

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07
Date: 13 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

**Order to the Prosecutor regarding the alleged false testimony of
witness P-159**

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

The Office of the Prosecutor

Mr Luis Moreno-Ocampo
Ms Fatou Bensouda
Mr Eric MacDonald

Counsel for Germain Katanga

Mr David Hooper
Mr Andreas O'Shea

**Counsel for Mathieu Ngudjolo
Chui**

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

**Legal Representatives of the
Victims**

Mr Fidel Nsita Luvengika
Mr Jean-Louis Gilissen

**Legal Representatives of the
Applicants**

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for
the Defence**

REGISTRY

Registrar

Counsel Support Section

Victims and Witnesses Unit

Others

Trial Chamber II of the International Criminal Court (“the Chamber” and “the Court” respectively), acting pursuant to articles 64 and 70 of the Rome Statute (“the Statute”) and rules 134(3), 162 and 165 of the Rules of Procedure and Evidence (“the Rules”), decides as follows:

I. PROCEDURAL HISTORY

1. Between 17 and 29 March 2010, Prosecution witness P-159 testified before this Chamber. On 14 December 2010, the Prosecution informed the Chamber that it would no longer rely on the testimony of witness P-159.¹
2. The Chamber received submissions from the parties and the participants,² as well as a further reply from the Prosecutor³ and rejoinders from the Defence.⁴ The Defence for Mr. Ngudjolo argued that P-159 had lied during his testimony and asked the Chamber to order that legal proceedings for perjury against P-159 be initiated.⁵
3. In its decision of 24 February 2011, the Chamber decided that it would not give any weight to witness P-159’s testimony in its deliberations on the question

¹ “Prosecution’s Notice that it will not rely on the testimony of Prosecution Witness P-159 to prove its case”, 14 December 2010, ICC-01/04-01/07-2631-Conf

² “Observations de la Défense de Mathieu Ngudjolo sur ‘Prosecution’s notice that it will not rely on the testimony of Prosecution Witness P-159 to prove its case’- ICC-01/04-01/07-2631-Conf du 14 décembre 2010”, 17 January 2011, ICC-01/04-01/07-2649-Conf”; “Defence Observations on the Prosecution’s Notice that it will not rely on the testimony of Prosecution Witness to prove its case”, 17 January 2011, ICC-01/04-01/07-2651-Conf; “Observations sur la ‘Prosecution’s Notice that it will not rely on the testimony of Prosecution Witness to prove its case’”, 16 January 2011, ICC-01/04-01/07-2468-Conf; “Observations sur la ‘Prosecution’s Notice that it will not rely on the testimony of Prosecution Witness to prove its case’”, 17 January 2011, ICC-01/04-01/07-2650-Conf

³ “Prosecution’s Reply to Defence ‘Observations on the Prosecution’s Notice that it will not rely on the testimony of Prosecution Witness to prove its case’”, 28 January 2011, ICC-01/04-01/07-2667-Conf

⁴ “Defence Rejoinder to the ‘Prosecution’s Reply to Defence ‘Observations on the Prosecution’s Notice that it will not rely on the testimony of Prosecution Witness to prove its case’”, 7 February 2011, ICC-01/04-01/07-2689-Conf; “Réponse de la Défense de Mathieu Ngudjolo à la Prosecution’s Reply to Defence ‘Observations on the Prosecution’s Notice that it will not rely on the testimony of Prosecution Witness to prove its case’”, 3 February 2011, ICC-01/04-01/07-2683-Conf

⁵ ICC-01/04-01/07-2683-Conf, *in fine*.

of guilt of the accused.⁶ In relation to the Defence's request to initiate proceedings against witness P-159 for giving false testimony, the Chamber considered that the Prosecution needed to be given some time to investigate the situation before deciding whether or not to initiate proceedings against witness P-159.⁷ However, the Chamber remained seized of the issue.

4. Considering that more than a year has passed since the Prosecution informed the Chamber of its renunciation of the testimony of witness P-159, the Chamber is of the view that the Prosecution has had sufficient time to determine its position in relation to this issue. As perjury is a very serious matter, the Chamber hopes that the Prosecution has meanwhile taken the necessary steps to investigate the issue and has decided on the appropriate course of action.

⁶ "Decision on the Prosecution's renunciation of the testimony of witness P-159", 24 February 2011, ICC-01/04-01/07-2731

⁷ ICC-01/04-01/07-2731, para. 18

FOR THESE REASONS,

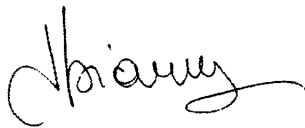
THE CHAMBER,

ORDERS the Prosecution to inform the Chamber no later than 31 January 2012 about which steps have been taken in regard to the alleged false testimony of witness P-159 and whether or not it intends to initiate criminal proceedings against him.

Done in both English and French, the English version being authoritative.



Judge Bruno Cotte
Presiding Judge



Judge Fatoumata Dembele Diarra



Judge Christine Van den Wyngaert

Dated this 13 January 2012

At The Hague, The Netherlands