies to the population under analysis? As I argued, the use of data collection strategies that do not adequately consider the differences existing within the population they aim to analyse comes with the risk of leaving

outside of the radar a substantial part of it. More importantly, it will systematically overlook the weakest part of the population, affecting the evaluation of the presence of biases in the system. To test this hypothesis, in this section I will show how different data collection strategies affect the resulting population of CSOs that engaged with the ICC in its involvement phase. Table below (Table 2.1) compares the methodology used in this dissertation (mod.1) with a model in which I selected only those organizations having a website from which I can retrieve information about organizational characteristics (mod.2), and eventually with a model including only organizations that are present in the Yearbook of the International Organization's Database (mod.3). The comparison across the different models allows 1) evaluating the extent of the information leak, 2) seeing how the loss of information is distributed across different categories of actors.

Table 2.2 Data Collection Impact on Resulting CSOs' Populations

Variables of interest	Levels	Population	Population	Population
		Mod.1	Mod.2	Mod.3
Geography	Local	40%	21%	0%
	Regional	9%	10%	10%
	International	51%	69%	90%
Knowledge	No one	16%	8%	6%
	One feature	41%	35%	21%
	Two features	22%	28%	24%
	All features	21%	29%	49%
Resources	Low	30%	16%	1%
	Medium	48%	52%	48%
	High	22%	32%	51%
Tot Observations		186	130	63

Starting from the population resulting from model 2, the first consequence of limiting the analysis to organizations that have a website is the loss of a significant degree of information: the total number of observations drops to 130 (a reduction of approximately 30% of the population). More importantly for the scope of this research, this cut is unevenly distributed across categories of actors. For instance, while the absolute number of organizations with an international mandate remains almost untouched, the number of organizations pursuing a local mandate decreases from 74 to 27.

As a consequence, the resulting population turns out to be significantly more skewed toward organizations pursuing an international mandate, now attesting to 69% of the total population.

The same effect, a systematic underestimation of certain kinds of CSOs in the population, can be observed to be significant for what also concerns the Knowledge and Resources variables. The information lost in the data selection process proves to severely affect organizations with low resources and expertise, causing a significant distortion of the original population analysis. For what concerns the third model (mod.3), it is clear how the powerfulness of the Yearbook of International Organizations, with its wide scope and the capacity to collect an unprecedented amount of data on international organizations across the globe, is not thoroughly useful for the scope of this research. The Yearbook captures only 63 of the 186 observations in the population under analysis. The resulting sample is now composed only by CSOs pursuing regional and international mandates; the distribution of the Knowledge factor across the population emerged to be significantly skewed toward knowledge rich CSOs; and finally - even if the distortion is less strong - there is a predominance of CSOs with a high degree of resources. In line with my expectations, the search for biases in the CSOs' population engaging with global decision-making processes is sensitive to data collection strategies, making this step crucial in the construction of population mapping efforts.

I already stated above that I am aware of the shortcomings the data selection process proposed in this chapter comes with: such a multilayered approach it is time consuming and cost intensive in particular if applied to studies involving a high number of observations. Nevertheless, what the simple exercise helps unveiling is how consequential can be the data selection process researchers opt for. Stakeholders involved in global decision-making processes such as the ICC's procedures emerged to be endemically diverse; a population characterized by different backgrounds, degree of expertise, and level of resources. No patterns of systematic underrepresentation of supposedly weak actors (local organizations with limited resources and expertise) emerged in the analysis. On the contrary, I showed how these organizations stand side by side with the usual suspects that are expected to advocate global decision-making processes and how the boundaries between CSOs' categories are more blurred than expected. The main insight this experiment offers is that there is a concrete need to utilize methods that - even if more time consuming - are actually able to grasp the diversity in the population under analysis, adopting a more critical attitude that avoid reproducing or, as in the case under analysis, even worsening the existing biases in interest representation systems.

2.3 Conclusions: A diversified participation system

How to interpret these results? It is unquestionable that CSOs' population in the involvement phase of the ICC's decision-making process is far from resembling the usual suspects' discourse. No systematic biases along the lines of geography, knowledge, or resources came out from the descriptive analysis above. Moreover, solid evidence of the presence of diversified voices within the formal mechanisms under analysis emerged from data. This descriptive analysis proves how the uniquely open participation system characterizing the ICC's decision-making process has effectively translated into the mobilization of a diversified CSOs' participation system.

The diffused definition of the ICC's participation system as 'limited' is not confirmed by data, at least in the involvement phase of the ICC's decision-making process. Among the CSOs part of the resulting population, there are the usual suspects such as Amnesty International, the International Commission of Jurists, and Human Rights Watch, all organizations that drawing on their extensive experience and resources have played an important role since the Rome Statute negotiations. Nevertheless, whether on one hand much has been written about the activities of these big international CSOs with established history of engagement with international law's decision-making processes. On the other hand, the results of the descriptive analysis chapter plainly signal the extensive presence of different actors whose motivations, strategies, and capacities have not received the same attention. Small organizations, based in the global south, often not specialized in international law issues came out to represent a substantial part of the population of CSOs that decided to formally engage with the Court.

The next chapter is going to explore whether this variety of actors survived the Court's selection, verifying if anyone can sit at the table, but only some are going to be heard. Hypothesis that will shift the limited participation image to the access phase of the ICC's decision-making process. Then, the last chapter will open the black box of this multifaceted population of actors. Through the qualitative investigation of one case under investigation I look at which organizations are present within the categories I used to conduct the quantitative analysis. Who are those actors that escape the usual suspect logic and how did they manage to participate in ICC's decision-making process? How and why did they opted for the formal participation mechanisms under analysis to voice their views? Starting from the analysis of organizational characteristics, the paragraphs above show how local as well as international organizations substantially vary in their degree of internal knowledge and resources. As such, I overcome this dichotomy by treating the organizational mandate as another organizational characteristic to control for, rather than a homogeneous category by itself.

3. Explaining Civil Society Organizations' Access to the International Criminal Court's Decision-Making Process

In the previous chapter, I have mapped the population of civil society organizations that decided to formally engage with the International Criminal Court in the involvement phase of its decision-making process. In particular, I searched for the presence of biases in the resulting participation system. The institutional participation mechanisms through which the International Criminal Court promotes the participation of civil society organizations to its decision-making process prove to be able to attract a varied set of actors. The analysis of the CSOs' population revealed the presence of a multifaceted and diversified participation system, far more complex than the 'more of the same picture', which is used largely to describe the CSOs' participation in global decision-making processes. No systematic exclusion or underrepresentation patterns penalizing certain types of CSOs has been detected. CSOs counting on different organizational characteristics and conveying diverse messages overcame the difficulties in advocating a global decision-making process and managed to be vocal through the participation mechanisms at their disposal.

The mapping effort carried out in the previous chapter focused on the first phase the CSOs must go through to be able to participate in the ICC's decision-making process. In fact, as I have discussed in Chapter 1, CSOs must undertake a two steps process while formally advocating the ICC's decision-making process. First, in the involvement phase, organizations have to manifest their intention to advocate the Court choosing among the two formal participation mechanisms at their disposal: the Amicus Curiae Brief and the Art.75 Observations. Second, the ruling Chamber examines organizational demands establishing which ones are admitted to the access phase of the ICC's decision-making process.

Once I am aware of who managed to interact with the Court over time, I can evaluate whether and, in this case, to what extent the passage from the involvement to the access phase of the ICC's decision-making process is responsible for the creation of phenomena of marginalization or silencing of certain categories of CSOs at the expense of others. In fact, once organizations were able to put their requests on the table, it is up to the Court Chambers to decide which voices are considered and which do not pass the selection process leading to the access phase of the ICC's decision-making process. The presence of such a clear threshold makes it possible to conduct a comparison between the population resulting from the analysis conducted in the involvement phase, in which the only limit to CSOs' participation was the organizational awareness and

willingness to spend time and resources in participating, and the one resulting from the selection operated by the Court's Chambers.

This chapter is going to delve into the effects of this selection process, looking for the logic responsible for CSOs' access. I try to understand whether the population's diversity and heterogeneity I observed in the involvement phase has been twisted by the selection operated by the Court's Chambers in the passage to the access phase of the ICC's decision-making process. Does the Court's selection cause the amplification of some organizational voices at the expense of others? If this holds true, which ones are more likely to pass through the selection process and why? To answer this question, I conduct a multivariate statistical analysis, providing a systematic assessment of which mechanisms account for CSOs' capacity to pass to the access phase and be considered in the ICC's decision-making process. In doing so, I test the hypotheses generating from the integrated access logic presented in the theoretical framework, while controlling for alternative explanations. Namely, the functionalist exchange approach to access.

As discussed in Chapter 1, I advance the argument that the likelihood of CSOs being granted access to the ICC's decision-making process can be explained by an integrated access logic. In choosing which CSOs' requests obtain access, the Court has to cope with two competing pulling factors affecting its behaviour: the necessity to collect relevant information and expertise from the participation mechanisms and the need to use the same channels to re-legitimize its proceedings, promoting a wider and diversified participation system.

The structural lack of resources and personnel characterizing the ICC since its establishment makes technical and expertise information of great value for the Court to collect in order to improve the quality of its decision-making process. Among the CSOs mobilizing to advocate the Court, many are properly equipped to provide this kind of information and are more than willing to share their expert knowledge with it. As I have already singled out in the previous chapters, the CSOs proved to be conscious of Court's shortcoming in this sense and stressed and highlighted in their requests their pedigree of experience accumulated through reiterated interactions with different international criminal law processes.

At the same time, the Court is facing a deep legitimacy crisis, at the base of which there is a fundamental friction between those advocating and representing international criminal law ideas and those who are more directly affected by its practice (Lohne 2020, 51–52). This growing sense of distance (Clarke 2009; Christian De Vos, Kendall, and Stahn 2015a; Clark 2018), which risks delegitimizing the ICC's proceeding in the eyes of its relevant agents, is expected to drive the Chambers to widen the spectrum of CSOs' participation in the proceedings beyond the usual expertise function. Indeed, critical voices coming from both states and civil society blame the

Court for promoting an alleged universalistic model of justice that is tailored on a western and professionalized conception of what international criminal law is and should do. This approach is accused to privilege CSOs sharing this professionalized universalistic approach, while leaving unheard those willing to bring to the attention of the Court different perspectives and demands.

The tension between these two competing necessities generates a peculiar logic of access that balances and intertwines both these needs. The result of this clash is an *integrated access logic* in which the Court's Chambers end up granting access to a diversified set of actors, going beyond a functionalist exchange logic in which information is used as currency to trade access to the decision-making process of interest. Still, this openness is not unconstrained. Building on the integrated logic, not all voices are expected to get to the access phase of the ICC's decision-making process. Indeed, since the need for fostering legitimacy is not the only pulling factor affecting Court's behaviour, the nature of the participation system continues to be limited by the necessity for technical and expert information.

Comparing the population of CSOs resulting from Chambers' selection with the one mapped in the involvement phase, I can unveil whether the result of the selection can be explained as the product of the balance between these competing necessities. To achieve this goal, I need to unpack the integrated access logic, singling out three causal mechanisms that capture how the logic operates in practice. As I will discuss in detail in the following paragraphs, I propose the hypothesis that the way organizations frame their demands, whether they engage in mixed coalitions, and at what stage of the ICC's decision-making process they decided to advance their demands are crucial determinants to predict whether an organization will be granted access or not.

After I check for the validity of the integrated logic, I test for its strength against the functionalist exchange access logic. Often discussed in the literature on transnational advocacy and international courts and tribunals, according to this logic access is a direct product of an exchange with relevant expertise. CSOs use relevant information at their disposal as currency to be traded in exchange for access to the Court's proceedings (Williams, Woolaver, and Palmer 2020, 195). Being an international, well-founded organization with a solid expertise in the international criminal justice field is supposed to influence not only organizational capacity to mobilize in this arena, as I have discussed in the previous chapter, but also increases its chances that the demands advanced by the organization are going to be taken into account. Therefore, I control for the effect of the organizational characteristics (looking at both material and human resources) on the likelihood that an organization reach the access phase of the ICC's decision-making process.

The results of the statistical analysis speak in favour of an integrated access logic. Chamber's selection resulted to be driven by the detected causal mechanisms intertwining expertise demands with the necessity to foster institutional legitimacy.

The Chapter is structured in four main parts. First, I discuss the operationalization of the dependent, independent and control variables used to conduct the multivariate statistical analysis, while presenting the driving hypotheses behind the theorized integrated logic. Second, I introduce the specification of the multivariate models and present the results of the statistical analyses. Then, I compare the population of CSOs who got access to the ICC's decision-making process with the one in the involvement phase, looking for the presence of biases caused by the Court's selection process. Eventually, I discuss how the results resonate with the theorized framework.

3.1 Operationalization of the Variables and Presentation of the Hypotheses

An original dataset has been developed by the author following a *top-down* mapping approach. Accordingly, I systematically mapped all the formal interactions by CSOs which sought access to the International Criminal Court's decision-making process through the participation mechanisms under analysis²⁴ from its establishment in 2002 until March 2020. Definitional issues and data collection strategies at the base of the dataset's development have been lengthily presented in Chapter 2²⁵. In the following paragraphs, I introduce the variables utilized for the multivariate analysis and their correlated hypotheses while briefly recalling the nature of the variables and their operationalization.

Dependent Variable: CSOs' Access to ICC's Decision-Making Process

Access is not a univocal concept. It can assume different forms depending on the decision-making process under analysis. As such, it is necessary to clarify what I conceive as CSO's access within the context of ICC's decision-making process. In answering this question, I build on the definition of access already presented in Chapter 1: to talk about access, CSOs have to overtake a

²⁴ The Amicus Curiae Brief, rule 103 of the Rules of Proceedings and Evidences and the Observation pursuant to Article 75(3) of the Rome Statute.

²⁵ See Chapter 2, p.51.

threshold represented by an action carried out by the decision-makers. In other words, access has to be granted (D. R. Halpin and Fraussen 2017, 725–26).

Looking at the procedures governing the Amicus Curiae and Art.75 participation mechanisms, a CSO get access to the ICC's decision-making process when it overcomes the threshold represented by the ruling Chambers' selection. Indeed, the decision on which among the requests presented in the involvement phase is desirable for the proper determination of the case, and as such meet the standards to get to the access phase, stands within the discretion of the ruling Chamber alone. Operating this selection, the Chamber decides which requests presented at the attention of the Court are going to be reckon during the trial and which are going to be disregarded²⁶. The Chamber communicates its decision to the parties in a written form and then adds its deliberation to the trial records. This clear threshold allows determining whether a formal interaction with the Court through an Amicus Curiae Brief or an Art.75 Observation ended up being granted access to the ICC's decision-making process or not.

Therefore, the dependent variable for this analysis will assume a dichotomous form. Each request contained in the original dataset of the CSOs' formal interaction with the ICC will be assigned value 0 when the CSOs' request was rejected by the Chamber's selection and value 1 when it passed through the selection process and successfully reached the access phase of the ICC's decision-making process.

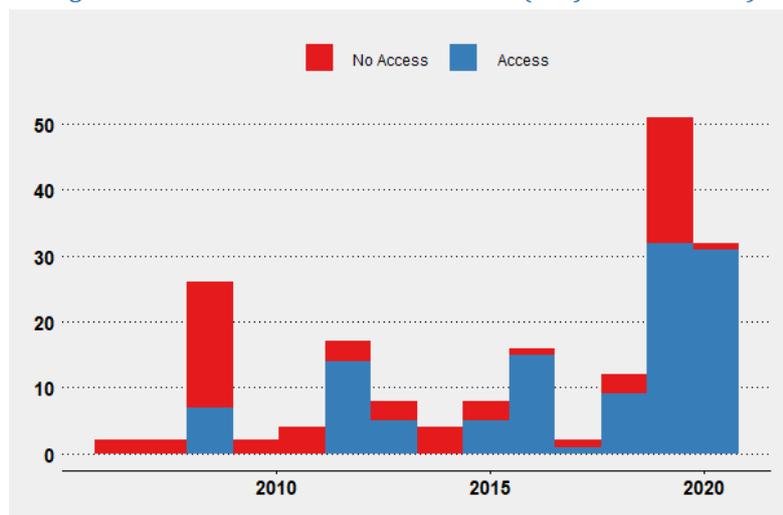
As a result of the selection operated by the Chambers, out of 106 requests sent by CSOs to the attention of the Court at its involvement phase, 67 have been granted access (63%), getting to the core phase of the ICC's decision-making process²⁷. The International Criminal Court proves to be open to the demands of CSOs not only formally, providing institutional channels for their participation, but also in practice, granting access to the majority of their requests in its first 20 years of existence. Using access as the dependent variable of the multivariate statistical analysis, I am going to test which mechanisms account for CSOs' capacity to pass to the access phase and be taken into account in the ICC's decision-making process, determining which organizations are more likely to be part of the successful 63%.

²⁶ For a encompassing discussion about the exclusive role of ruling chambers in the decision to grant access to an amicus or art.75 submission even in the case of parties' opposition see (Williams, Woolaver, and Palmer 2020, 120)

²⁷ It can be useful to recall how the unit of analysis used for the construction of the original dataset is CSOs by requests. As such, in the case a request has been sent by a coalition of actors, each organization participating in the coalition is treated as one observation. Therefore, the 67 requests who got access in the time span under analysis correspond to 119 observations of the original dataset developed by the author. To delve further into the criteria leading the data collection and the construction of the dataset, see Chapter 2, p.54.

ICC's openness toward CSOs has not been a constant over time. Looking at the distribution of the access rate over time - Figure 3.1 below - it is possible to notice how the participation mechanisms under analysis took a while before becoming effective instruments for CSOs to access the ICC's decision-making process. After a tough start in the infancy years of the Court²⁸, in which only a residual number of CSOs' requests have been granted access, the trend started changing toward an access rate more favourable to the CSOs mobilizing to advocate the ICC's decision-making process.

Figure 3.1. Court's Selection over Time (n. of observations)



After years of relative stability, focusing on the most recent years of the ICC's institutional life, a new path seems to stand out. In the previous chapter, I have already delved into the anomalous peak in CSOs' participation that characterized the years 2019-2020²⁹. What emerges from Figure 3.1 is how the peak in CSOs' participation was coupled by the acceptance of an unprecedented number of CSOs' requests. The change in the approach of the Court to Amicus Curiae, in particular its more frequent recourse to open calls asking CSOs to intervene in matters of interest to the Court, seems to have stimulated not only a more conspicuous participation by this kind of actors, but also a wider access to the ICC's decision-making process. Whether this trend will last and shape substantially the CSOs' role in the ICC's decision-making process represents an intriguing question for future research.

²⁸ If I start counting from the moment in which the first requests was received by the Court (Sep 2006) and consider the first five years of Court's activities, only 5 out of 17 requests that arrived at the attention of the Court have been granted access (23%).

²⁹ Two potential causes fostering this unprecedented peak in CSOs' participation have been already discussed in Chapter 2. On one hand, the salience and highly contentious nature of the situations discussed in those years (the Palestine, Afghanistan and Myanmar's situations) caused a major public outcry around the Court's deliberation. At the same time, the peak overlaps with a change in the use of the Amicus Curiae by the Court. Indeed, the Chambers started more frequently to launch open call for CSOs' submission.

Table 3.1. Overview of Dependent, Independent, and Control Variables

Variable	Variable Description	Data Source	Min-Max
Dependent Variable			
Access	Court's Chamber decision on granting access (or not) to CSO's request	ICC's Legal Tools Archive	0 - 1
Independent Variables			
H1 Coalition Formation	No Coalition (ref.) Local Coalition Mixed Coalition International Coalition	Original Dataset	0 - 1
H2 Advocacy Framing	Unsupervised scaling of the text of CSOs' requests along their degree of cooperativeness – contentiousness using QTA tools	ICC's Legal Tolls Archive	-0.239 - 0.582
H3 Stage of Proceeding	0 = Other Stages 1 = Reparation	ICC's Legal Tools Archive	0 - 1
Control Variables			
Mandate	Local Regional (ref.) International	Original Dataset	0 - 1
Level of Expertise	1 = No Features 2 = One Feature 3 = Two Features 4 = All Features	Original Dataset	1 - 4
Repeated Players	N° of previous formal interactions with the Court through the participation mechanism under analysis	Original Dataset	0 - 12
Resources	1 = Low 2 = Medium 3 = High	Original Dataset	1 - 3

Independent Variables: The Integrated Logic

To empirically test whether the integrated access logic is able to explain the nature of civil society organizations' access to the ICC's decision-making, I am going to unpack it in three causal mechanisms capturing how the logic works in practice. The three causal mechanisms are going to be used as independent variables in the multivariate analysis.

Building on the integrated logic, when selecting which requests reach the access phase of the ICC's decision-making process, ruling Chambers do not take into account only what organizations can bring in as expert knowledge, but operate a more comprehensive evaluation of the request presented. Having to weigh competing needs, the Chambers are expected to give more relevance

to the overarching *how* the CSOs presented their demands to the Court, more than limiting their focus on *who* present them. Following this logic, I advance the argument that to understand which CSOs get to the access phase of the ICC's decision-making process, it is necessary to focus on the way CSOs decided to advocate the Court.

In particular, I argue that *coalition formation* (with whom CSOs decide to co-sign a request); *advocacy framing* (how CSOs decide to frame their demands); and *stage of proceeding* (when CSOs decide to advocate the Court) are the driving causal mechanisms that substantiate the integrated access logic in practice, shaping the nature of CSOs' population in the access phase of the ICC's decision-making process.

In the following paragraphs, I introduce the causal mechanisms; discuss their operationalization; and recall the related hypotheses.

Coalition Formation

The first causal mechanism introduced in the analysis deals with the role of coalition formation in driving CSOs' access to the ICC's decision-making process.

As I have shown in the previous chapter, numerous CSOs in the population decided to write and co-sign their request together with other organizations (57%). However, who is part of those coalitions? Which organizations decided to join a coalition and with whom? Thinking about coalition formation, among the expected costs the aspiring participants certainly have to take into account, there is the necessity to find a compromise among the coalition members about which demands prioritize and which position takes collectively. Therefore, it is reasonable to expect CSOs being more prone to privilege coalitions among homogeneous actors, sharing similar interests. However, as is the case in the population under analysis, this expectation does not always hold. Indeed, coalitions might include different types of organizations, having diverse preferences around the issue at hand (Lowi 1964; Dür and De Bièvre 2007). To grasp this dimension and look at the composition of the coalition CSOs opted for, I recur to the Coalition Type variable.

Looking at the ongoing debate in the coalition literature, the choice to join forces among different actors is supposed to make coalition formation a powerful instrument to signal decision makers that a position is shared and supported by a large and varied group of interests (Mahoney 2007; 2008; D. Nelson and Yackee 2012). Granting access to such coalitions, decision-makers

have the opportunity to enhance the legitimacy of the decision-making process, embracing or at least taking into account a position already shared by a diversified group of stakeholders.

