

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 19 August 2021

TRIAL CHAMBER III (ARTICLE 70)

Before: Judge Miatta Maria Samba

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
*THE PROSECUTOR v. PAUL GICHERU***

Public with Confidential Annex A

Public Redacted Version of “Request for Information from Judge Miatta Maria Samba concerning Her Employment with the Office of the Prosecutor of the International Criminal Court,” 18 August 2021, ICC-01/09-01/20-163-Conf

Source: Counsel for Paul Gicheru

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

The Office of the Prosecutor
 Mr. James Stewart
 Mr. Anton Steynberg

Counsel for the Defence
 Mr. Michael G. Karnavas

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

The Office of Public Counsel for Victims

The Office of Public Counsel for the
Defence

States' Representatives

Other

REGISTRY

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 Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations
Section

Other

Mr. Paul Gicheru, through his Counsel (“the Defence”), hereby files this Request for Information from Judge Miatta Maria Samba concerning Her Employment with the Office of the Prosecutor of the International Criminal Court (“ICC OTP”), as instructed by Trial Chamber III by email on 17 August 2021.¹ This Request and Annex A are filed confidentially pursuant to Regulation 23*bis*(1) of the Regulations of the Court as they concern confidential information.

I. BACKGROUND

1. On 22 July 2021, the Defence was notified of the Presidency’s decision constituting Trial Chamber III with Judge Miatta Maria Samba as the Single Judge.²
2. Immediately, as part of its professional and ethical duty of diligence to investigate issues that may impact on Mr. Gicheru’s right to a fair trial,³ the Defence reviewed Judge Samba’s official Curriculum Vitae,⁴ Statement of Qualifications,⁵ response to the Advisory Committee on Nomination of Judges’ (“Advisory Committee”) questionnaire,⁶ and public profiles and interviews found online.⁷
3. Noticing that Judge Samba was employed by the ICC OTP and may have assisted with or been involved in the OTP’s investigations in the various Kenyan cases – and that the Presidency’s decision makes no mention of Judge Samba’s former employment with the OTP having been raised or considered (other than noting her “extensive experience as a trial judge” and that judicial resources are “insufficient to meet the needs at trial”)⁸ – on 26 July 2021, the Defence sent a letter to the Senior Prosecution Trial Lawyer in the *Gicheru* case, Mr. Anton Steynberg, requesting further information regarding Judge Samba’s employment with the ICC OTP.⁹

¹ Email entitled “Message to the Honorable Single Judge of Trial Chamber III from Counsel representing Mr. Gicheru,” 17 August 2021.

² *Prosecutor v. Gicheru*, [ICC-01/09-01/20-157](#), Decision constituting Trial Chamber III and referring it to the case of *The Prosecutor v. Paul Gicheru*, 22 July 2021.

³ Due diligence requires Defence Counsel to do anything and everything to ensure that all fair trial rights are fully accorded to their client, including making all necessary legal and factual challenges, checking the veracity and accuracy of evidence gathered by the Prosecutors that is used against him or her, and so on. [ICC Code of Professional Conduct for counsel](#), ICC-ASP/4/Res.1, adopted 2 December 2005, Art. 5; [ALASKA RULES OF PROF’L CONDUCT](#) (2017-2018 ed.), Rule 1.3 and Comment to Rule 1.3.

⁴ Judge Miatta Maria Samba, [Model Curriculum Vitae](#).

⁵ Judge Miatta Maria Samba, [Statement of Qualifications](#).

⁶ Judge Miatta Maria Samba, [Advisory Committee on Nomination of Judges Questionnaire](#), 3 July 2020.

⁷ Giraffe Heroes Project, Profile, [Miatta Maria Samba](#).

⁸ *Prosecutor v. Gicheru*, [ICC-01/09-01/20-157](#), Decision constituting Trial Chamber III and referring it to the case of *The Prosecutor v. Paul Gicheru*, 22 July 2021, p. 4.

⁹ Email entitled “Judge Samba’s prior employment with the ICC OTP,” 26 August 2021.

4. Mr. Steynberg responded on 29 July 2021.¹⁰ He informed that from 2006 until 28 October 2010, Judge Samba “worked in the OTP as a Field Operations Officer ... posted in the Uganda Field Office [REDACTED].” According to Mr. Steynberg, Judge Samba in this capacity “[REDACTED]” and “[REDACTED].”¹¹
5. Claiming that Judge Samba’s duties as a Field Operations Officer “[REDACTED],” and that Judge Samba “[REDACTED]” and “[REDACTED],” Mr. Steynberg informed that Judge Samba was:
 - a. “[REDACTED];”
 - b. “[REDACTED];”
 - c. “[REDACTED];” and
 - d. “[REDACTED],” and “[REDACTED],” including “[REDACTED].”¹²
6. Considering the sensitive nature of the matter and that it is incumbent that any issues related to potential recusal or disqualification of a judge are raised as soon as any grounds are discovered,¹³ the Defence sent a letter to Trial Chamber III requesting clarification of Judge Samba’s former employment with the ICC OTP on 2 August 2021.¹⁴
7. Trial Chamber III took note of the Defence’s letter on 17 August 2021 and instructed the Defence to file a formal submission.¹⁵

