

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

ANNEX 1

Letter (No. 131) to the Ambassador and Agent of the Democratic Republic of the Congo dated 30 March 2011 from the State Judicial Agent of the Republic of Guinea

[Translation]

Re: *Ahmadou Sadio Diallo case (Republic of Guinea v. Democratic Republic of the Congo)* before the International Court of Justice in The Hague.

Subject: Position of the Republic of Guinea on the adequate reparation due from the Democratic Republic of the Congo for the injurious consequences suffered by Mr. Diallo resulting from violations of international obligations

I have the honour to transmit to you herewith the position of the Republic of Guinea on the compensation due from the Democratic Republic of the Congo in order to make good the injurious consequences of the internationally wrongful acts suffered by Guinean national Mr. Ahmadou Sadio Diallo.

As you are aware, in the context of the above-mentioned case and in its Judgment of 30 November 2010, the International Court of Justice found that the Democratic Republic of the Congo had violated several international obligations at the time of the arrest, detention and expulsion measures taken by the Congolese Government against Mr. Diallo in 1995-1996.

The Court also found that owing to the fundamental character of the obligations breached, “reparation due to Guinea for the injury suffered by Mr. Diallo must take the form of compensation” and wished that our two countries should come together in order to reach an agreement on the amount of such compensation.

To that end, the Republic of Guinea quantified the various heads of damage suffered by its national, in terms of psychological and moral injury, loss of income and other material injuries, as well as his companies’ loss of earning potential.

1. The psychological and moral injury suffered by Mr. Diallo

On account of the arrest and expulsion measures taken against him, Mr. Diallo suffered psychological injury and damage to his reputation, aggravated by the fact that:

- (i) at the time of the acts noted by the Court, Mr. Diallo had devoted almost his entire life to developing economic activities that were of undoubted benefit to the Democratic Republic of the Congo. Furthermore, he had resided continuously and on a stable basis on Congolese territory for nearly thirty-two (32) years and had established all his personal and professional relationships there. Finally, he had no assets or property in his country of origin that would allow him to live in equivalent or even normal circumstances;
- (ii) Mr. Diallo’s expulsion was connected to the proceedings he had instigated against a number of majority public-owned companies, which underlined the arbitrary and unjust nature of this measure and caused the Guinean national significant psychological trauma and moral injury;
- (iii) Mr. Diallo’s expulsion took place under conditions which denied him the opportunity to take any personal belongings and thus, from one day to the next, he was left utterly destitute, with no hope of returning to the Democratic Republic of the Congo where he had all his personal and professional ties;

- (iv) finally, the accusations brought against Mr. Diallo at the time of his arbitrary arrest and expulsion, but also in court and publicly, have seriously harmed his reputation and image and, at the same time, have caused serious moral injury.

For all these reasons, the Republic of Guinea considers that the moral injury suffered by Mr. Diallo would be made good by the payment of US\$300,000 in compensation to the Republic of Guinea.

2. Loss of income

Mr. Diallo was arbitrarily arrested and, equally arbitrarily, held in detention in the first instance from 5 November 1995 until 10 January 1996, and for a second time between 25 and 31 January 1996, before being permanently expelled. At that time he was the executive officer and sole *associé* of two companies, Africom-Zaire and Africontainers-Zaire, and his earnings in this capacity were the only income he received.

However, throughout his detention, Mr. Diallo was unable to carry out his normal management activities or ensure that his companies — for which he was solely responsible — were being run properly, and was therefore unable to receive the monthly fruits of his labour.

The immediate damages resulting from loss of professional income for Mr. Diallo, during 71 days' detention, can be estimated at US\$80,000, taking account of the necessary revaluation of these damages since 1995.

This head of damage must also take account of the injurious consequences suffered by Mr. Diallo in the exercise of his role as *gérant* since his expulsion, and, in particular, the ensuing hindrance to the exercise of his management and administrative duties. As a result of his expulsion, Mr. Diallo is now, effectively, only able to carry out his management duties through a proxy, who in turn has to be paid in his stead. Given the length of time which has elapsed since the acts determined internationally wrongful by the Court, Guinea believes that, ultimately, the total damages suffered by its national, in terms of loss of professional income, can be estimated at a sum total of US\$6,080,000.

3. Other material injuries

Given the sudden nature of the decision to expel Mr. Diallo, and the fact that he was held in detention for most of the three months prior to the implementation of that measure, he was unable to make satisfactory arrangements for the transfer or disposal of his personal effects.

