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Lundi 26 avril 2010 à 10 heures

Monday 26 April 2010 at 10 a.m.

8 The VICE-PRESIDENT, Acting President: Please be seated. The hearing can at last be opened. The Court meets today to hear the first round of oral argument of the Democratic Republic of the Congo, in accordance with the reorganized schedule resulting from the difficulties in the air transport sector following the volcanic eruption in Iceland.

I would like to say at the outset that, for compelling reasons, the President is unable to sit in the case this week. Pursuant to Article 13 of the Rules of Court, it therefore falls to me, as Vice-President of the Court, to preside in this case so long as the President is unable to sit.

Judge Koroma has informed the President that he is recusing himself from the case. Furthermore, for reasons duly explained to me, Judge Abraham is unable to participate in today's sitting.

I now give the floor to the Co-Agent of the Democratic Republic of the Congo, Mr. Tshibangu Kalala. You have the floor, Mr. Kalala.

Mr. KALALA: Mr. President, Members of the Court, the Agent of the Democratic Republic of the Congo is unable, for professional reasons, to be present at today's hearing. He has therefore charged me with reading the speech which he would have made to the Court had he been here himself.

Mr. President, Members of the Court, I have the honour today of speaking on behalf of my country before the highest international court, following the complaint brought by the Republic of Guinea on the basis of the diplomatic protection which it believes it should grant to Mr. Ahmadou Sadio Diallo.

Before anything else, however, I should like to perform a pleasant duty, that of gratefully acknowledging the Court's decision, at the request of my country and at the eleventh hour, to reorganize the schedule of hearings so as to enable the Democratic Republic of the Congo defence team, trapped in that country by the closure of European airspace for reasons known to all of us, to appear before the Court and to present a proper defence of the interests of the DRC.

9 Please allow me by means of my speech to express appreciation, coupled with great respect on the part of my Government, for this demonstration of the importance which the Court attaches to the sacrosanct principles of fairness.

The Democratic Republic of the Congo also acknowledges, at the same time, the Republic of Guinea's gracious response to the Court's consultation on our request for rearrangement of the schedule, notwithstanding the one small cloud on the clear horizon of the relations happily existing between our two countries, as noted by Mr. Mohamed Camara. Our gratitude is all the greater because we are aware of the inconvenience and disturbance which such a deferral has no doubt caused.

At this stage, allow me just for one moment, Mr. President, Members of the Court, to explain that the Democratic Republic of the Congo, which I am proud to represent here, is not a rogue state as depicted in the sinister portrayal by the other Party. My country is a hospitable one chosen by many foreigners as their second homeland. They live there peaceably, complying with the laws and regulations laid down by the authorities. They create wealth. Some of them even buy vaults so that they can be buried there. Proof of this is the fact that Mr. Ahmadou Sadio Diallo himself, who came to the country at the age of 17, lived there for over 30 years.

I can take the liberty of saying that he knows my country better than his own. He clearly would not have spent all that time there had our country been the one of which Guinea now paints so black a picture. The principle of equality for all before the law is guaranteed in my country for everyone, without distinction based on sex or race and even less on nationality.

Is not the fact that Mr. Sadio was able to amass all his purported wealth eloquent proof, Mr. President, that he felt more comfortable there than at home? And if it is the case, moreover, that Mr. Ahmadou Sadio Diallo was expelled on the orders of the Prime Minister, one must believe that there were sufficiently serious grounds which prompted that man of the law to take such an unusual and serious decision. Because, Mr. President, decisions of that kind are extremely rare in the DRC, and each time this has occurred, the legal procedure has always been followed scrupulously, allowing the facts to be easily traced.

10

The DRC also regrets that Guinea, a brother country and friend, did not, at a preliminary stage, in line with custom and practice and with African ways of doing things, see fit to seek an amicable settlement before bringing proceedings before this esteemed Court.

Such discussions *à deux* between States would without the slightest doubt, Mr. President, have enabled Mr. Diallo's murky dealings to have been revealed. Guinea would not have allowed

itself to be used by this individual. Lastly, please allow me, Mr. President, to use this opportunity to acknowledge the patriotism of our lawyers, who have not faltered in the face of the difficulties our country is experiencing. They have met deadlines even though not able to work under the best of circumstances.

It is worth noting, indeed, that this case began at a time of serious crises in our country's history.

With your consent, Mr. President, Members of the Court, I now give the floor to the Co-Agent of the DRC who will present our country's oral argument, and I thank you, Mr. President, for giving me your attention.

Now, Mr. President, Members of the Court, I would ask you to allow me once again to take the floor.

The VICE-PRESIDENT, Acting President: Please take the floor and continue, Mr. Kalala, this time presenting your oral argument on behalf of your country. I understand that you have given an opening speech on behalf of the Agent. You now have the floor as Co-Agent and Counsel and Advocate, representing your country before the Court. You have the floor.

Mr. KALALA: Thank you very much, Mr. President. I now return to being myself, and therefore Counsel. Thank you.

**THE DEMOCRATIC REPUBLIC OF THE CONGO HAS NOT VIOLATED THE
INDIVIDUAL RIGHTS OF MR. AHMADOU SADIO DIALLO AS A PERSON**

11 1. Mr. President, Members of the Court, I would like first of all to express my immense pleasure at appearing for the third time before this prestigious Court to defend my country's interests. It is a rare privilege for a teacher of international law to plead before this, the principal judicial organ of the United Nations, thereby combining the theory and practice of international law. I am deeply grateful to the Congolese Government for the honour it does me and for the trust it has placed in my humble self to defend the interests of our country in this important case between it and the Republic of Guinea.

Before embarking on my argument on the merits of the case, I must not miss this opportunity, Mr. President, in my personal capacity, to express my sincere thanks to the Court

which, following the unkind and untimely intervention of the Icelandic volcano in the normal course of the proceedings, made a wise and just decision by rearranging the schedule of the hearings, urgently and at the very last moment, to meet my country's request so that it could present its defence in the best possible circumstances. That decision of the Court, Mr. President, merely further increases the trust which the Democratic Republic of the Congo has always placed in it as the ultimate embodiment of justice anywhere throughout humanity.

2. Mr. President, Members of the Court, in the words of the operative part of its Judgment on preliminary objections delivered on 24 May 2007, the Court held as follows:

“(3) (a) *Declares* the Application of the Republic of Guinea to be admissible in so far as it concerns protection of Mr. Diallo's rights as an individual;

(b) *Declares* the Application of the Republic of Guinea to be admissible in so far as it concerns protection of Mr. Diallo's direct rights as *associé* in Africom-Zaire and Africontainers-Zaire.” (*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Preliminary Objections, Judgment, I.C.J. Reports 2007, p. 618, para. (3) of the operative part.*)

It is only these two clearly defined issues which the Court confirmed and referred for argument on the merits of the dispute between the two Parties. In these oral proceedings, therefore, the Democratic Republic of the Congo (hereinafter “the DRC”) will focus solely on these two questions. During this morning's presentation, then, I am going to address the first issue of the alleged violations of Mr. Diallo's individual rights as a person. The second question concerning the alleged violations of Mr. Diallo's direct rights as *associé* in Africom-Zaire and Africontainers-Zaire will be examined this afternoon.

