

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: **ICC-01/04-01/07**
Date: **31 January 2012**

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI

Public

**Prosecution's response regarding its investigations into the alleged false testimony of
witness P-159**

Source: 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

Counsel for the Defence of Germain Katanga

Mr David Hooper
Mr Andreas O'Shea

Counsel for the Defence of Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of Victims

Mr Fidel Nsita Luvengika
Mr Jean-Louis Gilissen

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

Background

1. On 14 December 2010, the Prosecution informed the Chamber that it would no longer rely on the testimony of witness P-159 ("Notice").¹
2. On 24 February 2011, after having received submissions of the parties and participants on the matter, the Chamber decided that it would not "give any evidentiary weight to witness P-159's testimony in its deliberations on the question of guilt of the accused".²
3. On 13 January 2012, Trial Chamber II ("Chamber") requested the Prosecution to submit information on the steps undertaken in regards to the alleged false testimony of trial witness P-159.³

Submissions

4. It bears reminding that the Prosecution withdrew witness P-159's evidence because, after the witness had already testified, it received contrary information that raised credibility questions.⁴ In that circumstance, the remedy the Prosecution undertook, notifying the parties and Chamber of its intent to not rely on witness P-159's in-court testimony, immediately and completely protected the rights of the accused. The Prosecution's Notice ensured that the evidence of witness P-159, the credibility of which was called into question by other information that the Prosecution deemed to have been given in good faith, would not have the potential to mislead the Chamber in its finding of guilt or innocence.

¹ ICC-01/04-01/07-2631-Conf.

² ICC-01/04-01/07-2731, page 9.

³ ICC-01/04-01/07-3223.

⁴ ICC-01/04-01/07-2667-Conf. The Prosecution provided in Annexes A to C to that submission, the statements of two witnesses and an investigator's report on its investigation into the matter at that time.

5. At the same time, the Prosecution is acutely sensitive to the need to protect the integrity of the Court's proceedings. It will not hesitate to investigate or, where appropriate, initiate prosecution of persons – regardless which party calls them or whether they are called as court witnesses -- who knowingly and intentionally give material false testimony. However, it also believes that, absent some pressing need, the investigation and prosecution are best conducted after the proceedings themselves are concluded.

6. With respect to witness P-159, the Prosecution has not yet undertaken further investigative steps to pursue the contradiction between the testimony of the witness and other information in its possession and disclosed to the Chamber and parties.⁵ There may be instances when more immediate action is desirable or necessary. In this instance, however, the Prosecution determined that there are no special circumstances warranting action before the final judgment, and on balance concluded that it is best to not appear to be trying to influence the ongoing proceedings.⁶



Luis Moreno-Ocampo, Prosecutor

Dated this 31st day of January 2012

At The Hague, The Netherlands

⁵ *Ibid.*

⁶ The Defence for Germain Katanga agreed that the matter should be deferred until the end of trial. “The Defence submits that at an appropriate time (which the Defence submits may be at the conclusion of the case) whatever the decision of the Chamber in the instant matter, it may be appropriate that investigations be initiated against P-159 for false testimony, pursuant to Article 70 and Rule 165.” ICC-01/04-01/07-2651-Conf, para. 23.