

Annex 4 – Tribunal provisions

International Tribunal	Relevant provisions
<p>European Court of Justice</p>	<p>1. In preliminary ruling proceedings: the CJEU does not generally allow third parties to intervene unless they are part of the main proceedings at the national level. Indeed, according to Article 23 of the Statute of the CJEU, third parties must be admitted by the national court to participate in the proceedings before the case is referred to the CJEU for a preliminary ruling, e.g. as a party or intervener.</p> <p>2. For direct actions and appeals against judgments of the General Court: Article 40 Statute of the Court of Justice of the EU (Statute of the Court of Justice of the EU:</p> <p><u>“Member States and institutions</u> of the Union may intervene in <u>cases before the Court of Justice.</u></p> <p>The same right shall be open to the bodies, offices and agencies of the Union and to any other person which can establish an interest in the result of a case submitted to the Court. Natural or legal persons shall not intervene in cases between Member States, between institutions of the Union or between Member States and institutions of the Union.</p> <p>Without prejudice to the second paragraph, the States, other than the Member States, which are parties to the Agreement on the European Economic Area, and also the EFTA Surveillance Authority referred to in that Agreement, may intervene in cases before the Court where one of the fields of application of that Agreement is concerned.</p> <p>An application to intervene shall be limited to supporting the form of order sought by one of the parties.”</p>
<p>International Court of Justice</p>	<p><u>No definition</u> of amicus curiae in the ICJ Statute, but there are a few provisions that allow, under the competence of the court, intervention by third parties.</p>

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	<p>1. <u>For contentious proceedings</u>, participation is restricted to international organisations and states.</p> <ul style="list-style-type: none"> - Article 34(2) of the ICJ Statute provides: “The Court, subject to and in conformity with its Rules, may request of public international organisations information relevant to cases before it, and shall receive such information presented by such organisations on their own initiative”. - Article 62(1) of the ICJ Statute: “Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene”. - Article 63 of the ICJ Statute: “1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith. <p>2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.”</p> <p>2. <u>For advisory opinions</u>: Article 66(2) of the ICJ Statute: “The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organisation considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.”</p>

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<p>International Tribunal for the Law of the Sea</p>	<p>Participation by non-parties (intergovernmental organisations or states) before ITLOS is regulated in the ITLOS Rules. However, the ITLOS Rules have no formal/ specific provision on the submission of amicus curiae briefs.</p>
<p>International Criminal Court</p>	<ol style="list-style-type: none"> 1. Amicus curiae are explicitly provided and regulated in the ICC Rules of Procedure and Evidence (“ICC RPE” RulesProcedureEvidenceEng.pdf (icc-cpi.int)). Article 103(1) ICC RPE: “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”. 2. Participation of victims: <ul style="list-style-type: none"> - Article 68(3) of the Rome Statute: “Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.” - Article 19(3) of the Rome Statute: “in proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court”.

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	<p>3. <u>Participation of states not party and intergovernmental organisations to the proceedings:</u></p> <ul style="list-style-type: none"> - With respect to protection of national security: Article 72(4): “If a State learns that information or documents of the State are being, or are likely to be, disclosed at any stage of the proceedings, and it is of the opinion that disclosure would prejudice its national security interests, that State shall have the right to intervene in order to obtain resolution of the issue in accordance with this article.” - Article 54(3)(c) and Article 87 of the Rome Statute – ICC’s request for cooperation: <ul style="list-style-type: none"> o Article 54(3)(c): “The Prosecutor may seek the cooperation of any State or intergovernmental organisation or arrangement in accordance with its respective competence and/or mandate”. <p>4. Article 87(1)(a): “The Court shall have the authority to make requests to States Parties for cooperation. The requests shall be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, acceptance, approval or accession.”</p>
<p>European Court of Human Rights</p>	<p>Article 36 of the Convention: “Third party intervention” (European Convention on Human Rights (coe.int)):</p> <ol style="list-style-type: none"> 1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings. 2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

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	<p>3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.</p> <p>Rule 44 of the Rules of the Court: “Third party intervention” (Rules of Court - 28 March 2024 (coe.int)):</p> <ul style="list-style-type: none"> - Rule 44(1)(b): “If a Contracting Party wishes to exercise its right under Article 36 § 1 of the Convention to submit written comments or to take part in a hearing, it shall so advise the Registrar in writing not later than twelve weeks after the transmission or notification referred to in the preceding subparagraph. Another time-limit may be fixed by the President of the Chamber for exceptional reasons - Rule 44(3)(a): “Once notice of an application has been given to the respondent Contracting Party under Rules 51 § 1 or 54 § 2 (b), the President of the Chamber may, in the interests of the proper administration of justice, as provided in Article 36 § 2 of the Convention, invite, or grant leave to, any Contracting Party which is not a party to the proceedings, or any person concerned who is not the applicant, to submit written comments or, in exceptional cases, to take part in a hearing” <p>The Practice Directions on the Rules of the Court expressly clarify the meaning of “any person concerned” pursuant to Article 36, §2 of the Convention. As an example, “any person concerned” may be an amicus curiae if it has the intention to provide submissions which may assist the Court, and thus to further the “interest[s] of the proper administration of justice” (Rules of the Court, page 97).</p>
<p>Inter-American Court of Human Rights (IACtHR)</p>	<p>Explicitly provided in their constitutive instrument:</p>