12

**I. THE DRC DID NOT COMMIT INTERNATIONALLY WRONGFUL ACTS
WHEN MR. DIALLO WAS ARRESTED AND DETAINED**

3. Mr. President, Members of the Court, Guinea, espousing the cause of its national Mr. Diallo, accused the DRC in its Memorial filed with the Court of committing internationally wrongful acts at the time of Mr. Diallo's arrest and expulsion in 1995-1996 and of thereby violating the individual rights of the party concerned as a natural person. It also asserts in its Reply that Mr. Diallo's arrest and detention in 1988, 22 years ago, were internationally wrongful acts. In its closing submission, Guinea asks the Court to find that the DRC breached its international obligations when those acts were committed. I shall therefore answer those accusations, starting

with Mr. Diallo's arrest and detention in 1988 (B) and then dealing with the arrests and detentions which took place in 1995-1996 (C). Before that, however, Mr. President, I shall say something about the arrest and detention of Mr. Diallo which took place much earlier, in 1983 (A) — an arrest and a detention which Guinea and Messrs. Forteau and Thouvenin have passed over in complete silence, without any explanation whatsoever. Mr. President, Members of the Court, you will understand very soon the reasons for that extraordinary and unaccustomed silence on the part of Guinea.

A. Mr. Diallo's arrest and detention in 1983

4. Mr. President, Members of the Court, the Applicant has submitted to the Court in its case file Annexes 18 and 208 included in Volume II of its Memorial. In these documents, dating from 1984, 26 years ago, we read that Mr. Diallo, the chairman and chief executive of two companies, headed a team of 120 including nine executives, "all Zaireans". All except his gorgeous secretary, who was West Indian, and a Guinean, Balde, whose strategic role was to tone down his employer's "extravagances" from time to time. For the boss had fits of inspiration. The documents — documents submitted by Guinea itself — show that Mr. Diallo, boss though he was, drove a Citroen with no brake pads or exhaust pipe. Mr. President, Members of the Court, one has to concede that this is a curious paradox in a supposedly highly prosperous Guinean millionaire whom Mr. Vidal portrayed in glowing terms in his oral argument last Monday, and whom Guinea has presented to the Court as having been dispossessed by the DRC. I shall return to look in detail at Mr. Diallo's true fortune in my presentation this afternoon.

13

5. I shall pursue my argument because we are coming to the most important points, Mr. President. Again according to the documents, Ahmadou Sadio Diallo, a confirmed bachelor, lived alone with his cook Moussa, whose misadventure cost his boss a month in prison during the last quarter of 1983. A native of Burkina Faso, Moussa had been stopped by the police because his residence papers were not in order. He was then imprisoned before being notified of his deportation. Diallo-Cravates, his employer, tried to buy him an air ticket to return to Ouagadougou by signing a cheque for 10,000 zaires at the request of the Zairean prison warden. Diallo then also found himself behind bars for "attempted bribery of an official". Whether this was true or false, we

shall never know. It was the case, however, that a number of high-profile Guineans in Kinshasa were involved in diamond trafficking which came to light in 1983 at Ngobila Beach, by the river port (between Kinshasa and Brazzaville).

The documents detail further that Diallo did not invest in his own country, Guinea. That is what many of his compatriots held against him after his expulsion. It should be borne in mind — and this is important, Mr. President, Members of the Court — that this was because the Guinean Embassy in Kinshasa, by dragging his name through the mud, had led him to disown his nationality. Mr. Diallo did not have peaceful relations with the Guinean Embassy in Kinshasa, which was constantly — to cite the expression used in the documents produced by Guinea itself — “causing him problems”; testifying to this, the newspaper *Jeune Afrique Economie* of 16 February 1984 subtitled an article on Diallo-Cravates “As a Guinean or Zairean?”. Senen Andriamirado wrote: “Is Diallo-Cravates free? Not completely. The Embassy of Guinea in Kinshasa has withdrawn his passport. Since which he has been doing his damndest to obtain Zairean nationality.” Diallo told the paper: “I have always been Guinean, but Guinea wants nothing more to do with me. I want to carry on working — just that. But as a Zairean this time.”

14

In another interview given to a Conakry newspaper after his expulsion, Diallo stated that: “the [Congolese] police officer who arrested me [in 1983] was in cahoots with Guineans in Kinshasa who were plotting against me. They are jealous of my success, as personally, I have never been involved in politics, on either side . . .” In that document, Diallo recounted his altercations with the Guinean Ambassador in Kinshasa, Mrs. Fatou Diarra, who allegedly tried to poison him by offering him poisoned orange juice at her residence.

6. Mr. President, Members of the Court, the passages I have just cited are taken from documents included in the case file by Guinea itself. Furthermore, on page 11 of its Memorial, Guinea confirms some of the facts I have just mentioned. In line with your case law on evidence¹, since those documents were produced by the Party against whom they are being used, they must be given their full probative value. It is thus established, Mr. President, that Mr. Diallo was arrested and detained in Kinshasa for a month in 1983 for attempted bribery of an official, that he had poor

¹See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 41, para. 64.

relations with the Guineans in Kinshasa, including with the Guinean Ambassador, and that he was trying to give up his Guinean nationality in order to acquire Congolese nationality because, in his own words, Guinea wanted nothing more to do with him. It is easy to see, Mr. President, the kind of life that Mr. Diallo led in Kinshasa, and his quality of life. If there was a country which was giving Diallo a hard time, it was Guinea and not the DRC, whose nationality he was seeking to acquire. Mr. President, you will understand why Guinea's counsel did not dare, either in the Applicant's written pleadings or in their oral argument, to invoke Mr. Diallo's arrest and detention in 1983. It is quite simply because the situation is a very awkward one for Guinea and for its counsel who successively appeared before you last Monday. Mr. President, Members of the Court, there must be a stop to presenting the DRC to the Court as a country which has done nothing but harm to Mr. Diallo, to the point of dispossessing him of his property. There must be a stop to presenting Mr. Diallo as a flourishing multimillionaire who was living an opulent life in the DRC and was dispossessed by the Congolese State. I have read some completely unacceptable things about Mr. Diallo in my opponents' statements. Mr. President, the reality is quite different, and I shall return to this point at length in my presentation this afternoon. I shall now broach the question of Mr. Diallo's arrest and detention in 1988, which appear to suit Guinea's purposes.

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B. Mr. Diallo's arrest and detention in 1988-1989

7. Mr. President, Members of the Court, in its Reply of 19 November 2008², the Applicant for the very first time accused the Respondent of violating Mr. Diallo's individual rights at the time of his arrest and his detention in 1988-1989. The DRC replied amply to that accusation in its Rejoinder of 5 June 2009³. I stand by the DRC's response on this issue, and to avoid unnecessary repetition will not return to it in detail here. I would therefore ask the Court to refer to the Rejoinder.

8. I would take the liberty of pointing out, however, that the Rules of Court provide as follows, in Article 38, paragraph 2:

“The application shall specify as far as possible the legal grounds upon which the jurisdiction of the Court is said to be based; it shall also specify the precise nature

²See the Reply of Guinea (RG), p. 6.

