

Note: This translation has been prepared by the Registry for internal purposes and has no official character

PART II**ANNEXES****ANNEX 1****Speech by the Governor of the Congo Central Bank at the Kinshasa International Fair
on: the Central Bank and the Government's economic programme
14 August 2003**

Distinguished guests, ladies and gentlemen,

This Fair is the first to be held since the war ended. Doubtless it bears the marks of the war, but it also carries the hopes of a people who long for peace. The organizers were right to name it the "Fair for reconciliation in unity, peace and national reconstruction". It is a pleasure for me to thank the Organizing Committee for inviting me to participate in the series of talks planned for this occasion.

My thanks also to all the guests who are here today, in spite of the many other demands on their time.

Distinguished guests, ladies and gentlemen,

As you know, the sacrifices made by our people are beginning to bear fruit after over two years of applying policies of economic adjustment and structural reform.

Nevertheless, these reforms must go further and faster for the campaign against poverty to benefit the majority of the population.

I am speaking to you today on the role of the Congo Central Bank in the Government's economic programmes.

For this purpose, my talk will be structured around the following points:

- a brief review of the economic situation from 1990 to 2000;
- a reminder of the Central Bank's essential tasks;
- the Government's drive for recovery and the role of the Bank in supporting the Government;
- the constraints on the Central Bank and its prospects for the future.

Distinguished guests, ladies and gentlemen,

During the past decade, marked as it was by social and political instability generated by the democratization process, the crisis in the Congolese economy has taken many forms, the most striking features being:

- the deterioration of basic infrastructures and the pillaging of production plant;
- the emergence of an ever-growing unofficial economy;
- the lack of consistent economic and social policies;

- legal and judicial insecurity;
- chronic deficits in the operations of the State;
- the financing of those deficits by the Congo Central Bank by printing money;
- instability in prices and in the external value of the national currency, plus a multiplicity of exchange rates;
- the fragmentation of the national monetary area into several monetary zones;
- disintermediation in banking;
- the dollarization of the economy;
- the breakdown of structural cooperation with the international community as from 1993, causing external aid and foreign investment to dry up;
- the accumulation of arrears of foreign debt (USD 9.4 billion at the end of 2000).

Faced with this situation, the Government, with the help of the International Monetary Fund, has put in place economic programmes since June 2001 centred on two approaches, namely macroeconomic policies and structural policies.

The aims of these programmes have been to stabilize the macroeconomic context and to relaunch growth.

Distinguished guests, ladies and gentlemen,

Before I turn to the role of the Central Bank in the Government's economic programmes, let me give you a brief overview of some of the Bank's key tasks, i.e.:

- to achieve stability in domestic prices and in the external value of the national currency in relation to foreign currencies;
- to define and implement monetary policy, including the issuing of banknotes and the management of foreign exchange reserves, interest rates and other monetary instruments;
- to act as State Cashier;
- to supervise the monetary and financial system;
- to prepare and publish economic and financial statistics for the country, as the data on which all performance analyses and projections are based;
- to advise the Government on economic and financial matters.

Distinguished guests, ladies and gentlemen,

As part of the programmes implemented since 2001, the monetary measures taken by the Central Bank in support of the Government's drive for recovery have included:

- the liberalization of the foreign exchange markets in February 2001 and the removal of the remaining foreign exchange restrictions in February 2003. These measures have made it

possible to use currencies that were formerly prohibited as legal tender and done away with import and export licences;

- the unification of exchange rates and the establishment of a system of floating rates. This has resulted in a tripling of State revenues and of the volume of currency transactions in the banking system;
- the application of a policy of positive real interest rates. This has made it possible for some of the savings of economic operators and Congolese households to be invested in Congolese francs rather than in foreign currencies;
- sound funding of the State by means of Certificates of Deposit when it was in deficit;
- management of monetary issues on the basis of programme forecasts;
- ending the granting of Central Bank credits to the State and to public and private undertakings;
- the launching of a liquidity-regulating instrument in the form of commercial paper.

The last three measures referred to have helped to achieve greater monetary stability for an unprecedented period of two and a half years.

These Central Bank measures have been applied at the same time as budgetary measures, which can essentially be summarized as:

- the management of State finances on a cash basis (limitation of expenditure according to revenues actually received);
- centralization of all State revenues in the general Treasury account at the Central Bank;
- the rehabilitation of budgetary and accounting procedures for implementing public expenditure (now commonly called the chain of expenditure);
- the establishment of a single centre for authorization. This means that only the Finance Minister is entitled to authorize Treasury expenditure, after obtaining the approval of the Minister for the Budget.

Alongside these actions designed to stabilize the macroeconomic environment, the Government has put in place a series of structural measures. These are intended to reinforce the effect of the macroeconomic measures, with a view to creating conditions that are conducive to long-term growth.

Distinguished guests, ladies and gentlemen,

As regards this latter category of measures, I would refer first of all to the introduction of an automatic price-fixing system for petroleum products.

As you know, the immediate effect of this mechanism has been to improve the country's supplies of petroleum products. We have gone from chronic shortages to the formation of a national strategic 45-day stock.

Due to the recent strengthening of the Congolese franc against the dollar, a reduction in the price of fuel at the pump might be expected in the near future, leading to a reduction in transport costs and in the general index of prices.

Other important structural measures have also been applied with a view to improving the business environment. These include:

- the creation of commercial courts to speed up the settlement of legal disputes by means of arbitration;
- the creation of a National Investment Promotion Agency (ANAPI). Since its inception, the Agency has registered requests for approval for the next three years totalling USD 1.8 billion;
- abolition of the monopoly on the sale and export of diamonds, as well as the requirement to produce a certificate of origin proving that a Congolese diamond is not a blood diamond;
- promulgation of a Mining Code and Registry, an Investment Code, a Forest Code and a Labour Code. Water and energy codes are being drafted;
- restructuring of the banking system, with insolvent banks being marginalized.

Similarly, reference should be made to the establishment of a Committee responsible for the restructuring of public undertakings (COPIREP).

Distinguished guests, ladies and gentlemen,

The combination of measures which I have just mentioned has translated into the results of which you are all aware. Let me refer to some of these:

- the controlling of inflation, currently 10.4 per cent annually as against 500 per cent on average between 1999 and 2000, with a goal of 8 per cent annually at the end of 2003;
- the relative stability of the exchange rate. The average parity of the Congolese franc in relation to the American dollar has been CDF 420 to the dollar since January 2003;
- an improved level of economic activity (a growth rate of 3.5 per cent in 2002 against an annual average of -5.3 per cent during the 1990s). At the end of June 2003, the growth rate was 2.4 per cent against a target of 5 per cent by the end of 2003;
- the resumption of structural co-operation, in the form of substantial external financial contributions from the IMF and the World Bank, as well as bilateral contributions, not forgetting Congo's inclusion in the Heavily Indebted Poor Countries Initiative on 24 July last, with the cancellation of 90 per cent of our stock of external debt if the Government programme is successful.

Distinguished guests, ladies and gentlemen,

Improvements in governance and in the transparency of public management are an important aspect of the Government Economic Programme (GEP).

It is against this background that audits involving several sectors have been initiated since 2001, with financial support from the World Bank.

These audits relate to:

- the State accounts for the financial years 2001 and 2002, carried out by the Government Audit Office;
- the internal debt. This must be certified before any payment;

- staffing levels in the civil service. There must be physical examinations and retirement for those who have reached the legal age limit;
- public undertakings which have a substantial impact on the national economy;
- all commercial banks without exception, as part of the process of restructuring the banking system.

In the same context, the Central Bank accounts for the financial years 2000, 2001 and 2002 have been audited by Ernst & Young, a company with an international reputation.

In accordance with the undertakings entered into by the country with external partners as part of the three-year programme, the accounts of the Congo Central Bank have been required to give a true picture of its operations, given the fact that the principal GEP performance criteria relate to monetary aggregates.

It must be pointed out that, well before the external auditors started work, the senior management of the Central Bank, aware of the problems posed by its accounting system in terms of the reliability and completeness of monetary statistics and those on financial operations by the Treasury, had instructed the internal audit service to carry out detailed checks on the accounts of the bank of issue.

Shortly after this request for internal audit, the Central Bank set up an Accounting Reform Committee with the task of putting its accounts in order.

The accounting situation resulting from all this work has been used as a reference framework for the external audit. The IMF requirement to apply the current international accounting standards (IAS) has involved accounting for:

- differences in conversion found between the national currency and foreign currencies;
- differences in balances between the books of the Congo Central Bank and those of its correspondent banks;
- negative values resulting from the reconciliation of accounting balances with actual balances;
- payment of arrears of interest and commission due to certain creditors, in particular the International Monetary Fund, the Belgian National Bank and the Bank of Central African States;
- provisions for doubtful debts, for example in respect of MIBA and GECAMINES, as well as for legal costs and orders;
- losses on irrecoverable debts.

Accounting for all these adjustments, which relate to several accounting periods, some dating back around 30 years, has translated into an accumulated absolute loss of CDF 353.7 billion on the trading account at the end of the financial year 2002, CDF 340.2 billion of which relates to previous financial years.

Distinguished guests, ladies and gentlemen,

As I have already indicated, this is basically a loss arising from accounting reforms with no immediate macroeconomic impact, because the negative impact has already taken place over the last 30 years. The goal of this essential reform exercise is to reflect the assets and liabilities of the

Congo National Bank as well as possible, thereby ensuring that it is better able to meet the challenges of the future.

It should be noted that 84 per cent of this deficit relates to exchange losses, the payment of outstanding interest and commission due to the IMF, and losses on debts owed by a number of public undertakings. These are all general losses and do not relate to the management of the Congo Central Bank itself.

Distinguished guests, ladies and gentlemen,

To clarify the position a little further, the Central Bank losses to which I have just referred are the result of several factors, the most important of which are as follows:

First: hyperinflation

As you know, a continuous rise in the level of prices for goods and services was a feature of the 1990s.

By way of illustration, our country had a record level of inflation of nearly 10,000 per cent in 1994. Inflation at such a level is accompanied by an explosion in the demand for banknotes from the economy.

In other words, with inflation at such a level, an item of goods initially costing CDF 100 will be worth CDF 10,100 one year later. This means that you need 101 CDF 100 notes in order to buy that item, instead of the one note initially required.

This situation translates into a very substantial increase in general expenditure connected with printing, importing and distributing notes and coins, which unfortunately has to be borne by the Congo Central Bank.

Second: exchange rate depreciation

In the Bank's balance sheet, foreign currency liabilities are three times the size of foreign currency assets. In this context, any exchange rate depreciation translates into losses affecting the operating account of the bank of issue.

