

Annexure D

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Mr. Karim A.A. Khan QC
Lead Counsel
International Criminal Court

Sunday, 12 June 2011

Dear Mr. Khan,

Re : **Observations on the Prosecution's Application to Invalidate my Appointment**

I have had opportunity to consider the "Prosecution's Request to Invalidate the Appointment of Counsel to the Defence" ("Request") of 8 June 2011 seeking an order for my disqualification as co-counsel for the Defence team of Mr. Abdallah Banda and Mr. Saleh Jerbo on the ground of conflict of interest.

I write to clarify some of the issues that have been mentioned by the Office of the Prosecutor ("OTP"). Before I go any further, I again affirm, as a senior member of the Sierra Leonean Bar with an untarnished record both at national and international defence (before the Special Court For Sierra Leone) and prosecution bar (the International Criminal Court) that I am not in possession of or privy to any confidential information relating to the cases of the *Prosecutor v. Bahar Idriss Abu Garda* (ICC-02/05-02/09) and the *Prosecutor v. Abdalla Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (ICC-02/05-03/09) or any other case, other than the *Uganda cases*, the *Katanga and Ngudjolo case* as well as the *Bemba case*, arising from the CAR Situation, to which I was assigned during my tenure at the OTP.

From my knowledge of the way the OTP functions, if indeed I was privy to any confidential information in the *Banda and Jerbo* case, there would be clear records of the same. The fact that the OTP explains the non-existence of such record by saying "... it is neither reasonable nor possible for OTP Staff to maintain records of attendance at general meetings or of every conversation with persons outside their particular teams..." is by itself revealing, and certainly unfair. The OTP's records in fact would reflect that I am **not** in

possession of confidential information, and this is what it should put forward, instead of the course it has chosen to take.

Surely, the OTP doing the kind of serious work it does, and being the guardian of the security of people it deals with including witnesses, cannot be so nonchalant about the way confidential matters are handled within its walls, in the way it has submitted. As a lawyer and a prosecutor, I am of the view that to allow serious confidential issues to be floating around without restraint, on the corridors is a serious dereliction of its duties. It did not occur. I am of the view that the OTP's submission in this regard are designed simply to raise a ground of objection to my appointment, without there being any merit to it.

The OTP has advanced generalised assertions without any concrete or reliable proof of conflict of interest on my part in relation to this particular case. Nevertheless, I will address some of the issues that the OTP has raised in its application to argue that the office structure is such that I may have been exposed to confidential information. I do this in order that you are informed of the same for purposes of the formal response that the Defence will be submitting. Please note that my previous letter undated which I sent to you on 21 May 2011, had extensively addressed the issues raised in this regard, and I request that you consider the contents of that letter. Additionally, you will notice that most, if not all, of the issues were previously raised by the OTP in the Kaufman case, and in all instances the office situation, as that put forward in the Kaufman case, remained intact, till I departed from the OTP in April 2011.

(i) **Office Sharing:** Since the end of 2009, lawyers of P4 grade level in the OTP were elevated to the same situation as the Senior Trial Lawyers of P5 level, and were allocated individual offices on the 8th floor. As a P3 Trial Lawyer I remained on the office sharing arrangement, and was sharing my office with a Trial Lawyer assigned to the DRC Situation. Prior to this, I was sharing an office with a Trial Lawyer assigned to the *Bemba* Case.

(ii) **Corridor gossip:** I confirm that no such discussions took place between me and lawyers from the *Banda and Jerbo* case.

(iii) **My knowledge of OTP prosecution and investigation policies:** As a P3 Trial Lawyer, I do not attend Senior Management Meetings, or any meetings where office policies and strategies are discussed. The only prosecution strategies that I was aware of are those conveyed to me by the Senior Trial Lawyers or the P4 Trial Lawyers in the cases I actually worked on, which are the

Bemba case, the Uganda cases and the *Katanga and Njudjolo* cases which were under investigation at the time I was on these respective teams. I was not informed of or privy to, be it formally or on the hallways of the OTP, of any investigative or prosecutorial strategies in the *Banda and Jerbo* case.

(iv) **Non-informing OTP that I was joining a defence team:** Aside from the fact that this assertion by the prosecution is absolutely irrelevant, and is not something expected of departing OTP lawyers, it could not be further from the truth. I informed numerous colleagues, junior and senior, that I was returning to private legal practice which is the capacity in which I take on the position of Defence co-counsel in this case. I also informed numerous colleagues that I would be making an application to be admitted on the list of counsel. Importantly, lawyers currently having conduct of this case in the OTP, including the Acting Senior Trial Attorney, Mr. Ade Omofade and others outside the OTP/PD/Darfur Team were well aware that I had been invited to join the *Banda and Jerbo* case, after my resignation and prior to my final departure from the OTP.