The variety in the composition of CSOs' coalitions can become extremely valuable in the context of the ICC's decision-making process. Building on the integrated access logic, I expect the Court's Chamber to be more prone to grant access to those CSOs who choose to recur to a mixed coalition. Indeed, doing so, the Court widens the spectrum of actors and voices taken into account through its participation mechanisms, while at the same time securing that technical expertise and information they are in need of are brought in the decision-making processes from the same channels. Therefore, it is expected that the coalitions bringing together diverse civil society organizations that are able to bring to the attention of the Court both technical and expert knowledge together with contextualized and localized understanding will be the most suited to increase CSOs' capacity to reach the access stage of the ICC's decision-making process.

It can be relevant to notice how CSOs opting for such mixed coalitions are mindful to signal to the Court Chambers the potential benefits coming with the acceptance of their requests, intertwining technical expertise with contextualized knowledge. The potentials of this coalition formation strategy seem to be acknowledged by the same actors who recur to it. The extract below represents a meaningful example of how organizations signal the Chambers how the position is shared across different actors in practice. The extract is part of a request co-signed by two civil society organizations who filed a shared *Amicus Curiae* to the Court in 2016. The first CSO is the International Federation for Human Rights, a big international civil society organization with a long pedigree of formal interventions in different international courts and tribunals³⁰. The second, the Association Malienne des Droits de l'Homme³¹, is a local organization working on the promotion and defence of human rights in Mali. In particular, the AMDH campaigned over the years for the independency of the press; fought against preventive detention and for achieving democracy in Mali.

In filing the request together, the two organizations stressed the complementary nature of their coalition. They suggest to the ruling Chamber how their submission can grant the Court with both technical expertise in the international criminal law it needs, and the contextualized expertise coming from organizations operating on the ground that have first-hand knowledge of affected communities' reactions to ICC's investigations.

³⁰ In 2017, FIDH was directly engaged in 79 legal proceeding (national, regional and international courts) across 40 countries. See: <https://www.fidh.org/en/issues/litigation/>

³¹ For a more encompassing presentation of the story and scope of the organization, see their Facebook page: <https://www.facebook.com/AMDHmali/>.

«Through their investigations and their knowledge of populations and local cultures and customs, FIDH and AMDH consider themselves in a position to assist the Chamber in acquiring the best possible understanding of the multidimensional aspect of the harm suffered by each of the categories of victims. [...] The two organizations also draw on their expertise in the promotion and defence of human rights, in Mali and elsewhere in the world, and in particular concerning the rights of victims of serious human rights violations to obtain justice, truth and reparation»³².

Building on Coalition Type's operationalization, I advance the hypothesis that:

H₂: CSOs presenting their demands to the Court through a mixed coalition are more likely to get access to ICC's decision-making process than those organizations opting for homogeneous ones.

Advocacy Framing

The second causal mechanism deals with the role of advocacy framing in enhancing or constraining the CSOs' access to ICC's decision-making process. In particular, through the analysis of this mechanism, I unveil to what extent the Court has been prone to incorporate and discuss transformative and contentious demands in the core phase of its decision-making process: the access one.

The dominance of a standardized and professionalized approach to international criminal law has been coupled by forms of resistance within the same ICC's decision-making process. Indeed, as I have shown in the previous chapter, transformative and contentious framings were present in the involvement phase of the ICC's decision-making process. Combining a dictionary-based approach with sentiment analysis tools, I scaled all the texts of the requests presented at the attention of the Court along the latent variable I am interested in: their position on the scale cooperative - contentious framing of their demands³³. As a result of this scaling effort, 27% of the requests presented emerged to be characterized by a contentious framing. This trend confirms that the professionalized and universalistic understanding of the role of the ICC is not uncontroversial and, more importantly, proves that the actors promoting different understandings found in the formal participation mechanisms of the ICC useful channels to express their views and advocate for them. Thanks to these perceived opportunities,

³² N. ICC-01/12-01/15-176, "Demande de la FIDH et de l'AMDH aux fins de déposer des observations conjointes sur la procédure de réparations", 21 October 2016, p.9-10. Translation from French by the author.

³³ For a more comprehensive explanation of the dictionary-based approach utilized as well as for the presentation of the unsupervised scaling model chosen see Chapter 2, p.62-64 and Appendix 1.

transformative or contentious arguments that would otherwise remain outside of the Court's proceedings managed to be presented at the attention of the ICC's decision-making process.

The question now becomes whether these critical and transformative positions managed to pass through the Chambers' selection and be heard in the ICC's decision-making process. When a CSO decides to exploit formal participation mechanisms to voice transformative or contentious arguments, is it compromising its chances to pass through the Court's Chambers selection?

Building on the integrated access logic, I expect Court's selection to have a negative impact on the diversity of positions that manage to enter the access phase of its decision-making process. Indeed, while on one hand the need to foster institutional legitimacy through the promotion of a wider participation system could nudge the Chambers to incorporate those views in their proceedings as evidence of Court's attention to criticisms and its openness to institutional reflexivity. On the other hand, however, this trend keeps being counterbalanced by the necessity to use participation mechanisms as instruments to compensate for the ICC's structural necessity for expert and technical knowledge. CSOs conveying transformative and contentious messages challenge the universalistic and professionalized understanding of what international criminal justice is and should achieve, therefore they do not provide the expert information based on this understanding. As a result, I expect Court's Chambers to be more prone to select requests that do not question the ICC's professionalized understanding of international criminal justice and can consequently be used to strengthen Chambers' deliberations along this line.

Among the requests that used the participation mechanisms under analysis to challenge Chambers' understanding, it is common to find organizations calling for a more attentive decision-making process able to incorporate sensibilities and necessities coming from actors not represented in the Court's proceeding in which the organizations decided to intervene. For instance, the second Amicus Curiae ever sent to the Court can be included in this category. In this case, Women's Initiatives for Gender Justice filed an Amicus Curiae in relation to the situation of the Democratic Republic of Congo, asking the Pre-Trial Chamber I to review the Prosecutor's exercise of discretion in the selection of charges and to determine whether broader charges (specifically for gender-based crimes) could be considered. According to the submitting organization, indeed, the *narrow* and *incomplete*³⁴ charge sheet presented by the Prosecutor seriously affects victims' possibilities to be recognized by the Court and to participate in the justice process.

³⁴ The organization itself used the words narrow and incomplete in their request referring to the Prosecutor's approach to the DRC Situation.

«Failure to give sufficient importance to the prosecution of certain types of crimes may obviously *weaken* or *undermine* the Court's effectiveness in deterring those particular types of crimes especially those known to have been committed. Indeed, the Court might in such circumstances send the signal that such crimes can continue to be committed with impunity. Thus, while these choices fall to be made through the exercise of the Prosecutor's discretion, they are choices that ultimately *affect* the entire international community»³⁵.

In the same direction, other interventions have stressed the perceived distance of the Court's proceeding from the interests and expectations of the actors on the ground. Those CSOs claim to represent and give voice to such interests through the requests they presented to the attention of the Court. According to the sending organizations, only by granting access to their requests, the chambers could take into account the sentiments and perceptions of those unrepresented actors in their deliberation. The request submitted by the Sudan Workers Trade Unions Federation (SWTUF) and the Sudan International Defence Group (SIDG) concerning the Al Bashir's case represents a typical example going in this direction. They constructed their argument around the alleged rejection by the majority of the Sudanese population of Court's investigation in the country.

«Intervention by the ICC in the affairs of Sudan would be viewed by the vast majority of Sudanese as an imposition of a non-African solution to an African problem that remains susceptible to resolution by Sudan in co-operation with other nations of Africa and the international community»³⁶.

In both instances, the request for bringing in the ICC's deliberation preferences and interests that would otherwise not be considered comes with the call for a more context-sensitive, wider interpretation of the scope and objectives of Court's deliberation. Those CSOs resorted to participation mechanisms at their disposal to question the assumptions at the base of the professionalization of international criminal justice procedures.

Building on the Advocacy Framing operationalization, I advance the hypothesis that:

H₁: CSOs framing their requests in a contentious way are less likely to get to the access phase of the ICC's decision-making process.

³⁵ N. ICC-01/04-313, "Request submitted pursuant to rule 103(1) of the Rules of Procedure and Evidence for leave to participate as amicus curiae with confidential annex 2", 10 November 2006, p. 5.

³⁶ No. ICC-02/05-170 "Application on behalf of Citizens' Organisations of The Sudan in relation to the Prosecutor's Applications for Arrest Warrants of 14 July 2008 and 20 November 2008", para 19, p.13.

Stage of Proceeding

The third and last causal mechanism presented copes with the moment in which CSOs decide to advocate the Court, advancing their demands. In particular, I am interested in understanding whether the choice of different stages of the ICC's decision-making process is influential in determining CSOs' success in getting to the access phase.

Civil society organizations engaging with the Court over time did so across all stages of its decision-making process in which they had the opportunity to do so. Starting from the pre-trial phase, in which organizations stand out as eager to engage in debates concerning Court's jurisdiction or cases' admissibility, to the discussions about which form of reparations better fits victims and communities' necessities, CSOs did not miss any chance to put on Chambers' desks their views and concerns.

However, not all stages offer the same opportunities to CSOs when we shift the focus from actors' involvement to their capacity to get access (Steffek 2013; Steffek and Kortendiek 2018). Indeed, while there are no formal restrictions on the number of potential requests that CSOs could send to the attention of the Court across at all stages of its decision-making process, the diverse stages differ significantly in the Chambers' propensity to consider CSOs' positions. Therefore, the stage in which CSOs decided to engage with the Court is expected to influence their possibilities to pass through Court's Chambers selection and gain access to the ICC's decision-making process.

In particular, the Court is expected to be less prone to incorporate CSOs' views during the core stages of the proceedings, namely the trial and appeal stages. Indeed, these stages directly concerns the core competence of the judges, determining the individual criminal responsibility of the accused, and the Chambers are expected to be reluctant to be influenced in their decision by CSO's advocacy. On the contrary, ruling Chambers are supposed to be more willing to grant access in those novel and interlocutory stages in which they need CSOs' view the most.

The reparation stage is exemplary in these terms. During the Reparations stage, the Chambers are in need of contextualized kind of expertise to determine which forms of reparations are going to be more effective and more welcomed on the ground. Such expertise is based mainly on the direct experience of the organizations operating in the area interested by reparations. Therefore, it is problematic for the Court to obtain independently such know-how without entailing time and resources the Court does not abound of. The Trial Chamber I, while enlisting the reasons to grant

access to the Art.75 Observations filed by a coalition of CSOs³⁷, stressed the relevance of overcoming the Court's information shortcomings through the acceptance of the CSOs' request.

«The Chamber notes that all five organisations have worked in the field, and particularly in the DRC, in relation to issues that are relevant to the present case. The Chamber is of the view that these organisations are in a position to supply information and assistance that will be of direct relevance to issues related to reparations that otherwise will not be available to the Court, or would be costly and time consuming to secure»³⁸.

In this case, the conundrum the Court has to face in choosing between expertise and legitimacy while selecting which CSOs are going to be granted access or not, finds a peculiar balance. The contextualized expertise the Court needs at this stage of its decision-making process creates the opportunity for a wider range of actors to get the chance to be granted access, providing the Court with the information it needs to take an informed decision on reparations while opening the doors to a diversified set of actors.

Building on the integrated access logic, I expect:

H₃: CSOs advocating at the reparation stage of the ICC's decision-making process to be more likely to be selected by Court's Chambers and get to the access phase.

3.2 Control Variables: the Functionalist Exchange Logic

To test the strength of the integrated logic in explaining CSO's access to the ICC's decision-making process, I am going to control for the effect of a well-established access logic largely used in the existing literature: the functionalist exchange one (O'brien et al. 2000; Liese 2010; Chalmers 2013; K. Raustiala 2017; Tallberg, Dellmuth, and Agné 2018).

Following the functionalist exchange logic, I should expect CSOs' access to the ICC's decision-making process to be the result of a trade between the relevant expert information at disposal of some CSOs and the demand for such information by the Court. As a result, those organizations more equipped to satisfy ICC's demand for expert knowledge will be advantaged in getting access to its decision-making process. If the functionalist exchange logic is at the base of Court's

³⁷ The civil society organizations involved in the coalition were: *Justice-Plus, Terre des Enfants, Centre Pélican-Training for Peace and Justice/Journalistes en Action pour la Paix, Fédération des Jeunes pour la Paix Mondiale* and *Avocats Sans Frontières*,

³⁸ No. ICC-01/04-01/06-2870, 20 April 2012, p.8-9.

Chambers selection, I should expect CSOs to be more likely to get access when they hold those organizational characteristics enabling them to respond to Court's demand for expert knowledge.

In the next paragraphs, I enlist the organizational characteristics - as discussed in the literature and presented in the previous chapter³⁹ - which are expected to influence the nature of CSOs' access to the ICC decision-making process. Namely, I am going to test for the role of organizational geographical origin (Geography); human resources as well as accumulated experience in advocating an arena (Knowledge); and material resources in enhancing CSOs' capacity to be heard at the core phase of the ICC's decision-making process.

Geography

Thinking about organizational characteristics that can affect CSOs' capacity to provide expert information, where the organization is based and operates may not be the first thought. However, as I have shown in Chapter 1, the role of geography in determining who get to be present in global decision-making processes has been largely theorized in the literature (Steffek, Jens, Kissling, and Nanz 2008; Bexell, Tallberg, and Uhlin 2010; Uhre 2014; Hanegraaff 2015). The underlying argument is that organizations from developed countries are foreseen to profit more from increasing access opportunities in the global arena. First, organizations based in the global north are expected to be able to count on wider founding opportunities: it can be easier to mobilize constituents and attract donors to finance their advocacy work. Secondly, organizations pursuing an international mandate are supposed to devote more attention to global decision-making processes and therefore be more inclined to advocate their demands at this level. The Mandate variable, capturing the geographical scope of CSOs' advocacy work, is going to be used in the model to grasp the influence of geography on access. It can be useful to recall how it can assume three values: Local, if the scope of the organizational work is national or subnational; Regional, in case the organization mainly focuses on a specific set of countries in the same region; International, when the organization operates simultaneously in different countries and regions.

Knowledge I: Level of Expertise

According to an exchange-based understanding of CSOs' access to the ICC's decision-making processes, I should expect the ruling Chambers to be more prone to grant access to those expert

³⁹ For clarification about the data collection strategy which led to retrieve organizational data see Chapter 2, p.54.

CSOs, which can bring into the decision-making process valuable information for the determination of the case under investigation. This understanding puts at the core a mutual exchange with policy-makers between access and information. Policy makers are supposed to prioritize and favour those actors that in their engagement aim to provide relevant information, conceived in this picture as “access goods” (Bouwen 2004). Information becomes the key currency in this interaction, shaping the role of CSOs along the line of an expertise function. This access logic is supposed to be especially valuable in those issue areas with considerable technical complexity in which competent institutions lack sufficient internal resources and knowledge to fulfil their role. As I have widely shown throughout the chapters, the International Criminal Court fits into this category, being characterized by structural budget shortages and difficulties in managing through its limited personnel the complexity of the situations under investigation.

To account for the organizational capacity to provide expert knowledge through their advocacy, I control whether CSOs engaging with the Court can count on some or all the features deemed relevant for this scope. Therefore, the Level of Expertise variable takes into account whether the CSO in the population: 1) Have in-house legal experts that know how to speak the technical language of international criminal law. 2) Have ICC’s dedicated personnel, proving a continuous and long-standing effort in advocating the Court as well as a deep institutional understanding of what the Court does over time and its internal dynamics. 3) Have personnel based in The Hague that can closely follow Court’s proceedings, granting the organization first-hand information and contact with the Court’s professionals.

Knowledge II: Repeated Players

As emerged from the mapping of the CSOs population in the involvement phase of the ICC’s decision-making process, the participation mechanisms under analysis are characterized by a high degree of volatility. Only a minority of CSOs engaged with the Court multiple times, while the large majority in the population acted as a one-time player in this arena. Despite the limited presence of repeated players in this picture, having already experienced how to advocate the ICC’s decision-making process can represent a significant asset in improving CSOs’ capacity to get to be heard at the access phase. The number of interactions with the ICC an organization has accumulated is conceived as a learning process in which the organization gains first-hand experience on what the Court’s Chambers are looking for. Such reiterated experience is supposed to foster CSOs’ capacity to better match Chambers’ demands and consequently be more likely to get to the access phase.

To grasp this dimension, the variable Repeated Players will count the number of previous interactions (if any) the organization had with the Court using the participation mechanisms under analysis. Due to the actual distribution of the Repeated Players variable - most of the observations in the dataset have had between 0 and 1 previous interactions with the Court, while only a minority overcame this threshold - I have to take into account the right-skewed nature of the distribution. Therefore, I opt for using the logarithmic transformation of the Repeated Players variable in the regression models⁴⁰.

Resources

The last organizational characteristic that has been identified as relevant in determining which organizations are more likely to access the ICC's decision-making process according to the functionalist exchange logic is represented by the material resources organizations can count on. Existing studies have widely unveiled how organizations are more likely to succeed in their attempts to advocate global decision-making processes in the case they are relatively well endowed in terms of resources (Uhre 2014; Lisa M. Dellmuth and Tallberg 2017; Hanegraaff, Vergauwen, and Beyers 2019). Global decision-making processes are conceived as slow and complex, making any advocacy effort in this arena a costly enterprise. The long lasting and complex nature of the Court's proceedings makes the capacity for an organization to invest the needed resources a potentially crucial element to be able to respond timely to Court's demands. The Resource variable will be used to grasp the level of material resources an organization can count on. It will assume three values: Low, for annual budgets ranging from 0 to 50.000\$; Medium for budgets between 50.000 and 1 million; and High for budgets above 1 million.

In conclusion, building on the functionalist exchange logic and its related causal mechanisms, I should expect:

H_c: International, knowledge-rich and resourceful CSOs to be more likely to get to the access phase of the ICC's decision-making process.

3.3 Model Specification and Discussion of the Results

In this section, I present the results of the multivariate statistical analysis of CSOs' formal access to ICC's decision-making process over time. First, I comment on the effects of integrated

⁴⁰ See Appendix 3.2

logic's causal mechanisms on access (Model one (1)). Then, I comment on the effect of the functionalist exchange's causal mechanisms (Model two (2)). Eventually, I merge the two logics (Model three (3)) and compare them. Given the dichotomous nature of my dependent variable, I opted for a logistic regression model to conduct the analysis (OLS)⁴¹.

Table 3.2. Logistic Regression Analysis (LOS) of CSOs' Access to ICC's Decision-Making Process over Time

Logic	Causal Mechanism	Variable	(1)	(2)	(3)
		Intercept	-0.826* (0.334)	-1.189 (0.814)	-2.017* (0.967)
Integrated	Coalition Formation (H1)	Local Coalition	-0.127 (0.499)		-0.755 (0.619)
		Mixed Coalition	1.614*** (0.475)		1.781*** (0.520)
		International Coalition	1.310 (0.826)		1.147 (0.897)
	Advocacy Framing (H2)	Cooperativeness	4.797*** (1.220)		4.889*** (1.313)
	Stage of Proceeding (H3)	Reparation	3.233** (1.066)		2.997** (1.073)
Functionalist Exchange	Organizational Characteristics (Hc)	Local		0.636 (0.597)	1.286 (0.760)
		International		0.629 (0.572)	0.241 (0.624)
		Resources		0.434 (0.268)	0.174 (0.323)
		Level of Expertise		0.039 (0.199)	0.056 (0.235)
		Repeated player (LOG)		0.647* (0.315)	0.517 (0.404)
		Observations	186	186	186
		AIC	189.51	242.25	193.52

In conducting the analysis, I decided to impute the missing values in the dataset using the predictive mean matching (PMM) method provided by the MICE R package. As discussed in the Appendix 3 this choice did not affect the results of the models.

⁴¹ See Appendix 3 for robustness checks of the presented models. No specifications utilized in the presented models changed the results of the analysis.

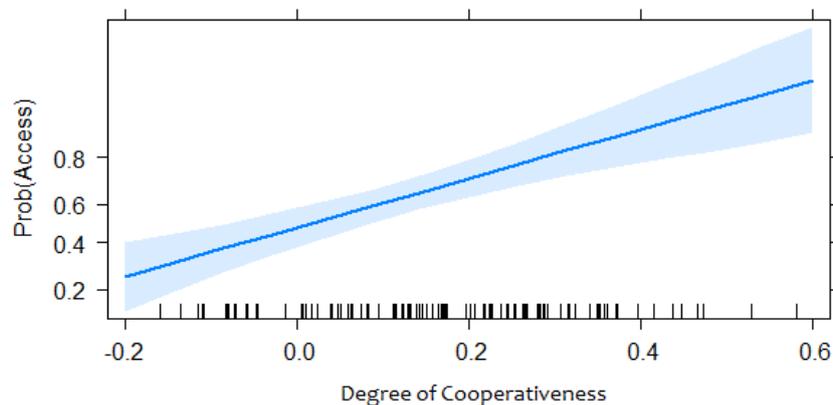
In the analysis, I provide AIC statistics (Akaike's Information Criteria) for all the three models. While these values cannot be interpreted in absolute terms, I deem useful to introduce these specifications since they can help evaluating different models predicting the same outcome based on the same dataset. In particular, those values enable me to assess which model better predicts CSOs' access to the ICC's decision-making process over time.

The Integrated Access Logic

Advocacy Framing

The multivariate analysis confirms how CSOs that framed their demands in a contentious or transformative way rarely managed to pass through the Court's Chambers selection. As theorized in hypothesis 2, the way CSOs frame their demands significantly affects their likelihood of getting to the access phase of the ICC's decision-making process. The magnitude of such a trend emerges to be positive and highly statistically significant (see Model one, Table 3.2). The more organizations frame their demands in a contentious manner (leading to negative values), the more they are likely not to get to the access phase of the ICC's decision-making process.

Figure 3.2 Advocacy Framing Effect on Access



Due to the strength of such a trend, CSOs that present divergent voices at the attention of the Court are most of the time blocked in the involvement phase of the ICC's decision-making process. The willingness of the Court Chambers to open the doors to a more diversified set of actors to be able to foster the legitimacy of the proceedings is revealed to include primarily those organizations speaking the same language as the Court. A wider acceptance of submissions sent through the participation mechanisms under analysis, finds its structural limits in the kind of message the CSOs convey. As I have discussed presenting the advocacy framing causal

mechanism, the legitimacy pulling effect is constrained by the need for expert and technical knowledge. Chambers still have to collect relevant information through these channels, and do so accepting mostly those requests that resonate and share their view of what international criminal justice is and should achieve.

Through the mapping of the population of CSOs who reached the access phase, see the section dedicated below, I will test whether the passage from the involvement to the access phase of the ICC's decision-making process affected the diverse and multifaceted nature of the resulting CSOs' population. What, however, already emerged from the analysis of the advocacy framing variable is that the access phase of ICC's decision-making process revealed itself to be less diverse in terms of the voices that get to be present. These results resonate with the ongoing discussion on the professionalization of the ICC-CSOs' interaction, which ended up dismissing critical voices and contesting discourses that do not fit with the Court's institutional worldview or do not share the same values and goals. In particular, ICC proved to be unable to discuss and incorporate contentious and transformative arguments in its decision-making process.

