

THE REPUBLIC OF GUINEA

APPLICANT

V.

THE DEMOCRATIC REPUBLIC OF THE CONGO

RESPONDANT

COUNTER-MEMORIAL OF THE DEMOCRATIC REPUBLIC OF THE CONGO

## STATEMENT OF LAW

1. Under the Operation of Jus Soli international legal convention contends that an individual, over time, acquires the nationality of its host State by virtue of a lengthy standing residency.
2. Article 4 of the Hague Convention of 1930, states as a rule: A State may not afford diplomatic protection to one of its nationals against a state whose nationality said person also possesses.
3. The Working Group established in 1996 by the International Law Commission felt that the foreign investors had privileged position as opposed to nationals. They had the ability to see domestic remedies, diplomatic protection and international arbitration for the protection of their rights. All of this was available while nationals could only get a hold of domestic remedies. Under the Calvo Doctrine Foreign Nationals are to have the principle of equality with nations who are subject to the sole jurisdiction of their court alone.
4. The application of diplomatic protection as it has been laid down in the Ben Tillett case of 1899 (Great Britain V. Belgium) and later confirmed by the Virginus case, the individual who is being protected must not have taken part in any improper activities; the individual must have clean hands.
5. Under Article 34 paragraph 1 of the official Statute of the International Court of Justice 1945, "only States may be parties in the cases before the court."
6. In the Draft Articles on State Responsibility adopted by the International Law Commission, Article 42 paragraph 3 states in no case shall reparations result in depriving the population of a State of its own means of subsistence. Furthermore, Article 43 provides that the injured or claimant State may receive restitution only if it would not seriously jeopardized the political independence or economic stability of the State which has committed the internationally wrongful act.
7. The Vienna Convention on Succession of States in Respect of Treaties (1978) developed the widely accepted definition of Successor States as those which take over the identity of the Predecessor State.
8. Traditional scholars and jurists have rejected the policy of successor state liability. Legal analyst Jean Phillippe Monnier concurs, finding that there is no customary rule or general principal of international law that postulates the automatic transfer to the successor state of the obligations flowing from the predecessor state s international responsibility.

## STATEMENT OF FACT

1. Mr. Ahmadou Sadio Diallo, of his own will and judgment, moved to Zaire in 1964 (where he remained for 32 years) and established two companies: Africom-Zaire for trade and Africacontainers for containerized transport.
2. By 1964, the State had only been independent from Belgium rule for four years and was still experiencing great civil unrest and violent rebellions as it tried to recover from an army mutiny, the near secession of the Katanga region, and the assassination of Prime Minister Patrice Lumumba. In 1965, Lieutenant General Joseph Desire Mobutu overthrew President Joseph Kasavubu by usurping control of the country, dissolving the government of Belgian Congo, and declaring himself President of the successor state. That came to be recognized as Zaire.
3. Despite the illegitimacy of this new military State, ruled as it was by an authoritarian bureaucracy, Mr. Diallo purposefully engaged it in numerous business transactions. Through a corrupt system of bribery and intrigue, Mr. Diallo was able to obtain exclusive contracts and become an official State supplier to the mining company Gecamines and other establishments and institutions owned by Zaire.
4. Mr. Diallo also conducted business with several major oil companies, all of which were a part of larger multinational conglomerates whose headquarters are located outside of any Congolese territories.
5. For over ten years, Mr. Diallo, like nearly all foreign investors throughout the regions long sad history, corroborated with an illegitimate government in order to profit from the people and natural resources of the region. However, this partnership began to disintegrate when both the State and the oil companies began to default on their payments and eventually refuse payment altogether.
6. In the following year, 1995, Mr. Diallo brought proceedings against Zaire Shell. Under decision RC 63.824 rendered on 3 June 1995 in the case between Africacontainers and Zaire Shell (RH 26.767), the Kinshasa Tribunal de Grande Instance ordered Zaire Shell to pay Africacontainers the sum of US\$13,156,704.39. Subsequently, a bailiff's seizure order was issued against the bank accounts and all movable or immovable property owned by Zaire Shell.
7. The ruling was upheld and then the heads of Shell, Modil Oil and Fina bribed Prime Minister Kengo Wa Dondo had Mr. Diallo detained.
8. Mad at the government for its conduct against Mr. Diallo, the people of Zaire declared what an abuse it was to his civil rights. The papers throughout the nation conducted investigations into the acts leading up to his detainment.
9. Facing pressure from domestic, as well as international parties, Mobutu ordered the release of Mr. Diallo. After a subsequent struggle for national power, Dondo issued the expulsion from Zaire.
10. In 1996, Laurent-Desire Kabila successfully overthrew the standing government of Zaire, reclaiming the area as The Democratic Republic of Congo. The new government has been very outspoken for their disdain of Mobutu.

## STATEMENT OF JURISDICTION

As the basis of Guinea's claim is the application of diplomatic protection, any decision of the court that finds Mr. Diallo unqualified to receive such protection will automatically eliminate the jurisdiction of the Court since without a right to diplomatic protection Mr. Diallo cannot be represented by the state of Guinea and only states may appear in this Court

## ARGUMENTS

### I. Dual Nationality

As a 32 year resident of Zaire, Mr. Diallo had, through jus soli, become a Congolese citizen, making him a dual citizen. As a citizen of Zaire/Democratic Republic of Congo he cannot be afforded diplomatic protection from that state as stated in the Hague Convention. In doing so, he would be granted unfair rights not permitted to other Congolese nationals.

### II. Clean Hands

Mr. Diallo has conducted business with a state that has been proven to be highly corrupt. This being the case, he has exempted himself from all claims of clean hands. As stated he does not have the right to diplomatic protection. This has been handed down by this court in the Ben Tillett and Virginius Cases. This further separates their claim of representing this individual, thus complicating their claim of jurisdiction more.

### III. Restitution

The Gross Domestic Product of the Democratic Republic of Congo is at \$5.7 billion. The external debts for the Democratic Republic of Congo stand at \$8.211 billion, and growing. With this, the Paris Club named Congo to Highly Indebted Poor Country Status. Overall, the economy in this state is still underdeveloped and trying to move out of the stigma placed on it by the recent dictator. To this extent, it would be irresponsible to award the \$36 billion Guinea is asking for in restitution would further indebt the Democratic Republic of Congo and would be quite harmful to an economy that is trying to find its place. That being the case, The Draft Articles on State Responsibility states that it would be irresponsible to award such restitution.

### IV. Successor State Liability

When Kabila reestablished the Democratic Republic of the Congo, he took over the international identity of Zaire, making the current Democratic Republic of the Congo a successor state. As a successor state, traditional ideology holds that it cannot be held accountable to the obligations or derelicts of Zaire, its predecessor state.

### V. Lacking of State Authority

Under statement of law 5 made at the beginning, Guinea has no right to bring this case to the International Court of Justice, based that this case is fighting for one individual, not a state.

## SUMMARY AND PRAYER FOR RELIEF

The people of the Democratic Republic of the Congo have shown great remorse for how Diallo was treated, and in fact some were the ones who acted in protest to see his release from detention. Diallo could have very well stayed there or been killed while in detainment. But now Guinea is asking the people to be held accountable for the actions of a government that oppressed them. Even more important, Mr. Diallo, like many others, was involved in exploiting the wealth of the area, and should not profit while the people of the region suffer.

With incredible injustice and ongoing violence the people of the Democratic Republic of the Congo ask to please not add salt to the wound by making them pay for actions of an oppressive predecessor.