To give you an idea of the impact of exchange rate variations on the Bank's operating account from 1990 to 2000, the depreciation of the national currency averaged 72.9 per cent annually.

Third: exchange rate management

The exchange rate management pursued by the Government at certain times in the history of our country has exposed the Central Bank and even the State to substantial operating losses.

For example, the Central Bank would buy foreign currency at the market rate of CDF 352 to the dollar and transfer it to the State at the rate of CDF 50 to the dollar, i.e., a loss of CDF 302 per dollar transferred. This also applied to the Treasury, which would pay its suppliers for goods and services at the market rate, but collected their taxes at the rate of CDF 50 to the dollar.

Fourth: restructuring of the banking system

A substantial part of the costs connected with the restructuring of ailing banks is borne by the Central Bank without compensation from the shareholders, in particular from the State in the case of the banks that it owns. Certain localities where these banking establishments have to close and where solvent banks have moved away cannot be left without at least one financial institution.

This has led the Central Bank to open its own branches in order to carry out its function as State Cashier, always at its own expense. This is how we come to be in Kikwit, Kamina, Matadi, Kasumbalesa, Ilebo and Tshikapa. It will certainly be necessary to open others as part of reunification.

Fifth: production of statistics

It is essential to have reliable economic statistics available in order to facilitate analysis of the economic situation and the formulation of policies by the authorities.

These statistics are also important for the assessment of our economic situation by external partners and local economic operators.

Following the closure of the official bodies producing statistics, the Central Bank has been called upon to fill the gap in this area. This applies in particular to national accounts statistics and those on the price index. These are in addition to the monetary and financial statistics and those on the balance of payments which are traditionally produced by the bank of issue.

Producing these statistics involves substantial costs, due in particular to the organization of surveys across the country, and these are a heavy burden on the Central Bank's operating account. Once again, this is all general expenditure.

Distinguished guests, ladies and gentlemen,

In conclusion, the Congo Central Bank, recognizing its weaknesses but also the recent moves towards better governance and increased transparency, has been firmly committed since 1998 to a restructuring process in which it has to strengthen its financial independence and its institutional capabilities. Recapitalization of the Bank is an urgent need in terms of its independence. Its present capital is only CDF 60!

So at least CDF 350 billion are needed. A recapitalization plan is under consideration with our development partners and provides for funding in the form of external contributions as well as from the Congolese State.

With regard to strengthening its institutional capabilities, in the very near future the Central Bank must:

- introduce a new accounting plan for the entire banking sector, with the assistance of the Congo Permanent Council on Accounting and other international partners;
- update its accounting and management standards and procedures;
- modernize its computing and data-transmission system throughout the Republic;
- train its staff, as a priority, on those issues closely connected with the implementation and monitoring of the GEP.

Thank you.

ANNEX 3

**Decree No. 0004 dated 22 February 1995 relating
to the deportation of 86 aliens**

The Prime Minister,

Having regard to the Constitutional Act of Transition, in particular Articles 61 and 80 (2);

Having regard to Legislative Order No. 83-033 of 12 September 1983, as amended and supplemented to date, relating to immigration control, in particular Articles 1, 15, 16, 17 and 20;

Having regard to Order No. 94-061 of 18 October 1994 relating to the organization and functioning of the government and establishing the practical procedures for permanent collaboration and consultation between the President of the Republic and the government, in particular Articles 10 and 73 (1);

Having regard to Order No. 94-039 of 16 June 1994 relating to the appointment of the Prime Minister;

Having regard to the personal files of the persons identified in Article 1 below, whose presence and conduct have breached Zairian public order, especially in the economic, financial and monetary areas, and continue to do so;

Having regard to the favourable recommendation by the National Immigration Board;

Having regard to the decision by the Council of Ministers at its meeting on 22 February 1995;

DECREES

Article 1

The aliens named below shall be deported from the territory of the Republic of Zaire: [list of names not reproduced] the persons referred to must leave the national territory within 24 hours;

Article 2

The persons listed in the preceding article shall be automatically entered in the list of undesirables in the Republic of Zaire. The same shall apply to Mr. de Freitas Viegas, of Brazilian nationality, and to Mr. Luppi, of Argentinian nationality;

Article 3

The Ministers with portfolios for the Interior, National Defence, Justice and Foreign Affairs shall be responsible, according to their respective attributions, for the implementation of the present decree, which shall take effect on the date of its execution.

Done at Kinshasa, 22 February 1995

(Signed) KENGO WA DONDO,
Prime Minister.

(Signed) Admiral MAVUA MUDIMA,
Deputy Prime Minister,
Minister for National Defence.

(Signed) Gustave MALUMBA MBANGULA,
Deputy Prime Minister,
Minister of the Interior.

ANNEX 4

**Decree No. 0006 dated 27 February 1995 relating
to the deportation of 84 aliens**

The Prime Minister,

Having regard to the Constitutional Act of Transition, in particular Articles 61 and 80 (2);

Having regard to Legislative Order No. 83-033 of 12 September 1983, as amended and supplemented to date, relating to immigration control, in particular Articles 1, 15, 16, 17 and 20;

Having regard to Order No. 94-061 of 18 October 1994 relating to the organization and functioning of the government and establishing the practical procedures for permanent collaboration and consultation between the President of the Republic and the government, in particular Articles 10 and 73 (1);

Having regard to Order No. 94-039 of 16 June 1994 relating to the appointment of the Prime Minister;

Having regard to the personal files of the persons identified in Article 1 below, whose presence and conduct have breached Zairian public order, especially in the economic, financial and monetary areas, and continue to do so;

Having regard to the favourable recommendation by the National Immigration Board;

Having regard to the decision by the Council of Ministers at its meeting on 22 February 1995;

DECREES

Article 1

The aliens named below shall be deported from the territory of the Republic of Zaire: [list of names not reproduced].

ANNEX 5

**DECREE NO. 0043 DATED 31 OCTOBER 1995
EXPELLING MR. DIALLO**

**Decree No. 0043 dated 31 October 1995 relating
to the deportation of an alien**

The Prime Minister,

Having regard to the Constitutional Act of Transition, in particular Articles 61 and 80 (2) and (3);

Having regard to Legislative Order No. 83-033 of 12 September 1983, as amended and supplemented to date, relating to immigration control, in particular Articles 1, 15, 16, 17 and 20;

Having regard to Order No. 94-061 of 18 October 1994 relating to the organization and functioning of the government and establishing the practical procedures for permanent collaboration and consultation between the President of the Republic and the Government, in particular Articles 10 and 73 (1);

Having regard to Order No. 94-039 of 16 June 1994 relating to the appointment of the Prime Minister;

Having regard to the personal file of the person identified in Article 1 below, whose presence and conduct have breached Zairian public order, especially in the economic, financial and monetary areas, and continue to do so;

DECREES

Article 1

The alien named below shall be deported from the territory of the Republic of Zaire: Diallo Amadou Sadio, alias Diallo Cravate.

Article 2

The name of the person cited in the preceding Article shall automatically be added to the list of undesirables in the Republic of Zaire.

Article 3

The Ministers with portfolios for the Interior, National Defence, Justice and Foreign Affairs are each responsible, according to their respective attributions, for the implementation of this decree, which takes effect on the date of its execution.

Done in Kinshasa, 31 October 1995

(Signed) KENGO WA DONDO,
Prime Minister.

(Signed) NSINGA UDJUU,
Minister for Institutional
Reforms and Justice.

(Signed) Gustave MALUMBA MBANGULA,
Deputy Prime Minister,
Minister of the Interior.

ANNEX 6

**Decree No. 0031 dated 20 September 1996 relating
to the deportation of 24 aliens**

The Prime Minister,

Having regard to the Constitutional Act of Transition, as amended and supplemented to date, in particular Articles 61 and 80 (2);

Having regard to Legislative Order No. 83-033 of 12 September 1983, as amended and supplemented to date, relating to immigration control, in particular Articles 1, 5, 16, 17 and 20;

Having regard to Order No. 94-061 of 18 October 1994 relating to the organization and functioning of the government and establishing the practical procedures for permanent collaboration and consultation between the President of the Republic and the government, in particular Articles 10 and 73 (1);

Having regard to Order No. 94-039 of 16 June 1994 relating to the appointment of the Prime Minister;

Having regard to the personal files of the persons identified in Article 1 below, whose presence and conduct have breached Zairian public order, especially in the economic, financial and monetary areas, and continue to do so;

Having regard to the favourable recommendation by the National Immigration Board;

Having regard to the decision by the Council of Ministers at its meeting on 13 September 1996;

DECREES

Article 1

The aliens named below shall be deported from the territory of the Republic of Zaire: [list of names not reproduced].

Article 2

The persons listed in the preceding article shall be automatically entered in the list of undesirables in the Republic of Zaire.

Article 3

The Ministers with portfolios for the Interior, National Defence, Justice and Foreign Affairs shall be responsible, according to their respective attributions, for the implementation of the present decree, which shall take effect on the date of its execution.

Done at Kinshasa, 20 September 1996

(Signed) KENGO WA DONDO,
Prime Minister.

(Signed) Admiral MAVUA MUDIMA,
Deputy Prime Minister,
Minister for National Defence.

(Signed) Gérard KAMANDA WA KAMANDA,
Deputy Prime Minister,
Minister of the Interior.

ANNEX 7

Committal note dated 5 November 1995 for Mr. Diallo

Committal Note

Mr. Diallo is to be held at *[illegible]* until his deportation from Zaire.

[Illegible]

5 November 1995

(Signed) *[Illegible]*

ANNEX 8

**Joint letter from Mobil Oil and Zaire Fina to the Congolese
Prime Minister dated 15 November 1995**

To: His Excellency the Prime Minister

Kinshasa/Gombe

Copies to:

His Excellency the Minister of Justice
His Excellency the Minister for the National Economy and Industry
His Excellency the Minister for Energy
The President of the Investment Board

Attempted fraud and destabilization of oil companies by Diallo Amadou Sadio

Your Excellency,

We respectfully draw your attention to the fact that in June 1995 Mr. Diallo Amadou Sadio, a Guinean subject, sued Zaire Shell and was awarded US\$13,000,000.

Encouraged by his success in these proceedings, Mr. Diallo is now threatening Zaire Mobil Oil and Zaire Fina with claims for payment of US\$1,680,626,994.67 and of US\$2,604,479,706.56 respectively.

Both these claims are fictitious and out of all proportion.

Zaire Mobil Oil and Zaire Fina fear that Diallo's greed may imperil their very existence, by endangering their commercial activities and the job security of their employees.

That is why we seek government intervention to warn the courts and tribunals of Mr. Diallo Amadou Sadio's activities in his campaign to destabilise trading companies.