The *de facto* expropriation of his personal effects which ensued, and which is confirmed by the fact that none of his personal property on Congolese territory has been returned to him, is a first head of damage in respect of material injury.

Yet Mr. Diallo — who had lived continuously on Congolese territory for 32 years — had, at that time, considerable tangible and intangible assets, which are now irretrievably lost. The value of those lost assets can be put at a total lump sum of US\$550,000.

4. Loss of earning potential

Lastly, the Republic of Guinea believes that the compensation due to it in the present case must take into account the injury resulting from the fact that Mr. Diallo was not given the opportunity to arrange, in non-injurious circumstances, for the companies Africom-Zaire and

Africontainers to continue their activities in his absence, or for the sale of his holding in those two companies before his expulsion.

Yet as a result of his expulsion, the two companies, and Africontainers in particular, immediately fell into a state of collapse and their assets were dispersed, which greatly reduced, indeed destroyed, the value of their share capital which was held solely by Mr. Diallo.

The financial consequences of having been denied any opportunity to plan for the consequences of his absence from Congolese territory, in favourable conditions, can be valued at a fraction of the exchange value of the shares making up the entire share capital of the two companies. In case of sale, the value of the two companies, which had no liabilities, would have taken account of:

- the stock and equipment owned by them;
- the debts owed to them by their various clients, including the Congolese State.

In view of Mr. Diallo's central and essential role in the activities of the two companies, the potential earnings he lost can be put at 50 per cent of the exchange value of the *parts sociales* held by Mr. Diallo at the time of his first arrest, namely, a total value of US\$1,000,000. This valuation takes account of the debt owed to Africom-Zaire by the Congolese State for the supply of listing paper, and the movable and immovable property of Africontainers.

Taking into consideration the above-mentioned heads of damage, the Republic of Guinea believes that the adequate compensation it is entitled to claim should not be less than the sum total of US\$7,930,000.

The Republic of Guinea is, of course, at your disposal to further pursue the discussions between our two States on the subject of that compensation and to do so in the spirit of mutual friendship which has always characterized our two countries' relations.

ANNEX 2

**Letter (No. 265) to the Registrar dated 27 May 2011 from the
State Judicial Agent of the Republic of Guinea**

[Translation]

Re: *Ahmadou Sadio Diallo case (Republic of Guinea v. Democratic Republic of the Congo)*
before the International Court of Justice in The Hague.

Subject: Progress of the negotiations between the Republic of Guinea and the Democratic
Republic of the Congo in the context of the above-mentioned case.

I have the honour to inform you of the progress of the negotiations initiated by the Republic
of Guinea with the Democratic Republic of the Congo (DRC) with a view to the amicable
settlement of the above-mentioned case.

As you are aware, in its Judgment of 30 November 2010, the Court found that the DRC had
violated several international obligations at the time of the arrest, detention and expulsion measures
taken by the Congolese Government against the Guinean national Mr. Ahmadou Sadio Diallo in
1995-1996.

In that same Judgment, the Court decided that the reparations owed to Guinea by the DRC
on account of the injury suffered by Mr. Diallo should take the form of compensation and required
that the two countries should come together in order to reach an agreement on the amount of
compensation.

In light of the Court's recommendations and in the absence of any initiative from the DRC,
the Republic of Guinea sent letter 131 dated 30 March 2011 to the DRC, in which, as a basis for the
negotiations, it quantified the various heads of damage suffered by its national.

However, to date, the Republic of Guinea has received no response from the Congolese
authorities to that letter which, moreover, was transmitted subsequent to Note 0344 of
6 April 2011.

Enclosed:

— a copy of letter 131 of 30 March 2011

— a copy of Note 0344 of 6 April 2011

**Note Verbale dated 6 April 2011 from the Ministry of Foreign Affairs
and Guineans Abroad of the Republic of Guinea to the Embassy
of the Democratic Republic of the Congo in Conakry**

[Translation]

The Ministry of Foreign Affairs and Guineans Abroad of the Republic of Guinea presents its compliments to the Embassy of the Democratic Republic of the Congo (DRC) in Conakry and has the honour to transmit herewith, for the attention of its country's competent authorities, letter 131/PRG/AJE/11, dated 30 March 2011, concerning the Republic of Guinea's position on the adequate reparation due from the Democratic Republic of the Congo for the injurious consequences of the violations of its international obligations suffered by Mr. Ahmadou Sadio Diallo, known as "Diallo Cravate".

The Ministry asks that the Embassy forward this letter as soon as possible, given the importance of its subject-matter.