³See the Rejoinder of the DRC (RDRC), pp. 5-12.

of the claim, together with a succinct statement of the facts and grounds on which the claim is based.”⁴

On that basis, the DRC raised the issue that the Applicant had not indicated either in its Application or its Memorial the facts and grounds concerning Mr. Diallo’s arrest and his detention from 20 January 1988 to 28 January 1989, and that this therefore constituted a new claim made out of time to the Court by Guinea by means of its Reply of 19 November 2008, that is to say, Mr. President, Members of the Court, 20 years after the facts in question, ten years after the filing of the Application and eight years after the filing of the Memorial. The Respondent asked the Court to reject this new allegation by Guinea as a new claim having no link to or connection with the main claim concerning the events of 1995-1996, and which was submitted to the Court at a late stage of the proceedings. Further, because it is a new claim, the DRC is entitled to raise preliminary objections concerning the Court’s jurisdiction and the admissibility of the claim, in particular the defence of non-exhaustion of local remedies in respect of these facts, which occurred several years — several years, I would emphasize, Mr. President — before Mr. Diallo’s expulsion.

16

9. Professor Thouvenin, whom I respect and admire greatly, offered no substantial or convincing thesis on the issue in his oral argument last Monday⁵. I therefore cannot but reproach the legal strategy used by Professor Thouvenin, consisting of hiding behind the Judgment on preliminary objections of 24 May 2007, instead of demonstrating that Guinea had both in its Application and in its Memorial set out the facts and grounds in respect of the claim concerning Mr. Diallo’s arrest and detention in 1988-1989. Professor Thouvenin’s line of argument on this point suggests that he has himself secretly amended the Rules of Court, so as to stipulate that it is in a judgment of the Court and not in the application instituting proceedings, and in the memorial which expands on that application, that the applicant must state the facts and grounds on which its claim is based. I think, Mr. President, Members of the Court, that Professor Thouvenin himself is not convinced by his reasoning and that he propounded it before the Court merely for amusement.

10. The reality is that Guinea did not, either in its Application instituting proceedings of 28 December 1998 or in its Memorial on the merits of the dispute of 23 March 2001, state the facts and grounds concerning Mr. Diallo’s arrest and detention in 1988-1989. That was done only in its

⁴Rules of Court (1978) as amended on 5 Dec. 2000, ed. 2000, p. 118.

⁵CR 2010/1, pp. 30-31 (Thouvenin).

Reply of 19 November 2008. The Court therefore cannot entertain a claim made for the first time at such a stage in the proceedings. The claim should quite simply be dismissed by the Court because it is out of time.

11. For information, Mr. President, I would point out that the fact that Mr. Diallo's arrest and detention in 1988-1989 were lawful and procedurally correct was amply demonstrated in our Rejoinder⁶. In order to avoid unnecessary repetition, I shall not revisit the Rejoinder here. I would therefore ask the Court to refer to it. I would merely note that Professor Thouvenin has turned a blind eye to the letter from Mr. Lounceny Kouyate, counsellor at the Guinean Embassy in Kinshasa, to the Guinean Government in Conakry, dated 3 February 1988, that is to say, around a week after Mr. Diallo's arrest, in which he stated that Mr. Diallo had been arrested and detained for embezzlement and that he had been taken to the Prosecutor's Office in Kinshasa for the purposes of interrogation. Mr. President, this appears clearly, in black and white, in the letter from the Guinean diplomat. Mr. President, Members of the Court, you will find a transcription of the letter on pages 17 and 18 of Guinea's Observations of 3 July 2003 on the Preliminary Objections of the DRC. Despite this irrefutable evidence produced by Guinea itself, Professor Thouvenin nevertheless continued to state in his oral argument that Mr. Diallo had never been arrested and detained in connection with a judicial investigation, and that he had never been accused of embezzlement, whereas in fact the Guinean State itself has acknowledged that he had.

17

12. In these circumstances, Mr. President, if the fact that Mr. Diallo was taken to the Prosecutor's Office in Kinshasa was not as part of a judicial investigation against him by the Congolese justice system, I would then ask Guinea whether the Prosecutor's Office in Kinshasa, where, according to Guinea itself, Mr. Diallo had been taken in 1988 before being transferred to prison, was a garage to which he had gone to have repairs done to his Citroen with no brake pads or exhaust pipe, or whether the Prosecutor's Office was a restaurant where he had gone to entertain his customers?

13. Guinea also expresses surprise that Mr. Diallo spent a year of his life in pre-trial detention. I am not going to describe here, Mr. President, Members of the Court, what is currently

⁶RDRC, pp. 5-12.

happening at Guantánamo Bay in Cuba with those accused of the attacks of 11 September 2001 in the United States. I would merely ask Professor Thouvenin, who raised this issue in his oral argument, to take himself to Conakry and have a look at the Guinean prisons. He will no doubt find Guineans held in pre-trial detention there for valid reasons connected with the requirements of judicial investigations by Guinean law officers, awaiting trial by a competent court. The situation is scarcely different in France or elsewhere in the world.

14. In sum, Mr. President, the DRC asks the Court to declare Guinea's claim in respect of Mr. Diallo's arrest and detention in 1988-1989 to be inadmissible as out of time, or to dismiss it as unfounded. I shall now proceed to the events of 1995-1996 which directly gave rise to the present dispute before the Court.

18

C. Mr. Diallo's arrest and detention in 1995-1996

15. Mr. President, Members of the Court, to facilitate our understanding of the issue of Mr. Diallo's arrest and expulsion from Congolese territory in January 1996, which lies at the heart of this dispute before the Court, I shall first briefly review the prevailing political, economic and social conditions in the DRC when the measures in question were taken (2). I shall then explain the total lack of justification for the Applicant's allegations that the Congolese authorities mistreated Mr. Diallo, violated Article 36 of the Vienna Convention on Consular Relations by failing to inform Guinea's consular officials of Mr. Diallo's detention and deprived Mr. Diallo of his personal property (3). But before expanding on these points, I shall first comment on Guinea's silence in respect of certain accusations it has levelled against the Respondent (1).

1. Guinea's deafening silences

(a) *Silence concerning the mistreatment allegedly inflicted on Mr. Diallo*

16. The first example of silence on Guinea's part concerns the alleged mistreatment suffered by Mr. Diallo when he was arrested and detained in 1995-1996. In its Memorial, Guinea accused the DRC of having mistreated Mr. Diallo during his imprisonment and expulsion in 1995-1996. In this connection Guinea asserts that, in execution of the order of expulsion, Mr. Diallo was taken away on 5 November 1995 by law enforcement authorities and secretly imprisoned in an immigration department jail without any form of judicial process or even examination and that he

remained a prisoner there without receiving any visit from his lawyers or members of the Guinean Embassy until 10 January 1996, that is, for 75 days. He is said to have been held under perilous conditions and to have received no food from the Congolese authorities⁷.