We beg to remain, Your Excellency, your obedient servants.

(Signed) H. LEFERINK,
Zaire Fina.

(Signed) G. LASMOLES,
Managing Director,
Zaire Mobil Oil.

ANNEX 9

Letter dated 30 November 1995 from Mr. Diallo to the Congolese Prime Minister, Minister of Finance and Planning Minister, with several international personalities in copy

Ref.: 083/AFC/DG/95

His Excellency the Prime Minister
of the Republic of Zaire,
Kinshasa Gombe

Your Excellency,

Re.: Transmission of files on debts owed to Africontainers by Gécamines, Zaire Shell, Zaire Fina and Zaire Mobil Oil

We have the honour to transmit to you, for information and for action to be taken if necessary, the files concerning the disputes between our company Africontainers and the above-mentioned companies, to which we attach certain relevant documents.

I. Debit notes and invoices

1. GCM FILE NO. 0062/AFC/DG/95 DEBIT NOTE NO. 0062/95 DATED 24/07/95 FOR	\$786,387.20
2. GCM FILE NO. 0061/AFC/DG/95 DEBIT NOTE NO. 0061/95 DATED 13/09/95 FOR	\$273,186,530.57
3. GCM FILE NO. 0063/AFC/DG/95 DEBIT NOTE NO. 0063/95 DATED 13/09/95 FOR	\$523,852,769.65
4. GCM FILE NO. 0065/AFC/DG/95 DEBIT NOTE NO. 0065/95 DATED 28/09/95 FOR	\$2,549,965,784.21
5. GCM FILE NO. 0060/AFC/DG/95 DEBIT NOTE NO. 0060/95 DATED 13/09/95 FOR	\$3,588,487,281.00
6. Z/S FILE NO. 0067/AFC/DG/95 DEBIT NOTE NO. 0064/95 DATED 09/09/95 FOR	\$1,866,447,433.40
7. GCM FILE NO. 0060/AFC/DG/95 DEBIT NOTE NO. 0059/95 DATED 28/06/95 FOR	\$7,708,642,033.82
8. GCM FILES NOS. 0065-0077/AFC/DG/95 DEBIT NOTE NO. 0077/95 DATED 02/11/95 FOR	\$44,520
9. Z/F FILE NO. 0076/AFC/DG/95 DEBIT NOTE NO. 0068/95 DATED 20/10/95 FOR	\$2,604,479,706.56
10. Z/M FILE NO. 0078/AFC/DG/95 DEBIT NOTE NO. 0069/95 DATED 20/10/95 FOR	\$1,680,626,994.67
11. RCA FILE 18307 AWARDED TO AFC AGAINST Z/SHELL	\$13,106,704.39

II. Documents

1. Articles of Association of Africontainers
2. Extraordinary General Meeting
3. Interdepartmental Order No. CAB/CGP/0037/81 of 5 August 1981 granting approval for the investment project of Africontainers Zaire in Kinshasa
4. Interdepartmental Order No. CAB/plan/0141/86 of 4 September 1983 concerning Amendment No. 1 to the Interdepartmental Order No. CAB/CGP/0037 of 5 August 1981
5. Interdepartmental Order No. CAB/plan/0144/87 of 31/12/1987 granting approval for the investment project of Africontainers in Kinshasa/Gombe
6. Contract of Carriage between Africontainers and Zaire Mobil of 01/10/1980
7. Contract of Carriage between Africontainers and Zaire Shell of 10/07/1981
8. Container Leasing Agreement between Africontainers and Gécamines of 29/06/1982
9. Tripartite Contract of Carriage of 13/07/83 between Gécamines, Zaire Fina, Zaire Mobil Oil, Zaire Shell and Africontainers
10. Supplementary Agreement No. 1 to the Contract of Carriage of 13/07/83
11. Supplementary Agreement No. 2 to the Contract of Carriage of 31/12/84
12. Undated Supplementary Agreement to Contract of Carriage
13. Letter of invitation No. GCM-KIN/107/T.14/95 dated 29/05/1985 from Gécamines to its forwarding agents, and minutes of meeting.
14. Letter from Zaire Shell dated 28/02/1994 regarding balance confirmation for supplier No. 4000036
15. Letter No. 850/CAB/MIN/RI & GS/95 from the Minister of Justice dated 28/09/95.
16. Correspondence concerning the immobilization and unauthorized use of 35 Africontainers containers by Gécamines, *inter alia* letters Nos. 265/84 dated 22/10/84 and 30049/TRP/DIE dated 06/06/1984 (File No. 0065-0077/AFC/DG/95 of 28/09/1995)
17. Shell letter No. DO/LOP/LNP/462 dated 19/10/92
18. Contract between Gécamines and Zaire Mobil (start of unfair competition)
19. Fina letter No. 109/KM/95/IK dated 16/11/95

In order to give you a better understanding of all these matters, we would also like to present to you, Prime Minister, the chronology of our business relations with those companies.

Gécamines Exploitation uses significant quantities of lubricants for its numerous facilities. Those lubricants are obtained from oil companies based in Kinshasa (Mobil Oil, Fina and Shell) and brought from Kinshasa.

The said lubricants were generally despatched in loose drums loaded onto Onatra barges then onto SNCZ goods trains. That method of transport had a number of disadvantages, mainly theft, leakage and handling difficulties.

In 1980, the company Africontainers offered to provide the company Zaire Mobil Shell with more secure packaging for its drums of lubricants, i.e., in the form of containers.

This offer was then accepted by the oil companies Zaire Fina and Zaire Shell which, in turn, submitted it to Gécamines. The latter agreed to the proposal and in 1980, the oil companies began to entrust their goods to Africontainers as their sole freight forwarder under contracts (two per company). That was the origin of the business relations between Africontainers, the oil companies and Gécamines Exploitation.

In order to meet the growing needs of the oil companies, Africontainers acquired the equipment necessary to provide for the transport of those lubricants: a sufficient number of containers, tractors and trailers, lifting equipment, etc. It also then opened branches in Ilebo and Lubumbashi.

We can state that Africontainers properly performed its task, to the great satisfaction of its partners. Those business relations, after an initial probation period, were thus continued by all parties and improved. Africontainers detected a number of operational weaknesses that could be corrected to the benefit of Gécamines Exploitation.

After unloading, the container was to return empty to Kinshasa. In 1981, for example, the return of an empty container cost 5,870 zaires — about US\$1,000 in 1981 — for Gécamines. During that time, Gécamines was despatching its copper in loose bars.

Such loose transport exposed the copper to theft and to the elements. The intermediate handling operations were arduous.

In January 1982, Africontainers made an offer to Gécamines to transport the copper in its containers which were returning empty to Kinshasa (see our letter AFC No. MZM/BMM/IN/023/82 of 10 January 1982). A box filled with goods is considered as ordinary packaging and its carriage is not invoiced by the SNCZ and Onatra. The solution proposed by Africontainers would thus ensure considerable savings for Gécamines.

That offer was enthusiastically accepted by the senior management of Gécamines which on 29 June 1982 signed an agreement for the lease of the containers of Africontainers. Gécamines however demanded the following conditions precedent:

- that Africontainers should open offices in Ilebo and Lubumbashi;
- that Africontainers should be a respectable company with its own facilities and a sufficient number of containers;
- that Africontainers should employ competent managers capable of discussing with the management of Gécamines.

Encouraged by this contract, Africontainers undertook to increase its stock of containers and its vehicle fleet. A financing agreement was secured with the SOFIDE, which was prepared to release the necessary funds.

To facilitate the import of such equipment into Zaire, Africontainers made representations to the Minister for Planning to obtain certain benefits under the Investments Code. Those benefits were granted to it by the Interdepartmental Order No. CAB/CGP/0037/81 of 5 August 1981.

On the expiration of the 1982 contract, another contract was signed on 13 July 1983, this time involving the oil companies Zaire Mobile Oil, Zaire Fina and Zaire Shell (the Tripartite Contract).

The future prospects for business relations would have been excellent if the oil companies had not chosen, at that precise time, to succumb to the temptation of purchasing containers for themselves, in order to transport their own lubricants and thus engage in significant unfair competition to the detriment of our company, notwithstanding the 1983 loyalty agreement which was still in force.

In order to increase even more the number of containers in their respective fleets and to bypass the services of Africontainers, they also signed container lease agreements with other freight forwarders such as Ataf, Atraza, Afredeza, Flucoza, Kincontainers, Trans Aspa, Transcore, Transtshikem, etc. Those forwarding companies even went as far, with the complicity of the oil companies, as to sign various supplementary agreements stemming from the Tripartite Contract without being parties to the latter. It should be pointed out here that the said contract had been stolen by our partners, after being signed on 13 July 1983, and was only returned to us on 24 February 1992.

Our partners thus committed acts of falsification by associating unauthorized persons, without our knowledge, in the negotiating and signing of supplementary agreements relating to price reviews.

This situation was extremely detrimental to the company Africontainers, which not only suffered from the immobilization of the equipment in which it had invested a lot of money, with the unemployment of 300 employees and managers, but also from a reduction in the revenue from the services rendered to oil companies and to Gécamines because of the deceit of the oil companies and due to the review of prices for container leasing. The invoices of Africontainers were then being underpaid on the basis of falsified supplementary agreements.

After December 1984, the 1983 Tripartite Contract became increasingly obsolete because the lubricants to be transported were no longer entrusted regularly to Africontainers as in the past. The following figures show this decline:

- In 1983: 306 TCS, in 1984: 276 TCS, in 1985: 200 TCS
- In 1986: 220 TCS, in 1987: 151 TCS, in 1988: 58 TCS
- In 1989: 79 TCS, in 1990: 29 TCS, in 1991: 0 etc.

In conclusion, as our company was granted the benefits provided for by the Investments Code, we are convinced that all the debts now owed to it by the oil companies are and will remain guaranteed by that Code. Thus, we are looking to your high authority with a view to recovering all our debts. This will also enable us to make repayment in foreign currency of the loans we received for the financing of our business.

Please find annexed hereto the various agreements signed between Africontainers and the oil companies, together with the forged supplementary agreements to which we have referred.

Yours faithfully,

(Signed) Ahmadou Sadio DIALLO,
Chairman and Chief Executive,
Africontainers.

