

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/09-01/20**

Date: **27 August 2021**

TRIAL CHAMBER III

Before:

Judge Miatta Maria Samba

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

THE PROSECUTOR v. PAUL GICHERU

Public

**Decision on Defence Request for Information concerning
Judge Samba's Prior Employment**

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 Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

**The Office of Public Counsel
for Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

TRIAL CHAMBER III of the International Criminal Court, in the case of *The Prosecutor v. Paul Gicheru*, having regard to Articles 41(2)(a), 64(2) and 67 of the Rome Statute (the ‘Statute’), issues this ‘Decision on the Defence Request for Information concerning Judge Samba’s Prior Employment’.

I. Procedural History

1. On 18 August 2021, the Defence filed a request for information concerning the prior employment of Judge Samba (the ‘Request’).¹ The Defence notes that Judge Samba has been working for the Office of the Prosecutor (the ‘Prosecution’) between 2006 and 2010.² The Defence had already contacted the Prosecution, which provided detailed information on Judge Samba’s employment in a letter to the Defence on 29 July 2021,³ and now wishes to receive further information from Judge Samba herself.⁴

2. On 25 August 2021, the Prosecution filed its response to the Request (the ‘Response’).⁵ Therein, it confirmed that it provided all information available concerning Judge Samba’s employment with the Office of the Prosecutor in its letter to the Defence on 29 July 2021.⁶

II. Provision of Information

3. I, Judge Miatta Maria Samba, noting Article 41(2)(a) of the Statute, the principle of fairness and expeditiousness of the proceedings, as well as the rights of the accused enshrined in Article 67 of the Statute, provide hereby the following information on my prior employment for the Office of the Prosecutor. I do so, because I strongly believe in the impartiality of the judges as a cornerstone of fair proceedings and the parties right to have all the information necessary in order to form their own opinion about this impartiality.

¹ Request for Information from Judge Miatta Maria Samba concerning Her Employment with the Office of the Prosecutor of the International Criminal Court, ICC-01/09-01/20-163-Conf, with confidential annex A, ICC-01/09-01/20-163-Conf-AnxA. A public redacted version of the Request was filed on 19 August 2021, ICC-01/09-01/20-163-Red.

² Request, ICC-01/09-01/20-163-Red, para. 4.

³ ICC-01/09-01/20-163-Conf-Anx (the ‘Annex’).

⁴ Request, ICC-01/09-01/20-163-Red, para. 9.

⁵ Prosecution’s Submissions on the Defence’s Request for Information from Judge Miatta Maria Samba concerning Her Employment with the Office of the Prosecutor of the International Criminal Court, ICC-01/09-01/20-167.

⁶ Response, ICC-01/09-01/20-167, para. 2.

4. Between October 2006 and September 2010, I worked as a Field Operations Officer for the Office of the Prosecutor under the Operational Support Unit of the Investigation Division. During this time I was stationed in Kampala, Uganda in the Court's field office. Further, to the best of my recollection, I participated in two missions to Arusha, Tanzania, in the period of April to August 2010.

5. My duties during my employment were to provide logistical support to the operations of the Prosecution. This included assistance in the operational preparation, execution and follow-up of the activities of the Investigation Division of the Office of the Prosecutor. For instance, I would rent interview rooms for investigators coming to the field from headquarters in The Hague and arrange for the movement of the witnesses to interview locations. I travelled to the northern part of Uganda on many occasions between October 2006 and September 2010 and, I believe, to Arusha, Tanzania, and to Kenya on two occasions between April and September 2010 to maintain contact with witnesses by collecting and exchanging logistical information with them. This was done in preparation for meetings with Prosecution investigators.

6. As mentioned above, due to my duties as a Field Operations Officer I had contact with Prosecution witnesses or potential Prosecution witnesses. However, any such contact was limited to logistical activities only and consisted of operational support of the investigations such as renting interview rooms and supporting the movement of witnesses to interview locations. At no point in time during my employment with the Office of the Prosecutor did I actively participate in the gathering of evidence or the taking of a witness statement. I was also not privy to any witness statements taken by the Prosecution during its investigative activities. Nor did I have access to any electronic data banks containing evidence. At no point in time did I have discussions with other members of the Office of the Prosecutor about the content of ongoing investigations, their investigation strategies or any other exchange related to the substance of investigative activities.

7. During the time of my employment I supported the investigators of the Prosecution who went to the field office to interview witnesses in respect of, mainly, the Uganda situation and, to a much lesser degree, helped to maintain contact with witnesses for the Prosecution for the situations in Darfur and Kenya.

8. With regard to my support of the investigators' activities in the Kenya situation, my role was limited, as far as I can recall, to maintaining contact with the witnesses and facilitating contact between the witnesses and the investigators at headquarters in The Hague. This must have occurred towards the end of my employment, before I left my position with the Prosecution in September 2010. Due to the lack of information on the content of the investigation, I am not in a position to specify for which specific case this assistance was provided. However, I note that the Prosecution stated that it contacted witnesses with regard to potential Article 70 investigations only in 2011 and 2012⁷ after I had left the Court. Accordingly, I cannot have been involved with witnesses being questioned with regard to potential Article 70 investigations.

9. With regard to the request to provide detailed information concerning interactions with members of the Office of the Prosecutor in connection with investigations related to the Kenya situation,⁸ I note that the current head of the Operational Risk and Support Unit within the Investigation Division was my supervisor at the time and I do not recall the names of investigators who went to the field office from headquarters who I supported logistically.

10. No further information regarding the dates and other details are provided for the following reasons: first, the period in question – my employment with the Prosecution – was over ten years ago. It is not possible to cite specificities, such as dates etc. from memory. Second, upon resignation of my employment I did not keep any information concerning my work with the Office of the Prosecution, due to security and confidentiality reasons.

11. For the same reasons, I am not in a position to provide any further details with regard to any witnesses with whom I interacted with while providing operational support to investigators working on the Kenya situation or cases related to this situation. However, I note that the Prosecution has already provided the Defence with details in its possessions concerning contacts I had with witnesses related to the Kenya situation or any of its cases. I also note that the Prosecution stated that it provided all the information it had on my employment with them to the Defence.⁹

⁷ Annex, ICC-01/09-01/20-163-Conf-AnxA, p. 7.

⁸ Request, ICC-01/09-01/20-163-Red, para. 9 a.

⁹ Response, ICC-01/09-01/20-167, para. 2.

12. With regard to the question posed in paragraph 9h of the Request, I can confirm that this was not related to any issue arising from the Kenya situation or cases related thereto.

13. With regard to the question posed in paragraph 9i of the Request, I can confirm that the Presidency was aware of my employment with the Office of the Prosecutor and that I was assigned as a Field Operations Officer to the field office in Kampala, Uganda.

14. The Prosecution is hereby encouraged, should it identify any further relevant information on this matter in its possession, to communicate it to the Defence. The Defence is equally encouraged to further communicate with the Prosecution on any additional information it wishes to receive from the Prosecution, in light of the information I have provided.

FOR THESE REASONS, THE CHAMBER HEREBY

PROVIDES the information as detailed above.

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

A handwritten signature in blue ink, appearing to read 'Miatta Maria Samba', is written over a horizontal line.

Judge Miatta Maria Samba

Dated 27 August 2021

At The Hague, The Netherlands