19 17. In its Counter-Memorial of 27 March 2008, the DRC denied all of these allegations by the Applicant and showed that there was no solid, credible evidence to back them up⁸. The Respondent pointed out in particular that, during the period in which Mr. Diallo was described by Guinea as having been locked up in prison without any contact with the outside world, that is to say, from 5 November 1995 to 10 January 1996, he sent three personally signed letters *dated 30 November 1995* to the Prime Minister of Zaire and the Finance and Planning Ministers. We may well wonder how Mr. Diallo could have been able to write and dispatch these three letters at a time when, according to the Republic of Guinea, he was locked up and mistreated in a jail maintained by the Congolese immigration authorities. What is more, Mr. Diallo made no reference in his letters to the ordeal the very same Congolese Prime Minister was supposedly secretly putting him through in prison. Moreover, although Guinea describes Mr. Diallo as having been imprisoned, mistreated and in the process of being expelled from Zaire, the sole concern expressed in his letters was recovering the debts owed to Africontainers-Zaire, without any mention, Mr. President, Members of the Court, of concerns relating to the conditions under which he was being held. All in all, it is strange. Lastly, it is hard to believe that Mr. Diallo could have spent dozens of days locked up, with nothing to eat or drink, as Guinea claims. The DRC concluded by asking the Court to reject Guinea's allegations for lacking any credibility and being unsupported by any solid, persuasive evidence.

18. Mr. President, Members of the Court, the DRC asks the Court to take note of Guinea's dramatic 180-degree volte-face in its Reply of 19 November 2008 on the subject of the accusations made against the DRC which I have just referred to. Guinea stated:

“At the time in Zaire, contacts between prisoners and people outside were frequent, proper and even *officially provided for* in some ways, since the authorities typically relied on such contacts to keep the prisoners fed. ‘As a rule, the prisoners are fed by non-governmental organizations, church associations and their own families’, in the words of a report on the situation of human rights in Zaire dated

⁷See Memorial of Guinea (MG), pp. 30-51.

⁸See Counter-Memorial of the DRC (CMDRC), pp. 13-14.

19 December 1994. As a matter of fact [says Guinea], during Mr. Diallo's whole time in detention it was thanks exclusively to help provided by his family that he was able to eat. And it was also because he *had contact with those outside the prison* that he was able to give instructions to write the 30 November letters and able to sign them.”⁹

20 Guinea adds: “other channels were available to alert the public: . . . and *on 21 December 1995 [when Mr. Diallo is supposed to have been in custody] Guinea's ambassador in Kinshasa reported to his superiors on the situation*”¹⁰.

19. Mr. President, Members of the Court, it was with great joy and pleasure that the Congolese authorities drank a champagne toast in reading these splendid sentences written in clear terms by the Republic of Guinea, to which they moreover express their sincere gratitude. Whereas we were awaiting proof of its accusations against the DRC in respect of the mistreatment allegedly suffered by Mr. Diallo in prison, Guinea produced the opposite, proof that the DRC properly protects prisoners' rights. The Applicant even points out that Mr. Diallo was well fed and had regular, officially sanctioned contacts with the outside world while in detention. It adds that Guinea's Ambassador in Kinshasa was well aware of the Diallo case and regularly reported on it to the Guinean authorities in Conakry. As I have said, I shall return to this point later in this statement.

20. Professor Thouvenin maintained utter silence on this accusation during his statement last Monday. In light of what I have just explained, Mr. President, the DRC asks the Court to find that, by Guinea's own admission, Mr. Diallo did not suffer any mistreatment during his detention and his expulsion from Congolese territory. That explains the deafening silence which all the speakers who appeared in turn before the Court last Monday maintained on these serious allegations. The DRC heard Guinea's silence and accordingly asks the Court to hear it as well and to draw all the requisite inferences.

(b) *Silence concerning the DRC's failure to question and try Mr. Diallo before his expulsion*

21. Mr. President, Members of the Court, I shall now address the second silence maintained by Guinea, this one on the issue of the alleged breach by the DRC in having neither questioned nor tried Mr. Diallo before his expulsion. In its written pleadings, Guinea criticizes the DRC for

⁹See RG, p. 17; emphasis added.

¹⁰*Ibid.*; emphasis added.

21 having failed to conduct either an examination or a trial of Mr. Diallo and for having failed to arrange for him to have access to counsel. Guinea concludes from this that Mr. Diallo's detention and expulsion were arbitrary and internationally wrongful acts¹¹. They were nothing of the sort, Mr. President, as I am going to explain in a moment.

22. On the subject of this accusation, the Respondent pointed out in the Counter-Memorial that Guinea was confusing two entirely separate types of proceedings. Mr. Diallo was not arrested and held pursuant to criminal proceedings initiated in the context of a judicial investigation by the State Prosecutor with a view to a possible arraignment before a competent court after completion of the investigation. It is in criminal proceedings of that type that provision is made for the examination of, and a defence statement by, the individual who may be brought before the court.

23. In the present case Mr. Diallo, by contrast, was merely the subject of administrative detention preliminary to his removal from Congolese territory for having engaged in conduct which the Congolese authorities deemed inimical to public order. Mr. Diallo was not accused of any particular criminal offence justifying pre-trial detention as part of criminal proceedings brought against him.

24. Article 15 of the Congolese Legislative Order of 12 September 1983 on immigration control provides for a maximum period of eight days between the date on which an alien deemed undesirable in Congolese territory is arrested and the date he is expelled. This Legislative Order therefore provides for an alien's administrative detention for purposes of expulsion, not for purposes of prosecution. In special administrative proceedings of this sort it is inappropriate to speak of an examination of, or defence statement by, the individual concerned.

25. The Respondent added that Guinea had failed to offer any evidence of a refusal by the Congolese authorities to allow Mr. Diallo's lawyers to visit him during his detention pending expulsion from Congolese territory. In fact, Mr. Diallo maintained regular contact with people outside the prison and was therefore free to consult his lawyers.

26. In the face of this argument by the DRC, Guinea did not repeat this accusation in its statements last Monday. The only valid conclusion to be drawn from this silence is that Guinea

¹¹See MG, pp. 51-53.

22 itself has retracted the accusation, considering it unjustified. Thus, the DRC asks the Court to find and declare that Guinea's allegations on this point are unfounded.

(c) *Silence concerning a denial of justice to Mr. Diallo*

27. Mr. President, I now turn to the third silence maintained by Guinea, this one concerning the supposed denial of justice suffered by Mr. Diallo at the hands of the Congolese authorities. The Applicant has claimed in its written pleadings that Mr. Diallo was the victim of two types of denial of justice by the Congolese authorities: a denial of justice in respect of enforcement of the 3 July 1995 judgment ordering Zaire Shell to pay Africontainers-Zaire US\$13 million; and a general denial of justice lying in the fact that Mr. Diallo's detention and expulsion made it impossible for him to pursue the settlement of the disputes relating to his dealings in the DRC.

28. Mr. President, the DRC has vigorously rebutted this denial-of-justice claim by showing that it leads to the exercise by Guinea of diplomatic protection in regard to rights belonging to Africontainers and Africom-Zaire, in contravention of the Judgment on preliminary objections handed down by the Court in the present case on 24 May 2007. In that Judgment Guinea's Application was declared inadmissible in this respect. Indeed, these two types of denial of justice, had they occurred, would have been directed at Africontainers-Zaire and Africom-Zaire, the holders of the claimed debts, not at Mr. Diallo in his individual capacity.