Annex

Copies to:

- His Excellency the President of the Republic of Zaire
 - His Excellency the President of the Republic of Guinea
 - His Excellency the Chairman of ECOWAS
 - His Excellency the Deputy-Prime Minister and Minister for Foreign Affairs of the Republic of Zaire
 - His Excellency the Minister of Justice of Zaire
 - His Excellency the Minister of Energy of Zaire
 - His Excellency the Minister of Energy of Guinea
 - His Excellency the Minister for State Investments of Zaire
 - His Excellency the Minister for State Investments of Guinea
 - His Excellency the Minister of Planning of the Republic of Zaire
 - His Excellency the Minister of Planning of the Republic of Guinea
 - His Excellency the Minister of the Economy, Trade and Industry of Zaire
 - His Excellency the Minister of the Economy, Trade and Industry of Guinea
 - His Excellency the Minister of Finance of the Republic of Zaire
 - His Excellency the Minister of Finance of the Republic of Guinea
 - His Excellency the Dean of the Diplomatic Corps in Zaire
 - His Excellency the Ambassador of the Republic of Guinea to Zaire
 - His Excellency the Ambassador of the United States of America to Zaire
 - His Excellency the Ambassador of the United Kingdom to Zaire
 - His Excellency the Ambassador of Belgium to Zaire
 - His Excellency the President of the International Court of Justice in The Hague
 - His Excellency the First President of the Supreme Court of Justice of the Republic of Zaire
 - His Excellency the President of the Court of Cassation of Guinea
 - The First President of the Court of Appeal of Kinshasa Zaire/Gombe
 - The First President of the Court of Appeal of Conakry, Guinea
 - Shell Petroleum Company Limited, London
 - Head office of Mobil Oil
 - Head office of Fina
 - Gécamines
 - The President of ANEZA, Zaire
 - The President of the Guinea Chamber of Commerce
 - Counsel for Africontainers
 - The family of Sadio Amadou Diallo, Guinea
-

ANNEX 10

Legislative Order No. 83-033 of 12 September 1983 relating to immigration control

The President and Founder of the *Mouvement Populaire de la Révolution*, President of the Republic;

Having regard to the Constitution, in particular Articles 31 and 43;

Having regard to the Decision of State by the Central Committee No. 16/CC/81 of 30 September 1981 concerning immigration control;

Having regard to the urgency of the situation;

On the initiative of the State Commissioner for the Administration of the Territory;

Having heard the Executive Council;

ORDERS

Chapter I

General provisions

Article 1

Any individual not of Zairian nationality, whether of foreign nationality or without nationality, shall be deemed to be an alien within the meaning of this Legislative Order.

Article 2

As regards entering and residing in Zaire, aliens shall be subject to the provisions of this Legislative Order, unless any international agreements or laws provide otherwise.

Article 3

In order to enter Zaire, aliens must be in possession of the documents and visas prescribed by the President of the *Mouvement Populaire de la Révolution*, President of the Republic.

Carriers shall be liable towards the Republic of Zaire for the repatriation and if necessary the maintenance in Zaire of aliens whom they have brought into the country, if those aliens are unable to prove at the outset that they are in possession of the documents and visas required.

Article 4

Any alien leaving Zaire must be in possession of the documents prescribed by the President of the *Mouvement Populaire de la Révolution*, President of the Republic.

Article 5

In order to acquire refugee status, aliens must be in possession of a certificate of recognition issued, after recommendation by the National Immigration Board for which provision is made in Article 18, by the State Commissioner for the Administration of the Territory, to whom application must be made, or of documents issued pursuant to international agreements to which Zaire is a party.

The application must be made within 21 days of entering the territory.

When an alien who does not have refugee status but who declares himself to be a refugee has entered the territory in contravention of the provisions of the first paragraph of Article 3, a ruling on his request for the issuance of a residence permit shall be held in abeyance pending a ruling on his application for recognition of refugee status. He shall be placed under house arrest at the address designated by the territorial government until notification of the decision.

Chapter II

Residence of aliens in Zaire and the residence permit

Article 6

An alien may reside in Zaire on the strength of his visa alone whilst it remains valid, and in any event up to the end of the maximum period of validity of six months. When the validity of the visa lasts for less than six months it may be extended one or more times up to a maximum period of six months.

An alien who resides in Zaire for a period in excess of six months must be in possession of a *residence permit* issued in accordance with the conditions of this Legislative Order.

An alien born in Zaire must be in possession of a residence permit at the end of a 30-day period.

Article 7

The residence permit shall have a maximum validity of two years with effect from the date of issue. It may be extended or renewed.

The President of the MPR, President of the Republic, shall determine the formalities and conditions for the delivery of the residence permit; he may waive the provisions of Article 10, paragraph 2.

Article 8

In order to obtain a residence permit the applicant must prove that he entered and resides in Zaire lawfully, and must provide evidence that he has sufficient means of subsistence.

For the delivery or extension of a visa the applicant is required to provide evidence that he has sufficient means of subsistence.

Article 9

A residence permit shall be withdrawn automatically in the event of deportation, removal or final departure.

Article 10

The issuance or extension of an entry visa shall be subject to the payment of a tax, the amount of which shall be set by the State Commissioner for Foreign Affairs and International Co-operation.

The issuance, extension or renewal of a residence permit shall be subject to the payment of a tax, the amount of which shall be set by the State Commissioner for the Administration of the Territory.

Article 11

Aliens may reside and travel freely in the National Territory, provided that they observe the laws and regulations of the Republic of Zaire. However, they are obliged to produce the papers and documents by virtue of which they are authorized to reside in Zaire whenever asked to do so by government officials.

Article 12

When an alien is under special surveillance because of his conduct or past history, the State Commissioner for the Administration of the Territory may prohibit him from residing in one or more Regions.

In cases provided for by the President of the Republic, the Regional Chairman of the MPR and Regional Governor may reduce the territorial validity of an alien's residence permit or document in lieu thereof, to one or more districts of his choosing within the region in question.

The said decision shall be entered on the residence permit of the person concerned.

Aliens referred to in the previous paragraph may not travel outside the area of validity of their residence permits without a safe-conduct issued by the authority that imposed the prohibition.

Chapter III
Refusal of entry, removal and deportation

Section I: Refusal of entry

Article 13

Subject to the application of the Article 5, paragraphs 3 and 4, an alien who arrives at a frontier post in order to enter Zaire without being in possession of the documents prescribed in Article 3 shall be refused entry by the immigration officer. Such refusal of entry shall not be subject to appeal, and the alien shall immediately be taken back to the other side of the frontier for repatriation, any costs being met by the carrier.

This measure shall be recorded in an undesirable alien report drawn up by an immigration officer, of which the person concerned shall be notified.

Within 24 hours from the date of notification the alien may lodge an appeal with the Regional Administrator of the CNRI [*Centre National de Recherches et Investigation*].

The time-limit for appeal shall not take account of fractions. Until the Administrator makes his decision, the alien shall be placed under house arrest at the address designated by the territorial government. The Administrator's decision will be sent as soon as possible to an immigration officer, who will inform the person concerned. A person finally designated as an undesirable alien shall be taken to the frontier post of his choosing.

Section III: Deportation

Article 15

The President of the *Mouvement Populaire de la Révolution*, 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.

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

CNRI 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.

Article 16

A deportation order shall only be issued against an alien holding a residence permit or against a refugee after a recommendation by the National Immigration Board. The deportation order shall mention the fact that the Board was consulted.

Article 17

Notice of deportation orders shall be given by any official or staff member of the CNRI administration or of the customs service or by any police officer.

If the alien is detained, he shall be notified by a prison officer. If an alien leaves the Territory before receiving notice of the deportation order, such notification can be given by the appropriate diplomatic or consular authority.

A copy of the deportation order shall be sent to the National Immigration Board and to the Department for Foreign Affairs and International Co-operation.

Chapter IV
The National Immigration Board

Article 18

A National Immigration Board shall be formed, with responsibility for:

1. ensuring that the policy decided upon by the Executive Council on Immigration is applied;
2. making recommendations in the cases provided for in Articles 5 and 16;
3. supervising the updating of the list of undesirables prepared by the security services and kept in the chanceries of the Embassies of Zaire.

The Board shall be chaired by the State Commissioner for the Administration of the Territory or his representative.

Article 19

The Board shall consist of seven members, representing the following Departments and Services:

1. Administration of the Territory;
2. Foreign Affairs and International Co-operation;
3. Justice;
4. Economy, Industry and Commerce;
5. Employment and Social Insurance;
6. CNRI;
7. SNI [National Immigration Service].

Chapter V
The list of undesirables

Article 20

A list of undesirables shall be kept by the security services, under the supervision of the National Immigration Board. Aliens who are the subject of special legal provisions or are deported from Zaire pursuant to the provisions of Articles 15 to 17 of this Ordinance shall automatically be placed on this list.

Chapter VI Penalties

Article 21

Any alien who evades the implementation of a deportation order or who, once deported from Zaire, enters the country again without special authorization by the President of the *Mouvement Populaire de la Révolution*, President of the Republic, shall be punished by penal servitude for one to six months and a fine of 5,000 to 10,000 zaires or by one of these punishments only. At the end of his sentence he will be removed from the territory.

An alien subject to a deportation order and who can prove that it is impossible for him to leave Zairian territory may, until he is in a position to do so, be compelled by Decree of the State Commissioner for the Administration of the Territory to reside in a specific place; he must report periodically to the police.

An alien who has not taken up the residence assigned to him within the time prescribed or who has subsequently . . . [text incomplete]

ADDENDUM

It has been noted that text has been omitted from Legislative Order No. 83-033 of 12 September 1983 relating to immigration control, published in Official Gazette No. 18, 15 September 1983, page 15.

This omission relates to "Section II: Removal" on page 17, which should read as follows:

Section II: Removal

Article 14

Subject to the provisions of Article 5, paragraphs 3 and 4, any alien who has entered Zaire without being in possession of the documents referred to in Article 3, or who has remained in the territory without a valid excuse when his authorization to reside has expired, shall be liable to removal.

The said measure shall be recorded in an undesirable alien report drawn up by an immigration officer, of which the person concerned shall be notified.

Within 24 hours of the date of notification the alien may lodge an appeal with the Regional Administrator of the CNRI.

The time-limit for appeal shall not take account of fractions. Until the Administrator makes his decision, the alien shall be placed under house arrest at the address designated by the territorial government. The Administrator's decision will be sent as soon as possible to an immigration officer, who will inform the person concerned.

A person finally designated as an undesirable alien will be taken to the frontier post of his choosing.

ANNEX 11

Letter dated 21 December 1995 concerning Mr. Diallo from Mr. Abdoulaye Sylla, Guinean Ambassador in Kinshasa, to the Guinean Minister for Foreign Affairs, with copy to the President of the Republic of Guinea

[First paragraph illegible]

I have the honour to bring the following facts to your attention:

The above-mentioned case, involving a dispute between our compatriot and, on the one hand, other private businessmen and, on the other, a Zairian State institution, has really begun to assume major proportions.

