Analysis of Amicus Curiae Intervention before the International Criminal Court

Current through 15 September 2021

• In all proceedings before the Court – Article 5 or Article 70 cases, at the Situation stage, or in Article 19(3) proceedings through 15 September 2021 – there have been 228 unique instances in which either:
  
  o (i) a prospective amicus or group of amici has sought leave to submit amicus curiae submissions pursuant to Rule 103 or Article 75 with such leave granted or denied (209 instances or 92%); or
  
  o (ii) amicus briefs have been admitted or an indication given that a brief will be submitted further to the invitation of a Chamber without any requirement that the amicus first seek leave to intervene (19 instances or 8%, with no such instances since June 2018).

• With respect to the first category, 134 of these 209 requests for leave have been granted – a success rate of 64%. It should be noted that such requests have been rejected on the merits as well as for procedural reasons.

• With respect to the second category, the great majority – 15 of these 19 ‘invited’ amicus briefs – were submitted at the reparations stage of proceedings. Of the remaining four briefs, two were submitted at the situation stage in the Darfur Situation, an additional brief submitted in the Al Bashir case (pre-trial) and a further brief is slated to be filed, again in the Al Bashir case (pre-trial).

• Of the total 138¹ amicus briefs that the Chambers of the Court have admitted into the record or decided shall be admitted into the record once filed – whether by leave or invitation – the briefs were submitted at the following stages of proceedings:
  
  o Situation: 68 (53%)
  o Pre-trial: 25 (20%)
  o Trial: 5 (4%)
  o Reparations: 18 (14%)
  o Appeal: 12 (9%)

• With regard to whether the admitted amicus briefs were more inclined towards / favorable to the position of the defence or victims, or primarily concerned with defence or victims related issues, or addressing other issues / interests, the 28 admitted briefs breakdown as follows:
  
  o Defence: 5 (4%)
  o Victims: 33 (26%)

¹ It appears one brief was not submitted (deadline for submission passed) even though leave was granted to the prospective amicus. 9 briefs had not yet been filed as of 15 September 2021, after having been granted leave by the Chamber. Thus, as of 15 September 2021, 128 amicus briefs had been filed before the ICC for purposes of this review.
o Other topics/General law: 90 (70%)

- With respect to the subject area of the 128 admitted amicus briefs – law, social science, or a mixture of both – the briefs breakdown as follows:
  o Primarily legal: 104 (81%)
  o Primarily social science: 2 (2%)
  o Mixture: 21 (16%)
  o Other: 1 (1%)