

Annexure B

Dear Mr. Khan,

Thank you for forwarding to me, for my comment, the Deputy Prosecutor's response to CSS's memorandum of 4 May 2011 about potential conflict with regards to my appointment as Co-Counsel/Associate Counsel for the Defence of Mr. Abdallah Banda and Mr. Saleh Jerbo before the International Criminal Court. I further refer to our discussions on the matter and your letter dated 21 May 2011 to CSS and brings the following additional matters to your attention.

I am challenging the entire basis of the objection put forward by Mrs. Bensouda in her capacity as Deputy Prosecutor, for reasons stated in our discussions, much of which are reflected in your letter to CSS of 21 May 2011, and as stated herein below. However, at this juncture, I wish to state that I am dismayed and absolutely disappointed that the Office of the Prosecutor (OTP) acting through Mrs. Bensouda could, in one sweep, level serious inflammatory accusations against three professional lawyers of repute. Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

The OTP has not provided any cogent basis for their objection to my appointment, on the ground of conflict of interest. The fact that the OTP has gone, *ad nauseum*, in their conjectures of where a conflict *could* exist generally, including referring to corridor and office room tittle-tattle, shows that there is not one demonstrable instance of anything even close to a possible conflict of interest in this instance.

I affirm that I am not in possession of any confidential information, be it directly or indirectly, be it officially or picked-up along the corridors of the OTPS offices, pertaining to any other case or situation outside of the CAR, DRC and Uganda cases, which have thus far been filed. The OTP is either not being altogether candid, or the leadership is simply not in the know of the system of information sharing within the Office. The very fact that the Office has not been able to say definitively that I am IN POSSESSION of identified confidential information in the BANDA-JERBO case, is clear indication that there is no such policy of information sharing within the OTP. In order for a lawyer in one team within the OTP to have access to the confidential information in another team, there has to be an express written approval of the Senior Trial Lawyer of his/her team, and the Senior Trial Lawyer from the other team. This relates to access to the confidential information such as court related documents and proceedings, and other information and evidence on the various evidence databases used in the OTP. One look at the court management circulation list and the system, and the permitted viewers within the various databases within OTP will show that it's not the case that every single lawyer on the 8th floor of the ARC building has access to ALL OTP related information. That sharing of information is encouraged is also inaccurate. In fact, the OTP "clean-desk" policies, and absence of OTP-wide meetings about details of the cases is clear indication that teams operate independently and exclusively. In fact, even within teams, the level of access to confidential information relating to the same team is controlled for reasons of confidentiality and security. Further information, including relevant jurisprudence supporting my assertions will be provided at the appropriate time. Although these matters are not *prima facie* relevant to the issue at hand, I thought it worth mentioning to shed light on the inaccuracies of the averments contained in the response of the OTP.

I have not participated in any meetings and/or discussions to do with any "highly confidential" prosecution investigation strategy or policy, or in relation to any confidential matters arising out of any cases other than the DRC cases, BEMBA Case or the Uganda cases that were filed during my tenure. The OTP actually seems to acknowledge that there is no ONE, UNIFORM investigation policy or strategy that applies across the board to all cases investigated by the OTP, when it asserts that as long as a lawyer was not in the employ at the OTP when the case is opened, he/she will not be in conflict. This can only mean that cases opened after the departure of the lawyer, would not be following previous investigative strategy or policy, and which in turn suggests that investigation policy and strategy of the OTP is on a case-by-case basis.

The OTP's objection cannot be factually or legally sustained. Their reference to a "presumption" of conflict and imposition of time restrictions in similar situations as that being discussed, in national jurisdictions is curious. I would be most interested to know which national jurisdiction is being referred to by the OTP, as I am not aware of any which operate on this premise.

I have turned my attention to the Code of Conduct for Counsel, the jurisprudence of the ICC in the *Kaufman disqualification issue*, the jurisprudence from the ICTY and the ICTR and the practice in national legal systems *vis a vis*, the issue of a former Prosecution lawyer representing the defence before the same Courts (and in some instances in the same case) and vice versa – I am confident that there is no conflict of interest arising in relation to my appointment as your Co-Counsel in the case against Abdallah Banda and Saleh Jerbo and am ready and willing to ventilate the factual and legal issues before the Trial Chamber, should it come to that.

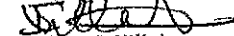
I have also examined my conscience. In the legal tradition in which I was trained, a lawyer moves and accepts cases with clear conscience. As I indicated to you, I have turned my attention to my time at the OTP, and I have not identified any issue impeding my assignment as Co-Counsel in this case. Had I identified an issue impeding my participation in this case, I would not have accepted the appointment. Similarly, I expect the OTP to be guided in its objections to my participation in this case by the law and evidence available. It appears to me that the objections raised are motivated by other factors, which have no basis in the applicable law and are not supported by evidence. I will not address other extraneous issues raised by the OTP because they are not relevant or pertinent considerations for disqualification.

That said, I wish to notify you that during my tenure at the OTP, I have acted at all times with good conscience, integrity, professionalism and respect for authority and colleagues consistent with my duties to the OTP, colleagues and the profession at large. I walked out of the OTP on my own volition when in my professional judgment, I could no longer continue to work in that environment. The least I deserve is to be accorded some respect. Given that the OTP has chosen to disparage my professional integrity, in a manner totally unsupported by any concrete evidence, I reserve the right to seek professional advice to defend my reputation. Redacted

Redacted

You are assured of my highest consideration at all times.

Kind regards



Ibrahim S. Yillah

B and J Partners

Barristers and Solicitors of the High Court of Sierra Leone

18 Wilberforce Street

Freetown