On 15 and 16 December 1995, the Zairian daily *ELIMA*, in its issue No. 75, featured on its front page an article entitled “Kengo’s Phobia on Public Display”.

And on 17 December 1995, the same article was broadcast verbatim on *Radio Internationale AFRICA No. 1*.

The gist of the story is that *Avocats Sans Frontières* have protested against the arbitrary arrest of a Guinean investor, who has been resident in Zaire for 31 years: Diallo Amadou Sadio, a victim of discrimination.

Avocats Sans Frontières denounce and call for the annulment of the Expulsion Decree issued against Mr. Diallo and urge all human rights associations and, in particular, Guinea to show solidarity with a view to securing his immediate and unconditional release — End of quote.

One may gather from the media coverage of the story, as reported in the *ELIMA* newspaper, that there is a foreseeable risk of diverse interpretations, both favourable and unfavourable.

In any case, the Embassy, for its part, will proceed with the cautious and measured diplomatic action that it has already initiated at all levels to ensure a felicitous outcome to the case.

I am attaching hereto a number of press clippings on the case.

ANNEX 12

Inventory of Containers belonging to Africontainers Zaire drawn up on 25 January 1996

A. Africontainers containers inventoried on 25/01/1996 at the request of the Guinean Embassy in Zaire

(a) *Inside the compound*

List of 59 containers identified by serial number
+ 12 containers without serial numbers
Sub-total: 71 containers

(b) *Outside the compound*

- I. Along the B.Z.C.E. fence
List of 15 containers identified by serial number
 - II. In front of the Kisombe building
List of 3 containers identified by serial number
 - III. Along the Onatra fence
List of 17 containers identified by serial number
 - IV. TCPK/Onatra
List of 2 containers identified by serial number
- Total: 107 containers

B. Containers belonging to other owners

1. Ebene container (see Compound) (one)
2. International containers:
K. Line AKLU 265/219/3 (see Onatra fence)
K. Line KXTU 201994/9 (see Onatra fence) for Amiza
3. HKX 636924/0 (see Onatra fence) for otherwise unidentified forwarder
4. CAI CAXU 408290/5 (40 ft) (see B.Z.C.E. fence) for Full Transit

C. Vehicles

(a) *Inside the compound*

1. Shell of car registration No. KN 8939F
2. A trailer (20 ft) registration No. KN 7125E (wreck)
3. A Magirus 302 tractor unit registration No. KN 47760E (wreck)
4. A Saviem 301 tractor unit registration No. KN 1794E (defective)
5. A Volvo tractor unit registration No. KN 9769K (in good condition)

6. A fork-lift truck registration No. KN 1476J (defective)
7. A trailer registration No. KN 7052L (in good condition)
8. A Renault 12 car (defective) No. KN

Given to Mr. Ismael for repair and temporary use on the instructions of Mr. Diallo himself on 23/01/96 and removed from the compound on 24/01/96.

(b) *Outside the compound*

1. Trailer (40 ft) registration No. KN 9773K (defective) without tyres (opposite compound)
2. Trailer (20 ft) No. 203 (shell) visible in front of the Kisombe building
3. Trailer No. 204 (wreck) visible in front of the Kisombe building
4. A Citroën executive car registration No. KN (defective) Visible at chairman's residence, P.L.Z. Building, Losonia.

N.B. The Saviem 301 unit KN 1794E, trailer KN 9773K and the fork-lift truck could be repaired on the instructions of the Chairman and Chief Executive, Mr. Ahmadou Sadio Diallo, and brought back into service.

Done at Kinshasa on 09/02/1996

For Africontainers

N'kanza Nekongo

Diallo Ibrahim

For the Guinean Embassy

Inventory of Africontainers movable property

Building No. 1 (small building)

Room I

2 wooden desks with black wood panel
1 wooden writing desk with black wood panel
2 FNMA metal cupboards
4 FNMA metal and leather chairs
1 Olivetti electric typewriter
1 box of spanners
1 jack
1 funnel
1 telephone
2 plastic paper trays
1 map of Zaire
1 *Petit Larousse illustré 1982* dictionary
2 calculators
1 desk blotter
8 spare used inner tubes

Room II

1 wooden desk with black wood panel
3 FNMA metal cupboards
2 FNMA metal shelf units
2 FNMA metal filing cabinets
2 small correspondence folders
2 safes
15 FNMA metal and leather chairs
1 embossing seal
1 attaché case
1 hacksaw
2 small boxes containing vehicle parts
5 rods
1 map
1 artwork in copper
1 telephone
2 hole punches
1 wooden bowl
1 Ericsson L.M switchboard

Building No. 2 (large building)

(a) *Drawing room*

4 armchairs/sofa
1 black wooden shelf
1 radio or TV stand in black wood
2 speakers
1 plastic paper tray

(b) Kitchen

1 black wooden dining table and five leather chairs
1 stove
2 refrigerators (one large Ignis and one small)
1 black wooden crockery shelf
5 china plates
2 trays
2 coffee cups (two sets)
2 metal cups
1 frying pan + 1 spoon and 1 table knife
1 empties crate (soft drinks)
1 grill
1 saucepan and standard coffee pot

(c) Former children's room

1 sponge
1 wooden bench

(d) Chairman's office (Mr. Diallo's office)

1 electric cable in the toilet
1 de luxe writing desk
3 wooden desks with black wood panels
2 office chairs
1 accordion (authentic)
1 air conditioning device
1 Banda printing machine
2 small boxes for files
1 Olympia Startype electric typewriter
1 circuit breaker
1 set of windscreen wipers
1 bag containing spare car parts
1 Olympia mechanical typewriter
4 electric calculating machines (defective)
1 checker machine
1 TV aerial
1 large black suitcase
3 new spare inner tubes
4 desk blotters
4 photo frames
1 embossing seal
1 hole punch
2 telephones
1 umbrella without a handle
1 mask
4 signature books
1 box
3 spare cans of hydraulic fluid
1 empty drum
1 metal paper tray
1 ashtray

Container 526401

1 welding unit
1 compressor
11 plain wooden doors
1 wheelbarrow
Loose stones

Container 526320

2 metal and leather chairs
1 Volvo fuel tank
1 electric saw
16 wooden doors, 7 of which glazed
1 wooden frame
1 large hammer
1 (manual) saw

Container 525609

1 IBM electric typewriter
1 Olympia typewriter
1 telex machine
1 Olivetti typewriter
1 couch and cushion
2 metal chairs
2 metal desks
1 Africontainers sign
7 boxes of archives
1 map
1 date stamp
1 plastic drum (approx. 200 litres)
3 telephones

Container 332

1 small metal door
2 galvanised pipes
2 Eternit pipes
1 rubber pipe
2 vehicle headlamps
2 indicator lamps
2 fuse boards
1 measuring line
1 set square
1 saw
Several tiles

Container 526345

5 FNMA metal shelf units
3 FNMA metal filing cabinets
2 FNMA metal desks
2 FNMA metal cabinets
1 Olympia Excellence electric typewriter
1 electric typewriter
1 air conditioning unit
1 Olivetti Logos machine
5 fire extinguishers
2 Mark XI (Memorex) machines
1 gearbox

Sayfulay room

1 double bed in formica + mattress
1 FNMA metal cabinet
1 mirror
1 telephone
1 Sharp radio-cassette/CD player
1 international radio-cassette
1 coat rack
1 plait
1 boubou
1 belt
1 hand towel
2 sweaters
1 black wood and leather chair
1 Franka camera
2 bed sheets
2 pillows
1 pair of underwear
2 pairs of trousers

Container (watchmen)

2 metal desks
2 metal and leather chairs on castors

On the wall of the compound

1 floodlight
4 planks approx. 6 m long

Done at Kinshasa, 09/2/96

For Africontainers

[Illegible]

ANNEX 13

Letter dated 15 April 1996 from the Guinean Minister for Foreign Affairs to the Secretary-General of the Presidency of the Republic of Guinea

Re: The case of our compatriot Mr. Diallo Cravate, recently expelled from Zaire

I have the honour to submit to you the case concerning the situation of Mr. Amadou Sadio Diallo, alias Diallo Cravate, who has recently been expelled by the Zairian authorities.

Mr. Diallo Cravate emigrated to Zaire at the age of 17 and spent 31 years in that country, during which time he succeeded in founding a prosperous trading company specializing in the dispatch to Gécamines of petroleum products in metal packaging.

This compatriot of ours, who is very well known in Zairian business circles on account of his results, signed certain agreements in the early 1980s between his company, Africontainers, and a number of oil and mining companies, especially Gécamines, which entrusted it with the transport of ores intended for export after it became impossible to use the Angolan route.

At the time he was expelled, these companies still owed Africontainers an aggregate debt of some 21 billion dollars, of which 14 billion was owed by Gécamines alone.

These amounts may appear exaggerated at first sight, but one only needs to refer to the authentic documents, *inter alia* the decisions of Zairian courts, to see that they do reflect the reality. When the dispute was referred to the competent courts of Zaire, they upheld the arguments of Mr. Diallo Cravate and quite rightly ordered the debtor companies to pay the above-mentioned amounts together with other penalties.

Unfortunately, instead of seeing these judgments properly enforced, Mr. Diallo Cravate was quite simply arrested and expelled from Zaire, in an unceremonious manner and in patent violation of all procedures in such matters.

Foreign Press Agencies such as *Africa No. 1*, *Jeune Afrique* and other Zairian newspapers have reported extensively on this denial of justice of which Mr. Diallo Cravate is the victim.

In any event, Mr. Diallo is currently living in Conakry without any income and can only count on the State of Guinea to see his rights upheld.

Suggestions

According to Mr. Diallo Cravate, an Action by the High Authorities of Guinea would be capable of helping our compatriot to recover his assets, after the patent spoliation and arbitrary abuses he has suffered.

The following measures could thus be envisaged:

1. The granting of special authority to the new Ambassador for the purpose of addressing this matter with a view to representations at a very high level.
2. The seeking of collaboration with Interpol to obtain the assistance of police co-operation in the compiling of a sound case file to support our action.

(Signed) Kozo ZOUMANIGUI.

ANNEX 14

Extracts from Legislative Order No. 82-017 of 31 March 1982 (Articles 87 to 90) concerning procedure before the Congolese Supreme Court of Justice

CHAPTER II

Requests for nullification of the acts, decisions and regulations of the central authorities

Section 1: Grounds for proceedings

Article 87

Applications for nullification may only be submitted by private citizens who can provide evidence that an act, decision or regulation is causing them prejudice and was adopted in violation of substantive or formal requirements so as to incur nullity, or that there has been an abuse or misuse of power.

The Court shall determine at its sole discretion which acts by the Executive Council lie beyond its powers.

