

# **The *Amicus Curiae* in International Criminal Justice**

Report of the Roundtable held  
18 January 2016  
Leiden University, Campus The Hague

## **Executive Summary**

**Australian Human Rights Centre  
Faculty of Law, UNSW Australia  
Faculty of Law, University of Cape Town  
Grotius Centre for International Legal  
Studies**

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## Executive Summary of Report

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Recent decades have witnessed an increased role for civil society actors in international law making and the development of international institutions, with the adoption of the Rome Statute of the International Criminal Court (ICC) being an oft-cited example. Yet once international institutions are established, there are few opportunities and mechanisms for civil society actors to participate directly within the formal processes of such institutions. The main way in which civil society can intervene in proceedings before international criminal tribunals is as an *amicus curiae*, or friend of the court. The practice of allowing *amici curiae* to participate in proceedings is included in the rules of procedure and evidence of most international and internationalised criminal tribunals, including the ICC. These rules generally provide chambers with a broad discretion to admit *amicus curiae* briefs where 'desirable for the proper determination' of the case.

However, the use of the *amicus curiae* must be balanced against the already complex nature of the trial process (especially where victims' participation is also available) and the need to ensure that the fair trial rights of the accused are not adversely affected. Further, the strategic considerations, preparation and admission procedures, as well as the possible outcomes and use of the *amicus curiae* brief remain opaque.

These issues were discussed at a roundtable held at Leiden University, The Hague campus, on Monday 18 January 2016. The roundtable aimed to allow judicial officers, legal practitioners, academics and civil society actors to discuss the practice, process, strategy and impact of the *amicus curiae* in international crimes trials. The roundtable arose from a project managed by Dr Sarah Williams and Dr Hannah Woolaver with the assistance of Emma Palmer: *Evaluating Civil Society Participation before International Criminal Tribunals: the Amicus Curiae and the Rights of the Defence*. This project considers the use of *amicus curiae* briefs before international criminal tribunals.

The roundtable was divided into four sessions. Professor William Schabas provided a keynote address. Three subsequent panel sessions considered: the strategy and impact of *amicus curiae* briefs before the ICC (Panel 1); the possibility of the *amicus curiae* affecting fair trial rights or being 'co-opted' (Panel 2); and the procedural implications, ethical challenges and potential future directions for managing the *amicus curiae* process (Panel 3).

Speakers included Judge Howard Morrison (ICC), Judge David Re (STL), Helen Brady (Office of the Prosecutor, ICC), Steven Powles (Doughty Street Chambers), Michael Karnavas (ECCC), Gaëlle Carayon (Redress), Göran Sluiter (Universiteit van Amsterdam), Rupert Skilbeck (Open Society Justice Initiative), Colleen Rohan (ADC-ICTY), Manuel Ventura (Peace and Justice Initiative), Aurélie Roche-Mair (International Bar Association).

These discussions suggested that there are a number of issues regarding the use of *amicus curiae* briefs before international criminal tribunals that warrant further attention. These included why and when to apply to provide *amicus curiae* submissions, what topics they might address, the criteria adopted by Courts in admitting *amici curiae*, and the relevant ethical considerations involved in acting as *amici curiae*.