Coalition Formation

Bringing in the analysis the specification about the nature of coalition' composition, assessing with whom CSOs decide to advocate, the hypothesis one's expectation finds confirmation (see Model one, Table 3.2). Not every coalition comes with benefits. International CSOs deciding to form a coalition only with other CSOs with an international mandate have no significant advantage in doing so. At the same time, CSO deciding to join a coalition formed only by CSOs pursuing a local mandate could be even potentially disadvantaged by this choice, as emerges from the negative correlation existing between joining a local coalition and the likelihood of getting access. Despite the sign of the correlation, the non-significant magnitude of the correlation prevents any further speculation in this direction. What holds true is that the only coalition formation emerging as instrumental in increasing CSOs' likelihood to have access is a mixed one, including both international and regional / local organizations in it. In this case, the correlation between having joined a mixed coalition and the likelihood for a CSO to gain access and be taken into account in the ICC's procedures emerges to be positive and strongly significant. When choosing which requests deserve to pass to the access phase of the ICC's decision-making process, the Court's Chambers are confirmed to value the combination of expert information and diversification of actors provided by the CSOs joining in mixed coalitions.

Stage of proceedings

Moving to the third and last causal factor, the multivariate analysis shows a strong positive correlation between the choice to advocate at the Reparation Stage of the ICC's decision-making process and the likelihood to get to the access phase (H3). Court's Chambers behaviour over time confirms the tendency of the Court to be more open in the stage of the decision-making process in which it is more in need of contextualized information it can only gain from CSOs. Both Amicus Curiae and Art.75 submissions presented at the reparation stage presented a higher acceptance rate compared to the other stages of the trial.

Functionalist Exchange Logic

The logic behind the Chamber's selection is confirmed by the multivariate analysis to follow the theorized integrated access logic. The CSOs populating the access phase of the ICC's decision-making process get there as a result of a compromise between the Court's necessity to bring in the decision-making process expert information and the one to increase the legitimacy of Court's proceedings.

To test the strength of the theorized integrated logic against alternative explanations, in this paragraph I control whether CSOs' access to the ICC's decision-making process can be understood as the result of an exchange between expert information and access. In doing so, I will check whether organizational characteristics (geography, knowledge, resources) are *per se* sufficient to understand who get to the access phase of the ICC's decision-making process.

Looking at the Model two (2) contained in the Table 3.2 above, it is clear how organizational characteristics did not have *per se* a statistically relevant effect in increasing or decreasing organizational chances to get to the access phase of ICC's decision-making process. Contrary to the functionalist exchange expectations, being an international, resourceful organization does not increment CSOs' chances to get access. In particular, the mandate and material resources variables find no significant correlation with CSOs' access to ICC's decision-making process. Organizations counting on higher material resources, enabling them to invest in advocacy efforts over time, as well as organizations based more closely to the core of the ICC's decision making have no comparative advantages when it comes to pass through Chambers' selection process.

At the same time, a mixed record emerges for what concerns the last organizational characteristics' variable: the Knowledge one. Indeed, while the static operationalization of organizational knowledge (Degree of Expertise), accounting for the human resources at disposal of the organization, does not have significant impact on CSOs' access. At the same time, however,

the dynamic operationalization of the same variable (Repeated Player), grasping the learning process derived from the repeated interactions with the Court organizations accumulated, revealed to have a weak but positive and significant correlation with CSO's access.

Having already had one or more interactions with the ICC came out to be the only organizational characteristic having a positive impact in enhancing CSOs' possibilities to get to the access phase of the ICC's decision-making process. The results of the Model two (2) turn out to be in contrast with the expectations advanced by the functionalist exchange logic. The dynamics of CSOs' access to the ICC's decision-making process cannot be exhaustively understood as an exchange between information and access. Despite the Court is in urgent need of relevant information that certain CSOs are able to provide, the demand for expert information is not the only pulling factor influencing Court's Chamber behaviour.

Comparing the Models

After having discussed the performances of the functionalist exchange and the integrated logic in explaining CSOs' access dynamics at the ICC, through Model three (3) I am going to test whether a combination of the two logics results as beneficial to the understanding of the phenomenon. The strength of the integrated logic' causal mechanisms proves to be solid. When the causal mechanisms from the two logics are combined (Model three (3)), the sign and relevance of the causal mechanisms of the integrated logic are not affected. At the same time, the only variable emerging as significant among the CSOs' characteristics – the Repeated Player one – loose its statistical significance.

Eventually, comparing the predictive performances of the three models presented, looking at the AIC statistics of the three, the integrated logic (Model one) turns out to outperform the functionalist exchange one (Model two). Indeed, a lower value in the AIC statistic reflects the fact that Model one is better able to predict CSOs' access to the ICC's decision-making process than Model two. Furthermore, it is relevant to notice how adding the functionalist exchange variables to the integrated logic model (Model three) has a negative effect on the quality of the prediction. Eventually, when I integrate the two discussed logics in Model three, I ended up weakening the predictive capacity of the model.

Looking at the results of the multivariate statistical analysis developed in this chapter, and as confirmed by the comparison between the models presented, the integrated logic was singled out to be the most fitted one to understand what drives CSOs' access to the ICC decision-making process.

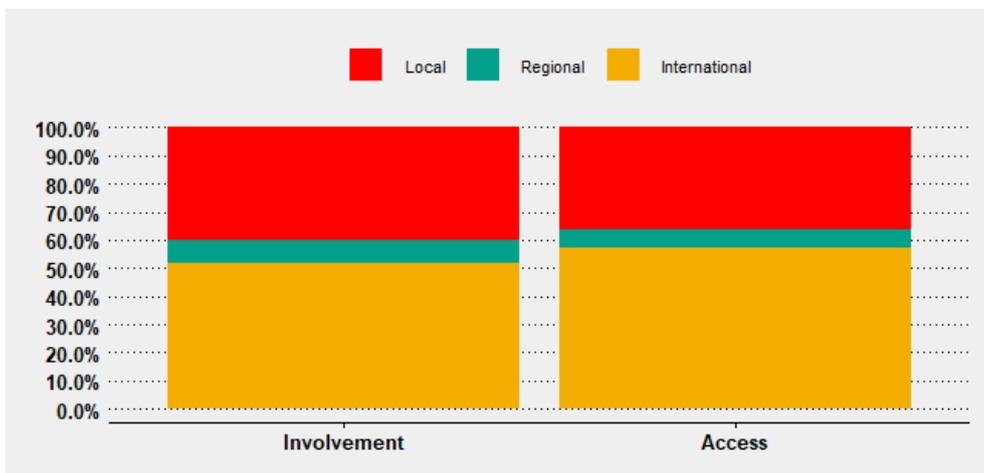
3.4 Mapping CSOs' Population at the Access Phase of the ICC's Decision-Making Process

Once I understood the logic behind Court's selection, determining which organizations get to the access phase of the ICC's decision-making process, I aim to see the effects of this selection on the resulting population of CSOs. Comparing the access phase's population with the one resulting from the mapping of the involvement phase, I will be able to assess whether and to what extent Court's selection is responsible for the creation of dynamics of exclusion or silencing of certain type of CSOs at the expense of others. In the following paragraphs, I compare the two populations across the dimensions already explored in Chapter 2.

Mandate

As for the involvement phase's mapping effort, I start looking at geographical factors to see whether Court's selection affected the variety of CSOs' population along the lines of their geographical origin and their mandate's scope. The divide between local and international CSOs is slightly exacerbated in this phase of the ICC's decision-making process. Nevertheless, as is clear from Figure 3.3 below, the variation is not strong enough to affect the diversity of the system. Accordingly, there is no evidence justifying a claim about the presence of a systematic overrepresentation of organizations pursuing an international mandate in the population.

Figure 3.3 CSOs' Mandate across Phases (%)



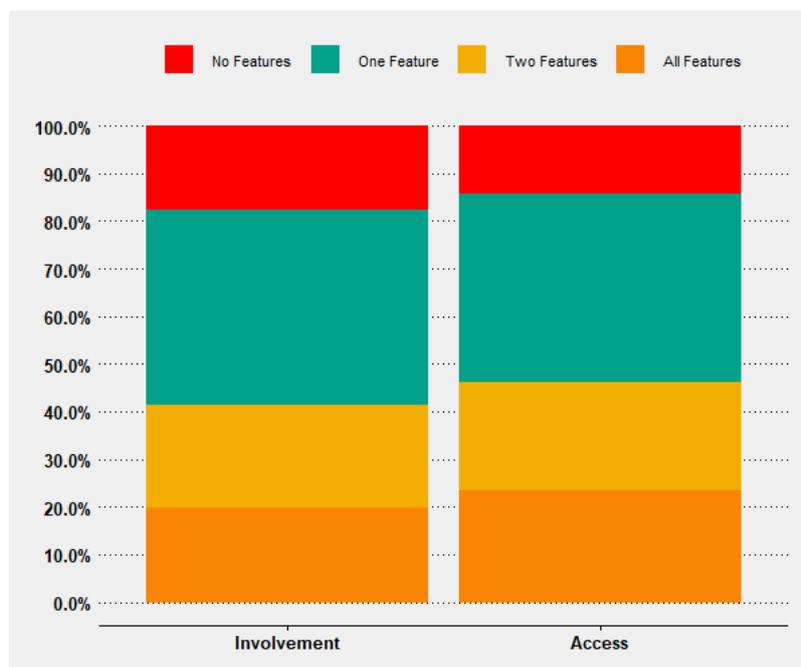
A similar claim could be advanced for what concerns the Headquarter distribution. At the access phase, it is possible to observe the trend consolidation of the already discussed trend about the overarching presence of European CSOs within the decision-making process of the ICC, attesting to 44% of the total population. The proximity to the core of the decision-making process

seems to increase organizations' capacity not only to advocate at this level, but also to better respond to Court's necessities. However, the general picture is not significantly altered compared to the population emerging from the analysis of the involvement phase. Western organizations (Europe + North America) at the access phase attest to the 54% (against 50%) of the total population. The selection operated by the Court's Office, which determine who gets to be granted access to this stage of its decision-making process, did not affect population diversity along the line of the geography dimension.

Level of Expertise

Moving to the level of expertise held by the organizations in the population, it is surprising to see how the distribution of the observations across the Level of Expertise does not confirm any overrepresentation of expert organizations at the expense of less specialised ones. The distribution continues to follow the pattern I observed in the involvement phase of the ICC's decision-making process: the majority of the organizations in the population have no or only one of the characteristics conceived as relevant for assessing the level of expertise of an organization (54%). The presence of low-skilled organizations is far from being insignificant in the resulting population, disregarding any claims about a systematic bias toward experts, knowledge-rich organizations at the access stage of the ICC's decision-making process.

Figure 3.4 CSOs' Level of Expertise across Phases (%)

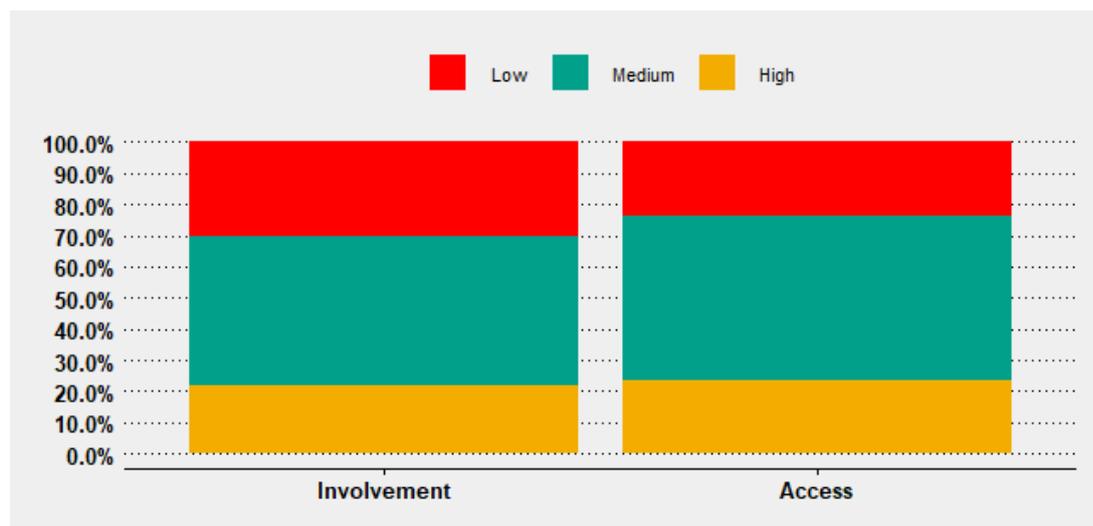


Resources

Moving to the last organizational characteristic that has been identified as relevant in determining which organizations are more likely to access the ICC's decision-making process according to the functionalist exchange logic, I explore the distribution of different levels of material resources in the population.

The Court's selection in this case operated a levelling process that undoubtedly affected the most organizations with a low level of resources. While in the involvement phase they outnumbered organizations with a high level of resources; among the CSOs who succeeded in getting access, those having low resources and those with high resources are present in equal terms (both attesting for 23,5 % of the population). However, such a trend does not appear to affect the substantial diversity in the population of actors who were granted access to the ICC's decision-making process over time.

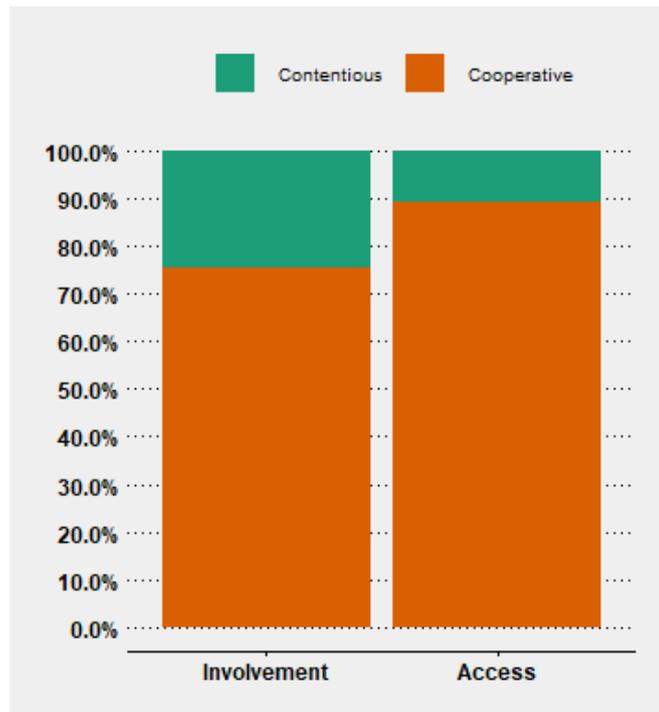
Figure 3.5 CSOs' Resources across Phases (%)



Advocacy Framing

Eventually, Figure 3.6 below confirms the reluctance of Court's Chambers to incorporate and discuss critical demands and stimuli within the core phase of its decision-making process: the access one. When comparing the distribution of cooperatively and contentiously framed requests in the involvement and access phase of the ICC's decision-making process, the Court emerged to be rather selective. The presence of transformative and contentious requests declines moving from the involvement to the access phase of the ICC's decision-making process: the percentage of observations classified as contentious in the population drops from representing the 27% of the total to only a residual 11%.

Figure 3.6 Framing Impact on Access



Gallagher Index of Disproportionality

Another instrument potentially useful to grasp the diversity between the two populations is represented by the Gallagher Index. This index was ideated to calculate the electoral disproportionality index of minimum squares. In particular, it is meant to return an appropriate weight to *the distortions of disproportionality* in analyses related to electoral results. However, its mathematical formula can be equally applied to different scenarios. For instance, in the context of this dissertation, it can be effectively used to calculate how diverse are the percentages distributions of different organizational characteristics across phases of the ICC's decision-making process.

The Gallagher Index results in a number that ranges from 0 (perfect proportionality) to 100 (complete disproportionality). The lower the number, the more proportional the outcome. Looking at the results of the calculations (Table 3.3 below) they corroborate the thesis formulated in the dissertation, adding a more accurate calculation of distribution similarities⁴².

⁴² For the extensive calculation of the Gallagher Index see Appendix 4.

Table 3.3 Gallagher Index - Populations' Comparison

Organization Characteristic	Involvement Distribution (%)	Access Distribution (%)	Gallagher Index
Mandate			4,87
Local	39,78494624	36,13445378	
Regional	8,602150538	6,722689076	
International	51,61290323	57,14285714	
	100	100	
Expertise			3,78
No Feature	17,74193548	14,28571429	
One Feature	40,86021505	39,49579832	
Two Feature	21,50537634	22,68907563	
All Features	19,89247312	23,52941176	
	100	100	
Resources			6
Low	30,10752688	23,52941176	
Medium	47,84946237	52,94117647	
High	22,04301075	23,52941176	
	100	100	
Advocacy Framing			13,8
Cooperative	75,2688172	89,07563025	
Contentious	24,7311828	10,92436975	
	100	100	

The distribution of Mandates, Expertise and Resources' variables is not significantly altered moving from the involvement to the access phase. The Gallagher Index score, indeed, attest to rather small values (4,9 - 3,8 - 6). The same cannot be said for the Advocacy Framing distribution, which resulted to be significantly higher than the others (13,8).

3.5 Conclusions

The purpose of this chapter has been to perform a multivariate analysis of potential logics that explain the access of CSOs to the ICC's decision-making process over time. The regression's results point to the validation of the integrated logic as the central driver of access.

ICC's formal mechanisms promoting CSOs' participation in its decision-making process translated into an actually diverse interest representation system. CSOs from different geographical origins, pursuing different mandates and having more or less technical expertise or resources managed to exploit the opportunities at disposal not only to engage with the Court, but also to pass through Chambers selection and get to be taken into account in the ICC's decision-making process. As this chapter has shown, the passage from the involvement to the access phase did not significantly affect the diversity of the population, granting access to a diversified set of actors. The expectations at the base of a functionalist exchange access logic prove to be inadequate to understand which organizations are more capable of passing through the Court's selection. Being an organization with more expertise and resources, as well as being an international CSO based in The Hague do not *per se* significantly augment CSOs' capacity to be heard in the access phase of the ICC's decision-making process.

Access to this arena resulted to be driven by a combination of pulling factors as theorized in the integrated logic. The participation system resulting from the Court's Chamber selection emerged to be shaped by the intertwined action of two competing necessities influencing Chambers' behaviour: the demand for collecting relevant technical and expert information together with the need for augmenting the legitimacy of the ICC's proceedings. As a result, Court's selection has been attentive to grant access to a diversified set of actors, going beyond the acceptance of only organizations that provide technical expertise. However, this openness does not interest all organizations in the same way. The Chambers, operating their choices, ended up amplifying those voices in line with the current professionalized understanding of what the Court should do and achieve while silencing those organizations challenging the Court's status quo. Trend that proves the ICC's limited capacity to incorporate such alternative voices in its decision-making process. Comparative efforts are needed to assess whether such a phenomenon is limited to the ICC or can travel across different International Criminal Law Courts and Tribunals. The development of a tailor made dictionary that explicitly aims to detect the degree of cooperativeness – contentiousness in advocacy texts engaging with these judicial institutions represents a first fundamental step to advance empirical findings in this direction.

Building on the insights generated by mapping of the population of CSO engaging and getting access to the ICC's decision-making process over time, this arena confirms to be characterized by

a diversified and multifaceted interest representation system across the phases. CSOs outside of the usual suspect spectrum actually managed to mobilize exploiting the participation mechanisms at their disposal and eventually saw their demands taken into account by the ICC's decision-making process.

Throughout this chapter, I unveiled how, independently from the organizational characteristics at their disposal, CSOs are able to increase their likelihood to get access to the ICC's decision-making process joining mixed coalitions, framing their demands in a way that resonate with the Court's professionalized view, and advancing their demands at the reparation stages of Court's proceeding.

How so different CSOs decided to engage with the Court through the participation mechanisms under analysis and how they succeed in doing so is going to be discussed in the following chapter. Through the case study of the Myanmar-Bangladesh investigation, I am going to investigate the dynamic leading CSOs to mobilize around the ICC's decision to start an investigation in the countries and to exploit (or not) the participation mechanisms at their disposal.

4. ICC's Investigation in Myanmar and Bangladesh: a Framework of CSOs' Mobilization

In the previous chapters, through a comprehensive mapping effort, I was able to disentangle the nature and boundaries of the population of CSOs who engaged and have access to the ICC's decision-making process over time. The analysis enabled me to test for the presence of biases in the ICC's participation system, reaching the conclusion that the participation mechanisms under analysis led to a remarkably diverse participation system across phases of the ICC's decision-making process.

What came out clearly from the analysis is the significant presence of organizations escaping the definition of a limited participation system consisting of usual suspects. Resourceful expert organizations stand side by side with small generalist ones, and organizations from the global south were present to the same extent as organizations from the global north. This diversified participation system raises questions about how such different CSOs manage to 1) participate, overcoming the threshold identified by the literature on transnational advocacy and international courts and tribunals; and 2) reach the access phase of the ICC's decision-making process. In the previous chapter, I provide an answer to this latter question through a quantitative assessment of which is the logic driving access to the ICC's decision-making process. In particular, the integrated logic has proven effective in predicting which CSOs' formal interactions with the Court are more likely to reach the access phase, and in explaining the endurance of a diverse set of CSOs across phases of the ICC's decision-making process. This chapter takes a step back, looking at the backstage of CSOs' participation. Specifically, I try to shed light on the process through which different actors become aware of the existence of the ICC's participation mechanisms, end up deciding these mechanisms can be valuable instruments to invest time and resources on, and eventually find an agreement on whether and how to exploit this opportunity.

This further level of analysis enables me to understand what led different CSOs to engage with the Court using the participation mechanisms under analysis in the first place, while checking if and how the dynamics detected in the large N analysis influenced the mobilization practices of the CSOs. To achieve these goals, I recur to a qualitative case study of CSOs' engagement with the Court in one of the situations under investigation. The qualitative nature of the analysis allows me to return on and tell more about one argument that has undergone the entire dissertation. The necessity to overcome the dichotomy between local and international CSOs, opening the box of these complex categories to show the deep variance existing within them. In particular, I argue that the international versus local framework obscures more than it illuminates about the CSOs' engagement with the Court. Already, the quantitative analysis provided proofs of how blurred the

boundaries between these categories of actors are. The case study allows me to reinforce this argument and through the examination of the several facets characterizing the mobilization of CSOs to overcome the international versus local distinction.

I do so, using as a qualitative case study the engagement of CSOs in the investigation the ICC opened in November 2019 on crimes committed at the border between Myanmar and Bangladesh. The Myanmar and Bangladesh case particularly fits the exploration of this phenomenon.

First, 'time' played a central role in the selection. Having the opportunity to interview organizations that were in the middle of discussing about whether and how to mobilize around the ICC's decision to start an investigation in the region represented a key factor that influenced the decision. Indeed, I was able to reconstruct how different actors reacted to the ICC's decision to begin an investigation and how they came to the resolution of engaging with the Court through formal mechanisms to voice their views. Since ICC's proceedings can last years (even decades), timing comes out to be particularly relevant to enable a correct interpretation of the dynamics of engagement. During the process of data collection for this dissertation, it turned out how challenging can be the reconstruction of the chain of decisions leading the CSOs to interact with the Court in case the interaction happened some years ago. The frequent turnover characterizing jobs and assignments in CSOs hinders efforts in this direction. To give just an example, in collecting data for this dissertation, I contacted one CSO who sent an Amicus Curie in 2009 asking some questions about its interaction with the ICC. They replied that they cannot take part in the research, since they did not have formal interactions with the Court. Once I forward them the text of their own request, they needed to get in contact with the person working with the organization during that period to figure out what led the organization to take the decision. It was not an isolated case. This experience makes it clear how short-term organizational memory can threaten a meaningful reconstruction of CSOs' dynamics of engagement. To overcome this shortcoming, it became evident my analysis needs to focus on recent mobilization processes.