The Court shall not review legislative acts.

Section 2: Admissibility of applications

Article 88

Applications for nullification shall not be admissible unless the applicant has previously filed, within three months from the date when the act was personally notified to him, a complaint with the relevant authority requesting the postponement or amendment of that act.

Article 89

Applications for nullification must be submitted within three months from the date when notification was given of the dismissal of the complaint in full or in part.

The lack of any decision by the Administration three months after the date when the letter containing the complaint was sent by registered post shall constitute a dismissal.

Article 90

A copy of the act, decision or regulation in dispute, a copy of the complaint and of its dismissal, or, where no dismissal has been received, the proof of registered posting must be included with the Application.

ANNEX 15

[Extracts]

Decree of 27 February 1887 on commercial corporations

27 February 1887 – ROYAL DECREE — Commercial Corporations (*Bulletin Officiel*, 1887, p. 24; new edition, p. 150)

— An unofficial compilation of the texts is presented below.

Unless otherwise indicated, the text of Section 1 is derived from the Decree of 27 February 1887 and that of the other sections from the Decree of 23 June 1960, Article 3.

Section I: General provisions

(This title was introduced by the Decree of 23 June 1960. Unless otherwise indicated, the text of this section is derived from the Decree of 27 February 1887.)

Article 1

Commercial corporations recognized by law in accordance with this Decree shall constitute juridical persons distinct from those of their members.

[*Decree of 23 June 1960, Art. 2* — The law recognizes the following as commercial corporations:

- general partnerships;
- limited partnerships;
- private limited companies;
- public limited companies;
- co-operatives.]

Article 2

[*Decree-law of 19 September 1965, Art. 1* — Corporate documents shall be void unless full copies and extracts are filed within six months of their date with the registry of the *Tribunal de première instance*. They shall be published in the *Moniteur Congolais* by courtesy of the Minister of Justice. Any person may consult them free of charge in the archives of *Tribunal de première instance* registries.]

Article 3

Any amendment to the corporate documents shall be void unless filed in the same way as the documents themselves.

[*Decree of 26 August 1938* — Powers of attorney granting powers of management and the right of official signature and documents withdrawing those powers shall be subject to the same rules].

Article 4

If a failure to file results in documents being void, such nullity cannot be relied upon by the members against third parties.

Article 5

[*Decree of 19 September 1965, Art. 2* — Corporate documents shall be published as extracts in the *Moniteur Congolais* at the expense of the parties concerned.

The extract shall contain the following as a minimum, depending on the nature of the corporation:

1. precise particulars of the members;
2. the corporate name or designation of the corporation;
3. its registered office;
4. its purpose;
5. the amount of capital and how it is formed;
6. details of each contribution in kind, the conditions under which it is made and the name of the contributor;
7. mortgage charges on contributed immovable property;
8. the conditions to which the sale of rights contributed as options are subject;
9. the way in which profits are to be shared;
10. the date on which the corporation commenced and its duration;
11. the names of persons authorized to manage and bind the corporation and their powers;
12. the beginning and end of each accounting year;
13. the time for the members' annual general meeting.

The extract shall be signed, by notaries in the case of authentic documents, and in the case of simple contracts by all the members or by one of them with a special power of attorney for the purpose from the other members].

Article 6

No public limited company can be set up in the Congo until it has been authorized by decree.

[*Decree of 23 March 1921* — No co-operative can be set up in the Congo until it has been authorized by the Governor General or the Vice-Governor General designated by him. The authority responsible for authorization shall verify whether the articles of association submitted for approval comply with the general principles of Belgian law on this subject.]

Article 7

Corporations shall act through their representatives, whose powers shall be established by the act of incorporation or by subsequent documents executed pursuant to the act of incorporation.

Article 8

Lawfully established commercial corporations whose registered offices are located in a foreign country may operate and enter into judicial proceedings in the Congo.

Article 9

Foreign corporations which set up a branch, office or any other form of operation in the Congo shall be required, no later than six months after creating such an establishment, to submit an extract from their instruments of incorporation containing, in addition to all the information provided for in Article 5, the names of the persons appointed to the establishment in the Congo, and shall be required to have an address for service in the Congo Free State.

Foreign corporations which currently have a branch, office or any other form of operation in the Congo must submit such information no later than six months after the promulgation of this Decree.

Articles 2 to 5 shall be applicable to corporations covered by this Article.

Article 10

The persons appointed to manage a branch or office of a foreign corporation in the Congo shall bear the same liability towards third parties as if they were managing a corporation established in the Congo.

Corporations represented in this way by the managers of their branches may enter into legal proceedings initiated by and at the behest of those managers, and may have documents validly served upon them in the person of their managers at the address for service.

Article 11

Any false statement, information or fraudulent omission in the documents filed that is intended to deceive third parties shall be punished as fraud.

Article 12

No corporation may possess or acquire more than 10,000 hectares of land without express authorization. We, i.e. our Council of General Administrators, will rule on requests for authorization. Any acquisition contrary to the present Article shall be null and void.

Article 13

[*Legislative Order No. 87-062 of 4 October 1987, Art. 1* — In addition to the costs of publication in the *Journal Officiel* which are determined by the President and Founder of the *Mouvement Populaire de la Révolution*, President of the Republic, the filing of corporate documents shall give rise to the payment of a fixed registration charge of Z 20,000.00 (twenty thousand zaires) for private limited companies and public limited companies and a registration charge of Z 5,000.00 (five thousand zaires) for the other types of corporations.

These charges are reduced to Z 10,000 (ten thousand zaires) and Z 2,500 (two thousand five hundred zaires) respectively for the filing of documents containing amendments, granting powers of attorney or withdrawing authority.]

[*Decree of 18 October 1942* — Corporations which fail to comply with the provisions of Articles 2 and 9 within six months shall incur a fine equal to the amount of the unpaid registration charge, without prejudice to the payment of that charge.

A proportional [10 per cent] charge, distinct from the payment of the fixed charge, shall be due on the filing by public limited companies, whose establishment in the Congo has been authorized by royal decision, of documents concerning:

- (a) the incorporation of companies;
- (b) increases of capital;
- (c) the continuance of companies.

— As amended by Art. 2 of Legislative Order No. 87-062 of 4 October 1987

Such charge shall be payable, in the case of subparagraph (a), on the authorized capital; in that of (b), on the amount of the increase in authorized capital; and in that of (c), on the amount of authorized capital on the day of the decision on continuance, increased, where appropriate, by any new contributions made or provided for in the articles of continuance.

Corporations which fail to comply with the provisions of Articles 2 and 3 within six months shall incur a fine equal to the amount of the unpaid charge, without prejudice to the payment of that charge.

The filing of documents which do not entail the application of the proportional registration charge shall remain subject to payment of the fixed charge.]

— For the amounts, see also Circular 789/D010/GB/CSJ-PGR of 23 April 1997.

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Section IV: Private limited companies

(Unless otherwise indicated, the text of this section derives from the Decree of 23 June 1960, Art. 3.)

Paragraph 1: General

Article 36

A private limited company is a company formed by individuals undertaking only to provide resources, which makes no public appeal for funds, and the shares of which shall be uniform and issued in the name of the holder and shall not be freely transferable.

Article 37

The name chosen by the company shall include the words “*Société privée à responsabilité limitée (SPRL)*”.

Article 38

All documents, invoices, advertisements, publications or other communications issued by the company must state its name and the precise location of its registered office.

Article 39

No advertising with a view to obtaining capital for a private limited company is permitted.

No loan may be entered into by a private limited company by way of an issue of bonds to order or to bearer.

Article 40

The act of incorporation shall fix the amount of authorized capital. This shall be fully subscribed.

Each share shall be half paid up at least, except shares corresponding to contributions in kind, which shall be fully paid.

The authorized capital must be sufficient for the normal operation of the enterprise, having regard to reasonable forecasts.

It shall be no less than one hundred thousand francs. This minimum amount may, however, be amended by the *King*.

Article 41

The object of the business must be precisely defined and limited. It may not relate to insurance, the raising of capital or savings.

Article 42

A private limited company may at any time, by unanimous agreement of the *associés* [members], change itself into another type of company, without that change giving rise to a new legal person and subject to third-party rights.

Paragraph 2: Formation and increase of capital

Article 43

A private limited company must be set up by an authentic document, failing which the company shall be a nullity.

Such nullity may not be invoked against third parties by the *associés* or by the company; among the *associés*, it shall be effective only from the date of the request seeking nullity.

Article 44

Each *associé* must be a party to the document, in person or through a special representative.

Article 45

The document shall state:

1. precise particulars of the *associés*;
2. the designation of the company;
3. its registered office;
4. its purpose;
5. the amount of capital and how it is formed;
6. details of each contribution in kind, the conditions under which it is made and the name of the contributor;
7. mortgage charges on contributed immovable property;
8. the conditions to which the sale of rights contributed as options are subject;

9. the way in which profits are to be shared;
10. the date on which the company commenced and its duration;
11. the names of persons authorized to manage and bind the company and their powers;
12. the beginning and end of each accounting year;
13. the time for the annual general meeting of the *associés*.

Powers of attorney shall include the particulars in 4, 5, 6, 7 and 8 above.

Article 46

The formalities and conditions prescribed for formation shall also be required for any increase in capital.

Article 47

[Repealed by the Decree-law of 19 September 1965, Art. 8.]

Article 48

[Decree-law of 19 September 1965, Art. 9 — Any action brought by a private limited company whose founding document has not been published in accordance with Article 5 shall be declared inadmissible if the defendant so requests before any defences on the merits.]

Article 49

Any agreed amendment to the documents of a private limited company shall be void unless made by authentic document.

*[Decree-law of 19 September 1965, Art. 10 — Any document changing the statutes, or concerning the appointment and removal of *gérants* [managers], auditors and liquidators or the method of liquidation, or changing the registered office shall be published in accordance with Article 5.]*

They cannot be invoked against third parties whose rights and duties originated prior to publication. Nevertheless third parties may take advantage of them.

Paragraph 3: Shares

Article 50

The capital shall be divided into equal shares, with or without designation of value.

Shares that are not representative of capital may not be created.

Article 51

Each share confers an equal entitlement in the exercise of *associés'* prerogatives as well as in the distribution of profits and the products of liquidation.

Article 52

The shares are indivisible. In the event of several persons owning a single share, the company is entitled to suspend the exercise of rights deriving from that share until such time as one person is designated as, in that respect, the sole owner of that share.

Article 53

In the event of usufruct, voting rights shall be suspended until such time as the bare owner and the life beneficiary agree to designate one person to exercise such rights.