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	<p>1. <u>Amicus curiae is expressly foreseen in the Rules of Procedure of the Inter-American Court of Human Rights:</u></p> <ul style="list-style-type: none"> - Article 2.3 of the Rules (Rules of Procedure of the Inter-American Court of Human Rights: Microsoft Word - RULES OF PROCEDURE ENG 13-01-10 FINAL.doc (corteidh.or.cr)) sets out a definition for amicus curiae: “the expression “amicus curiae” refers to the person or institution who is unrelated to the case and to the proceeding and submits to the Court reasoned arguments on the facts contained in the presentation of the case or legal considerations on the subject-matter of the proceeding by means of a document or an argument presented at a hearing” - Article 44(1) of the Rules sets out the full provision relating to amicus curiae: “Any person or institution seeking to act as amicus curiae may submit a brief to the Tribunal, together with its annexes, by any of the means established in Article 28(1) of these Rules of Procedure, in the working language of the case and bearing the names and signatures of its authors.” <p>Article 44 of the Rules relates to written submissions, but no corresponding rule for participation exists in the oral proceedings, although it is foreseen in the definition (Article 2.3).</p> <p>2. <u>Participation of the alleged victims and their representatives.</u> Article 25 of the Rules: “Once notice of the brief submitting a case before the Court has been served, in accordance with Article 39 of the Rules of Procedure, the alleged victims or their representatives may submit their brief containing pleadings, motions, and evidence autonomously and shall continue to act autonomously throughout the proceedings.”</p> <p>3. <u>Participation of any person on request of the Court.</u> Article 58(a) of the Rules: “The Court may, at any stage of the proceedings: a. Obtain, on its own motion, any evidence it considers helpful and necessary. In particular, it may hear, as an alleged victim, witness, expert witness, or in any other capacity, any</p>

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	<p>person whose statement, testimony, or opinion it deems to be relevant.”</p>
<p>World Trade Organisation (WTO)</p>	<p>Amicus curiae are not explicitly regulated in the WTO’s Dispute Settlement Understanding or any of the working procedures.</p> <p><u>Panels</u></p> <p>Accepts amicus curiae on the basis of Article 13(1) of the DSU: “Each panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate.”</p> <p>Article 10(2) DSU: “Any Member having a substantial interest in a matter before a panel and having notified its interest to the DSB (referred to in this Understanding as a “third party”) shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.”</p> <p>Article 10(3) DSU: “Third parties shall receive the submissions of the parties to the dispute to the first meeting of the panel.”</p> <p>Clarification: “Third parties receive the parties’ first <u>written submissions</u> to the panel and present their <u>views orally</u> to the panel during the first substantive meeting (<u>Article 10.3</u> of the DSU). Third parties have no rights beyond these although a panel can, and often does, extend the rights of participation of third parties in individual cases.”</p> <p>Article 17(4) DSU: “Only parties to the dispute, not third parties, may appeal a panel report. Third parties which have notified the DSB of a substantial interest in the matter pursuant to paragraph 2 of Article 10 may make written submissions to, and be given an opportunity to be heard by, the Appellate Body.”</p>

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<p>Iran-US Claims Tribunal</p>	<p>Explicitly provided in their constitutive instrument:</p> <p>Note 5 under Article 15 of the Rules: “The arbitral tribunal may, having satisfied itself that the statement of one of the two Governments – or, under special circumstances, any other person “who is not an arbitrating party in a particular case is likely to assist the tribunal in carrying out its task, permit such Government or person to assist the tribunal by presenting oral or written statements”</p>
<p>African Court on Human and Peoples’ rights</p>	<p>1. <u>Amicus curiae submissions are allowed</u></p> <p>Rule 71(1) f) of the Rules of the Court: “The decision of the Court shall contain: (...) f) the submissions of amicus curiae, where applicable”.</p> <p>The Practice Directions of the Court set out how <i>amicus curiae</i> are handled under Chapter V:</p> <p>“V. REQUEST AND INVITATION TO ACT AS AMICUS CURIAE</p> <p>25. An individual or organisation that wishes to act as amicus curiae shall submit a request to the Court, specifying the contribution they intend to make regarding the pending application.</p> <p>26. The Court may, on its own motion, invite an individual or institution to act as amicus curiae.</p> <p>27. The Court will, within a reasonable time, determine whether to grant the request.</p> <p>28. If the Court grants the request to act as amicus curiae or designates one, the Registrar shall notify the individual or institution and serve them with the Application and any other relevant pleadings relating to the Application. The amicus curiae shall also be informed by the Registrar of the time set by the Court for the filing of the amicus curiae brief.</p>