29. The Court has already observed in its Judgment of 24 May 2007 that it is undisputed that all of the financial claims (arising from commercial litigation or otherwise) relied on by Guinea concern rights belonging to the commercial companies as legal persons, not to Mr. Diallo as a natural person. This is true of all the commercial disputes, including the dispute between Africontainers-Zaire and the oil company Zaire Shell which Guinea cites.

23 30. In response to the strong arguments elaborated by the DRC in its written pleadings, Professor Thouvenin considered the more prudent course to be to maintain complete silence in his statement last Monday on the subject of the denials of justice alleged by Guinea to have been suffered by Mr. Diallo at the hands of the Congolese State. I therefore request the Court to take note of the Applicant's deafening silence on these accusations and, in consequence, to rule that they are unfounded.

(d) *Silence concerning breaches of contract*

31. Mr. President, Members of the Court, I am now going to address the fourth and last silence maintained by the Applicant, on the subject of the alleged violation by the DRC in respect of contractual commitments to Mr. Diallo. The Applicant has asserted in its written pleadings that a State's breach of contractual commitments assumed to an alien may constitute an internationally wrongful act where that breach is accompanied by other internationally wrongful acts. Guinea claims that this is the case of breaches by Gécamines of the contract of carriage of 13 July 1983 and of the refusal by the Department of Finance to pay the 178 million zaire debt owed to Africom-Zaire, which, Guinea contends, were accompanied by other internationally wrongful acts, notably unlawful detention and expulsion, arbitrary interference and denial of justice.

32. Mr. President, the DRC rebutted this argument as well in its Counter-Memorial, explaining that this reasoning would lead to Guinea's exercise of diplomatic protection on behalf of Africontainers and Africom-Zaire, in contravention of the Judgment on preliminary objections handed down by the Court in the present case on 24 May 2007. Indeed, the tripartite contract of 13 July 1983 was entered into by, and the listing paper order placed with, Africom-Zaire and Africontainers-Zaire as legal entities. Thus, any of the alleged contractual breaches, if established, would have been committed against the companies as legal entities, not against Mr. Diallo as a natural person. Thus, the situation is the same here as the one I just referred to a moment ago in respect of denial of justice. Accordingly, the DRC concluded that it has not committed any breach of contract against Mr. Diallo in his individual capacity.

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33. Mr. President, Members of the Court, in response to the DRC's solid, irrefutable arguments, Guinea has chosen to flee from any courtroom debate on this accusation and to retreat into silence. Thus, Guinea has to remain silent for good on this accusation, which is patently unjustified.

34. To sum up, in the light of Guinea's various silences which I have just pointed out, the DRC requests the Court to reject Guinea's corresponding allegations as unfounded.

The time has now come, Mr. President, to examine the social conditions generally prevailing in the DRC during the period of Mr. Diallo's arrest and detention in 1995-1996.

2. The national backdrop when Mr. Diallo was arrested and detained in 1995-1996

35. Mr. President, on 24 April 1990, 22 years ago to the day, Marshal Mobutu decided to restore pluralist democracy and to abolish the dictatorial single-party régime which had ruled the country for nearly 25 years. But Marshal Mobutu and leading figures in his régime, who had become a minority by a wide margin in the country, chose to cling desperately to their power and privileges. They adamantly refused to play fair and to put in place an open democratic system acceptable to the Congolese people and to all the democratic forces. Those forces then set off radical, systematic political opposition to the reigning régime. This serious political situation created a social environment characterized by the decline of the Congolese State, the collapse of the economy and currency, destitution of the population and widespread political protest against the ruling powers. Mismanagement of the economy and public finances, together with the régime's corruption, forced the Bretton Woods institutions and the DRC's bilateral partners to cut off all co-operation with the Congolese Government for more than ten years.

25 36. It was against this backdrop of political, economic, social and moral crisis that mass rioting, featuring and facilitated by the mutiny of the Congolese army, broke out in September 1991 in Kinshasa, the DRC capital. This rioting on an unprecedented scale triggered massive looting of private businesses throughout the city of Kinshasa and exacerbated the damage to the country's economic fabric. In January 1993, further mass rioting, in which the French Ambassador to the DRC was killed, erupted in Kinshasa and gave rise to wide-scale looting of public and private property in the city. Most of the expatriates still controlling the Congolese economy fled the country. Africontainers-Zaire, of which Mr. Diallo was *gérant* and *associé*, also suffered the disastrous effects of these riots on its business, as did other private companies. This is in very large part the reason why Africontainers-Zaire, a company specializing in the containerized transport of goods, found itself in undeclared bankruptcy. Mr. President, I shall return in greater detail in my statement this afternoon to the actual position of this company, which Guinea falsely describes — I repeat, falsely describes — to the Court as a thriving company at the time of Mr. Diallo's expulsion.

37. In a speech given on 14 August 2003 at the Kinshasa International Fair (Foire internationale de Kinshasa (FIKIN)), the Governor of the Central Bank of the Congo described the

Congolese economy over the decade from 1990 to 2000. He specifically pointed out the deterioration of basic infrastructures, the pillaging of production plant — I repeat, the pillaging of production plant —, the accumulation of arrears of foreign debt and the breakdown of structural co-operation with the international community. The Central Bank of the Congo, in its annual report in 1994 on the state of the Zairian (DRC) economy in 1993, noted that the inflation rate had been 2989 per cent in 1992 and 4651 per cent in 1993. The report also pointed out the harm caused to the Congolese economy by the looting in January 1993.

38. Taking advantage of these general conditions of decline of the apparatus of the Congolese State, of deterioration of the economy and widespread moral degeneration, set against a backdrop of political struggle for control over the country and access to privileges, certain aliens who had remained in the DRC took up economic crime in the pursuit of riches by any and all means. To deal with this serious state of affairs, in which organized crime groups sought to profit from the weakness and instability of State authorities — seizing control of the country's economy, counterfeiting the currency, trafficking in foreign currency, defrauding the tax authorities, and destroying the public finances — the Congolese Government resolved in early 1995 to launch a fierce, determined campaign against economic crime and destabilization.

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39. As part of that campaign, Mr. President, Members of the Court, the Congolese Government took a number of steps to expel certain aliens involved in economic crime. Thus, the Congolese Government issued a decree on 22 February 1995 expelling 86 aliens for involvement in economic and financial crime. Five days later, on 27 February 1995, the Congolese Government issued another decree expelling 84 aliens for the same reasons. Eight months later, on 31 October 1995, the Congolese Government issued the decree expelling Mr. Diallo from Congolese territory on the same grounds — this is the decree that will be the subject of this statement. A number of months after Mr. Diallo's expulsion, the Congolese Government issued a further decree, on 20 September 1996, expelling 24 aliens implicated in economic crimes. Mr. President, Members of the Court, you will find copies of these decrees at tab 1 of the judges' folder you have before you.

40. Thus, it was against this national backdrop which I have just described that the decree expelling Mr. Diallo was adopted on 31 October 1995. As you can see, Mr. President, Members of

the Court, the expulsion measure taken against Mr. Diallo was not an isolated action aimed at arbitrarily harming Mr. Diallo's interests and taken by the Congolese State against him out of vengeance. Under the terms of the decree itself, the justification for the measure was that Mr. Diallo's presence and conduct were breaching *Congolese public order*, especially in the economic, financial and monetary areas. Mr. President, you will find a copy of this decree at tab 2 in the judges' folder.