Article 54

Unless formally agreed otherwise, the owner of shares which have been pledged shall exercise the voting rights deriving from those shares.

Article 55

A register of *associés* shall be kept at the registered office and shall include:

1. precise particulars of each *associé*;
2. the number of shares belonging to each *associé*;
3. information on payments made;
4. transfers of shares *inter vivos* with dates, signed and dated by the transferor and the transferee or their proxies;
5. transfers on death and the allocation of shares with dates, signed and dated by the management and the beneficiaries or their proxies;
6. allocation of life interests or pledges.

Any *associé* or any third party may have access to this register.

Article 56

The management shall provide any *associé* who so requests with a certificate containing all or part of the information contained in the register of *associés*, together with the dates and signatures appearing therein.

Any third party may, with the authorization of the President of the *Tribunal de première instance*, obtain such a certificate at his own expense.

Article 57

In the absence of specific provisions in the statutes, shares may be freely transferred *inter vivos* and in the event of death to the spouse of the *associé*, his ascendants or descendants, to another *associé* or to any other person or category of persons authorized by the statutes.

Unless there is special provision in the statutes, transfers of shares to other persons *inter vivos* and upon death are subject to the approval of the *associés*.

Article 58

A request for approval must be made to the management in writing. It must contain the full particulars of the potential beneficiary and the number of shares involved.

The management must immediately convene a general meeting. The general meeting must decide on the request within three months of its receipt at the latest.

Unless the statutes provide otherwise, approval must, in order to be valid, be given by at least half of the *associés*, holding shares which together represent three quarters of the capital, not counting those shares for which the approval of transfer has been requested.

The management shall inform the requesting *associé* of the decision in writing within one week.

Article 59

In the event of approval not being granted within the time-limit provided for by the previous article, the requesting *associé* may, in the following two months, take legal action to dissolve the company.

The court shall dissolve the company unless the refusal is held to be legitimate, or if the company, an *associé* or a person authorized by the *associés* offers to acquire the shares during the two-month period of notice.

If there is a dispute as to the value, the court shall fix the price and the terms of payment.

Until the price has been paid in full, the requesting *associé* shall have a preferential right to the acquired shares which is not lost through alienation or the bankruptcy of the acquirer. This right takes precedence over all others. It is the responsibility of the management to enter it in the register of *associés* at the same time as the transfer.

Article 60

The creditor of an *associé* may seize the shares of his debtor.

Sale on distress shall not be subject to Article 58 or to provisions in the statutes limiting the transfer of shares.

However, both the company and each *associé* may prevent the public sale of all or part of the shares by:

1. indicating other assets belonging to the debtor by means of which the creditor may readily obtain payment;
2. indemnifying the creditor, for whom they are automatically subrogated in respect of rights, shares, liens and mortgages;
3. acquiring the shares for their real value up to the amount of the credit or balance outstanding; in the event of disagreement, the court shall determine the value of the shares.

Article 61

Transfers *inter vivos*, transfers due to death, allotments in the event of division and purchases following public sale are not opposable to the company until they have been entered in the register of *associés*. The same applies in respect of third parties, who may nonetheless derive benefit from them.

Article 62

The company may at any time purchase its own shares, following a decision by the general meeting to that effect taken under the conditions provided for by the third subparagraph of Article 58.

It has the right to transfer them to a third party within three months of the purchase. After that time-limit, the shares shall be cancelled. Such cancellation shall result in a reduction in the number of shares and the attribution of a new proportional value to the shares remaining.

Share purchases may be funded only out of earnings or reserves.

The statutes must be modified accordingly.

In the situations provided for under Articles 59 and 60, the company shall have first right of pre-emption.

Article 63

In the absence of provisions in the statutes, the management shall issue calls for the subscription of shares which are not entirely paid up, according to the company's requirements.

The statutes may allow for the exclusion of a defaulting *associé* and the public sale of his shares.

The transferor and transferee in the event of a transfer *inter vivos*, the successors in title of a deceased *associé* in the event of a transfer due to death, and the distrainee and successful purchaser in the event of a public sale shall be held jointly and severally liable for the full payment of shares.

Paragraph 4: Management and supervision

Article 64

A private limited company shall be managed by one or more persons, who may or may not be *associés*, called *gérants* [managers].

Article 65

Gérants shall be appointed either in the instrument of incorporation or by the general meeting, for a period which may be fixed or indeterminate.

Article 66

The statutes may provide for the grouping of shares, each group having the power to elect one or more *gérants* separately.

Article 67

Unless the statutes provide otherwise, *associé-gérants* appointed for the life of the company can be removed only for good cause, by a general meeting deliberating under the conditions required for amendments to the statutes.

Other *gérants* can be removed at any time.

Article 68

Each *gérant* shall have all the powers to act on behalf of the company in all circumstances and to perform the administrative acts and take the measures that the purpose of the company implies.

However, the statutes or the general meeting may limit these powers, and may stipulate *inter alia* that if there are several *gérants* they shall act on a collegiate basis.

No limitation whatever can be invoked against bona fide third parties.

Article 69

The statutes, the general meeting or the management may entrust the day-to-day management of the company and special powers to agents or other proxies, whether *associés* or not.

Article 70

A sole *gérant* who has an interest in an operation opposed to that of the company is obliged to submit the matter to the general meeting, which may appoint an *ad hoc* proxy to carry out that operation.

If there are several *gérants*, the one faced with this conflict of interest must advise his colleagues of the fact, have his declaration officially endorsed and may take no part in the decision. An account of this shall be given at the first general meeting before any other proceedings.

Article 71

Oversight of the management shall be entrusted to one or more administrators, who need not be *associés*, called “auditors”.

If there are more than one of these, the statutes or the general meeting may require them to act on a collegiate basis.

If the number of *associés* does not exceed five, the appointment of auditors is not compulsory, and each *associé* shall have the powers of an auditor.

Article 72

Auditors shall be appointed either in the instrument of incorporation or by the general meeting, for a period which may be fixed or indeterminate.

Article 73

The statutes may provide for the grouping of shares, each grouping having the power to elect one auditor separately.

Article 74

Unless the statutes provide otherwise, auditors can be removed at any time by a general meeting or by the grouping which appointed them pursuant to Article 73.

Article 75

The auditors’ task shall be to oversee and monitor, without restriction, all the actions performed by the management, all the company’s transactions and the register of *associés*.

Article 76

Each auditor shall have the power to examine, *in situ*, the books, registers, correspondence, minutes and, in general terms, all the written records of the company.

They may be assisted in their task by an expert of their choice, at their own expense, unless the general meeting decides that the company shall bear the costs.

They must submit the results of their work to the general meeting, together with such proposals as they see fit, and indicate how they have verified the inventories.

They shall have the right to convene a general meeting whenever they believe it to be appropriate.

Article 77

The emoluments of auditors shall consist of a fixed amount set at the beginning and for the duration of their term of office by the general meeting.

They can be altered by mutual agreement. Apart from these emoluments, the auditors may not receive any benefit from the company whatsoever.

The auditors may not perform any other function within the company.

Paragraph 5: The general meeting

Article 78

The general meeting of *associés* shall have the widest powers to perform or ratify acts concerning the company.

Unless the statutes provide otherwise, the general meeting shall have the right to amend them.

Article 79

Notwithstanding any provision to the contrary, all *associés* shall have the right to take part in general meetings and shall be entitled to one vote per share.

Article 80

Unless the statutes provide otherwise, *associés* may express their votes in writing or by any other means that guarantees the authenticity of the will expressed.

Article 81

Associés may always be represented by a proxy of their choice, subject to compliance with the conditions set forth in the statutes.

Article 82

At least one general meeting must be held every year, at the place and time stated in the statutes.

Article 83

The management and the auditors, if any, may convene a general meeting at any time.

They must convene a general meeting at the request of *associés* holding one fifth of the total number of shares.

If the management takes no action on this request within a reasonable time, the meeting may be ordered by the court.

Article 84

The notice of a general meeting shall contain the agenda and shall be sent by registered mail to each of the *associés* 20 days before the meeting.

If the agenda includes amendments to the statutes, the purpose of the proposed amendments must be clearly stated in the notice of the meeting.

If the proposed amendment relates to the purpose of the company, a special report by the management on this amendment containing a recent statement and summary of the company's assets and liabilities must be annexed to the notice of the meeting.

Article 85

When a reduction of capital or a reduction in the number of shares is involved, the notice of the meeting must state how the proposed reduction will be carried out.

If the reduction is to be made by a repayment to the *associés*, this repayment can only be made six months after publication of the decision.

In no case may the reduction of capital adversely affect the rights of third parties.

Article 86

The statutes shall determine how the proceedings of the general meeting shall be conducted. In the absence of such provisions, appointments shall be made and decisions taken according to the ordinary rules of deliberative meetings. In the event of a tied vote, the person presiding over the meeting shall have a casting vote. The minutes shall be signed by the members of the board and by the *associés* who request it. Authenticated copies shall be signed by the management.

Article 87

Decisions by the general meeting shall be by a simple majority, whatever the number of shares held by the *associés* present or represented.

When amendments to the statutes are involved, the *associés* present or represented must hold at least half the total number of shares. If this condition is not met, a non-compliance report shall be prepared, a new meeting shall be called, and the proceedings of the second meeting shall be valid irrespective of the number of shares held by the *associés* present or represented.

An amendment can be passed only by a majority of three quarters of those voting in the ballot. If the amendment relates to the purpose or the nationality of the company, the required majority shall be increased to four fifths of the votes.

Article 88

The management shall have the right to adjourn any meeting on the spot for six weeks for all or any of the items on the agenda, but can exercise this right only once for each subject. This adjournment cancels any decision taken in relation to the latter.

**Paragraph 6: Inventory, balance sheet,
profit and loss account**

Article 89

The management must close off the books of account at the end of each accounting period.

Article 90

Every year the management shall draw up an inventory showing real and personal property values as well as all the amounts receivable and payable by the company, with an annex summarizing all its commitments, in particular sureties and other guarantees as well as amounts receivable and payable by each *associé*, *gérant* and auditor to or from the company.

Article 91

The balance sheet and profit and loss account must clearly and exactly reflect the assets position of the company and the positive or negative results of its activities.

Article 92

On the assets side the balance sheet must show separately the real property values and the saleable values, amounts due to the company from the *associés*, *gérants* and auditors, and in particular the amounts due from the *associés* to pay up the shares that they have applied for.

The liabilities side shall clearly show the depreciation necessary, the debts of the company to itself such as capital and reserves or other debts, debts burdened by pledge or mortgage, the company's debts to the *associés*, *gérants* and auditors, and other debts.

Article 93

Every year the management must make a report on the completion of its mandate and on the company's operations during the accounting period.