(v) **Restraint of Trade for a year:** My resignation was accepted unconditionally by the Prosecutor's office. My contract at the OTP was one of General Temporary Assistance ("GTA") as it is generally referred to in the ICC, renewable from year to year based on the availability of funds. Such contracts, as you may be aware, are temporary in nature, come with no expectation of renewal, and may be terminated at any time by either party, upon giving a month's notice or alternatively, due to unavailability of funds. I have on many occasions personally voiced my concerns that I was in a very precarious and disadvantaged situation as far as my employment was concerned, when compared to the majority of OTP lawyers. The uncertainties of future employment are inherent in GTA contracts. That I was personally distressed and insecure as a family man who has heavy responsibilities even to my extended family at home in Sierra Leone, is known by the highest echelons of the OTP. At the time I resigned from the OTP, I had about 7 months remaining on my contract, and the mere mention of a one-year ban by the OTP in these circumstances is not only arbitrary but is without foundation and is also most unkind.

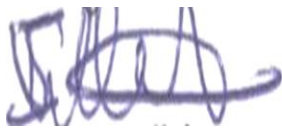
At all times, I remained confident that the OTP would not attempt to restrain my continuing with my personal career plans, given the fact that the jurisprudence was clear, there was no impediment in the Code of Conduct and the GTA status of my contract did not include such a ban.

In addition to the above, I attach herewith as "Annex 1" my Letter of Resignation, for your further information. I reiterate what I stated therein. As a function of my professional ethics and legal obligations, I undertake to keep sacrosanct any confidential information received during my erstwhile employment in the OTP-ICC.

I hope the information I provide above sufficiently addresses the prosecution objections on matters which I possess personal knowledge of. I am available at your convenience to provide any further clarification that you may require in this matter.

Please be assured of my highest consideration at all times.

Kind Regards,



Ibrahim S. Yillah

Annex 1

Mr. Luis Moreno Ocampo
Prosecutor
International Criminal Court

Date: 21 March 2011

Dear Mr. Prosecutor,

I hereby tender my resignation, effective today 21 March 2011.

I have taken this decision after discussion with my family, the Deputy Prosecutor, Ms. Bensouda and my Senior Trial Lawyer, Ms. Kneuer.

During the almost six years that I have served in your office, I have served as a Trial Lawyer in the Uganda, DRC and CAR Situation, particularly in the case against BEMBA which is presently in the trial phase.

I feel humbled, truly privileged and immensely fortunate to have been a part of such important work, and to have worked alongside such outstanding professionals, both senior and junior lawyers, who have come together, made the necessary personal sacrifices and given their best efforts towards constantly making the mission of the Office a reality. For this and many more, I extend my sincere thanks to you, Mr. Prosecutor.

I take this opportunity to record my sincere gratefulness to the Deputy Prosecutor, Ms. Bensouda for the guidance, care and concern she has shown me throughout my years in this office, and especially in recent times. Whilst I have pondered long and hard over my resignation and know that it is the right move for me to make at this time, Ms. Bensouda is the one person that made me pause for thought, because of my profound regard for her.

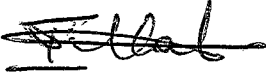
I also extend my gratitude to my STL, Ms. Kneuer for her leadership and support during my time with the CAR Team. Each member of the CAR team has in so many different ways, made an invaluable contribution to our ability to successfully investigate and prosecute this case, and have shown unwavering commitment to presenting the best, most professional case possible. It has been my pleasure to work with each and every member of the CAR team. I will do my

utmost so that my departure at this time will not have any negative impact on the work of the team, and in this regard will present witnesses in court and fully participate and prepare examination outlines of other assigned witnesses before I depart.

I undertake that I will at all times, continue to abide by my obligation of confidentiality with regards all information that I have been privy to by reason of my position in the Office of the Prosecutor.

I wish the OTP every success in its important work, and I will continue to follow the work of the Court with the greatest of interest and belief.

Yours sincerely



Ibrahim Yillah
Trial Lawyer
Office of the Prosecutor
International Criminal Court

c.c. Ms. Fatou Bensouda, Deputy Prosecutor
Ms. Petra Kneuer, Senior Trial Lawyer,
Ms. Harmit Kaur