41. Mr. President, Members of the Court, I have just set out for you the reasons for, and circumstances surrounding, Mr. Diallo's arrest and detention and his expulsion from the DRC on 31 January 1996. I shall now explain to the Court how all these measures were taken in accordance with Congolese law and in compliance with the DRC's international obligations.

3. Legality of Mr. Diallo's arrest and detention in 1995-1996

42. Mr. President, Members of the Court, in its written pleadings the DRC has already thoroughly set out its position on Mr. Diallo's arrest and detention in 1995-1996¹². Professor Thouvenin returned to these subjects in his statement last Monday¹³. As what he said did not materially undermine the DRC's responses figuring in the Counter-Memorial and Rejoinder, I do not think it necessary to go over these aspects once again in this statement by rehashing what the Respondent has already clearly said in its written pleadings. I shall therefore ask the Court to refer to the DRC's written pleadings on these issues, so as to avoid, as I have said, pointless repetition. But I must however respond to statements made by Professor Thouvenin on certain points which I think significant and on which the Parties remain divided in respect of this issue. Those are: the alleged violation of Article 36 of the Vienna Convention on Consular Relations (a); and the deprivation of Mr. Diallo's personal property (b).

(a) *Alleged violation of Article 36 of the Vienna Convention on Consular Relations*

43. Mr. President, Members of the Court, the Applicant further asserts in its written pleadings that the DRC violated Article 36 (1) (b) of the Vienna Convention on Consular Relations

¹²See the Preliminary Objections of the DRC (PODRC), pp. 39-42; CMDRC, pp. 8-24 and RDRC, pp. 3-15.

¹³See CR 2010/1, pp. 31-39 (Thouvenin).

by failing to allow contact between Mr. Diallo and Guinea's consular officers in Kinshasa when Mr. Diallo was being held in detention¹⁴.

44. In his statement Professor Thouvenin raised this issue, on which, as I just said, the Parties remain divided. Guinea's allegations are unfounded, Mr. President, as I shall demonstrate in a few moments.

45. Article 36 (1) (b) of the Vienna Convention on Consular Relations provides:

“if he [an arrested, imprisoned or detained alien] so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner . . .”.

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46. Mr. President, the DRC is well aware that the Court has recently ruled on the interpretation of this treaty provision, specifically in the *LaGrand* case between Germany and the United States of America¹⁵. Like all other judgments of the Court, the Judgment the Court handed down in that case, Mr. President, has effects *erga partes* considering the facts and all the circumstances of the case. The distinguishing feature of that case, Mr. President — *LaGrand (Germany v. United States of America)* — lies in the fact that the United States, the Respondent, acknowledged without argument that it had violated the treaty provision invoked by Germany by failing to afford the LaGrand brothers the possibility of receiving consular protection by Germany, the country of their nationality. Thus, there was manifestly — and inarguably — a clearly established breach by the United States of its international obligations, a breach aggravated by the fact that the LaGrand brothers were tried, sentenced to death and indeed executed.

It was against this backdrop that the Court began by observing — rightly — as follows in its Judgment:

“when the sending State *is unaware of the detention of its nationals* due to the failure of the receiving State to provide the requisite consular notification without delay, which was true in the present case during the period between 1982 and 1992, the sending State has been prevented for all practical purposes from exercising its rights under Article 36, paragraph 1” (*LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001*, p. 492, para. 74; emphasis added).

¹⁴See MG, pp. 43-44 and RG, pp. 24-26.

¹⁵See *LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001*.

47. Drawing the logical conclusion from this observation, and we agree with the Court, the Court found that:

“by not informing Karl and Walter LaGrand without delay following their arrest of their rights under Article 36, paragraph 1 (*b*), of the Convention, and by thereby depriving the Federal Republic of Germany of the possibility, *in a timely fashion* [I stress, ‘in a timely fashion’], to render the assistance provided for by the Convention to the individuals concerned, the United States of America breached its obligations to the Federal Republic of Germany and to the LaGrand brothers under Article 36, paragraph 1” (*ibid.*, p. 515, point (3) of the operative part; emphasis added).

48. Mr. President, Members of the Court, the situation in the present case is *completely* different, as I shall explain in a moment.

29 49. In this connection, I point out to the Court that Guinea itself has produced a letter dated 21 December 1995 from its then Ambassador in Kinshasa, Mr. Abdoulaye Sylla, a lawyer by profession. That letter was sent to the Guinean Ministry of Foreign Affairs, with a copy to the President of the Republic of Guinea for his information, and concerned Mr. Diallo’s situation. In it Guinea’s Ambassador in Kinshasa stated as follows, Mr. President, Members of the Court, and I quote Ambassador Sylla: “In any case, the Embassy, for its part, will proceed with the cautious and measured *diplomatic action that it has already initiated* [I stress, the ‘*diplomatic action that it has already initiated*’] at all levels to ensure a felicitous outcome to the case.”¹⁶ Mr. President, you will find a copy of this letter at tab 6 of the judges’ folder before you. I would also stress that the phrase “diplomatic action . . . already initiated” used in December 1995, before Mr. Diallo’s expulsion, clearly shows that Guinea’s diplomatic approaches on Mr. Diallo’s behalf had begun much earlier, that is to say, at the time he was arrested. It must also be noted that this letter was written, as I said, more than a month before Mr. Diallo was expelled. Guinea’s Ambassador also sent the Ministry of Foreign Affairs in Conakry clippings of articles published in the Congolese press reporting on Mr. Diallo’s situation.

50. When Mr. Diallo was still being held in Kinshasa prior to expulsion, Guinea’s Embassy instructed Africontainers-Zaire’s senior executives on 25 January 1996 (Mr. President, Members of the Court, on 25 January 1996 Diallo was still in the Congo) to prepare an inventory of all the containers belonging to the company¹⁷. It will be added that, on 15 April 1996, Guinea’s Minister

¹⁶See the copy of this letter in MG, Vol. II, Ann. 192; emphasis added.

¹⁷See the inventory list: MG, Vol. II, Ann. 199.

for Foreign Affairs wrote to the Secretary-General of the Presidency of the Republic of Guinea to report to him on Mr. Diallo's situation¹⁸.

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51. Mr. President, Members of the Court, it is thus demonstrated beyond doubt that Mr. Diallo's case was known not only to the Guinean consulate in Kinshasa but also to the President of the Republic and the Minister for Foreign Affairs of Guinea; what is more, Guinea's Ambassador in Kinshasa had made diplomatic approaches on Mr. Diallo's behalf to the Congolese Government. Guinea, unlike Germany in the *LaGrand* case, therefore was able, in a timely fashion, to repeat the phrase employed by the Court, to afford Mr. Diallo the consular assistance contemplated in the Vienna Convention on Consular Relations. Where then is the problem?

52. It is clear to the DRC that the Applicant's litigation strategy is to take refuge behind purely theoretical considerations while deliberately closing its eyes to what actually happened. Guinea does not cite any injury which Mr. Diallo allegedly suffered as a result of Guinea's consular post not having been informed of his detention. As I have just explained in detail, the fact is that Mr. Diallo received support and protection from Guinea's consular officers in Kinshasa from the outset of his arrest and detention, for they were well aware of his situation. Given Mr. Diallo's extensive network of social relations in Kinshasa, his arrest could not have gone unnoticed. Guinea itself has moreover admitted that "other channels were available to alert the public" as to Mr. Diallo's detention.