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	<p>29. The amicus curiae briefs and annexes, if any, shall be transmitted to the Parties, for their information.”</p> <p>2. Interventions by <u>any other State Party</u> are allowed</p> <p>Article 5(2) of the Protocol: “When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join”.</p> <p>3. Interventions by <u>relevant NGO’s and individuals</u> are allowed</p> <p>Article 5(3) of the Protocol: “The Court may entitle relevant Non Governmental Organisations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34(6) of this Protocol.”</p> <p>4. Written submissions by <u>any interested entity</u></p> <p>Rule 84(2) of the Rules of the Court: “Any other interested entity may be authorized by the Court to do the same [i.e. fill submissions]”</p> <p>5. Request for Advisory Opinions</p> <p>Rule 83 of the Rules of the Court provides that:</p> <p>“2. The Registrar shall, unless otherwise decided by the President, publish the request on the website of the Court, transmit copies to and invite observations from:</p>

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	<p>a. Member States of the African Union;</p> <p>b. The Commission;</p> <p>c. Relevant AU Organs; and</p> <p>d. Any other relevant entities.”</p>
<p>Common Court of Justice and Arbitration of the OHADA</p>	<p>Third-party interventions and third-party objections are foreseen in Chapter VII of the Rules of Procedures of the Common Court of Justice and Arbitration:</p> <ol style="list-style-type: none"> 1. Article 45(1) provides: “States Parties to the Treaty may intervene in cases submitted to the Court. Anybody interested in supporting the claims of one of the parties for the conservation of his rights shall also be entitled to intervene.” 2. Article 47(1) provides: “Any natural person or legal entity may submit an application for third party objection to a judgment rendered without it being appealed, if this judgment is prejudicial to his/its rights.”
<p>International Criminal Tribunal for Rwanda</p>	<p>The Rules of Procedure and Evidence expressly provide for “<i>Amicus curiae</i>”.</p> <p>Rule 74 ICTR Rules: “A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organisation or person to appear before it and make submissions on any issue specified by the Chamber.”</p>
<p>International Criminal Tribunal for the former Yugoslavia</p>	<p>The Rules of Procedure and Evidence expressly provide for “<i>Amicus curiae</i>”.</p> <p>Rule 74 ICTY Rules: “A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organisation or person to appear before it and make submissions on any issue specified by the Chamber.”</p>
<p>Special Court for Sierra Leone</p>	<p>The Rules of Procedure and Evidence expressly provide for “<i>Amicus curiae</i>”.</p>

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	<p>Rule 74 SCSL Rules: “The President, Designated Judge or a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organisation or person to make submissions on any issue specified by the President, Designated Judge or Chamber..”</p> <p>One difference with the ICTR and ICTY Rules is that the right to appear before the SCSL is omitted, there is only a possibility for written submissions.</p>
<p>Special Tribunal for Lebanon</p>	<p>1. <u>Victim’s participation</u></p> <ul style="list-style-type: none"> - Article 17 of the Statute of the Special Tribunal for Lebanon: “Where the personal interests of the victims are affected, the Special Tribunal shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Pre-Trial Judge or the Chamber and in a manner that is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Pre-Trial Judge or the Chamber considers it appropriate.” - Rule 86 STL Rules: “(A) If the Pre-Trial Judge has confirmed the indictment under Rule 68, a person claiming to be a victim of a crime within the Tribunal’s jurisdiction may request the Pre-Trial Judge to be granted the status of victim participating in the proceedings pursuant to Article 17 of the Statute.” <p>2. <u>Amicus curiae</u>. Rule 131 STL Rules: “(A) The Trial Chamber may decide, after hearing the Parties, that it would assist the proper determination of the case to invite or grant leave to a State, organisation or person to make written submissions on any issue, or to allow a State, organisation or person to appear before it as amicus curiae.”</p>

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	<p>This rule foresees in an extra step (compared to ICTR, ICTY and SCSL), namely that there is an obligation to ‘hear the parties’ before approving a submission.</p>
<p>Extraordinary Chambers in the Courts of Cambodia</p>	<p>1. <u>Victims’ participation as “Civil Parties”</u></p> <ul style="list-style-type: none"> - Rule 23 of the ECCC Internal Rules: “1. The purpose of Civil Party action before the ECCC is to: <ul style="list-style-type: none"> a) Participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution; and b) Seek collective and moral reparations, as provided in Rule 23quinquies.” <p>2. <u>Amicus curiae</u></p> <ul style="list-style-type: none"> - Rule 33 of the ECCC Internal Rules: “1. At any stage of the proceedings, the Co-Investigating Judges or the Chambers may, if they consider it desirable for the proper adjudication of the case, invite or grant leave to an organisation or person to submit an amicus curiae brief in writing concerning any issue. The Co-Investigating Judges and the Chambers concerned shall determine what time limits, if any, shall apply to the filing of such briefs.”