



Original: English

No.: ICC-01/05-01/08

Date: 27 April 2009

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova (Single Judge)

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

Public

**Prosecution's Position Statement re: Amnesty International's Amicus
Curiae Observations on Superior Responsibility filed on 20 April 2009**

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the
Regulations of the Court to:

The Office of the Prosecutor

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**Unrepresented Applicants for
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Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 30 March 2009, the Office of the Prosecutor (the “Prosecution”) filed the Prosecution's Submission of Amended Document Containing the Charges (the “Amended DCC”)¹, applying Article 25(3)(a), and in the alternative, Article 28 of the Rome Statute (the “Statute”).
2. On 9 April 2009, the Single Judge issued a Decision on Application for Leave to Submit *Amicus Curiae* Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence, granting Amnesty International (“Amnesty”) leave to submit written observations no later than 20 April 2009.² The Chamber further granted the Prosecution and the Defence the opportunity to respond by 27 April 2009.
3. On 20 April 2009, Amnesty filed its *Amicus Curiae* Observations on Superior Responsibility Submitted Pursuant to Rule 103 of the Rules of Procedure and Evidence³ (“*Amicus Curiae* Observations”).
4. The Prosecution concurs with the *Amicus Curiae* Observations. With respect particularly to the question of causation in Article 28 of the Statute, the Prosecution agrees that Article 28 of the Statute does not impose the additional element of causation. The superior is subject to criminal responsibility under Article 28 of the Statute because he or she failed to exercise control. That failure to exercise control requires that the superior knew or should have known that the crime is being or was committed and failure to take steps to deter or punish. That is the sole meaning of “as a result of his or her failure to properly exercise control”.

¹ ICC-01/05-01/08-395

² ICC-01/05-01/08-401

³ ICC-01/05-01/08-406

5. However, assuming *arguendo*, that the Single Judge considers that Article 28 of the Statute requires proof of causation, the Prosecution agrees with Amnesty's position that the Prosecution only has to prove that the superior's failure increased the risk that the subordinates commit certain crimes. Application of a higher standard would over extend the causation requirement beyond what is stipulated in Article 28 of the Statute.
6. The Amended DCC, as a charging document, did not contain extended legal arguments or statutory analysis. If the Chamber has additional questions on the legal arguments, the Prosecution requests an opportunity to explain its positions at greater length.



Luis Moreno-Ocampo, Prosecutor

Dated this 27th day of April 2009

At The Hague, The Netherlands