

IN THE INTERNATIONAL COURT OF JUSTICE

GUINEA,

APPLICANT

V.

DEMOCRATIC REPUBLIC OF THE CONGO,

RESPONDENT

MEMORIAL OF GUINEA

COMES NOW Guinea and for their Memorial to the Court states the following:

STATEMENT OF LAW

1. The International Covenant on Civil and Political Rights (ICCPR), to which the Democratic Republic of the Congo, formerly known as Zaire, is party, states in part (a) of Article 2 that any person “whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

2. Further, the ICCPR states in part (c) of Article 2 that parties to the Covenant must “ensure that the competent authorities shall enforce such remedies when granted.”

3. In the case of *Nottebohm (Lichtenstein v. Guatemala)* the International Court of Justice decided that a state may initiate proceedings that comprise “diplomatic protection” on the behalf of a national or corporation.

STATEMENT OF FACT

1. Mr. Ahmadou Sadio Diallo, a citizen of Guinea, settled in the Democratic Republic of the Congo (DRC) –formerly known as the Congo and Zaire- in 1964. There he formed two companies, Africom-Zaire and Africontainers-Zaire. These two companies had dealings with many different Congolese companies, most of which were tied to the Congolese government, such as Zaire Shell, Zaire Mobile Oil and Generale des Carrieres des Mines (Gecamines).

2. Diallo attempted to collect debts owed to Africom-Zaire and Africontainers-Zaire by the aforementioned companies first by direct negotiations with the companies and the state, and when those failed, he turned to the Congolese court system.

3. Diallo won his court case against Zaire Shell, both initially and upon subsequent appeals, and Zaire Shell was ordered to pay Africontainers-Zaire \$13 million.

4. Shortly after the Congolese courts’ decision, Diallo was imprisoned for breaching the public order in what was then Zaire, and after his release, was taken by air back to Guinea, having been formally deported with a refusal of entry notice and an

account of illegal residence.

5. In the DRC, refusals of entry do not have any form of administrative redress, unlike expulsion orders.

STATEMENT OF JURISDICTION

1. A member state may initiate proceedings against other states on the behalf of a national in cases of “diplomatic protection.” This includes the proceedings initiated by Guinea against the DRC, on behalf of Mr. Diallo.

2. The ICJ has jurisdiction over any case(s) brought to it by member states seeking solution to a conflict, which includes both Guinea and the DRC.

ARGUMENTS

I. Mr. Diallo took steps to collect the debts owed him by the various Congolese companies and the government, both through direct negotiation and through the court system of the DRC, he had exhausted all possible remedies as stated in Article 2 of the ICCPR.

2. The government of the DRC failed to uphold the decisions made by the courts as to the remedies in #1, and thereby violated part (c) of Article 2 of the ICCPR.

3. Subsequent to the violations of the ICCPR, the government of the DRC further violated Mr. Diallo’s rights by having him unlawfully imprisoned for 74 days and then expelled, by a refusal of entry and an account of illegal residence, from the DRC. The official reason for this imprisonment and expulsion is that Mr. Diallo had breached the public order with his actions.

4. Mr. Diallo did nothing illegal in his attempts to settle the debts owed by Zaire Shell and the government, and in fact was the victim in the dispute, as was repeatedly upheld by the decisions of the Congolese courts.

4. As a Guinean citizen, Mr. Diallo has the right to redress in the form of proceedings in the ICJ, with the state of Guinea applying on his behalf.

SUMMARY AND PRAYER FOR RELIEF

The government of the DRC is party to international treaties and organizations that require them to provide methods of redress for individuals whose rights have been compromised, and also requires them to uphold the results of that redress. The DRC has done neither with regard to Mr. Ahmadou Sadio Diallo. Therefore, Guinea has come before the court to ask for a decision on his behalf. As a national of Guinea, Mr. Diallo has the right to diplomatic protection from the illegal actions of other states. The decision from this court should hold states responsible for their actions, according to the promises they have made by signing onto international treaties and by claiming membership in international organizations.