53. Mr. President, to conclude on this point, I must yet again lay great emphasis on the fact that the aim to be achieved through Article 36 (1) (b) in question here is to ensure that the consular officers of the sending State are informed whenever a national of that State living in the receiving State is being held in detention, so that they can see to it that his individual rights are respected and can provide consular assistance to him under proper conditions. In the present case, this aim was fully achieved, as I explained a moment ago. This is indeed far, far removed from the situation in the case of the *LaGrand* brothers. Once again, the DRC accordingly fails to see any issue.

54. In the light of what I have just said, Mr. President, the Respondent requests the Court to reject as unfounded Guinea's allegation that the DRC violated Article 36 (1) (b) of the Vienna

¹⁸See the copy of this letter appearing in MG, Vol. II, Ann. 203.

31 Convention on Consular Relations by failing to allow contact between Mr. Diallo and Guinea's consular officers in Kinshasa. In any case, Guinea has failed in the present case to show that the Congolese authorities prevented Mr. Diallo from entering into contact with Guinea's Embassy in Kinshasa during his detention or neglected to notify Guinea's consular post of the detention. On the contrary, Guinea's Ambassador in Kinshasa, Mr. Abdoulaye Silla, was fully informed in timely fashion of Mr. Diallo's arrest and detention with a view to expulsion to Conakry.

(b) *Mr. Diallo's personal property*

55. I shall now address the last point raised in Guinea's Application concerning Mr. Diallo's personal property. On the subject of Mr. Diallo's personal property, I must point out here that Guinea's Ambassador in Kinshasa had an inventory of this property prepared, as well as of the containers and other property belonging to Africontainers-Zaire¹⁹. He never approached the Congolese authorities to protest against the confiscation or disappearance of Mr. Diallo's property. Mr. President, when a State expels an alien under the circumstances and for the reasons I have described in this statement, international law does not oblige it to charter an aircraft or other means of transport for the alien's benefit for purposes of arranging his removal together with all his moveable property. There is no precedent to this effect in State practice.

56. The Guinean State itself knows exactly what happened to Mr. Diallo's personal property which had been in the apartment where he was living, for Guinea took custody of it after having it inventoried.

57. In conclusion to this statement, the DRC requests the Court to find that the DRC did not commit any internationally wrongful act in connection with Mr. Diallo's arrest and detention in 1995-1996. I shall now turn to Professor Forteau, who prepared a fine presentation on Guinea's behalf on the issue of the expulsion, which he read to the Court during his statement last Monday.

Mr. President, not knowing whether you can entertain this possibility, in your wisdom, I would like to ask whether one might take a recess, if only for a few minutes, so that we can resume our statement afterwards.

¹⁹See MG, Vol. II, Anns. 199 and 200.

32 The VICE-PRESIDENT: Thank you, Mr. Kalala. I understand that you would like a short recess so that you can continue your statement; I believe that you still have 20 minutes to go, but I understand that you are requesting a break. In that case, I shall call a 10-minute coffee break. The hearing will resume at 11.35 a.m. The session is adjourned.

Mr. KALALA: Thank you very much, Mr. President.

The Court adjourned from 11.25 a.m. to 11.35 a.m.

The VICE-PRESIDENT, Acting President: Please be seated. The hearing resumes and I shall now give the floor to Professor Tshibangu Kalala to continue his statement. You have the floor, Mr. Kalala.

Mr. KALALA: Thank you very much, Mr. President, for giving me the floor. The break has enabled me to take breath.

II. THE DRC DID NOT COMMIT INTERNATIONALLY WRONGFUL ACTS IN CONNECTION WITH MR. DIALLO'S EXPULSION ON 31 JANUARY 1996

58. Mr. President, Members of the Court, as part of its legal strategy of accusing the DRC of every evil under the sun, in the hope that the Court will uphold what it sees fit to uphold, the Applicant also criticizes the DRC for expelling Mr. Diallo on the basis of a decision not made in accordance with the law. By so doing, according to Guinea, the DRC violated Article 9 of the International Covenant on Civil and Political Rights, as well as Article 13, whereby an alien lawfully in the territory of a State can only be expelled from it in pursuance of a decision reached in accordance with law.

Professor Forteau addressed the topic at length in his statement last Monday²⁰. The Applicant's claims will not stand up, Mr. President, as I shall explain very shortly by replying to Professor Forteau's assertions on this issue which continues to divide the Parties.

²⁰CR 2010/1, pp. 41-55 (Forteau).

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59. Mr. President, Members of the Court, I shall first draw attention to the fact that the DRC expelled Mr. Diallo rather than refusing him entry (A) and will then explain to the Court that this measure was lawful (B).

A. Mr. Diallo's expulsion or refusal of entry

60. I have already explained, in the course of this statement, the reasons and circumstances surrounding Mr. Diallo's expulsion from Congolese territory in January 1996. Many pages of the Congo's written pleadings have also been devoted to this question. I shall not go back over them in detail. I would therefore ask the Court to refer to those pleadings.

61. It is clear, Mr. President, that Mr. Diallo was arrested by the police and expelled to Guinea on 31 January 1996 on the basis of the Decree of 31 October 1995 issued by the Congolese Prime Minister. Guinea speaks sometimes of refusal of entry and sometimes of expulsion, depending on which concept suits its purposes. I note that in their oral argument last Monday, however, Mr. Vidal used the word "expulsion" six times, Professor Thouvenin seven, and Professor Forteau beat all records by using it 75 times, no less. The DRC has been criticized for using the expression "refusal of entry" instead of "expulsion" in the notice drawn up at Ndjili airport on the day that Mr. Diallo was expelled. However, I have noted, Mr. President — and I would ask the Court to note likewise — that, before the Court, Guinea uses the term "expulsion" instead of "refusal of entry". If no one is right, then no one is wrong. The DRC can therefore no longer be criticized. Mr. Diallo was indeed expelled and not refused entry. That is why Guinea is attacking as unlawful the Prime Minister's expulsion decree, and not the notice of refusal of entry issued by an official of the State.

B. Mr. Diallo's expulsion was lawful

62. In the course of his presentation, Professor Forteau challenged the lawfulness of the Prime Minister's expulsion decree, invoking both the provisions of Congolese immigration control law and those of the International Covenant on Civil and Political Rights.

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63. I would first like to point out, Mr. President, Members of the Court, that the decree in question was issued under Article 15 of the Congolese Legislative Order of 12 September 1983 concerning immigration control, according to which

“The President of the Republic may, by a duly reasoned Order, deport from Zaire any alien who, by his presence or conduct, breaches or threatens to breach the peace or public order.”²¹

Mr. President, as you will soon realize, the reason on which the decree to expel Mr. Diallo was based was the fact that “Mr. Diallo’s presence and conduct have breached Zairean law and order, especially in the economic, financial and monetary areas, and continue to do so”, applying Article 15 which I have just read out. This was indeed therefore a decision reached in accordance with law within the meaning of Article 13 of the International Covenant on Civil and Political Rights.