This report must comment on the balance sheet and profit and loss account and make proposals regarding the allocation of any profits.

Article 94

If there is an auditor, the management must pass to him the inventory, the balance sheet, the profit and loss account and the management's report, with all supporting documents, at least 40 days before the annual general meeting.

Within 15 days at the latest the auditors must report on their audit, on how the accounts have been kept and on the documents passed to them by the management. This report must contain their observations and proposals.

Article 95

During the 20 days preceding the annual general meeting, any *associé*, in person or through a proxy of his choice, may consult the inventory, the balance sheet, the profit and loss account, the management's report and, where appropriate, the auditors' report at the registered office.

The balance sheet, profit and loss account and reports shall be annexed to the notifications to attend.

Article 96

The annual general meeting shall hear the management's report and, if appropriate, the auditors' report.

It shall consider and decide on the balance sheet and profit and loss account and on the allocation of profits.

It shall then give a decision, by special vote, on the discharge of the *gérants* and of any auditors.

Such discharge shall be valid only if the balance sheet and profit and loss account are free from omissions and contain no false statement concealing the true position of the company and, as regards acts performed beyond the scope of the statutes, only if these are specifically mentioned on the agenda.

Article 97

There can be no distribution of profits to the *associés* if the capital is in deficit as long as the latter has not been restored or reduced to a corresponding extent.

Article 98

The balance sheet and profit and loss account shall be filed by the management within 30 days of their approval in the commercial register at the place of the registered office.

Paragraph 7: Continuance — dissolution

Article 99

The dissolution or continuance of the company can only be decided by a general meeting deliberating under the conditions required for amendments to the statutes.

Article 100

In the event of the loss of half the capital, the management must propose the dissolution of the company to the general meeting, which shall deliberate under the conditions required for amendments to the statutes.

If the loss amounts to three quarters of the capital, dissolution can be decided by the associés owning one quarter of the shares.

If, as the result of a loss, the capital is less than the minimum prescribed by Article 40, fourth subparagraph, the company shall be dissolved at the request of any interested party, unless the capital is restored to the appropriate level.

Article 101

Unless the statutes provide otherwise, the company shall not be dissolved by the suspension of an *associé*'s rights, his bankruptcy, collapse or death.

Paragraph 8: Liability

Article 102

Notwithstanding any provision to the contrary, the parties to the founding document shall be deemed to be founders.

In the case of an increase in capital, the *gérants* in office shall be deemed to be founders and shall bear the corresponding responsibilities.

Article 103

Notwithstanding any provision to the contrary, the founders shall be jointly and severally liable to the company or to interested parties:

- for any part of the capital that is not validly subscribed; they shall be deemed to be subscribers by operation of law;
- for the actual paying-up of shares as provided for in Article 40;
- for sharing the loss that is an immediate consequence either of the nullity of the company or the absence or falseness of the prescribed statements.

To be relieved of liability, the founders must prove that they themselves were deceived.

Article 104

Anyone who, directly or by proxy, has engaged in publicity in order to solicit funds for a private limited company shall be held jointly and severally liable for any prejudice thereby caused to third parties.

Article 105

Anyone who has made a commitment on behalf of a third party shall be held personally liable if no valid proxy agreement exists or if the commitment is not ratified within two months.

The founders are also jointly and severally liable with such persons for such commitments.

Article 106

In the event of bankruptcy, composition with creditors or a request for time to pay creditors within two years of the formation of the company, the founders may be held liable, jointly or not according to the circumstances, for its commitments in the proportion set by the court if the capital was insufficient to ensure the operation of the firm having regard to reasonable forecasts.

Article 107

The *gérants* and auditors of a private limited company shall not undertake any personal obligation in relation to the commitments of the company.

Article 108

The *gérants* shall be liable in accordance with the law for the performance of the mandate that they received and for misconduct in their management.

They shall be jointly and severally liable to the company, to the *associés* or to third parties for any damage resulting from breaches of the provisions of the present Decree or of the company statutes. They shall be released from this liability as regards breaches in which they had no part only if no misconduct is attributable to them and if they declared these breaches to the next general meeting after they had notice of them.

The liability of auditors, as derived from their duty of supervision and monitoring, shall be determined according to the same rules as for the liability of *gérants*.

Article 109

In the event of bankruptcy, composition with creditors or a request for time to pay creditors, *gérants*, former *gérants* or persons who have actually had the power of management may be held liable, jointly or not, for all or part of the debts that arose over five years:

1. if they jeopardized the financial position of the company by their withdrawals;
2. if, due to their acts, disruption of the accounting system makes it impossible to keep track of the company's operations;
3. if they have been guilty of fraud or theft to the detriment of creditors or *associés*.

Article 110

The creditors may have the payments stipulated in the statutes and essential to the preservation of their rights ordered by the court; the company can have the action set aside by paying the debt in full, after deducting the discount.

The *gérants* in person are required to give effect to judgments given for this purpose.

The creditors may exercise the rights of the company as to payments to be made and due for payment against the *associés*, in accordance with Article 64, Book III of the Civil Code.

Article 111

The transferor and transferee are jointly and severally liable for the full payment of the shares transferred.

In the event of a sale on seizure, the same obligation shall apply to the distrainee and the purchaser.

Article 112

Associés who have wrongfully received dividends not charged against actual profits shall be required to repay them to the company.

Gérants who have allocated such dividends to the *associés* shall be jointly liable with them to repay the said dividends to the company.

Article 113

Associés or former *associés* who have obtained the repayment of their shares as the result of an unauthorized capital reduction shall be required to return such sums to the company.

Gérants who have effected such a repayment shall be jointly liable with them to return the sums to the company.

Section V: Liquidation of corporations

(Unless otherwise indicated, the text of this section derives from the Decree of 23 June 1960, Art. 3.)

Article 114

After being dissolved, commercial corporations are held to exist in order to be liquidated.

Any papers issued by a dissolved corporation shall mention that it is undergoing liquidation.

Article 115

Unless an agreement to the contrary exists, the method of liquidation and the liquidators shall be decided by the general meeting of members. For general partnerships and limited partnerships, such decisions shall not be valid unless approved by half the members possessing three quarters of the assets; in the absence of such a majority, liquidation shall be decided by the courts.

In the event of the nullity of the corporation, the courts can decide upon the method of liquidation and appoint liquidators.

Article 116

In the absence of appointed liquidators, the members of the management body established by the statutes shall be regarded as the liquidators for the purposes of third parties.

Article 117

Unless the statutes or the instrument of appointment provide otherwise, the liquidators may initiate and pursue any legal proceedings on behalf of the corporation, receive any payments, grant releases with or without discharge, sell all the corporation's securities, endorse any bills of

exchange and settle or reach agreement on any dispute. They can dispose of the corporation's premises by public sale, if they regard the sale as necessary in order to pay the corporation's debts or if there are seven or more members.

Article 118

They may, but only with the approval of the general meeting of members, continue until liquidation the industrial or commercial activities of the corporation, borrow in order to pay the corporation's debts, issue bills of exchange, mortgage the corporation's assets, use them as security, dispose of its premises, including sale by mutual agreement, and invest its capital in other corporations.

Article 119

The liquidators can demand from members the payment of sums which they have undertaken to invest in the corporation and which appear necessary in order to cover debts and the costs of liquidation.

Article 120

Without prejudice to the rights of secured creditors, the liquidators shall repay all the corporation's debts; such payment shall be proportional and without distinction between debts due and debts not due, subject to a discount for the latter.

They may, however, subject to their personal guarantee, repay the debts due in the first instance if assets significantly exceed liabilities or if there is sufficient coverage for long-term debts; creditors shall retain their right to go to court.

Article 121

After the payment or depositing of monies necessary for the repayment of debts, the liquidators shall distribute to members the cash or securities which can be divided into equal parts; they shall pass on the remaining assets to be shared among members.

Article 122

The liquidators shall be liable both to third parties and to members for the performance of their mandate and for misconduct in their management.

Article 123

Each year, the results of the liquidation procedure shall be submitted to the general meeting of the corporation, with an indication of the reasons which have prevented the liquidation from being completed.

Article 124

Once the liquidation has been completed, the liquidators shall make a report to the general meeting on the application of capital and shall submit the accounts and supporting documents. The meeting shall vote on the management of the liquidators and declare the completion of liquidation. The announcement of completion of liquidation shall be published in the *Moniteur Congolais*. In addition, such an announcement shall contain:

1. an indication of the location decided by the general meeting where the corporation's books and documents shall be filed and stored for a period of not less than five years;
2. an indication of the measures taken to deposit monies and securities belonging to creditors or members to whom repayment could not be made.

Section VI: Limitation of actions

(Unless otherwise indicated, the text of this section derives from the Decree of 23 June 1960, Art. 3.)

Article 125

Rights of action against commercial corporations shall become statute-barred after the same period as rights of action against individuals.

Article 126

The limitation period shall be five years in respect of:

1. all rights of action against members or shareholders, with effect from their withdrawal from the corporation, or from a formal act of dissolution of the corporation, or from its statutory date of termination;
2. all rights of action of third parties for the restitution of dividends distributed in error or of repayment of shares, with effect from the date of the distribution or repayment;
3. all rights of action against liquidators in that capacity, with effect from the publication of the announcement of the completion of liquidation in the *Moniteur Congolais*;
4. all rights of action against the managers, auditors or liquidators for acts carried out in the course of their duties, with effect from when those acts took place or from when they became known, if they were fraudulently concealed;
5. all rights of action for nullity against the corporation, with effect from publication where the contract has been in force for at least five years, without prejudice to any compensation which may be due; however, applications may be made for the nullity of corporations whose existence is a threat to public order or to accepted morals even after the statutory limitation period, although nullity in that case shall apply only to the future;
6. all rights of action against the corporation founders, with effect from the publication of the document to which they were parties.

Transitional provisions

Articles 127 to 129 constitute Chapter III of the Decree of 23 June 1960.

Article 127

[Decree of 23 June 1960, Chapter III — The new Articles 17 to 22 of the Decree of 27 February 1887 shall apply to general partnerships formed before the present Decree came into force.

The new Articles 49, 57 to 63, 67 to 70, 96, 100 to 113 and 121 to 125 of the Decree of 27 February 1887 shall apply to limited partnerships formed before the present Decree came into force.]

Article 128

[Decree of 23 June 1960, Chapter III — Corporations other than public limited companies and co-operatives must, on pain of losing the benefit of their legal personality, bring their statutes into line with the provisions of the present Decree within a period of one year.]

Article 129

[Decree of 23 June 1960, Chapter III — The present Decree shall enter into force with effect from the date on which it is published in the *Moniteur Congolais*.]