II. REQUEST FOR INFORMATION

8. According to Judge Samba’s ICC Curriculum Vitae, she worked for the ICC OTP as a Field Operations Officer in the Uganda Field Office, “provid[ing] assistance to investigators from the [OTP] ... to Kenya, Tanzania and Uganda.”¹⁶ In her response to the Advisory Committee’s questionnaire, Judge Samba stated that her “primary duty was to manage witnesses of the [OTP], most of whom were vulnerable witnesses and victims of sexual violence” and that she was “also the custodian of exhibits for the [OTP] and ... assisted

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ Rule 34(2) of the Rules of Procedure and Evidence: “Subject to the provisions set out in article 41, paragraph 2, and article 42, paragraph 8, a request for disqualification shall be made in writing as soon as there is knowledge of the grounds on which it is based.”

¹⁴ Letter entitled “Request for Clarification of Background,” 2 August 2021.

¹⁵ Email entitled “Message to the Honorable Single Judge of Trial Chamber III from Counsel representing Mr. Gicheru,” 17 August 2021.

¹⁶ Judge Miatta Maria Samba, [Model Curriculum Vitae](#), p. 3.

investigators who went out in the field to gather information and evidence for crimes within the Court’s jurisdiction....”¹⁷ A public profile by the Giraffe Heroes Project also states that Judge Samba was “putting her life at risk in Sierra Leone and Uganda in an effort to protect and promote the rights of witnesses and survivors who were participating in an accountability process.”¹⁸

9. Compelled to seek further information concerning Judge Samba’s former employment with the ICC OTP – specifically, her involvement in the Kenya investigations and contacts she may have had with witnesses and investigators in this case – the Defence requests the following information to determine whether further submissions may be necessary and reasonable in ensuring Mr. Gicheru’s right to a fair trial conducted by an impartial tribunal:¹⁹
 - a. The tasks Judge Samba performed in her role as a Field Operations Officer in the Uganda Field Office assisting OTP investigators in Kenya, Tanzania, and Uganda;
 - b. The names and positions of OTP staff members with which Judge Samba had contact in connection with the Kenya investigation and the times, locations, and nature of these contacts;
 - c. The names of *any* witnesses in the *Ruto and Sang* and *Gicheru* cases Judge Samba interacted with, including the times, locations, and nature of these interactions;
 - d. Whether Judge Samba participated in any interviews of any witnesses in the *Ruto and Sang* or *Gicheru* cases and the names of these witnesses, the participating OTP staff members, and the times and locations of these interviews;
 - e. Whether Judge Samba was present during any discussions or de-briefing sessions concerning any of the witnesses in the *Ruto and Sang* or *Gicheru* cases, the names of the witnesses and participating OTP staff members, and the times and locations of these discussions or sessions;

¹⁷ Judge Miatta Maria Samba, [Advisory Committee on Nomination of Judges Questionnaire](#), 3 July 2020, p. 3.

¹⁸ Giraffe Heroes Project, Profile, [Miatta Maria Samba](#).

¹⁹ Rome Statute, Art. 67(1): “In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially....” The “fundamental human right of an accused to be tried before an independent and impartial tribunal” is considered “an integral component” of the accused’s fair trial guarantees. *Prosecutor v. Furundžija*, IT-95-17/1-A, [Judgment](#), 21 July 2000, para. 177.

- f. Whether Judge Samba received or handled any evidence, reports, or communications of any kind regarding the OTP's investigation in the *Ruto and Sang* or *Gicheru* cases and the nature of the evidence, reports, or communications;
- g. Whether in Judge Samba's capacity as Field Operations Officer she participated in or was aware of any discussions within the OTP concerning the legality of using witnesses to [REDACTED] other witnesses in the investigation in Kenya, Tanzania, and Uganda, and the content of these discussions;
- h. Whether the impression that Judge Samba was "putting her life at risk in Sierra Leone and Uganda"²⁰ came from anything concerning any of the witnesses in the Kenya investigation; and
- i. Whether upon her appointment Judge Samba brought to the Presidency's attention her employment with the ICC OTP and involvement in the Kenya investigations, in particular, that she [REDACTED], and was [REDACTED].

WHEREFORE, in the interests of justice, the Defence requests Judge Samba to provide the requested information herein regarding her employment with the ICC OTP, her prior involvement in the Kenyan cases, and contacts she may have with any of the witnesses and investigators in this case.

Respectfully submitted, 19 August 2021,

In The Hague, the Netherlands.



Michael G. Karnavas
Counsel for Mr. Paul Gicheru

²⁰ See Giraffe Heroes Project, Profile, [Miatta Maria Samba](#).