Secondly, I needed to consider security concerns in operating the choice. To conduct the qualitative analysis, I needed to be able to enter contexts interested or still interested by crimes against humanity and war crimes and be enough free to move around the country asking questions on such a salient issue.

At the moment I conducted the research, only two other cases under investigation responded to the 'time' concern: the Mali situation and the Afghanistan one. The former situation escalated when, on 30 September 2019, the Pre-Trial Chamber I issued a confidential decision confirming the charges of war crimes and crimes against humanity brought by the Prosecutor against Mr Al

Hassan - accused of being involved in the work of the Islamic court in Timbuktu - and committed him to trial. The redacted version of the decision was published on 13 November 2019. For what concerns the latter, on 12 April 2019, the Pre-Trial Chamber II had rejected the Prosecutor's request for the authorisation of an investigation of 20 November 2017 and had found that the commencement of an investigation about the situation in the Islamic Republic of Afghanistan would not be in the interests of justice. This decision led the Prosecutor to file an appeal against that decision and generate a huge CSOs' mobilization.

However, neither in Afghanistan nor in Mali I would have been able to travel across the country to meet with organizations mobilizing around the ICC investigation. I evaluated the possibility of going to Mali, limiting my fieldwork to the capital Bamako, but the capacity to reach as many organizations as possible and be at the centre of CSOs' mobilization led me to opt for the Bangladesh and Myanmar case.

The opening of the investigation in Myanmar-Bangladesh represented a great opportunity in this direction. In fact, it allows me to interview organizations that decided to formally engage with the ICC's investigation in the previous months or even were in the middle of the discussion on whether and how to engage with the Court. Therefore, I decided to take advantage of this opportunity by spending a fieldwork period between Yangon (Myanmar) and Dhaka (Bangladesh) to personally meet with organizations working on justice and accountability for Rohingya. Through the interviews, I aim to understand why they decided to mobilize around the ICC's investigation and, in that case, why they opted for engaging with its formal participation mechanisms to voice their arguments.

The picture emerging from the analysis of the interview material confirms how there is no 'unitary local or international CSOs'. Motivations, mobilization strategies and content of the advocacy significantly vary across the organizations mobilizing around the ICC's investigation independently from the fact that they are organizations coming from the countries interested by the investigation or not. CSOs' aspirations and demands cannot be inferred by their organizational characteristics. In particular, local organizations should not be expected to speak with a unified voice. They do not all seek justice in the same way and do not engage with the Court for the same reasons. Throughout the chapter, I go beyond the pervasive idea dominating the International Criminal Court and Transitional Justice scholarships of a local international divide, showing how this way of thinking about CSOs' participation in global decision-making processes through meta-categories of 'international and 'local', creates many blind spots.

The chapter is organized as follows. In the next paragraph, I present the design of the qualitative analysis, discussing the methodology utilized and the challenges encountered in collecting the qualitative data.

Then, I provide an overview of the background in which the crimes against the Rohingya community took place. Through a review of secondary sources on the issue, I provide the reader with an entry point to the complex dynamics that led the ICC to start the investigation into the crime of forced deportation of Rohingya community from Myanmar to Bangladesh. This introduction to the context cannot and does not pretend to be exhaustive of the complex dynamics that developed along decades. Nevertheless, it represents a crucial starting point to stress how the Rohingya struggle is not at all a recent issue, as proved by a lasting civil society mobilization on this topic; and to make sense of the environment in which the organizations subject of this research operate, shedding light on the hurdles they have to overcome to mobilize.

The background chapter is followed by an account of the recent developments that radically twisted the context in which CSOs find themselves operating. Indeed, ICC's investigation did not come alone. During what I call the "November Turn", three international justice mechanisms almost simultaneously commenced their investigation on the crimes committed against the Rohingya community. After decades of pressure and advocacy at all levels to obtain justice and accountability, November 2019 represented a turning point that opened unprecedented mobilization opportunities for CSOs.

Once I traced the context, I unpack the CSOs' participation to ICC's investigation in Myanmar and Bangladesh through the analysis of the interview material. Who mobilized around the ICC's decision to open an investigation in the countries? Through the interviews, I will reconstruct the processes through which different CSOs get to know about the formal participation mechanisms of the ICC, why they decided to invest time and resources to exploit these opportunities, and how they did so.

Eventually, I compare the different dynamics of engagement as they emerged from the interview analysis, providing a framework of CSOs' engagement with the ICC in the context of the investigation in Myanmar and Bangladesh.

4.1 Interviews' design

My fieldwork resulted in 22 semi-structured interviews with representatives of civil society organizations mobilizing around the ICC's investigation in the Myanmar and Bangladesh case. To

identify the organizations for the interviews, I started from the ones that opted for the formal participation mechanisms analysed in the quantitative section of this dissertation. Then, I widened the spectrum to organizations that were publicly advocating the Court. Eventually, I ask those organizations to signal me relevant actors for the object of this analysis. Therefore, participants were identified through a combination of convenience, purpose, and snowball sampling. The interviewees cover a variety of professional backgrounds ranging from apical roles such as the founders of the interviewed organization to subject-matter experts such as legal advisors⁴³. The interviews were conducted in person between Yangon and Dhaka as well as via Skype with individuals based elsewhere or not willing to meet in person for security concerns. The interviews material is complemented with the participation, during my stay, in meetings and public events on the ICC's investigation that enriched my understanding of the public debate on this issue.

Before moving to the core of the chapter, I deem necessary to acknowledge and report some of the difficulties I faced in planning and pursuing the fieldwork for this dissertation. Difficulties that inevitably shaped my ability to enter the field and collect information on the object of interest of this dissertation. Getting in contact with organizations working in contexts interested in ICC investigations and collecting information about why and how they decided to interact with the Court is neither easy nor an immediate task to achieve. Several hurdles make it particularly complex. First, the context in which organizations operate. Contexts interested by ICC's investigations have experienced or are still experiencing serious violations of international law pursued by governmental or non-governmental groups often still operating in the country. Consequently, active engagement pro or against international justice mechanisms became a particularly sensitive and politicized issue. Often strict restrictions are imposed on the public discourse on this topic, limiting the capacity of CSOs to work and advocate for justice and accountability freely. Being aware of such restrictions is fundamental to not endanger interviewees during the data collection process. In this regard, the ability to create a climate of trust cannot be underestimated. In particular, relying on intermediaries and on precedent consultations with activists and advocates with long-lasting experience in the field resulted to be crucial to open channels of communication otherwise interdicted. To ease the conversation, I make sure through multiple preliminary contacts that before the interviews any doubt on the scope of the research and on the protection measures adopted to collect and store data is resolved. At the same time, I keep myself open to conducting interviews under suboptimal conditions to make the interviewees comfortable enough to talk freely. Eventually, a last note

⁴³ See Appendix 8 to see the list of interviewees

should be dedicated to the language issue⁴⁴. Not knowing Burmese or Bengali, I conducted all interviews – independently of where the organizations were based - in English and encountered no linguistic barriers in doing so. What I paid close attention to, as I have already highlighted in Chapter 2, is to avoid creating misunderstanding or confusion about the concepts used for the research and during the interview. In particular, I devoted time to creating a common understanding and to make sure the interviewee clarifies what she intended with a certain expression, while avoiding from my side to infer universal value to my subjective understanding of the concepts utilized for this dissertation.

In planning and carrying out my fieldwork, I was constantly confronted with these difficulties and tried to cope with them in a sensitive and responsible manner. Throughout the chapter, I account for these difficulties reporting both the challenges CSOs faced in advocating for justice and accountability in the context under analysis as well as the hurdles I had to face to enter the field, get in touch with the CSOs and eventually obtain information about their advocacy work and opinions.

Due to the sensitivity of the matter discussed in the interview, I decided in accordance with the interviewees to protect their identity. Names and other personally identifiable information are withheld from the analysis. Accordingly, throughout the dissertation, I refer to the interviews conducted using a three-digit numeric code assigned to each of them⁴⁵.

4.2 Background: a History of Discrimination and Violence in the Rakhine State

According to its last available census, Myanmar has an ethnically diverse population of more than 51 million people, with 135 officially recognised ethnic groups among which the majority of the population declare itself as Buddhist⁴⁶. The Rakhine state (see Figure 4.1) has a similar composition with a population of 3.2 million people divided between several ethnic and religious groups. The ethnic Rakhine majority, predominantly Buddhist, is followed by the Rohingya, an ethnic minority group of predominantly Muslim faith constituting the second largest group in the Rakhine state. It is estimated that approximately 1.1 million people who identify themselves as Rohingya live in the Rakhine state. In particular, according to statistics allegedly collected in 2016 by Myanmar's General Administration Department ('GAD'), Rohingya represent the majority in

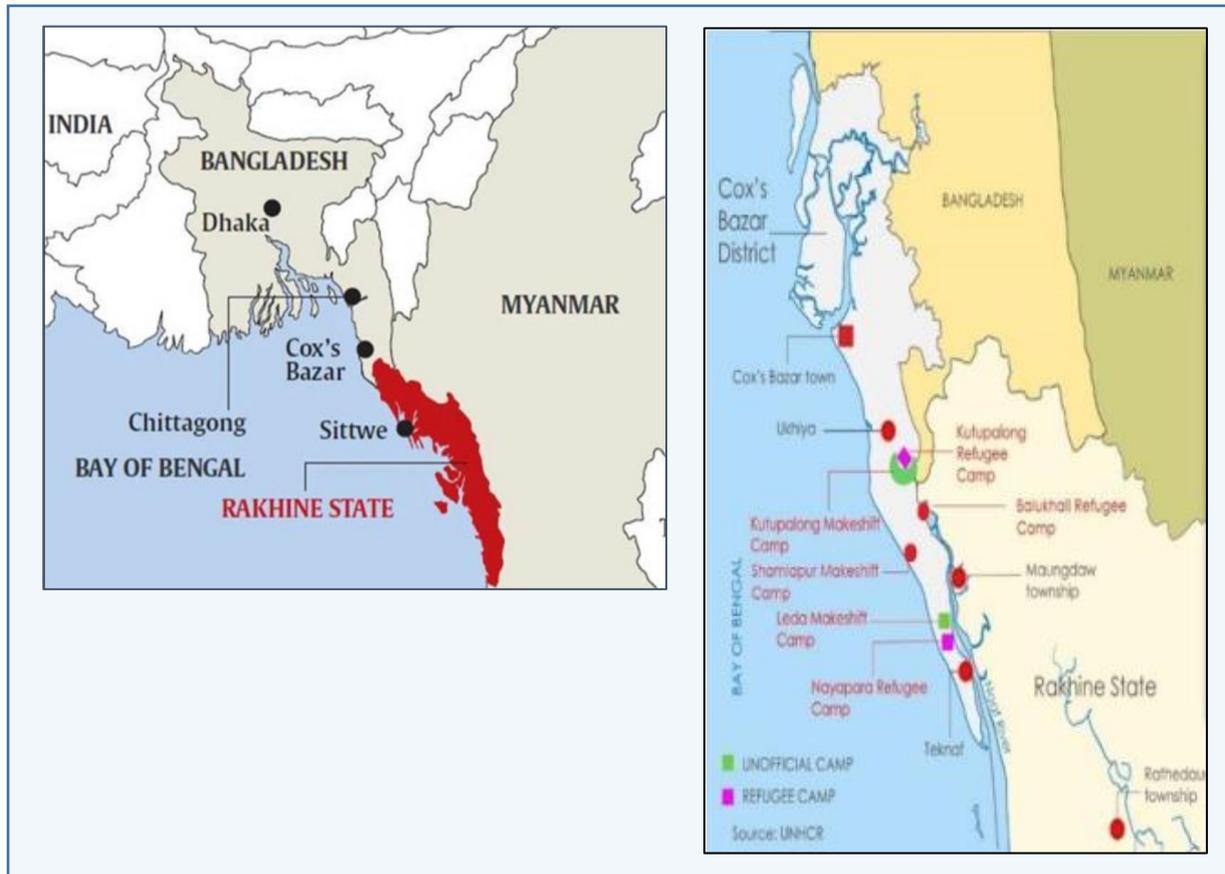
⁴⁴ Chapter 2, p. 58-59

⁴⁵ See Appendix 8

⁴⁶ See: <http://themimu.info/census-data> (Last access 21/19/2021)

some of the major Rakhine villages close to the Bangladeshi border: they represented 93% of the Maungdaw Township population, and 84% of the Buthidaung Township population.

Figure 4.1 Refugees Camps at the Myanmar - Bangladesh Border



The Rohingya community has long faced systematic discrimination and persecution in Myanmar. They have been effectively deprived of their right to a nationality as a result of discriminatory laws, policies, and practices, among which the most consequential is represented by the 1982 Citizenship Law and its application. Under this law, being a member of a *taing-yin-tha* (national ethnic groups) has been made the key criterion for citizenship and for potential self-governance on the territory⁴⁷. To be recognized as a *taing-yin-tha*, a group has to be able to prove a history and culture established in Burma before the arrival of the British, an event commonly dated in 1823. Part of the violence pursued within the conflict in the Rakhine state revolves around the demand by the Rohingya community to be recognized as a *taing-yin-tha*, to have their citizenship rights restored, and the resistances to this demand by the Rakhine ethnic majority⁴⁸.

⁴⁷ In 1990, an official list of 135 “national races” was made public.

⁴⁸ The Rakhine State conflict cannot be reduced to inter-ethnic violence caused by the Rohingya’s demand for citizenship. As Ware and Laoutides (2018) systematically pointed out, this represents only one aspect of the tripartite nature of the Rakhine conflict. The Rohingya’s struggle is historically intertwined with the

The conflict has been characterized by a “stalemate of contradictory stories”, in which the irreconcilable clash of historical narratives and collective memory is played out in a daily struggle to propagate competing versions of history (Ware and Laoutides 2018, 71).

During the years, Myanmar’s governments have denied Rohingya the status of an ethnic group, stating that they are migrants from Bangladesh who settled in the country ‘illegally’ in the last century as migrant workers brought to Myanmar by English colonizers to implement their agricultural plans in the country. This ‘infiltration narrative’, still widely diffused in public opinion, builds on the presumed threat imposed by this flow of people to the integrity and security of the Buddhist majority in the Rakhine state (Zan and Chan 2005). In an attempt to disregard the legitimacy of the Rohingya as an ethnic group, this narrative contests the same use of the term ‘Rohingya’. It is rather common in public discourses and official documents written by the Rakhine majority or the Myanmar government to refer to the Rohingya community using the term ‘Bengalis’. This narrative revolves around a sense of existential threat, arguing that it is the Rakhine people, not the Bengalis, who are the real victims, robbed of their ancestral homeland, property, and livelihoods by endless Bengali migration⁴⁹.

Alongside these competing narratives, if we look at the contemporary situation in the country, the overwhelming majority of Rohingya living in the Rakhine state, as well as those who have fled to Bangladesh or other states, were born in Myanmar, as were their parents. Virtually all of them have no other citizenship and no reasonable claim to citizenship anywhere other than in Myanmar. Despite this background, due to the citizenship law, most of them are not recognized as Myanmar citizens. The lack of citizenship has had a cascade of negative impacts on the Rohingya community. They lost rights to property, to due process, to legislative representation as well as electoral rights. Due to their peculiar condition, the authorities are legitimated to circumscribe their freedom of movement, segregating them from the rest of society. Several restrictions on movement are currently in place, in particular in the northern Rakhine, where Rohingya wanting to travel between townships have to obtain a temporary travel permit. Such severe limitations effectively compromise Rohingya access to healthcare, education, and employment opportunities for the entire community.

Rakhine majority fight for more autonomy against the Myanmar State, a centre-periphery political struggle that assumed an armed nature over time and the Tatmadaw - the Burman-dominated military – armed response to any claim against national solidarity and unity.

⁴⁹ A 2012 Survey conducted by the Rakhine Inquiry Commission shows how 84.7 per cent of Rakhine respondents attributed the violence to alleged Bengali efforts to take over the state. See: UoM. 2013. *Final Report of Inquiry Commission on Sectarian Violence in Rakhine State*. Yangon: Republic of the Union of Myanmar, 8 July. Available at: [https://www.burmalibrary.org/docs15/Rakhine Commission Report-en-red.pdf](https://www.burmalibrary.org/docs15/Rakhine_Commission_Report-en-red.pdf) (Last access 21/10/2021)

In addition to discriminatory policies, over the years, Rohingya have been subjected to waves of violence at the hands of the Myanmar authorities as well as the Rakhine community. The long-lasting nature of the violence forced many to flee Myanmar and take refuge in neighbouring countries, mainly Bangladesh. Some examples can be useful to explicit the capillarity of violence outbreaks in the Rohingya history. Back in 1978, up to 200,000 Rohingya were allegedly forced to flee Myanmar as a result of the 'Ye-The-Ha' military operations in north Arakan (M. Smith 1999). The operation targeted Muslim, Arakanese, and communist insurgents. Government officials blamed the trouble on 'armed bands of Bengalis', 'rampaging Bengali mobs', and 'wild Muslim extremists' attacking Rakhine Buddhist villages. In October 2012, violence erupted again on a large scale in the Rakhine State between Buddhists on the one hand, and Rohingya and other Muslim groups on the other⁵⁰. The trigger in this case was the brutal rape and murder of an ethnic Rakhine woman by Muslim men on 28 May, in a rural village in southern Ramree Township. Communal tensions had been high for months, with protests and mobs escalating in violent reprisals causing killings, injured, and the destruction of hundreds of houses. The major escalation of violence forced tens of thousands of people, mostly Rohingya, but also ethnic Rakhine, Maramagyi and Kaman, to be displaced. Then, on 9 October 2016, a Rohingya armed group known as the Arakan Rohingya Salvation Army (ARSA) allegedly launched three attacks killing nine police officers. On the same day, the military and the BGP launched the initial 'area clearance operations'⁵¹. Less than a year later, on 25 August 2017, ARSA launched coordinated attacks on security forces' posts in northern Rakhine state⁵². In the days, weeks, and months that followed, Myanmar security forces, led by the Myanmar Army, attacked the entire Rohingya population in villages in northern Rakhine state. In the 10 months after 25 August, the Myanmar security forces drove more than 702.000 women, men, and children - more than 80% of the Rohingya who lived in northern Rakhine state at the crisis's outset - into neighbouring Bangladesh. Human Rights and Advocacy groups reported how Myanmar security forces conducted a relentless and systematic campaign in which thousands of Rohingya were unlawfully killed. Rapes and other sexual violence were allegedly committed, as well as torture of Rohingya in detention sites. Rohingya communities were forced to starvation by burning markets and

⁵⁰ UNFFM Report 2018, para. 24-29.

⁵¹ UNFFM Report 2018, para. 44-46.

⁵² International Crisis Group Report 2017, "Myanmar's Rohingya Crisis Enters a Dangerous New Phase", available at: <https://www.crisisgroup.org/asia/south-east-asia/myanmar/292-myanmars-rohingya-crisis-enters-dangerous-new-phase> (Last access 21/10/2021)

blocking access to farmland; and hundreds of Rohingya villages were burned in a targeted and deliberate manner⁵³.

The Myanmar government acknowledges that up to 90 per cent of the Muslim population of the three northernmost townships - Maungdaw, Buthidaung, and Rathedaung - have now fled Myanmar, including virtually the entire Muslim population of southern Maungdaw - which was previously 93% Muslim⁵⁴. As of September 2018, over 1 million Rohingya from Myanmar took shelter in 34 refugee camps in Ukhiya and Teknaf Upazilas in Cox's Bazar District of Bangladesh. During the prolonged stay in these provisional camps, refugees reported having experienced substantial physical and mental suffering as a result of overcrowding, disease, lack of hygiene, lack of access to food and clean water, and safety risks including exposure to sexual assault and trafficking in persons⁵⁵. On the 14th November 2019, the Pre-Trial Chamber III, decided to authorize the Prosecutor to proceed with an investigation on the alleged crimes of deportation, persecution, and any other crime within the jurisdiction of the ICC committed against the Rohingya people or others, which occurred in Rakhine state, Myanmar, and any other crimes under the ICC's jurisdiction sufficiently linked to these events⁵⁶.

4.3 “It has been a week of sleepless nights for the military”⁵⁷: the November Turn

The ICC's decision to start an investigation in the Myanmar – Bangladesh context did not come alone. In the middle of November 2019, after decades of national and international pressures, three international law mechanisms almost simultaneously took actions in the countries, pointing out and condemning the violations committed against the Rohingya community. Detecting and analysing with particular attention the events happened in November 2019 is extremely consequential for the study I am conducting. As I will show, there is no doubt that the mobilization of CSOs around the Rohingya issue was already well established both internally and abroad. The

⁵³ Amnesty International Report 2018, “‘We Will Destroy Everything’. Military Responsibility for Crimes against Humanity in Rakhine State, Myanmar”. Available at: <https://www.amnesty.org/en/documents/asa16/8630/2018/en/> (Last access 21/10/2021)

⁵⁴ Moe Myint, (2018). ‘Ninety Percent of Rohingya Population Ejected from Rakhine’. *The Irrawaddy*, 23 February. Available at: <https://www.irrawaddy.com/specials/ninety-percent-rohingya-population-ejected-rakhine.html> (Last access 21/10/2021)

⁵⁵ HRW Report 2018, “Bangladesh is not my country. The Plight of Rohingya Refugees from Myanmar”. Available at: <https://www.hrw.org/report/2018/08/05/bangladesh-not-my-country/plight-rohingya-refugees-myanmar> Last access (21/10/2021)

⁵⁶ N.ICC-01/19-27, ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar’

⁵⁷ Interview 002, p.7

same ‘November turn’ would not have happened without a decades-long advocacy effort pursued by the Rohingya diaspora and the organizations working in the field. However, this turning point was central in giving the cause an unprecedented resonance, renovating international attention as well as opening new spaces for mobilization in particular at the local level. In the following paragraphs, I dedicate particular attention on how this event influenced the mobilization path of the different actors I interviewed.

The three mechanisms constituting the November Turn are characterized by diverging jurisdictions and competences. While all revolve around violations of international law against the Rohingya community, each of them faces the issue from a different perspective, having a narrower or wider scope of action and counting on different instruments of enforcement. The temporal proximity, as well as the sometimes overlapping competences that characterize these mechanisms, create a sense of confusion among the actors willing to engage. I explore the consequences of this confusion in the paragraphs dedicated to the analysis of the interviews. For now, it is worth enlisting the different mechanisms, clarifying how and in what ways each of them aims to contribute to the cause of justice and accountability for the Rohingya community.