64. At the same time, under Article 15 of the Legislative Order of 12 September 1983 concerning immigration control,

“An alien against whom deportation proceedings have been initiated and who is likely to evade implementation of this measure may be imprisoned by the General Administrator of the [intelligence services or the immigration service] or his representative for a period of 48 hours. In cases of absolute necessity this period may be extended by 48 hours at a time, but shall not exceed eight days.”

The length of Mr. Diallo’s detention was also in accordance with Congolese legislation. Here, Guinea’s assertion that Mr. Diallo was detained for a total of no less than 75 days (from 5 November 1995 to 10 January 1996, and then from 17 January to 31 January 1996) is groundless and not supported by any persuasive evidence. This assertion is based solely on newspaper sources, which for their part reproduce an “Avocats Sans Frontières” press release. I have already described in this statement how Guinea’s presentation of the facts stands in contradiction to the material before the Court because, during the period when Mr. Diallo was supposedly detained with no contact with the outside world, he wrote various letters to the Congolese Government signed by his own hand in which he made no complaint about his detention. I shall not rehearse this point again.

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65. In the same vein, the Applicant also accuses the DRC of failing to give Mr. Diallo the opportunity to submit the reasons against his expulsion and to have his case reviewed by the competent authority. According to Guinea, this conduct by the Respondent likewise infringed Article 13 of the International Covenant on Civil and Political Rights.

²¹Judges’ folder, tab 3.

66. Mr. President, Members of the Court, Article 13 of the International Covenant on Civil and Political Rights provides as follows:

“An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority . . .”

67. The Parties are divided on the fundamental question — and this is precisely the point which divides them — of whether or not Mr. Diallo had an opportunity to submit any reasons against his expulsion, in accordance with the treaty provision which I have just read out. In Mr. Diallo’s case, his daily scheming — I have described the circumstances in which the gentleman in question was expelled — had become so serious that the Congolese Government, in the exercise of its discretion, found that it was urgent and compelling, for reasons of maintaining public order, that he be removed from the territory.

68. The Congolese legal system, Mr. President, provides a means of redress — this is the point of contention with Guinea — against any decision taken by a central administrative authority which infringes a person’s rights. The Congolese Constitution of 9 April 1994, which was in force in 1996 (it did not enter into force then, and Guinea is confused on that point), provided in Article 102 that: “[t]he Supreme Court of Justice has jurisdiction over . . . applications for nullification of acts and decisions of the central authorities of the Republic”. For its part, the Legislative Order of 31 March 1982 concerning procedure before the Supreme Court of Justice establishes specifically in Articles 87 to 90 that applications for nullification of acts, decisions and regulations of the central authorities can be submitted by any aggrieved individual. Mr. President, you will find the text of this Legislative Order in the judges’ folder at tab 4.

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69. Even after his expulsion, therefore, there was an administrative means of redress available to Mr. Diallo to seek nullification of the 31 October 1995 Decree issued against him by the Congolese Prime Minister, before the Administrative Division of the Supreme Court of Justice. He was therefore allowed to submit any reasons against his expulsion, in accordance with Article 13 of the International Covenant on Civil and Political Rights. I am bound to point out, Mr. President, Members of the Court, I am bound to point out that Mr. Diallo, who had instructed Congolese lawyers to act in defence of his financial interests, did not instruct those lawyers to bring

administrative proceedings for annulment of the expulsion decree, using the procedure available in the administrative courts.

70. Having clarified those points, the DRC asks the Court to find that Mr. Diallo's expulsion was decided upon in accordance with Congolese law and that the Respondent did not violate Article 13 of the International Covenant on Civil and Political Rights.

71. Guinea also claims on page 22 of its Reply that the Decree of 31 October 1995 to expel Mr. Diallo breaches the 1983 Congolese Legislative Order concerning immigration control because the decree was issued by the Prime Minister and not by the President of the Republic. Mr. President, the text of Article 15 of the Legislative Order of 12 September 1983 does indeed refer to the President of the Republic, and specifically to the President of the *Mouvement Populaire de la Révolution*, President of the Republic (at the time, Field Marshal Mobutu Sese Seko), who, in the period of the Cold War and single-party rule, held a monopoly of supreme executive power.

72. Following abolition of the single-party system on 24 April 1990, a new constitution based on democratic principles and characterized by the sharing of executive power between the President of the Republic and the Government led by a Prime Minister was adopted on 9 April 1994. Article 80, second paragraph, of that Constitution gave the Prime Minister regulatory power in the following terms — I am reading the Congolese Constitution of the time: “The Prime Minister shall exercise regulatory power by means of decrees voted on by the Council of Ministers.” Mr. President, Members of the Court, you will find the text of Article 80 of the 1994 Congolese Constitution in the judges' folder at tab 5.

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73. It was therefore on the basis of Article 80, second paragraph, of the Congolese Constitution in force at the time of the facts that the Prime Minister exercised his regulatory power to implement the laws of the Republic by issuing the Decree of 31 December 1995, in order to apply the 1983 Legislative Order concerning immigration control to Mr. Diallo. Mr. President, it had become inconceivable in a democratic régime that a President of the Republic might be able, as at the time of the single-party dictatorship, to issue an administrative decision to expel an alien when there was a Government, headed by a Prime Minister, with regulatory power to implement the laws of the Republic. In other words, the unlawfulness of the Decree of 31 October 1995 which Guinea has raised before the Court is apparent only to a foreigner unfamiliar with Congolese law.

In short, Guinea's argument is untenable in the context of the Congolese domestic legal system. That is why the DRC asks the Court to dismiss Guinea's allegations in this respect.

Mr. President, Members of the Court, I have finished my presentation for this morning. It being lunch time, may I wish you, Mr. President, distinguished Members of the Court and the Guinean delegation, *bon appétit*. Thank you.

The VICE-PRESIDENT, Acting President: Thank you for your presentation, Mr. Kalala. Before closing the hearing, I should like to give the floor to Judge Cançado Trindade, who wishes to ask a question. You have the floor, Judge Cançado Trindade.

Judge CANÇADO TRINDADE: Thank you, Mr. President. I have a question to put to both Parties. In your opinion, do the provisions of Article 36, paragraph 1 (*b*), of the 1963 Vienna Convention on Consular Relations apply solely to relations between the sending State or State of nationality and the receiving State? Was Mr. Diallo himself informed about consular assistance immediately after his detention? Who is the holder of the right to information regarding consular assistance: the sending State or State of nationality, or the individual? Thank you, Mr. President.

38 The VICE-PRESIDENT, Acting President: Thank you. The written version of the question will be transmitted to the Parties as soon as possible, shortly after the closure of the hearing.

Finally, I should like to ask you for a factual detail, Mr. Kalala. You made reference to the new Constitution of the Democratic Republic of the Congo which was adopted on 9 April 1994, and you mentioned that this Constitution entered into force in 1996. Could you tell us this afternoon the exact date of the entry into force of the 1994 Constitution? It is simply a point of information. Thank you.

The hearing is closed. The Court will meet again this afternoon at 3 p.m. to hear the continuation of the oral argument of the Democratic Republic of the Congo. The sitting is closed.

The Court rose at 12.15 p.m.
