

**Replies of the Democratic Republic of the Congo to the questions put
by Judge Cançado Trindade at the end of the hearing held
on 26 April 2010 at 10 a.m.**

[Translation]

By Professor Tshibangu Kalala
Co-Agent of the Democratic Republic of the Congo

First question

“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?”

Reply

In the *LaGrand* case, the Court found that Article 36, paragraph 1 (b) and (c), of the 1963 Vienna Convention creates “individual rights” (*Germany v. United States of America*, Judgment of 27 June 2001, para. 77).

The DRC does not intend to call into question that well-established jurisprudence. The DRC will restrict itself to pointing out that, while the right to information is an “individual” right, it is nevertheless inextricably linked to the sending State’s right to communicate with its nationals through consular officers. Indeed, Article 36, paragraph 1, states that the purpose of that right to information is to facilitate the exercise of consular functions relating to nationals of the sending State.

That purpose confirms that it is indeed a matter of individual rights, but that these remain closely linked to the rights of the State itself.

In other words, the DRC believes that the sending State’s right to information and that of the arrested or detained alien are interdependent rights. This interdependence between the rights of the State and those of the individual was also confirmed by the Court in the case concerning *Avena and Other Mexican Nationals*, in which the Court found that “violations of the rights of the individual under Article 36 may entail a violation of the rights of the sending State, and that violations of the rights of the latter may entail a violation of the rights of the individual” (*Mexico v. United States of America*), Judgment of 31 March 2004, para. 40).

In the DRC’s view, it thus follows that these rights do not apply solely to relations between the sending State or State of nationality and the receiving State, nor do they apply solely to relations between the individual and the receiving State.

In the present case, no matter what the answer to the second question, which divides the Parties, it has been established that Guinea was aware of Mr. Diallo’s situation and that it made diplomatic approaches to the Congolese authorities on behalf of its national well before his expulsion. That is sufficient to establish that the purpose of the right to information was achieved. Consequently, the DRC cannot be found to have violated the right to information of either Guinea or Mr. Diallo.

Moreover, it follows from the interdependence between the right to information of the sending State or State of nationality and the right to information of the arrested or detained alien that, if that right has not been violated in respect of the State — here, Guinea — it cannot have

been so in respect of its national, Mr. Diallo, who did not object — quite the opposite — to his State being informed of his situation.

This conclusion is even more compelling if one takes account of the fact that neither Mr. Diallo nor Guinea has suffered the slightest injury because of the alleged violation of the right to information enshrined in Article 36, paragraph 1 (*b*), of the 1963 Convention.

Second question

“Was Mr. Diallo himself informed about consular assistance immediately after his detention?”

Reply

The DRC verbally informed Mr. Diallo immediately after his detention of the possibility of seeking consular assistance from his State. Furthermore, it is clear from the record that such assistance was indeed obtained.

Third question

“Who is the holder of the right to information regarding consular assistance: the sending State or State of nationality, or the individual?”

Reply

For the same reasons as those given in the answer to the first question, both the individual and the sending State or State of nationality hold the right to information, these rights being interdependent.