On 11 November 2019, the Gambia - on behalf of the Organization for Islamic Cooperation's 57 Muslim-majority states - filed an application and requested provisional measures at the **International Court of Justice (ICJ)** alleging that Myanmar violated its state obligations under the Genocide Convention with respect to the Rohingya community⁵⁸. Myanmar has in fact ratified the Genocide Convention in 1956, becoming a party to the treaty that places legal obligations on states to prevent and to punish acts of genocide. In particular, the Gambia contends that the ‘clearance operations’ conducted by Myanmar security forces, first starting in October 2016, and then recommencing in August 2017, violate the Genocide Convention. According to Gambia’s ‘application to institute proceedings’, these acts were intended to destroy the Rohingya as a group, in whole or in part, through acts including murder, rape and the destruction of villages. On January 23th, the ICJ unanimously deliberated provisional measures urging Myanmar to take all measures within its power to prevent the commission of all acts within the scope of Article II of Genocide Convention⁵⁹ in relation to the members of the Rohingya

⁵⁸ 2019 General List No. 178: ‘Application Instituting Proceeding and Request for Provisional Measure’. Available at: <https://www.icj-cij.org/public/files/case-related/178/178-20191111-APP-01-00-EN.pdf>

⁵⁹ In particular, (a) killing members of the group; (b) causing serious bodily or mental harm to the members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (d) imposing measures intended to prevent births within the group.

group in its territory⁶⁰. At the same time, ICJ imposed Myanmar to submit a report to the Court on all measures taken to give effect to this Order within four months, and thereafter every six months, until the Court renders a final decision on the case. In September 2020, Canada and the Kingdom of the Netherlands joint Gambia's submission, granting their support in the process.

On 13 November 2019, the Burmese Rohingya Organization, a diaspora group based in the UK (BROUK), submitted a criminal complaint regarding crimes against the Rohingya filed on the basis of **universal jurisdiction in Argentina**. After a first negative decision, on 29 May 2020, the Buenos Aires court overturned its position not to pursue a case against State Counsellor Aung San Suu Kyi and senior officers in the Tatmadaw (the Myanmar military). Through the instrument of universal jurisdiction, national courts are allowed to prosecute individuals for serious international crimes, such as genocide, war crimes, and crimes against humanity. The complaint BROUK filed in Argentina has a wide scope: it allows investigating and prosecuting the alleged crimes of genocide and crimes against humanity committed within Myanmar national boundaries.

On 14 November 2019, the **International Criminal Court** authorized the Prosecutor to conduct a full investigation into potential 'crimes against humanity of deportation' in Bangladesh and Myanmar⁶¹. Although Myanmar is not a state party, the legal basis for the admissibility of the ICC's jurisdiction was founded on the fact that the conduct that constitutes the 'crime against humanity of deportation' started in Myanmar and then ended in Bangladesh, where more than a million Rohingya refugees found a shelter. Because part of the crime occurred in Bangladesh, which is a signatory of the Rome Statute, the Court established to have jurisdiction over this crime. The ICC investigation is independent and different from the one conducted by the ICJ. Indeed, it focuses on individual perpetrators of crimes and not on state responsibility. Regarding the scope of the ICC's investigation, it goes beyond the crime of deportation, authorizing the investigation of any crime, including future crimes, committed at least in part on the territory of Bangladesh or other state parties and related to the attacks in October 2016 and August 2017 in the Rakhine state.

The sudden and unexpected turn galvanized the organizations and activists who were tirelessly advocating for achieving justice for the Rohingya community.

«I think just a couple of months ago I was standing saying that there are no avenues for accountability internationally at the moment. Myanmar has not ratified the Rome Statute. The

⁶⁰ 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020'. Available at: <https://www.icj-cij.org/public/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>

⁶¹ N.ICC-01/19-27, 'Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar'

UN HRs Counsellor has not really taken any courageous steps. The UN Security Council has not made a new referral. There are no universal jurisdiction processes that look promising. Then, suddenly in a matter of months, everything changed. [...] And this is enormously encouraging»⁶².

After many years of resistance and lack of commitment from the international community, the picture was completely overturned in less than a week: «It is giving a sense of empowerment to many human rights defenders that they are not completely alone, and they are not abandoned»⁶³. The November turn was undeniably a shock hitting the public debate on the Rohingya issue. How CSOs' mobilization was affected by this turn is the objects of the next paragraphs.

4.4 Mobilizing around the ICC's investigation

Who mobilized? An overview of the interviews data

The November turn occurred in a transnational context already highly mobilized on the Rohingya issue. Indeed, as the background paragraph helped clarifying, the Rohingya struggle is far from being a recent issue and managed to develop along the years a lively solidarity network active at the local, regional, and international level. The November Turn canalized an unprecedented international attention, which brought different newcomers to this already thick mobilization. The international criminal proceedings act as catalysts for the debate outside of the courtrooms. As it comes out from the interviews, they substantially contributed to foster societal mobilization around justice discourse.

The table below (Table 4.1) represents an attempt to classify the variety of CSOs that mobilized on the ICC's decision to start an investigation in Myanmar and Bangladesh as it emerged from the interviews. Looking at the organizations involved, there are CSOs coming from different backgrounds and having diverse main fields of action. Some boast years of activism for the Rohingya community, others started mobilizing because of the November Turn. Most importantly for the scope of this dissertation, only some of them ended up using formal participation mechanisms to advance their demands, while the others either choose informal strategies to put pressure on the Court, or decided to have no contact with it. Through the analysis of this case study, I aim to unveil what led organizations to choose the formal participation mechanisms.

⁶² Interview 016, p.8

⁶³ Interview 002, p.7

Table 4.1. Classifying CSOs' Mobilization around Rohingya Issue

Main base	Timing	Field of Action	ICC's Engagement
Myanmar	Before November Turn	Justice and Accountability	Formal Engagement
Bangladesh	After November Turn	First Aid	Informal Engagement
Refugees Camps		Ethnic groups	No Engagement
Diaspora		Human Rights	
Regional			
International			

Table 4.1 illustrates a complex mosaic of CSOs interested in the ICC's investigation. From the first sight, it is straightforward how the use of the international and local divide is poorly informative in this case because these categories will contain extremely different actors in it. There is no such thing as a unitary local that can be meaningfully classified as homogenous. For instance, if I look at the organizations that pursue a local mandate, I find at least three different groups of actors. The organizations based in Myanmar where the violations took place. The ones based in Bangladesh, where most of the Rohingya community was forced to flee. Then there is the Rohingya community, split between the refugees living in camps and the diaspora based abroad. As the interview's material is going to confirm, motivations, demands and strategies significantly vary not only among those different groups, but also within it. The same can be said for international organizations. Such broad conventional terms prove not useful to grasp the complexity of the positions existing among the CSOs interested in the ICC's investigation.

A further clarification can be useful at this point. When I look at the CSOs' engagement with the ICC, I am not limiting myself to observe mobilization in favour of ICC's intervention. The organizations engaging with the ICC are the expression of a diversified group of actors who decided the ICC's participation mechanisms gave to them the chance to stand in solidarity or to voice their contrariety to the investigation in the country. As I have shown in chapters 2 and 3, indeed, CSOs interact with the Court in different ways, including to express their open aversion to the Court's decision. The case of CSOs' participation to ICC's procedure in Myanmar and Bangladesh is exemplary in this regard, allowing me to delve into different kind of interaction with the Court.

Building on these evidences, in the next paragraphs I use the classification presented above as a starting point to explore why and how organizations within these categories decided to mobilize

on the ICC’s decision to start an investigation in Myanmar and Bangladesh, trying at the same time to detect the reasons and expectations behind this choice.

The Table below (Table 4.2) illustrates how the semi-structured interviews I conducted during my fieldwork are distributed across the categories just presented.

Table 4.2. List of Interviews

Interview Code	Main Base	Timing	Field of Action	ICC’s engagement
001	Diaspora	Before	Ethnic Group	Informal Engagement
002	Regional	Before	Human Rights	Informal Engagement
003	Myanmar	Before	Justice and Accountability	No Engagement
004	International	Before	Human Rights	No Engagement
005	International	Before	Human Rights	No Engagement
006	International	Before	First Aid	Informal Engagement
007	International	After	Justice and Accountability	No Engagement
008	International	After	Justice and Accountability	No Engagement
009	Myanmar	Before	Human Rights	Informal Engagement
010	Myanmar	Before	Justice and Accountability	No Engagement
011	Bangladesh	Before	Human Rights	Formal Engagement
012	Bangladesh	Before	Human Rights	Formal Engagement
013	Bangladesh	Before	First Aid	Formal Engagement
014	Bangladesh	Before	Justice and Accountability	Formal Engagement
015	Bangladesh	Before	Justice and Accountability	Informal Engagement
016	International	Before	Justice and Accountability	Formal Engagement
017	Bangladesh	Before	Human Rights	Formal Engagement
018	International	Before	Human Rights	Formal Engagement
019	Refugees Camps	Before	First Aid	Informal Engagement
020	Myanmar	After	Ethnic Group	No Engagement
021	Bangladesh	Before	Human Rights	Informal Engagement
022	Diaspora	Before	Ethnic Group	Informal Engagement

4.5 Mobilizing around the ICC’s investigation in Myanmar: “I did not dare to speak about the ICC and investigation”

Context matter. An analysis of CSOs’ mobilization in Myanmar on a sensitive issue such as the ICC’s decision to launch an investigation in the country must be preceded by an account of the obstacles that come with the specific context in which these organizations operate. The existing legislative restrictions CSOs must conform to, combined with an extremely biased public discourse on international justice mechanisms make the daily advocacy work of CSOs particularly challenging.

First, being a civil society organization active in Myanmar comes with significant limitations. The same act of constituting a new organization or, for already existing organizations, implementing their activities and projects in the country can become a real challenge. The 2014 *Association Registration Law (ARL)* has been identified by the interviewees as the main legislative constrain to their advocacy work. According to this legislation, to become a legal entity in Myanmar - and consequently be authorized to pursue activities in the country - local as well as international CSOs are required to obtain a registration certificate. To obtain or renew the registration organizations have to undertake a tricky procedure. According to Art. 3(c) of ARL, ad hoc committees are responsible for the process. In particular, they have to «ensure the activities of an organisation are supportive to the benefits of the [s]tate and citizens»⁶⁴. This fuzzy criterion is at the base of the committees' decision on whether to allow the registration of an organization or not. Which activities can be considered beneficial for the state and the citizens is subject to (potentially arbitrary) interpretation. Then, once an organization is officially registered, the control over CSOs' activities continue. Organizations have to submit annually a report of their activities to the relevant Registration Body and every five years they have to renew their registration from scratch⁶⁵. Such a system, arbitrarily deciding whether organizations are supportive enough to continue operating in the country, highly affects CSOs' independence. Within this legislative framework, interviewees noticed how conducting activities in the Rakhine state and/or promoting projects with the Rohingya community can lead to the rejection or lack of confirmation of the registration. Hence, the fear of losing the possibility to conduct activities in Myanmar limits CSOs' project with or in support of the Rohingya community from within the country's boundaries⁶⁶.

Second, in parallel with the limitation imposed by the ARL, interviewees stressed a structural factor they retain to be relevant in restraining mobilization on justice and accountability in the country. Most of the CSOs I interviewed in Myanmar highlighted the lack of legal education and, in particular, the mistrust in the judiciary as a factor explaining the scarce mobilization around the decision by the ICC to open an investigation in the country. One of the conclusions of a recent national survey on access to justice in Myanmar, conducted by the organization 'My Justice', is particularly apt to introduce this point: «People do not recognise the law, or the work of justice sector institutions, as providing access to justice. For most, laws exist to maintain control and

⁶⁴ Unofficial Translation of the Registration of Organizations Law (Pyidaungsu Hluttaw Law No. 31/2014) provided by ILO website at: www.ilo.org/dyn/natlex/docs/ELECTRONIC/103627/125983/F666167193/MMR103627_Eng.pdf.

⁶⁵ The same duties are requested both to local and international CSOs.

⁶⁶ The impact of these legal constrains was referred to during Interview 004 and was recently confirmed by a survey experiment conducted in Myanmar by Andy Buschmann and Arkar Soe (2020), available at: <https://ssrn.com/abstract=3544900>.

social order»⁶⁷. The authoritarian past still makes people reluctant to expose themselves and the concrete fear of retaliation and potential abuses lead to the total mistrust in the judiciary. All these factors are expected to play a role against public mobilization⁶⁸. An interviewee gave me a concrete example to help me understand how this mistrust is related to the object of this research. She told me that:

«when people try to even launch a police report, they are ceased away from the police station. Or, when they lodge the report, they are sue by the military for labelling, insulting the military. The reprisal is so strong. So, for them it is difficult to understand judicial processes and evidence collection, as well as how judicial institutions are supposed to work»⁶⁹.

In other words, the climate of impunity and the habit to not to be held accountable for abuses and violent retaliations that characterized the Tatmadaw (the Myanmar Military) regime and beyond deeply twisted the conception of justice, linking it to enforcement and control, more than to rights⁷⁰. For this reason, many interviewees look at the promotion of awareness-raising campaigns on what international justice means and what international law mechanisms can do as a fundamental premise to enable people to understand the potential of the ICC's investigation and to encourage mobilization for justice and accountability in the country⁷¹.

«I am basically telling this to make the point that before this country can think about international justice and what international crimes are they have to understand what achieve justice means in their own justice system»⁷².

Eventually, another strong constraining factor was represented by how the discourse on the international law mechanisms was treated and developed in the media and in the public sphere. As the interviews' material is going to clarify, the extent to which a context is open and porous to free information and debate is key to determine the capacity for CSOs to get to be informed about international justice mechanisms, and to freely debate and evaluate the associated opportunities. The Myanmar government has steadily opposed the intervention of the ICC and the ICJ in the country, arguing that: 1) they represent unacceptable attempts to override the principle of national sovereignty and non-interference in the internal affairs of other states; and that 2) no deportation or crimes against humanities were committed in the Rakhine state. Already during the pre-examination phase, the government clarified this position:

⁶⁷ "Searching for justice in the law: Understanding access to justice in Myanmar. Findings from the Myanmar Justice Survey 2017", ISBN [online version] 978-0-86355-917-4, p.9

⁶⁸ Interview 006

⁶⁹ Interview 002, p.6

⁷⁰ Interview 009, p.1

⁷¹ Interview 005

⁷² Interview 008, p.3

«The Request by the Prosecutor may be interpreted as an indirect attempt to acquire jurisdiction over Myanmar which is not a State Party to the Rome Statute. Myanmar, as a non-State Party, is under no obligation to enter into litigation with the Prosecutor at the ICC or even to accept notes verbales emanating from their Registry by reference to article 34 of the Vienna Convention on the Law of Treaties (“Vienna Convention”). The actions of the Prosecutor constitute an attempt to circumvent the spirit of article 34 of the Vienna Convention. [...] Myanmar categorically rejects the proposition that the Court has jurisdiction as proposed by the Prosecutor in the Request. Myanmar also disagrees with the Prosecution’s assertion that population displacement across a national boundary is an essential objective element of the crime of deportation set out in Article 7(1)(d). Furthermore, there is no organizational policy of the kind required for proving crimes against humanity under the Rome Statute.»⁷³.

The official position did not change since then and has deeply influenced the way the media portray the decision to open an investigation in Myanmar. As one interviewee noticed: «the public support to international law mechanisms is equated to a denial of the governmental narrative, a betrayal of Myanmar independence, an open treason against the Daw»⁷⁴. During my stay in Yangon, it was sufficient walking down the streets to perceive the relevance of this dominant discourse.

Figure 4.2 Billboards in Yangon



I arrived in Myanmar just after the State Counsellor Aung San Suu Kyi participated in the hearings at the ICJ to defend her country from the accusation moved by Gambia. Few days before my arrival, the decision by the ICJ to impose preliminary measures to prevent and stop further human rights violations in the Rakhine state was delivered. At most of the main crossroads and

⁷³ Government of the Republic of the Union of Myanmar Ministry of the Office of the State Counsellor: Press Release dated 9 August 2018. Available at: <https://reliefweb.int/report/myanmar/government-republic-union-myanmar-ministry-office-state-counsellor-press-release>

⁷⁴ Interview 002. “Daw” is an appellative commonly used in Myanmar to address women in a senior position. It is rather common in public discourse to refer to Aung San Suu Kyi simply as the Daw, emphasising the sense of closeness perceived between the leader of the NLD and the people of Myanmar.

close to the main tourist attractions of the former capital, huge billboards remind how people stand with the Daw against international accusations.

The absence of a free public debate on international justice mechanisms translates into a critical lack of source of information about what these mechanisms are and what they can do to improve the situation in the country:

«I am absolutely convinced that all the issue of the ICC investigation is not an issue in the country. I do not think it is discussed. I do not think ordinary people know about it. Not even the legal sector people know about it»⁷⁵.

November Turn's Impact on CSOs' Mobilization: The Raise of Solidarity Network

The next paragraph tries to understand how the November Turn affected the just described context, characterized by shrinking mobilization opportunities. The constraining factors presented are expected to substantially affect the opportunities and willingness of the CSOs to mobilize. Whether on one hand this expectation stands true, on the other November Turn exceptionality was able to trigger unprecedented patterns of mobilization. It was recognized as «really a unique opportunity not only to bring justice, but also to bring consciousness and awareness in the country [about what justice is and how it can help improving people conditions]»⁷⁶.

The presented limitations and difficulties CSOs face in conducting activities in the Rakhine state and in promoting project in support of and in collaboration with the Rohingya community hinder the CSOs' capacity to build solidarity networks in the country. Therefore, the lack of inter-ethnic linkages and the absence of common strategies or actions are described in the interviews as consolidated patterns in the history of civil society mobilization in the country. The overcoming of these established patterns is recognized as the unique contribution of the ICC's decision to open an investigation in Myanmar. Indeed, an unprecedented move toward inter-ethnic solidarity followed the Prosecutor demand to investigate on the alleged international law violations happened in the Rakhine state. The sense of novelty of this phenomenon was clearly revealed in the words of the interviewees:

⁷⁵ Interview 008, p.2

⁷⁶ Interview 008, p.3.

«Solidarity is quite a new issue. If you look at a couple of years ago. But now, with the ICJ and ICC, CSOs came out with a statement. That never happened in the past»⁷⁷.

«Groups are coming together reaching out to kind of push for the ICC. Just to say they agree on that, it is a great step forward. Even though right now the ICC is mainly focusing on the Rohingya, the kind of abuses that are being committed against Rohingya are the same that all other ethnic groups have faced. So, I guess the kind of hope is that if we are shedding light on what happened to Rohingya, we are kind of pushing the government not to continue this kind of abuses»⁷⁸.

The most relevant public initiative resulting from the emergence of this new inter-ethnic solidarity was the publication of one statement that circulated in Myanmar on the 22nd January 2020. The document drew great attention, to the point that almost all of the interviewed organizations mentioned it during our conversation. The uniqueness of the statement lies in two elements. On one hand, the interviewees tend to highlight the high number of signatories (103 civil society organization) coming from different ethnic background⁷⁹ as well as from different main field of activity. On the other hand, the content of the message conveyed by the statement openly contested the picture of the ICC as an external actor interfering with national affairs, looking at it as an opportunity to come to terms with the impunity dominating the country:

«We welcome and accept these cases as steps to protect the people of Myanmar and aid us in achieving democracy, rights and justice. We understand very clearly that the ICJ case against Myanmar is directed toward those responsible for using political power and military might, and not to the people of Myanmar»⁸⁰.

As I presented before, such an open and direct critique to the government narrative is far from being usual in Myanmar context. The signatories reversed the depiction of international criminal law mechanisms as foreign attempts to threaten Myanmar's independence and unity. They see in the international justice mechanisms potential allies of Myanmar's people that through their investigations can make those responsible for crimes and violations accountable and achieve justice and truth for all the ethnic groups that suffered from their abuses. The Rohingya cause was used as a lever to obtain justice for the people of Myanmar.

«As with the Rohingya, our Karen people have suffered for decades from the systematic human rights violations by the Burma Army. The Worldwide Karen Community is thus greatly

⁷⁷ Interview 009, p2

⁷⁸ Interview 020, p.2

⁷⁹ To understand the variety of the alliance, among the signatories there are Chin, Kachin, Kajah, Karen, Mon, Rakhine and Shan civil society organizations.

⁸⁰ Extract from "Position of Civil Society Organizations on the case against Myanmar by the International Court of Justice regarding the potential indication of provisional measures to prevent genocide", 22 January 2020, Yangon.

heartened by these cases at the ICJ and ICC, as they send a clear signal to Burma Army leadership that the net of justice is closing in, and their days of impunity – for crimes against all ethnic peoples in Burma - are numbered»⁸¹.

The enthusiasm linked to this unprecedented mobilization pattern was usually followed in the interviews by a cautionary note. In fact, the interviewees felt the urgency to make a distinction between the beliefs of activists and CSOs and those shared by the general public.

«Majority of the people still justify actions at the Rakhine State»⁸².

I have shown how human rights defenders and activists recognized how the root causes of the crimes against Rohingya are the same of the crimes against their own community. All ethnic groups are facing the same enemy. Therefore, they see the opportunity the international justice mechanisms' interventions create to advocate for structural changes and to dismantle the institutional behaviour of perpetrated impunity. However, the interviewees, knowing the situation on the ground, are careful not to generalize.

«Activists have long time being committed to human rights issues; they understand international mechanisms, at least HRs mechanisms. However, the public may not follow that. So it doesn't mean that this is suddenly going to improve the relationship between different ethnic groups, I still see a lot of hate speech against the Rohingya»⁸³.

Indeed, while the solidarity movement managed to emerge and voice its argument, its view is conceived as marginal in society. The governmental narrative on Myanmar authorities' responsibilities in the Rakhine conflict and its consequences on the Rohingya community continues to be dominate the public domain, and the fear of retaliations kept silencing many organizations that did not dare to voice their opinions.

The fear of retaliations and the difficulties encountered by the CSOs in collecting unbiased information about the ICC were widely present in the interviews I conducted. The interviewed CSOs did not concealed the fear to express their opinion on the ICC and on the other international justice mechanisms operating in the country. In particular, they highlighted how they are concerned that the authorities would question and ban their activities in case they publicly stand for the international justice mechanisms.

« I believe you might know when you meet with many peoples that this issue is really divisive. Very sensitive. Since we are working with government agencies sometimes, it is quite a

⁸¹ Extract from Statement by the Worldwide Karen Community: "Worldwide Karen Community Welcomes the ICJ Genocide Case an ICC Investigation", 02 December 2019.

⁸² Interview 003, p.2

⁸³ Interview 021, p.6

challenge for us to touch this issue. [...] There is complete silence on this issue. I cannot say in person, I cannot open my mouth and say the word Rakhine»⁸⁴.

«The work on international justice is only done by organizations outside Myanmar. Organizations inside Myanmar they are not going to produce a statement like that. The government will check their offices, interrupt their activities, and the staff will be questioned by the authorities»⁸⁵.

When asked to talk, CSOs based in Myanmar often explicitly expressed their difficulties in speaking freely about their opinion on the Court and the Rohingya issue. An extract from one of the interviews helps clarifying the atmosphere of fear that forces organizations to be so cautious: «You have to be conscious that a lot of people are worried about talking because everybody has his concerns about security. Security of their colleagues. There is a lot of fear»⁸⁶. Another organization was even sharper: «This is confidential, we are living in Myanmar»⁸⁷.

The security concerns just described posed a serious challenge on the eve of this dissertation's fieldwork. Emails turn out to be rarely effective in getting in touch with the CSOs operating in Myanmar. Either organizations did not reply, or they systematically postponed the meeting, making clear they are uncomfortable in talking about the issue. Even once I managed to set up a meeting, it happened that the interviewees, despite I was physically in Yangon, asked me not to speak in person: preferring Skype or telephone conversations. Furthermore, most of the in person interviews I conducted in Yangon did not take place in the interviewees' office or the organization's headquarter, but in public spaces such as cafés or squares and they recommended a special discretion in recording the conversation.

Such diffuse reticence among local actors to talk and share their advocacy work, as well as their opinion on the ICC, forced me to recur more extensively than expected to regional and international organizations active in Myanmar. Often, their intermediation was crucial to overcome the barrier of suspicion and obtain a meeting with local organizations. At the same time, the exchanges I had with advocates having long lasting contact with CSOs based in Myanmar revealed extremely meaningful. One of the interviewees, employed as advocacy director in an international organizations working with different local partners in Myanmar, told me about one meeting he had with a young Burmese lawyer in Yangon who wanted to discuss with him international criminal law mechanisms. The recounted how he wanted to speak only in confidence, in a corner of a restaurant, because he did not want anyone else to know. When asked

⁸⁴ Interview 003, p.1.

⁸⁵ Interview 020, p.3.

⁸⁶ Interview 016, p.9.

⁸⁷ Interview 009, p.7.

whether he have ever spoken about this issue with someone else (any Burmese) the answer was final: «I cannot. I did not dare to speak about the ICC and investigation with anyone else»⁸⁸.

Myanmar CSOs' engagement with the ICC

International criminal justice mechanisms played a pivotal role in opening unprecedented avenues for discussing justice and accountability in the country. Albeit limited, the creation of this space for contention allowed new voices such as the one of the solidarity movement to emerge and forced the defendants of the governmental narrative to respond to their argumentations. The polarization of the already sensitive Rohingya issue was reinforced by the ICC's willingness to open an investigation in the country. The diffusion of these two competing narratives in the media and in the public discourse was disproportionately in favour of the governmental one. The same can be said for what concern their capacity to make their point heard in the ICC's proceedings.

Indeed, the emerging mobilization of the solidarity movement failed so far to traduce in direct engagement with the ICC. The security concerns, along with the lack of awareness about what the ICC is, and what can be achieved through its intervention, emerged as the core motivations behind this lack of engagement. As the interviewees said:

«People are happy to see the military suffer, but then they are concerned about what is the reprisal at the local level that might happen»⁸⁹.

«Those people that have vision for the solidarity movement and operate for that, they will be cracked down and persecuted»⁹⁰.

Therefore, prudence and secrecy were at the base of most of the interactions the CSOs aligned with the solidarity movement had with the Court. Among the organizations I interviewed, there were actors who had contact with ICC's officials working on the investigation and declared themselves willing to facilitate the Court's investigation in the country. However, while they openly supported the ICC's investigation, they circumscribed their actions to an informal level of interaction with the Court. The only public advocacy campaign in favour of the ICC's investigation within Myanmar' borders did not translate into formal participation in the ICC's proceeding.

Who, in contrast, made extensive use of the formal participation mechanisms, as witnessed by the three Amicus Curiae that have been sent by Myanmar CSOs to the ICC, were organizations that

⁸⁸ Interview 008, p.4

⁸⁹ Interview 002, pag.3

⁹⁰ Interview 009, p.4.

embody and reinforce the governmental narrative. The Amicus Curiae submitted to the Court by Myanmar CSOs are aligned in contesting any attempt by the ICC to start an investigation in the country. This possibility is described as an undue international interference with Myanmar national affairs, and as an inadmissible action in defence of a non-recognized ethnic group having no legitimate rights in the country. Going through the requests, I encountered many of the pillars of the governmental narrative. First, the 'Alliance for Social Justice' in its Amicus Curiae highlighted the illegitimacy of the ICC's intervention, stressing the judicial efforts already undertaken by the military and civilian forces to account for the crimes committed in the Rakhine State.

«The steps undertaken by Myanmar's ICOE and the Military Court of Inquiry so far [...] are likely to render an ICC investigation inadmissible»⁹¹.

Furthermore:

«at present, the Prosecutor has failed to satisfy that test [that there is a reasonable basis to conclude that no true investigation is underway in Myanmar] and her admissibility conclusions appear to be based on a preconceived presumption (acquired from civil society organizations and UN bodies possessed of a biased agenda) that any steps taken by Myanmar are *a priori* designed to whitewash the situation and to absolve its civil and military hierarchy of any criminal responsibility»⁹².

Second, the 'Confederation of Trade Unions Myanmar' contested, among the other points, the use of the term Rohingya to identify an ethnic group belonging to Myanmar history. In its request, the applicant used the term "Rohingya" only in quotes, systematically referring to the community as unlawful immigrants.

«Although the Prosecutor defines the term "Rohingya" as connoting a "distinct ethnic group", the Applicant will submit research which argues that it would be more appropriate to define the name as embodying an ongoing process of identity formation that has unified Muslim communities in the North Arakan region with a similar cultural profile but a diverse historical background»⁹³.

Moreover:

«[...] with respect to the alleged "lawful presence" of "the Rohingya victims in the areas from which they were removed", the Applicant will tender materials released from the diplomatic

⁹¹ ICC-01/19-18-Red, "Public Redacted Version of Application pursuant to Rule 103(1) of the Rules of Procedure & Evidence", Alliance for Social Justice, Maungdaw, 21/10/2019, p.13. Emphasis in the original text.

⁹² *Idem*, p.13

⁹³ ICC-01/19-16, "Application pursuant to Rule 103(1) of the Rules of Procedure & Evidence", The Confederation of Trade Unions Myanmar, 16/10/2019, p.8.

archives of Australia, the United States and the United Kingdom, which highlight the extent of illegal migration from Bengal into Rakhine State during the first three decades of Myanmar's independence (1948-1978)»⁹⁴.

Eventually, the 'Thayninga Institute' in its submission denied the Rohingya identity never using the term, while referring to them only with the term "Bengalis". The narratives of foreign invaders is then coupled with the threat they caused to the Myanmar population (which is clearly distinguished from the Rohingya), calling for a legitimate intervention to protect Rakhine population from terroristic intents.

«The Thayninga Institute as well as many other civil society organizations in Myanmar objects to the use of such words as "ethnic cleansing" and "genocide" in reference to the military aid provided to civil authorities to re-establish security and rule of law in Rakhine State. The Tatmadaw deployed forces in response to well-planned, coordinated and lethal attacks by terrorists against Myanmar security forces and Myanmar citizens, and furthermore, the attacks against the security forces were carried out by overwhelming numbers of Bengalis intent on killing»⁹⁵.

Because of this trend, the presence of dissenting voices in the country remained outside of the courtroom. Looking more closely at this trend, it cannot be circumscribed to the Myanmar situation. Going through the cases under investigation, it is often the case that security concerns and the lack of awareness about the ICC's nature and capabilities pose concrete challenges to the mobilization of CSOs not supporting the main narrative. This trend can lead to a lack of formal participation of vulnerable actors operating the context under investigation, while opening the door to organizations that promote a view in line with the dominant narrative in the country. There is the necessity to face this challenge and find solutions that would allow organizations to bring safely their point of view to the attention of the Court.

Mobilizing around ICC's investigation in Bangladesh

The cross-boundaries nature of the investigation, the limited space for mobilization in the Myanmar context, and the long history of hospitality and support to the refugees due to the massive presence of the Rohingya community in the camps at the border, made the Bangladeshi civil society strongly attentive to the ICC's investigation. As the interviews are going to show, Bangladesh became one of the cores of the CSOs' mobilization on the Rohingya issue. In stark

⁹⁴ *Idem*, p.8-9.

⁹⁵ ICC-RoC46(3)-01/18-34-AnxI, "Annex I: Amicus Curiae", The Thayninga Institute for Strategic Studies, 06/08/2019, p.16.

contrast to the situation characterizing the public discourse in Myanmar, the Bangladeshi public and media's debate about the November Turn in particular, and about the condition of the Rohingya more in general have been salient and largely debated throughout the years.

The majority of organizations mobilizing around the ICC investigation were already active working in support of the Rohingya community long before international justice interventions. As I presented in the background paragraph, forced migration from Myanmar to Bangladesh became massive already in the 1980s, and continued to worsen after each wave of violence that occurred in the Rakhine state. So far, more than one million Rohingya refugees live in the camps at the Bangladesh South border. The first emergency response of Bangladesh's civil society to this massive arrival was progressively replaced by a more structural engagement with the Rohingya community. The massive displacement and the arrival in the camps was described in the interviews as a phase of generosity and open harms, in which Bangladesh's civil society made all the efforts to rescue and grant basic needs to the Rohingya. As recalled among others by the head of the Centre for Peace and Justice based in Dhaka: «it is useful to remember how at the very beginning it was really the local people that responded to Rohingya basic needs. Well before the international organizations and humanitarian agencies got involved»⁹⁶.

This strong bond has been strengthened by years of activism in the camps with the Rohingya community. While recalling when they start working with the refugees, many interviewees referred to their direct or indirect experience in the 1970s among the reasons pushing them to mobilize for the Rohingya. The humanitarian crisis that followed the Pakistani army intervention in Bangladesh emerged to be a vivid memory for the activists I interviewed. They recognize how crucial it was in that experience to get help from neighbouring countries to overcome the peak of violence. «In 1971, when we had our war, many people from neighbouring countries and abroad helped us. It is our duty to stand up with these people»⁹⁷. «They should not face here what they have faced in Burma»⁹⁸. «It is our duty to create trust with affected communities. They are our guests, and we are their hosts. Our survivors and their survivors are the same. We are trying to heal their trauma»⁹⁹. The CSOs I interviewed often were among those organizations who provided first humanitarian responses, such as food, healthcare, and shelters to the refugees crossing the border. Since then, they have continued to operate in the camps, as well as advocating at the national level for better conditions in the camps and safe repatriation for the Rohingya. During

⁹⁶ Manzoor Hasan's interview with Asia Foundation 29 June 2020, available at: <https://asiafoundation.org/2020/06/29/aid-in-conflict-affected-borderlands-the-rohingya-crisis-in-bangladesh/>

⁹⁷ Interview 017, p.2

⁹⁸ Platform Meeting – 19/02/2020

⁹⁹ Interview 017, p.3

their decades of work with the refugees' emergency, these organizations were mainly active in the humanitarian and microfinance field or committed to the documentation of human rights' abuses.

The unprecedented international attention that follows the November Turn contributed to give more leverage and visibility to the demands advanced by the active network of organizations just described, granting them a further channel to reach their goals. The opening of this opportunities happened in a context in which the possibilities to conduct activities in the camps were shrinking. According to the interviewed CSOs, Bangladeshi authorities started imposing increasing access restrictions, which affect their capacity to conduct projects with the Rohingya community living in the camps.

«There are a lot of restrictions, there are a lot of conditions. You can't do this. You can't do that. So yes, now working with the Rohingya community is becoming very challenging»¹⁰⁰.

The range of restrictions implemented limited both the number and length of the accesses as well as the kind of activities that CSOs are allowed to pursue within the camps. Time limitations were introduced to circumscribe the presence of external CSOs in the camps. At the same time, the authorities fixed a limited number per day of valid permits to access the camps. This evolving environment contributes to creating a sense of uncertainty among organizations operating in the field.

«We are having this kind of shrinking space, we can't work the way we want. We don't actually know when the government can come out and say you cannot now go and work in the camps»¹⁰¹.

Many organizations that over the years focused their advocacy efforts on humanitarian responses to the crisis and on granting services within the camps started joining the call for justice and accountability for the Rohingya. In the Bangladeshi context, I did not observe a substantial change in the mobilization patterns around the Rohingya cause. What seems to be the main effect of the November Turn was an unprecedented centrality given to the justice discourse within the already existing mobilization pattern. The presence of international mechanisms interested in establishing responsibilities and make accountable those that have caused the forced displacement and the suffering of Rohingya community was perceived as a unique opportunity to make the most out of years of documentation of human rights' abuses. Organizations with a length experience in the camps, having collected along the years the stories of the refugees, their

¹⁰⁰ Interview 15, p.3

¹⁰¹ Interview 015, p.3

testimonies about the violence suffered find themselves having a wealth of knowledge of great relevance for achieving justice and accountability for the Rohingya community.

The few elements I provided are already sufficient to prove the radical differences characterizing the CSOs' mobilization framework in the two countries in which I conducted the fieldwork for this research. The substantial divergence between the two contexts forced me to drastically change my approach and attitude toward interviewees, adapting to the mutated environment. The sharp contrast in CSOs' approach toward the ICC already emerged in the fieldwork's preparation phase. The first remote contacts with the organizations active in the field received prompt and enthusiastic responses. Civil society organizations proved to be willing to share their opinion about ICC's decision to start an investigation on the crimes committed against Rohingya community at the border. Then, once I moved from Yangon to Dhaka, I was immediately immersed in a structured and lively network of actors working on the Rohingya issue. They were promoting both internal discussions on how to exploit the opportunity created by the international justice mechanisms as well as public events and round-tables about it.

This fortunate circumstance enables me to meet mostly in person the representatives of the organizations I was interested in talking to, with the only exception of people who were on mission outside Dhaka during my stay¹⁰². The interviews I conducted were comparatively less tense and, consequently, more informative than those conducted in Myanmar. The interviewees in most cases felt enough comfortable to invite me to the organization headquarters and we were able to discuss extensively about their advocacy work. After a couple of interviews, I had already been invited to take part in public events as well as organizational meetings dedicated to how to exploit the favourable moment and the galvanized public attention. The major newspapers and TV channels daily discussed updates on the investigations and reported the positions of the main stakeholders. It was rather common for universities as well as CSOs to promote conferences, seminars, and roundtables to shed light on the different international criminal law mechanisms at place. I have already said how the lack of awareness and the consequent confusion was detrimental to mobilization in Myanmar. The possibility for public opinion and CSOs to read and be informed about what exactly the ICC is, what it can realistically achieve and how to contribute to the investigation was recognized by interviewees as a crucial asset to be able to engage with the Court.

While the discussion on the violence perpetrated in the Rakhine State and at the border by Myanmar military forces are largely debated and discussed, the Bangladeshi authorities

¹⁰² Due to the Covid-19 breakdown and the limited time I could spend in Bangladesh, I only managed to conduct interview in Dhaka. In the paragraph dedicated to the camps, I will develop more on the consequences of my limited mobility.

fundamentally silenced the violent episodes pursued by their forces within the camps, condemning and even incarcerating organizations pointing the finger on such episodes and asking for a more transparent management of the camps.

CSOs' Engagement with the ICC in Bangladesh

The CSOs' mobilization on the Rohingya issue within Bangladeshi borders did not limit itself to aliment the public debate and promote activities in the camps, but actually translated into a significant engagement with the ICC's proceeding. In this section, I try to disentangle what led organizations in this context to choose formal and informal participation mechanisms to voice their demands and influence the ICC's decision-making process.

As it strongly came out from the interviews, the decision of different international law mechanisms to start investigations in the country was perceived as an opportunity and a signal that human rights defenders and organizations working with the Rohingya community since decades are finally not alone. Despite the opinions diverge on whether and to what extent these mechanisms are going to improve Rohingya's conditions, it is a shared belief that they are creating unprecedented opportunities to move forward the deadlock characterizing the diplomatic negotiations on the Rohingya issue.

The ICC's proceeding has benefited from this lively activism. Bangladeshi CSOs with a history of involvement with the Rohingya community were responsive and proactive in using and exploiting the formal and informal participation mechanisms provided by the ICC. They have shown open to facilitate ICC officials' access to the camps, offering to act as intermediaries. Furthermore, as I have already introduced, they were willing and enthusiastic to share the wealth of knowledge accumulated in years of activism and advocacy on the issue. As the extract below helps clarifying, these organizations felt that they have a contextual knowledge and a baggage of information accumulated in years of work with the Rohingya that the international justice mechanisms would not be able to gain by themselves.

«There are people that have been working for justice for the Rohingya and different minorities inside Myanmar for years, for decades. Long before the ICC was in anybody agenda as a possible hope for engaging in the country. [...] For these people the *ICC is in a way just the last people who arrived*. What can they do that has not already been done by us from years and years? You are the last arrived, the least knowledgeable, you don't know the context, there

are no many dynamics, there are so many people that have been doing this work and might be of use for you. Start by talking to them»¹⁰³.

To reach this scope and bring in the ICC's proceeding information that otherwise would unlikely manage to get into the ICC's debate, many CSOs opted for the use of the formal participation mechanisms investigated in this dissertation. Organizations were trying to make the ICC acknowledging the efforts and commitment of mobilization from below in the region. The willingness to see decades of advocacy efforts and human rights documentation recognized in the ICC evaluation of the case boosted CSOs' effort to understand, collaborate and directly engage with the participation mechanisms ICC put at CSOs' disposal. These instruments have proven to be up to the task.

As described above, events, seminars and public discussions about what international justice mechanisms are and what different actors can do to contribute to their work proliferated in the capital. I already stressed the relevance of awareness as the determinant premise for any form of participation and, once this condition is in place, the potential of the ICC's investigation to create new mobilization spaces outside the courtroom. The case of Bangladesh strengthens this argument. The numerous efforts to promote awareness raising brought together CSOs interested in the process. In particular, a network of CSOs that started gathering around the common goals of achieving justice and accountability for the Rohingya, decided to join forces and create a platform. Using the words of an interviewee:

«When this all process started, it gave us the leverage to come together and build this coalition. [...] The civil society has created a platform to talk about justice and accountability for the Rohingya people »¹⁰⁴.

The societal interest in the ICC's investigation translated into a renovated pattern of mobilization. Of additional interest for the object of this dissertation is how the trigger factor that led different CSOs to come together and form a coalition was identified with the intention of exploiting *Amicus Curiae* to bring their demand within the ICC's proceeding.

«*Amicus Curiae* was the basic starting point to come together on the issue. [...] It [The *Amicus Curiae*] was a powerful tool to disseminate our information»¹⁰⁵.

According to the platform's members I interviewed, the choice of *Amicus Curiae* was driven by the possibility to articulate through this instrument the position of the coalition while keeping the complexity of years of advocacy work and human rights documentation. This reading about

¹⁰³ Interview 016, p.7, emphasis added

¹⁰⁴ Interview 014, p.17

¹⁰⁵ Interview 014, p.7

how the Amicus Curiae can be used to effectively bring years of mobilizations and works from below into the ICC's discussion prove to be consequential in fostering CSOs' mobilization. In this regard, the exchange I had with one international organization that often collaborates with other CSOs active on the ground to draft and send together Amicus Curiae to the ICC sounds extremely resonant. What emerged to be the main hurdle in the drafting of Amicus Curiae is to explain what the point of sending such a document is.

«Sometimes people don't really see the point. Because, I think, if you are not familiar with how judges review documents, you not necessarily understand. And this is normally grassroots reaction. Not always, in some instances. Sometimes organizations do not understand that if you don't place your input and your point of view on the record, than it is simply not there. Sometimes organizations would be like: yes, but we have already said that. We have been saying that for years. We have all these reports, we have already engaged with the Court»¹⁰⁶.

«I do see the added value of doing that. Because sometimes you fell the proceedings can become like an academic discussion, and our role as Human Rights Organizations is to remind the discussants of the reality on the ground. And to link it, and to make it a living discussion and not just abstract. And that is where we think the value added is, and why we think is always important to have civil society grassroots and international voicing their opinions and taking part to the discussion but more from the practical lens. Giving things more meaning. A human lens to the discussion»¹⁰⁷.

Despite this extract referred to another situation under the investigation of the Court, it profoundly matches the process that led Bangladeshi CSOs to the decision to use such opportunity to voice their arguments. The decision taken by the platform to engage with these participation mechanisms was marked at the beginning by uncertainty:

«Amicus Curiae Brief was a really new process for us. We had no previous knowledge or experience on such legal mechanisms and more in general on how ICC works. We started asking help to other organizations and we ourselves took the responsibility to collect information, study and understand how to do that. [...] It was extremely time-consuming, and we weren't at all certain that this will be accepted. We were worried and reasoning whether it was a good choice»¹⁰⁸.

«During those days it was not clear whether it will be accepted or not. And it might be a waste of time. But at least, we tried»¹⁰⁹.

¹⁰⁶ Interview 018, p.3

¹⁰⁷ Interview 018, p.4

¹⁰⁸ Interview 021, p.2

¹⁰⁹ Interview 014, p.7

The process of understanding what can Amicus Curiae contribute to and how to draft it in an effective way is recalled as a time consuming and extremely technical one. Despite these difficulties, they opted for the use of this particular instrument. The motivation behind this choice lies in the capacity to communicate through the Amicus Curiae an informed and grounded recall of what happened and is still happening on the ground at the benefit of a more contextualized debate at the ICC.

The platform mobilization resulted in two Amicus Curiae: one sent by a member of the platform in collaboration with the 'Women's Initiative for Gender Justice' and the 'European Center for Constitutional and Human Rights'¹¹⁰; the other shared by all the members of the platform under the name of Bangladeshi Non-Governmental Representatives. Within the requests, actors managed to include historical contextual knowledge, legal expertise, as well as years of direct interaction with the Rohingya community in the camps translated into reports, surveys and interviews. Both requests presented to the attention of the Court were accepted: «When it was accepted, we acquired trust in our potentials and capacities»¹¹¹.

Interestingly, the platform's engagement with the ICC was not limited to the formal participation mechanisms. While the collective submission of the Amicus Curiae triggered the constitution of the platform, it survived its success. The group of CSOs continues to meet regularly, monitoring the investigation by the ICC as well as carrying out their advocacy work at the national level. It emerges clearly from the replies to the interviews how the issue of Justice and Accountability cannot and should not be isolated from a more organic advocacy campaign promoting 1) the improvement of life conditions within the camps, granting more than mere subsistence to the refugees; 2) safe repatriation to Myanmar; 3) the restoration of citizenship rights for the Rohingya.

4.6 Advocating the ICC's investigation from within the Rohingya Community

Mobilization on the ICC's investigation is not limited to solidarity movements. Among the actors mobilizing within Bangladesh boundaries there are those groups and organizations that directly represent the Rohingya displaced community from either within the refugee camps, or from the different diaspora groups around the world. Despite these groups are the best suited to

¹¹⁰ The ACs was sent by Naripokkho, local CSOs working on women's rights in Bangladesh, in coalition with the Women's Initiative for Gender Justice, international CSOs with a consolidated experience with formal participation mechanisms at the ICC.

¹¹¹ Interview 021, p.2

speak out for the refugees' claims and demands, their positions often fatigue to emerge in the public discourse and cross the camps' boundaries. At the same time, as main victims of the alleged crimes under investigation at the Court, they are expected to closely follow the evolution of the proceeding and to have a voice in it. Again, the interviews help clarify the impact of contextual and structural factors on the mobilization pattern of this category of actors.

The first factor limiting the spread of Rohingya demands outside of the camps is the factual impossibility of having stable contacts with the outside world. This condition precipitated in September 2019, when the Bangladeshi government imposed a communication ban forcing mobile-phone operators to limit 3G and 4G services in the camps. The internet ban dictated by the government affected not only Rohingya refugees' capability to be vocal outside of the camps, but it also substantially limits the flow of external information that manage to enter. I have already largely talked about the relevance of awareness and information to understand what the ICC is, how the investigation evolves and to be aware of the possibilities to contribute to the ICC's proceeding. During the interviews I conducted, this sense of isolation and the impossibility of updating was often linked to attitudes and expectations about the ICC in the camps.

«[People in the camps] want to see this process being successful, but it can't be without participation of victims and survivors. [...] People's hope is pinned on that. If the process is moving forward, but they don't know that it's moving forward, and they don't know how quick it can move forward. They might be expecting it to go much more quickly. Then it's just creating more agitation in the camps»¹¹².

Without access to internet, the only source of information became the CSOs who managed to obtain the permit to conduct projects and activities in the camps. However, as I previously reported, governmental authorities increasingly hinder the presence of external actors, reducing, for instance, the number of permits issued. By their own admission, the CSOs' awareness activities are nowhere enough to cover a camp population that stands at one million refugees. A recent survey conducted in the camps confirmed this impression. Direct communication with aid workers and CSOs is among the most utilized sources of information refugees declare to use. Unfortunately, up to 40% of refugees declared not to be able to communicate with the aid providers. The same source reported that the majority of respondents claim they did not know enough about relevant issues affecting the community and see this lack of information as dangerous (Abud et al. 2019, 6). The same ICC's officials tried to conduct outreach activities and awareness raising initiatives within the camps. Still, the impossibility to disseminate the information across the masses living there do not allow a capillary diffusion of information. The recall of CSOs' meetings with the refugees in the camps are neat in unveiling this sense of

¹¹² Interview 019, p.5

impotence on the side of CSOs and of frustration on the refugees' side. Failing to make affected communities aware of the boundaries of ICC's room for manoeuvre fosters crisis of trust toward the institution and compromise the involvement in its proceedings. The following extracts exemplify this sense of frustration and impotence:

«You have to understand that you are touching the biggest fear and greatest hope and that comes with enormous responsibility. When I was telling in front of this large amount of people what ICC is not going to do for them there were actually a lot of people start crying, somebody stood up very angry, saying [...] leave us alone»¹¹³.

«The reaction of the participants to the ICC meetings in the camps was characterized by a crisis of trust. They have different beliefs and expectations. Some of them may think the ICC will do everything [...]. People expect maybe they can obtain some relieves, some benefits. Repatriation also! Some expect that if they do that [give testimony] than they are getting back [to Myanmar]»¹¹⁴.

Frequently, the call for justice is confused with the achievement of immediate political solutions. Hence, it is not seen as a component of the solution, but it is mistaken for the solution itself. Being aware of the real prospects linked to international justice mechanisms is fundamental for empowering Rohingya groups in camps. They must be put in the condition of making an informed decision about whether and how to engage with the ICC investigation. Their deep local knowledge, as well as their understanding of the history and context of Myanmar, can uniquely assist the Court in finding contextualized solutions for the Rohingya community. The necessity to give space to non-mediated positions repeatedly emerged in the interviews I conducted: «no one is more expert than Rohingya. Rohingya can speak for themselves. When you investigate, you should collaborate with Rohingya activists and organizations»¹¹⁵. The removal of the hurdles limiting their access to information is pivotal to enable them to directly advance their demands not only as victims in the trial, but also as organized groups in the public discourse.

The second element highlighted during the interviews regards the multifaceted nature of the positions emerging from the Rohingya community. Different understandings, opinion and expectations evolve and consolidate in a population of around one million people only counting the people living in the camps. Particularly on such a sensitive issue as the ICC's investigation. As has been argued throughout this dissertation, the use of general categories to systematize the mobilization of CSOs often clashes with the incoherence present within the same. This tendency to render homogeneous the CSOs' categories risks overlooking the natural divergences of opinion

¹¹³ Interview 016, p.6

¹¹⁴ Interview 014, p.3

¹¹⁵ Interview 001, p.4

emerging in a composite group of actors. Interviewees often felt the necessity to point to the fallacy of an external narrative that try to report the position of the Rohingya community as a unified one¹¹⁶.

«We are talking about a body of more than a million people, if you have to include the diaspora even more. And people just don't always agree on everything. You know, you ask them about ASSK or NLD and you get a lot of different answer. And sometimes you get clear differences between the diaspora and people in the camps»¹¹⁷.

When I refer to the Rohingya community, it is useful to recall that at the moment I am writing, more Rohingya reside outside Myanmar than inside the country and that the advocacy and mobilization of Rohingya goes well beyond the borders of refugee camps in Bangladesh. A vast network of Rohingya groups is active and advocates from outside the country. Indeed, the longstanding exodus has established Rohingya outposts around the globe, including communities resettled mainly in Malaysia and Saudia Arabia, but also in the USA, Europe and Australia. The diaspora groups developed a transnational link between their homeland and their host countries, advocating and pressuring hosting states and international community to act for the Rohingya cause.

These groups did not face the limitations encountered by the organizations operating in the camps and were particularly able to canalize international attention on the Rohingya cause. In particular, many diaspora organizations focused their advocacy on the issue of justice and accountability, being among the key actors pushing for international criminal law mechanisms to intervene in Myanmar. First, the Rohingya diaspora strongly advocated for the United Nations Security Council to urgently refer Myanmar to the ICC to investigate and possibly prosecute those responsible for genocide and crimes against humanity against the Rohingya, recognizing the ICC as a powerful instrument to achieve accountability for their community. Already in July 2018, a joint statement was released by 26 diaspora organizations based all across the world¹¹⁸. Moreover, as I have introduced at the beginning of this chapter, one of the Diaspora groups based in UK was responsible for the commencement of a universal jurisdiction case in Argentina. While as far as today this represents the only successful case, other groups around the world are promoting similar initiatives¹¹⁹. Diaspora groups assumed an unquestionable leadership in advocating internationally for justice and accountability for Rohingya.

¹¹⁶ Interviews 012, 016, 019, 021

¹¹⁷ Interview 016, p.5

¹¹⁸ Joint Statement: "Rohingya organizations worldwide call for accountability for genocide and crimes against humanity in Myanmar", 19 July 2018, available at:

<http://www.rohingyablogger.com/2018/07/rohingya-organizations-worldwide-call.html?m=1>

¹¹⁹ Interview 001

The indisputably different background in which the diaspora groups and Rohingya organizations in the camps operated generate divergent expectations and strategies. Using the word of one of the interviewees: «the diaspora is much more eager and excited and has higher expectations of the process. Whereas in Burma on the grassroots level people are happy to see the military suffer, but at the same time, they are concerned about retaliation »¹²⁰. Such an extract makes it clear how living and working from abroad unquestionably gives more leverage and space of manoeuvre to the advocacy effort of diaspora groups. While organizations operating in the refugee camps have to reconcile their advocacy goal with their dependence on Bangladeshi government and their daily struggle for survival, inevitably affecting their prioritization of demands. While the interviewee referred to Myanmar situation, the same reflection can be extended to Rohingya groups in the camps. Consequently, it comes with no surprise that some frictions are reported existing between the public positions expressed by the diaspora and the one expressed by the groups in the camps. Both are legitimate and both represent the opinion of the victims of the crimes under investigation.

What emerges from this reconstruction of Rohingya groups' mobilization on the ICC's investigation is that the organizations operating in the camps and those working abroad opted for different mobilization patterns. The latter privileged a strong advocacy campaign in the international media aiming to mobilize the international public opinion and consequently pressure international justice mechanisms to act. They were successful in doing so, and decided not to intervene in the proceeding through the formal participation mechanisms. For what concerns the first, due to the constraining factors enlisted in this paragraph, it comes with no surprise the absence of formal engagement's attempts by Rohingya CSOs active in the camps.

A specification is needed at this point. Rohingya community has the right to take part to the ICC's proceeding as victims, using ad-hoc channels. In particular, the Registry estimates that out of the transmitted representations, 202 representations were introduced on behalf of approximately 470,000 individual victims part of the Rohingya community living in different camps across Bangladesh¹²¹. The collection of victim's statements in the camps has been made possible by the collaboration between the Court's officials and Bangladeshi CSOs. Such consistent individual participation was not complemented by Rohingya organizations' formal participation in the proceeding.

¹²⁰ Interview 002, p.3

¹²¹ ICC-01/19-27, 'Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar', p.11

4.7 International Organizations Advocating the ICC's Investigation

Among the actors who decided to exploit participation mechanisms to voice their position on the ICC's decision to open an investigation in Myanmar and Bangladesh there are organizations pursuing international mandates that either pursue project in the region or aim to bring in the proceeding their expert view on judicial issue linked to the investigation.

I have already underlined how international organization operating both in Myanmar and in Bangladesh are subjected to the same limitations constraining local organizations' advocacy. The fear of retaliations and the possibility to be interdicted from conducting further activities in Myanmar on one hand, and the shrinking opportunities to access the camps in the others, affected organizational margin of manoeuvre on the field and as for the local actors, also their propensity to recur to formal participation mechanisms to take part in ICC's proceeding.

Among the organizations pursuing an international mandate that sent *Amicus Curiae* to the Court, only one was conducting project in Myanmar at the time of the request: the International Commission for Jurists¹²². In its request, however, the organization did not mention this part of its advocacy effort. Instead, it focused its request on legal arguments, discussing the boundaries of Court's jurisdiction and claimed to be qualified to offer assistance to the Chamber due to its expertise in international law and its experience as independent third-party intervener in domestic and international courts and quasi-judicial bodies around the world¹²³. None of the other organizations operating in the countries I had the chance to talk to opted for the formal participation mechanisms. Most of them were collaborating with the Court informally, helping the Court getting in contact with local actors or promoting awareness-raising event to explain the various international justice mechanisms to the public and to the interested CSOs. Discussing with these organizations about the reasons restraining them from recurring to the formal participation mechanisms, I identified a recurring discourse. Often, they raise doubts about why they should invest time and resources in writing an *amicus curiae* when they were already sending the same messages through their reports and through their direct informal contact with ICC's officials. A conversation I had with one representative of an international organization recalling her own experience in this regard, exemplifies well this discourse:

«Recently I was speaking to one international organization about the [...] case and I was asking whether they wanted to file an *Amicus Curiae* supporting the fact that the Court has jurisdiction. That was what we wanted to say, and they say we don't see the point of doing it. We always called

¹²² ICC-RoC46(3)-01/18, 'Request for Leave to Submit *Amicus Curiae* Observations by the International Commission of Jurists (pursuant to Rule 103 of the Rules)'

¹²³ *Idem*, p.6

for an investigation and obviously this means that we want the Court to have jurisdiction. Otherwise, we wouldn't be calling for this»¹²⁴.

At the same time, two organizations pursuing an international mandate – The Women's Initiative for Gender Justice and the European Center for Constitutional and Human Rights - decided to join forces with a local actor – Narippokho - to send a common request¹²⁵. Speaking with the Bangladeshi organization part of the coalition, it positively valued the experience. In particular, it underlined how sending the request with more experienced actors helped the organization's members understanding how the system works for then using this knowledge to promote another amicus curiae with other Bangladeshi organizations. In this case, the request makes clear how the collaboration of these different organizations is meant to bring into the ICC's decision-making process information on «how sexual and gender-based violence can be appraised within the crime of deportation or forcible transfer»¹²⁶, doing so with an attentive eye on the context in which these crimes happened.

4.8 Conclusions: A framework of CSOs' mobilization

Throughout the chapter, I reviewed how the decision by the ICC to start an investigation in Myanmar and Bangladesh fuelled the mobilization of a variegated set of CSOs. The Court acted as a catalyst to mobilization, fostering the societal debate within and outside of the countries directly interested by the investigation. As a result, organizations having different goals and advocating for different investigation's outcome, found themselves interrogating on how to channel these demands. Some limited themselves in fostering the public debate on the international justice mechanisms, others used this opportunity to form coalitions and strengthen their position. Eventually, certain organizations ended up using the participation mechanisms object of this dissertation as strategies for influencing the ICC's decision-making process.

What came out from the interview analysis is first, how the decision on how to engage with the Court and whether to use formal participation mechanisms is not linked with determined organizational characteristics. Organizations pursuing international mandates, active in promoting justice and accountability in the countries interested by the investigation and having enough knowledge and resources to potentially advocate the Court, decided to opt for other strategies or remained silent to not incur in retaliations. On the other hand, small organizations,

¹²⁴ Interview 018, p.3

¹²⁵ ICC-RoC46(3)-01/18-11, 'Joint Request for Leave to Submit Amicus Curiae Observations pursuant to Rule 103 of the Rules'

¹²⁶ Idem, p.5

having no previous knowledge of international criminal justice have equipped themselves for being able to use such mechanisms. Either devoting time and energy in studying and understanding by themselves how the ICC's procedures work or building strategic coalition to compensate for their weaknesses.

The interviews analysis confirms how the meta-categories of local and international civil society organization mask many different facets. Rather than taking for granted the existence of a unified local international, analysis of CSOs' population in global decision-making processes should help exploring who is hidden behind those categories.

In a hostile context such as in Myanmar the decision to start an investigation didn't translate into direct involvement and participation in ICC's proceeding, at least by organizations promoting a counter narrative diverging from government ones. In this case, the investigation triggered the unprecedented mobilization of the solidarity movement, which however did lack the organizational structure as well as the knowledge necessary to recur to participation mechanisms. On the contrary, we see in Bangladesh how the already existing and lively network of actors facilitated a direct involvement of a wide range of actors. The promotion of numerous and capillary awareness-raising initiatives contributes to creating a critical mass of organizations who join forces to mobilize around common goals.

The case analysed in this chapter is promising in showing how consequential the decision by the ICC to start an investigation in a situation can be. The local mobilization around the call for justice for Rohingya transversally benefited from the ICC's decision. In Myanmar, it triggered an unprecedented solidarity movement willing to reopen the debate on accountability in the country, and to foster initiative to stop impunity and hold people accountable for crimes committed in the country. Undoubtedly, as I showed before, it also caused a vivid response from civil society supporting the governmental narrative and rejecting the ICC investigation as an external threat to the independence and unity of Myanmar. Still, in a country in which the Rakhine issue is evicted from any public discourse, and the work with the Rohingya community is actively discouraged, the ICC's decision came with the merit of opening spaces for discussion. Often, they are contentious spaces of discussion, but still representing an unprecedented opportunity for CSOs to voice their positions. On the other hand, the case of Bangladeshi mobilizations represents an example of how the existence of the participation mechanisms for CSOs at the ICC are able to trigger a mobilization from below. In this case, the drafting of an *Amicus Curiae* was the pulling factor in joining the forces among actors already active in the field and to promote a permanent coordination group that aims to closely follow the developments of ICC's investigation. ICC's participation mechanisms prove to be efficacious channels through which organizations working at the local level can effectively contribute to the investigation bringing into the Court's debate

contextual knowledge, year of concrete work in the field, as well as a panoramic of the sentiments toward the Court in the context under investigation. All those contributions are extremely valuable to remind the discussant about the reality on the ground, giving a «human lens to the discussion»¹²⁷.

¹²⁷ Interview 018, p.4

5. Conclusions

This section aims to wrap up the questions, concepts, and contributions this work helped to disentangle, while collocating them in a broader academic and policy debate. To do so, First, I come back to the research questions that have driven this work to retrace the thesis' contributions. Then, I present how these contributions speaks to ongoing debates within the literature and among practitioners operating in the policy field of interest. Finally, I discuss the research paths and questions left open by this dissertation which call for further investigations.

The thesis started from an intriguing puzzle: decades of opening up of opportunities for civil society organizations to participate in global decision-making processes made their presence and potential influence in these settings as a given. We got used to take for granted the presence of CSOs as actors at the table of international organizations, conferences, and institutions. At the same time, while we know much about the processes that makes possible for those opportunities to flourish across institutions and issue areas, much less attention was devoted to test the effect of this opening up process. Systematic mapping efforts capable of tracing CSOs participation across different global decision-making processes are still lagging behind. Indeed, whether it has been extensively investigated how starting from the '90s there was a substantial spread of institutional provisions allowing CSOs to access global decision-making processes, which actors actually populated these participation mechanisms and what they did with them, still remain an open empirical question that deserve further investigations. Once those opportunities were at place, who ended up actually exploiting them over time? Does the presence of opportunities for participation translated into actual civil society organization's involvement? And if yes, who benefited from these possibilities?

To answer these questions, I deemed necessary to opt for an interdisciplinary and mix-method perspective. In particular, the thesis collocates itself at the intersection of three different strands of literature: the transnational advocacy, the interest groups and the international court and tribunal ones. Chapter I lengthily discuss the benefits of each of this strand in building the argument. Briefly, I look at the phenomenon of CSOs participation in global decision-making process building on the established and fruitful cross-fertilization among interest groups and transnational advocacy literature in conducting population mappings in these settings. Then, I combine it with insights offered by the international courts and tribunal literatures. As this thesis helped unveil, despite this strand stands most of the time on its own with no connection with interest groups or transnational advocacy theorizations, the arguments developed within it presents relevant complementarity potentials in its way of facing the issue of interest representation biases in global decision-making processes.

The broad questions identified by the selected strands of literature were analysed and addressed through the lens of the context-specific insights of one international judicial institution, the International Criminal Court. The willingness to close up into one relevant institution allows me to operate a scrupulous and in-depth investigation of the population of civil society organizations who engaged with the Court over the twenty years of its existence. At the same time, the construction of the arguments and the theorizations advanced in this dissertation always relates the ICC's findings to the general debate. Finally, the exploration of the phenomenon demanded a mixed methodological approach which allows me to integrate the quantitative insights coming from the mapping efforts of the population of civil society organizations exploiting the participation mechanisms over time, with a qualitative understanding of the motives and the catalysts that led organizations to take this decision.

Research questions and main arguments

This dissertation has explored the actual participation of civil society organizations in the International Criminal Court's decision-making process across the first twenty years of its existence, testing the Court's capacity to reflect through its participation system the complexity of positions and types of actors potentially affected or interested by its deliberation. This has involved first, figuring out the population of actors who decided to invest time and resources to advocate the Court using the formal participation mechanisms at their disposal; secondly, making sense of the logic and causal mechanisms that determined which among all the organizations mobilizing were granted access and have been taken into account in the Court's deliberations.

Answering the first research question - *once opportunities for CSOs to participate in global decision-making process are at place, who are the actors that manage to exploit them* - the mapping effort carried out (Chapter 2) tried to be adequate to grasp the complexity of the phenomenon. The descriptive analysis conducted proved to be consequential. Showing and enumerating which interests got to be present and heard in the ICC decision-making process, I was able to understand whether the existing participation mechanisms were able to attract most of the same kind of organizations or they managed to mobilize a diversified set of actors and interest. I searched for the presence of systematic biases in the population, considering how best to address concerns over data collection hurdles characterizing population analyses at the global level, and how to minimize the risk of selective exclusion of certain kind of actors from the analysis. The identified data collection strategy – a multi-layered one – proved to be up to the task, preventing the omission of organizations which were hardly detectable using standard methods. As emerged from the dissertation's results, the multi-layered data collection strategy contributed to reflect in

the analysis the diversity characterizing the population of civil society organizations that formally engaged with the Court over time. Looking at the involvement phase of the ICC's decision-making process, no systematic exclusion or underrepresentation patterns penalizing certain types of CSOs has been detected. CSOs counting on different organizational characteristics and conveying diverse messages overcame the difficulties in advocating a global decision-making process and managed to be vocal through the participation mechanisms at their disposal. The mapping effort conducted shows how the formal participation mechanisms characterizing the ICC's decision-making process have effectively catalysed the mobilization of a diversified CSOs' participation system.

Once I traced the characteristics of the population of CSOs who engaged with the Court over time, I moved to the second research questions driving this dissertation. *Which logic drives access to the ICC's decision-making process and what are the consequences of this access system? Are some CSOs more likely to get access at the expense of others and why?* The main argument advanced in the dissertation is that the Court, in selecting to whom granting access, follows an integrated access logic balancing the need to obtain expert knowledge and relevant information from the participation mechanisms with the one of re-legitimizing its proceeding through the same channels. Such a logic has been strongly corroborated by the multivariate analysis conducted in this dissertation. The findings show how the exchange-based relationship at the core of the functionalist access logic promoted by the interest groups and transnational advocacy literature failed in the case under investigation to capture the dynamics driving CSOs' access to the ICC's decision-making process. Looking at which CSOs reached the access phase of the ICC's decision-making process, organizational characteristics such as the degree of expertise or resources had a limited influence in increasing their likelihood to get access. As discussed in Chapter 3, the Chambers have been attentive to consider more than one factor while selecting to whom grant access. The integrated access logic helped unveil how it is not only a matter of who demanded access, but it is equally relevant how the CSOs decided to exploit the participation mechanisms. Only conceiving the two elements together through an integrated logic, we are able to grasp the access dynamics characterizing the ICC. The diversified participation system characterizing the access phase of the ICC's decision-making process came as the main result of this logic. However, this openness did not interest all CSOs in the same way. Introducing the advocacy framing element in the analysis, I was able to detect how the Chambers selection was responsible of the amplification of certain voices at the expense of others. Indeed, how organizations framed their demands to the Court has been proven to matter in determining their chances to be selected and pass to the access phase of the ICC's decision-making process. In particular, the organizations framing their requests in line with a professionalized understanding of what the Court should do

and achieve came out to be more likely to be heard than those organizations who opted for more contentious framing. This trend emerging from the data proves how while the Court was able to bring in its decision-making process a variety of different actors, it still has to work on its capacity to incorporate alternative voices.

Relevance

The findings address scholars interested in international judicial institutions, while speaking to the broader debate in international relations and interest groups. The focus on International Criminal Court provides a solid case to explore the phenomenon of the participation of civil society organizations in global decision-making processes, contributing to test and refine the mapping effort methodologies. This work responded to the demand of comprehensive mapping efforts interesting global decision-making processes, providing a systematic empirical analysis of an understudied issue area among global decision-making processes, the international courts and tribunals' one, which has been recognized to be one of the most open to contributions from CSOs. It does so, starting from the methodologies and theorization grounded in the interest groups literature, while introducing methodological innovations which proved efficacious to provide a more comprehensive understanding of the population under investigation. In particular, the multi-layered data collection strategy significantly contributed not to overlook the weakest part of the population I was trying to investigate, providing factual instruments that can be replicated in future efforts in this direction. At the same time, the introduction in the analysis of the advocacy framing that the CSOs aim to deliver in the decision-making process, capturing and measuring this element represents both an enrichment of the analysis conducted as well as a potentially powerful instrument in future investigations.

The findings establish the potential of strengthening the cross-fertilization between the strand of literature explored in this dissertation. The insights coming from the international courts and tribunal literature revealed crucial to the introduction of one of the innovative elements of the analysis conducted in this dissertation that can promisingly travel outside of the study of international judicial institutions: the attention devoted to the content of CSOs' advocacy. Indeed, while this element finds no systematic space in the theorization of CSOs' formal engagement with global decision-making processes within the transnational advocacy literature, it is largely debated and comparatively well theorized in research dealing with CSOs' engagement with international law decision-making processes. Literature exploring international courts as well as transitional justice mechanisms, often stressed how these settings became arenas in which contrasting ideas of justice have been *articulated and negotiated* by a range of domestic and

international actors. Such arenas were not only conceived as formal mechanisms through which CSO can exchange information and deliver their expertise, but also as space to have an addressee for their opinions, fostering interest mobilization and creating *spaces of contention*. This significant contribution strengthens the choice to add the international courts literature to the picture. Indeed, it pay a unique attention to the use of formal mechanisms for participation as instruments to convey transformative or contentious arguments.

Finally, this dissertation contributes to challenge the allegedly implications of organizational characteristics on civil society organizations' behaviour. In particular, I sustain that CSOs' aspirations and demands cannot be inferred by their organizational characteristics. Throughout this dissertation, I go beyond the pervasive idea of a local vs international divide, showing how this way of thinking about CSOs' participation in global decision-making processes through meta-categories of 'international and 'local', creates more blind spots than it helps to clarify. Motivations, mobilization strategies and content of the advocacy significantly vary across the organizations mobilizing around the ICC's investigation independently from the fact that they are organizations mobilizing at a local scale or pursuing international mandates. In the case investigated by this dissertation, one consequence of such a discourse is to expect local organizations to speak with a unified voice. On the contrary, the combination of quantitative and qualitative data presented throughout the chapters shows how they do not all seek justice in the same way and do not engage with the Court for the same reasons. This work makes clear how not all map onto the comfortable dichotomy local versus international. Indeed, the explanatory power of the meta-categories 'Local' and 'International' proved to be limited: it tells little about organizational resources or structure, as well as about the goals and demands the organizations belonging to one category or the other aim to bring in the decision-making process exploiting the participation mechanisms at disposal. Without taking for granted the existence of a unified local or international, the analysis helped exploring the variety of organizations and motives hidden behind those categories.

Policy implications

In addition to the methodological and theoretical contributions noted above, this dissertation suggests a number of policy implications and help corroborating some ongoing debates among practitioners operating in the international law field. In particular, the analysis of the International Criminal Court case adds new elements to the discussion on the capacity of international criminal justice mechanisms to trigger interest and mobilization within and outside the borders of the countries interested by the investigations. At the base of the integrated access logic argument presented in this dissertation, there is the acknowledgement that the Court is

going through a phase of delegitimization and is trying to actively respond to the critics using any means at its disposal, including the fostering of CSOs' participation in its decision-making process. Understanding to what extent this attempt proved to be efficacious to capture the attention of diverse civil society actors and to reduce the sense of distance that is among the root causes of the delegitimization of the Court constitutes a critical knowledge to move forward in the promotion of relegitimization initiatives.

The analysis conducted in the dissertation revealed how the formal participation mechanisms have been used by civil society organizations as a discursive arena in which different actors and opinions have found room to articulate and promote contrasting ideas of justice. As testified by the variety of actors and arguments who managed to be present within the ICC's participation mechanisms, the decision of the ICC to initiate an investigation proved to act as a catalyst for the mobilization of civil society organizations, fostering the societal debate within and outside of the countries under investigation. In this regard, the qualitative analysis of the Myanmar and Bangladesh case helped unveiling how consequential it was the decision to start an investigation for a variety of local, regional, and international actors. The creation of an arena in which organizations can convey their views on the investigation forced organizations having different goals and advocating for different investigation's outcome to interrogate on if and how to channel their demands through the formal participation mechanisms the Court makes available. While some actors limited themselves to foster the public debate on the international justice mechanisms, and others used this opportunity to form coalitions and strengthen their positions, certain organizations ended up using the participation mechanisms as privileged channels for influencing the ICC's decision-making process. These mechanisms at the disposal of the civil society organizations enabled them to negotiate and challenge the meanings and implications of the Court's decision-making process from within and indisputably succeeded in promoting participation.

While on one hand the diversity of organizations and voices found within the formal participation mechanisms promoted by the ICC is encouraging, data on the systematic silencing of contentious and transformative arguments within them demands further considerations. This point become particularly urgent since it is at the base of a sense of mismatch between what affected communities conceived as justice and the allegedly universality of international criminal law's principles and mechanisms. In particular, the universalistic conception of justice as promoted by the Court is accused to be rooted in an oversimplification and unhelpful generalization pursued by international courts of what justice means for different people and societies in different conflicts and circumstances and the related poor ability to 'deliver' justice in a one-size-fits-all and top-down manner.

Contentious and transformative arguments found their ways toward the formal participation mechanisms, now it is up to the Court to interrogate on if how it would be possible to integrate these conceptions within its decision-making process and not continue simply rejecting them.

Future research paths

This dissertation leaves with some intriguing questions that provide a research agenda for future explorations of the topic within and outside the case study of the International Criminal Court. Indeed, while I shed light on the population of CSOs who engaged with some crucial phases of the ICC's decision-making process and I advanced a promising argument on how those CSOs were selected, still other relevant questions remain unexplored and could contribute significantly to the investigation of the phenomenon.

Data restrictions that I have discussed in the dissertation made not possible for this thesis to explore the agenda setting phase of the ICC's decision-making process, limiting the investigation to its involvement and access phase. Such a limitation restrains the analysis to the mobilization and participation of CSOs interested in the modest number of cases on which the Court decided to start an investigation on, living outside the substantial mobilization of CSOs around cases that never reach or are still trying to get to a formal investigation. It can be useful to remind how pursuant to Art.15 of the Rome Statute, CSOs can provide the Prosecutor information as whether violations are happening in a situation country and its gravity deserves ICC's intervention. This participation mechanism offers a novel avenue for civil society organizations to influence future ICC's investigations, potentially shaping Prosecutor's actions. To understand the scale of CSOs' participation in this phase, it is sufficient to remind how each year the Prosecution office received hundreds of communications pursuant to article 15 of the Statute. For this reason, decisions about the confidentiality classification of these data deserves to be closely monitored by researcher for future investigation of the phenomenon.

The framework utilized in this dissertation seems promising in helping overcome some of the conundrums that hinder mapping efforts at the global level. However, it remains to be tested how far the presented framework can stretch across different global decision-making processes. Indeed, the methodology utilized for the analysis of the CSOs' participation in ICC's deliberations is strongly tied to a certain degree of access to information. Both the multi-layered approach to data collection and the exploration of the content of CSOs' advocacy within the Court's deliberation were made possible by the openness of the ICC's procedures. More opaque or less formal processes in which the participation of CSOs is not properly keep track of can hinder its

replication. Still, the results achieved using this framework encourage to test it in different global decision-making processes. In particular, the multi-layered approach to data collection can help assess to what extent the overlooking of the weakest categories of civil society organizations had affected the results of the population analyses at this level. For what concern the attempt to go beyond the organizational characteristics introducing a quantitative assessment of the framing conveyed by CSOs in the decision-making process of interest, any replication of the method – as clarified in the operationalization of the *advocacy framing* variable – has to come with an adjustment of the vocabulary utilized to the specific context under analysis. Despite this necessity, the development of a tailor-made dictionary that explicitly aims to detect the degree of cooperativeness and contentiousness in advocacy texts engaging with these judicial institutions represents a fundamental first contribution to advance empirical findings in this direction.

6. Appendix

Appendix 1. Quantitative text analysis tools

The manually developed dictionary resulted in a list of 1894 cooperative and contentious words. I weighted each word assigning a value ranging from -3 for contentious words to +3 for cooperative words. Table 1 illustrate examples of how the weighting system is applied in practice.

Figure 6.1 Dictionary Values Attribution

Word	Category	Value
Aberration	Contentious	-3
Endanger	Contentious	-2
Disagree	Contentious	-1
Agree	Cooperative	+1
Bolster	Cooperative	+2
Plaudits	Cooperative	+3

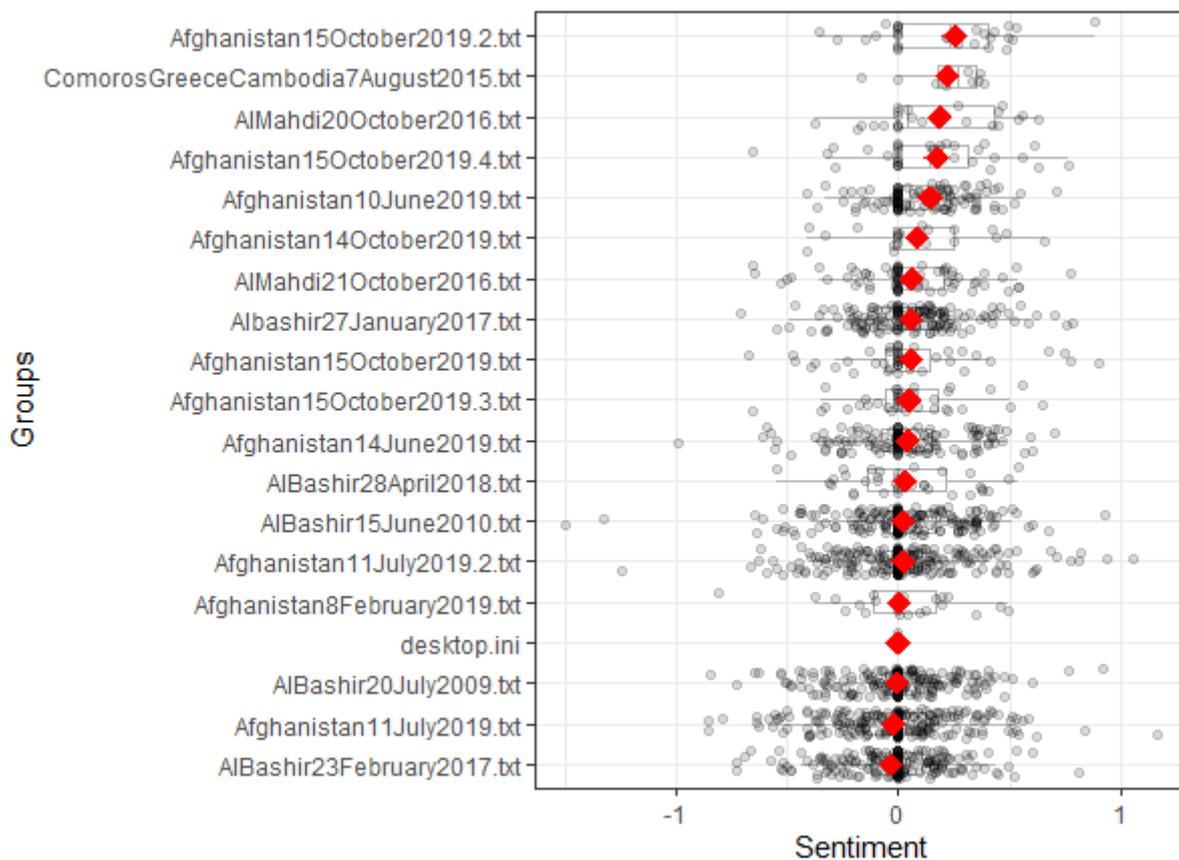
SentimentR outcome considers each sentence separately – counting its resulting score on the base of: 1) the presence in the sentence of one or more words in the dictionary; 2) the presence of negators, amplifier or deamplifiers, which respectively reverse, increase, and decrease the impact of the dictionary word. Eventually, it groups the sentences analysed by single request sent by CSOs to the ICC and assigns to each request a score resulting from the average of all sentences analysed. The two visualizations presented below aims to clarifies visually the outcome of sentimentR process. In Figure 1 is presented an extract of one of the requests sent by CSOs to the Court. In the text we see, sentences are highlighted in red, when there is a predominance of contentious wording; sentences are highlighted in green, when there is a predominance of cooperative wording; and sentences are not highlighted, when they do not contain any word included in the dictionary.

Figure 1

erred. This Courts appellate process was specifically designed to avoid that occurrence. 33. To not grant that right to Afghan victims and Afghan society to appeal the Decision when it directly implicates their interests would also have two potentially irremediable effects. First, it would put victims on significantly different standing than other parties or participants when the Court was designed to enhance their participation in the criminal justice process. It would create an inexcusable dissonance between the rights of an accused who has every right to an automatic appeal of a final judgment under the Statute versus the interests of victims who would have no similar right in respect to a final decision relating to their interests. This would marginalize the role of victims and send the wrong message concerning their place at the ICC. 34. Second, the absence of appellate review would garner further distrust with the Court. Prior to the Decision, Afghan victims and Afghan society stood ready to support the Courts work. They put themselves in harms way to assist the Prosecution, assist the Registry, and assist the Chamber. The absence of adequate outreach and the lack of genuine support shook the confidence of many Afghan victims and civil society members. And the confidence Afghan victims and Afghan society had that the Court would not sacrifice them to protect itself from conducting cases related to Afghanistan has since been shattered by the Decision. If the Court is still unable to provide Afghan victims and Afghan society with assurances that their interests will be understood and delivered by permitting an appeal, the Court cannot hope to win the trust of those who are also in possession of crucial evidence if an investigation is ever to be opened. And without that trust, there will be no justice. The effect of the Courts engagement in Afghanistan in turn will go far beyond the borders of Afghanistan. Unless addressed through appeal, the Court risks its fundamental legitimacy. C. The issues certified for appeal should

The second visualization (Figure 2) shows how the resulting score is calculated for a selection of texts.

Figure 2



Appendix 2. Independent Variables Descriptive Statistics

	Mandate	Level of Expertise	Repeated Players	Resources	Coalition Type	Advocacy Framing	Reparation
Min	1	1	1	1	1	-0.239	1
1st Qu	1	2	1	1	1	0.006	1
Median	3	2	1	2	2	0.130	1
Mean	2.118	2.475	2.108	1.919	2.059	0.140	1.177
3rd Qu	3	3	2	2	3	0.267	1
Max	3	4	13	3	4	0.582	2
NA's	-	9	-	-	-	7	-

	Reparation	Advocacy Framing	Level of Expertise	Repeated Players	Coalition Type	Mandate	Resources
Reparation	1						
Advocacy Framing	0.096	1					
Level of Expertise	0.13	0.38	1				
Repeated Players	0.1	0.28	0.5	1			
Coalition Type	0.075	0.067	0.031	0.27	1		
Mandate	0.094	0.3	0.44	0.27	0.091	1	
Resources	-0.013	0.27	0.32	0.024	0.059	0.52	1

Appendix 3. Multivariate Analysis

This appendix enlists the necessary robustness checks controlling for the validity of the models presented in the dissertation while changing some of the data manipulation used in the analysis. In particular, I control for 1) the impact of MICE package imputation of missing data on the resulting models; 2) the effect of using the logarithm of my Repeated Player variable due to its left skewed nature; 3) the impact of computing the Resources and Expertise variables as numeric one instead of using them as categorical ones.

3.1 All models with no imputation of missing values

I opted for using the MICE package in R to impute the missing values contained in the dataset. In particular, I used the PMM method to impute the values. Predictive mean matching calculates the predicted value of target variable Y according to the specified imputation model. For each missing entry, the method forms a small set of candidate donors (typically with 3, 5 or 10 members) from all complete cases that have predicted values closest to the predicted value for the missing entry.

One donor is randomly drawn from the candidates, and the observed value of the donor is taken to replace the missing value. The assumption is the distribution of the missing cell is the same as the observed data of the candidate donors.

Variable	(1)	(2)	(3)
Intercept	-1.119 (0.828)	-0.822* (0.337)	-1.697* (1.003)
Local	0.430 (0.600)		0.964 (0.791)
International	0.698 (0.575)		0.252 (0.658)
Resources	0.409 (0.275)		0.078 (0.330)
Degree of Expertise	0.034 (0.204)		0.039 (0.237)
Repeated player (LOG)	0.630* (0.320)		0.484 (0.406)
Local Coalition		-0.142 (0.503)	-0.571 (0.627)
Mixed Coalition		1.615*** (0.477)	1.942*** (0.539)
International Coalition		1.269 (0.82)	1.116 (0.892)
Contentiousness		4.978*** (1.243)	4.909*** (1.327)
Reparations		2.630* (1.061)	2.428* (1.079)
Observations	177	179	174
AIC	230.39	186.55	186.71

Note: *p<0.05; **p<0.01; ***p<0.001

Without imputing the missing values in the dataset, the results substantially do not change across the models. The trends observed in the Chapter 3 remained unaltered. As expected, it is possible to notice a slightly better performance across the models in terms of predictive capability (AIC).

Due to the minor impact of imputation on the model's result and the reduced benefits in using non imputed data, I have chosen to provide the most encompassing model specification possible in the case under analysis.

3.2 Model 1 and 3 using not logged Repeated Player variable (with imputed missing values)

Variable	(1)	(3)
Intercept	-1.415 (0.820)	-2.166* (0.973)
Local	0.636 (0.595)	1.285 (0.757)
International	0.605 (0.570)	0.243 (0.621)
Resources	0.456 (0.267)	0.180 (0.323)
Degree of Expertise	0.005 (0.199)	0.073 (0.234)
Repeated player	0.296* (0.138)	0.184 (0.173)
Local Coalition		-0.758 (0.618)
Mixed Coalition		1.759*** (0.520)
International Coalition		1.087 (0.912)
Contentiousness		4.770*** (1.307)
Reparations		2.967** (1.070)
Observations	186	186
AIC	240.60	193.91

Note: *p<0.05; **p<0.01; ***p<0.001

3.3 Model 3 with imputed missing values computing Degree of Resources and Degree of Expertise variables as categorical and not as numeric

Variable	(3)
Local	1.322 (0.767)
International	0.207 (0.644)
Degree Exp2	0.012 (0.521)
Degree Exp3	0.149 (0.685)
Degree Exp4	0.144 (0.730)
Resources Medium	0.475 (0.514)
Resources High	0.338 (0.655)
Repeated Player (LOG)	0.525 (0.413)
Local Coal	-0.768 (0.632)
Mixed Coal	1.807*** (0.524)
Intern Coal	1.083 (0.907)
Contentiousness	4.790*** (1.328)
Reparations	3.034** (1.084)
Intercept	-1.896* (0.833)
Observations	186
AIC	198.953

Note: *p<0.05; **p<0.01; ***p<0.001

Appendix 4. Gallagher Index Calculation

Organization Characteristic	Involvement Distribution (%)	Access Distribution (%)	Difference	Difference Squared	Tot Square of Difference	Tot /2	GI
Mandate					47,4388609	23,71943	4,870259792
Local	39,78494624	36,13445378	3,650492455	13,3260952			
Regional	8,602150538	6,722689076	1,879461462	3,53237539			
International	51,61290323	57,14285714	5,529953917	30,5803903			
	100	100					
Expertise					28,4355647	14,21778	3,770647472
No Feature	17,74193548	14,28571429	3,456221198	11,945465			
One Feature	40,86021505	39,49579832	1,364416734	1,86163303			
Two Feature	21,50537634	22,68907563	1,183699286	1,401144			
All Features	19,89247312	23,52941176	3,636938646	13,2273227			
	100	100					
Resources					71,406539	35,70327	5,975221292
Low	30,10752688	23,52941176	6,578115117	43,2715985			
Medium	47,84946237	52,94117647	5,091714105	25,9255525			
High	22,04301075	23,52941176	1,486401012	2,20938797			
	100	100					
Advocacy Framing					318,256173	190,6281	13,80681305
Cooperative	75,2688172	89,07563025	13,80681305	190,628087			
Contentious	24,7311828	10,92436975	13,80681305	190,628087			
	100	100					

Appendix 5. Software Packages

The used packages in R are:

MICE for imputation. More documentation on the package can be found here: <https://cran.r-project.org/web/packages/mice/mice.pdf> ;

sentimentR for quantitative text analysis. More documentation on the package can be found here: <https://cran.r-project.org/web/packages/sentimentr/sentimentr.pdf>

Appendix 6. Replication Material

The final dataset and the sentiment vocabulary are available here:
<https://github.com/giorgiaconc/CSOs-participation-in-ICC-procedures>

Appendix 7. Interview Consent Form



Interview Consent Form

Research project title: Advocating for Justice - Assessing International Criminal Court's Participation Mechanisms

Research investigator: Giorgia Concetti

Thank you for agreeing to be interviewed as part of our research project.

The interview will take approximately one hour. You have the right to stop the interview or withdraw from the research at any time.

Ethical procedures for academic research require that interviewees explicitly agree to being interviewed and how the information contained in their interview will be used. This consent form is necessary for us to ensure that you understand the purpose of your involvement and that you agree to the conditions of your participation.

Would you therefore read the accompanying information sheet and then sign this form to certify that you approve the following:

- the interview will be recorded and a transcript will be produced
- the transcript of the interview will be analysed by Giorgia Concetti as research investigator
- access to the interview transcript will be limited to Giorgia Concetti and academic colleagues and researchers with whom he might collaborate as part of the research process
- the actual recording will be destroyed after the transcription will be produced
- any variation of the conditions above will only occur with your further explicit approval
- I also understand that my words may be quoted directly. With regards to being quoted, please sign next to any of the statements that you agree with:

I wish to review the notes, transcripts, or other data collected during the research pertaining to my participation.	
I agree to be quoted directly.	
I agree to be quoted directly if my name is not published and a made-up name (pseudonym) is used.	
I agree that the researchers may publish documents that contain quotations by me.	

Signature of research participant

Signature of participant

Date

Signature of researcher

I believe the participant is giving informed consent to participate in this study

Signature of researcher

Date

Contact Information

This research has been reviewed and approved by the Scuola Normale Superiore Ethics Board. If you have any further questions or concerns about this study, please contact:

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Appendix 8. List of Interviews

- Code 001 – 15/01/2020 – Diaspora Organization – Founder - Online
- Code 002 – 19/01/2020 – Regional Organization – Coordinator / Founder - Online
- Code 003 – 05/02/2020 – Local Organization – Legal Advisor – In presence
- Code 004 – 07/02/2020 – International Organization – Grants Officer – In presence
- Code 005 – 10/02/2020 – International Organization – Director – In presence
- Code 006 – 11/02/2020 – International Organization - Conflict Sensitivity & Social Accountability Advisor – In presence
- Code 007 – 11/02/2020 – International Organization - Senior Program Director – In presence
- Code 008 – 09/02/2020 – International Organization - Director of Strategy & Advocacy - Online
- Code 009 – 12/02/2020 – Local Organization – Founder – In presence
- Code 010 – 20/02/2020 – Local Organization – Not public - In presence
- Code 011 – 15/02/2020 – Local Organization – Secretary – In presence
- Code 012 – 15/02/2020 – Local Organization – Activist - In presence
- Code 013 – 17/02/2020 – Local Organization – Executive Director – In presence
- Code 014 – 19/02/2020 – Local Organization – Research Coordinator – In presence
- Code 015 – 23/02/2020 – Local Organization – Project Coordinator – In presence
- Code 016 – 24/02/2020 – International Organization – Senior Legal Advisor – Online
- Code 017 – 03/03/2020 – Local Organization – Project Director – Online
- Code 018 – 18/03/2020 – International Organization – Permanent Representative – Online
- Code 019 – 30/03/2020 – Refugee Camps’ Researcher – Researcher – Online
- Code 020 – 12/03/2020 – Local Organization – Advocacy Officer – Online
- Code 021 – 02/04/2020 – Diaspora – Founder - Online

Appendix 9. Online Survey

The online survey was implemented using Lime Survey tool thanks to the subscription provided by Scuola Normale Superiore.

For more documentation on the software see: <https://www.limesurvey.org/>

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