

19 JUIN 2012

ARRÊT

AHMADOU SADIO DIALLO

(RÉPUBLIQUE DE GUINÉE c. RÉPUBLIQUE DÉMOCRATIQUE DU CONGO)

**(Indemnisation due par la République démocratique du Congo
à la République de Guinée)**

AHMADOU SADIO DIALLO

(REPUBLIC OF GUINEA v. DEMOCRATIC REPUBLIC OF THE CONGO)

**(Compensation owed by the Democratic Republic of the Congo
to the Republic of Guinea)**

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JUDGMENT

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INTERNATIONAL COURT OF JUSTICE

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19 June 2012

**AHMADOU SADIO DIALLO
(REPUBLIC OF GUINEA v. DEMOCRATIC REPUBLIC OF THE CONGO)**

**(Compensation owed by the Democratic Republic of the Congo
to the Republic of Guinea)**

Introductory observations.

Object of the present proceedings pursuant to Court's Judgment of 30 November 2010 — Determination of amount of compensation — Injury resulting from unlawful detentions and expulsion of Mr. Diallo — Guinea's exercise of diplomatic protection — General rules governing compensation — Establishment of injury and causal nexus between the wrongful acts and that injury — Valuation of the injury — General rule that it is for the party which alleges a particular fact to prove existence of that fact — That rule to be applied flexibly in this case as Respondent may be in a better position to establish certain facts — Evidence adduced by Guinea as starting point of the Court's inquiry — Assessment in light of evidence introduced by the Democratic Republic of the Congo (DRC) — Allowance for the difficulty in providing certain evidence because of abruptness of Mr. Diallo's expulsion — The Court's inquiry limited to the injury resulting from the breach of Mr. Diallo's rights as an individual.

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Claim for compensation for non-material injury suffered by Mr. Diallo.

Non-material injury may take various forms — Establishment of non-material injury even without specific evidence — Non-material injury of Mr. Diallo as an inevitable consequence of the wrongful acts of the DRC already ascertained by the Court in its Judgment on the merits — Reasonable to conclude that the wrongful conduct of the DRC caused Mr. Diallo significant psychological suffering and loss of reputation — Number of days for which Mr. Diallo was detained, as well as fact that he was not mistreated, taken into account — Context in which the wrongful detentions and expulsion occurred, as well as their arbitrary nature, as factors aggravating Mr. Diallo's non-material injury — Importance of equitable considerations in the quantification of compensation for non-material injury — US\$85,000 in compensation awarded.

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Claim for compensation for material injury suffered by Mr. Diallo.

Alleged loss of personal property.

Property of the two companies not taken into account given the Court's prior decision that claims related thereto were inadmissible — Personal property located in Mr. Diallo's apartment appearing on an inventory prepared 12 days after his expulsion — Failure of Guinea to prove extent of loss of Mr. Diallo's personal property listed on inventory and extent to which any such loss was caused by the unlawful conduct of the DRC — Lack of any evidence regarding value of items on inventory — Mr. Diallo nevertheless required to transport his personal property to Guinea or to arrange for its disposition in the DRC — US\$10,000 awarded based on equitable considerations.

High-value items not specified on the inventory — No evidence put forward by Guinea that Mr. Diallo owned these items at the time of his expulsion; that they were in his apartment if he did own them; or that they were lost as a result of Mr. Diallo's treatment by the DRC — No compensation awarded.

Assets alleged to have been contained in bank accounts — No information provided by Guinea about total sum held in bank accounts, the amount of any particular account or the name(s) of bank(s) in which account(s) were held — No evidence put forward by Guinea demonstrating that the unlawful detentions and expulsion of Mr. Diallo caused the loss of any assets held in bank accounts — No compensation awarded.

Alleged loss of remuneration during Mr. Diallo's unlawful detentions and following his expulsion.

Cognizable character, as a component of compensation, of claim for income lost as a result of unlawful detention — Estimation may be appropriate where amount of lost income cannot be calculated precisely — No evidence however offered by Guinea to support the claim that

Mr. Diallo was earning US\$25,000 per month as gérant of Africom-Zaire and Africontainers-Zaire — Evidence, on the contrary, that neither of the companies was conducting business during the years immediately prior to Mr. Diallo's detentions — Failure of Guinea to prove how Mr. Diallo's unlawful detentions would have caused him to lose any remuneration he could have been receiving — Guinea's claim for loss of remuneration during period of Mr. Diallo's detention rejected — Reasons for rejecting claim equally applicable to Guinea's highly speculative claim relating to the period following Mr. Diallo's expulsion — No compensation awarded.

Alleged deprivation of potential earnings.

Guinea's claim concerning "potential earnings" as beyond the scope of the proceedings, given the Court's prior decision on the inadmissibility of Guinea's claims relating to the injuries alleged to have been caused to the companies — No compensation awarded.

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Total sum awarded and post-judgment interest.

The total sum awarded to Guinea is US\$95,000 to be paid by 31 August 2012 — Should payment be delayed, post-judgment interest on the principal sum due to accrue as from 1 September 2012 at an annual rate of 6 per cent — Sum awarded to Guinea in the exercise of diplomatic protection of Mr. Diallo intended to provide reparation for the latter's injury.

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Procedural costs.

Article 64 of the Statute of the Court as implying that there may be circumstances which would make it appropriate for the Court to allocate costs in favour of one of the parties — No such circumstances exist in the present case.

JUDGMENT

Present: President TOMKA; Vice-President SEPÚLVEDA-AMOR; Judges OWADA, ABRAHAM, KEITH, BENNOUNA, SKOTNIKOV, CANÇADO TRINDADE, YUSUF, GREENWOOD, XUE, DONOGHUE, GAJA, SEBUTINDE; Judges ad hoc MAHIOU, MAMPUYA; Registrar COUVREUR.

In the case concerning Ahmadou Sadio Diallo,

between

the Republic of Guinea,

represented by

Mr. Mohamed Camara, First Counsellor for Political Affairs, Embassy of Guinea in the Benelux countries and in the European Union,

as Agent;

Mr. Hassane II Diallo, Counsellor and *chargé de mission* at the Ministry of Justice,

as Co-Agent,

and

the Democratic Republic of the Congo,

represented by

H.E. Mr. Henri Mova Sakanyi, Ambassador of the Democratic Republic of the Congo to the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg,

as Agent;

Mr. Tshibangu Kalala, Professor of International Law at the University of Kinshasa, member of the Kinshasa and Brussels Bars, and member of the Congolese Parliament,

as Co-Agent,

The COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 28 December 1998, the Government of the Republic of Guinea (hereinafter “Guinea”) filed in the Registry of the Court an Application instituting proceedings against the Democratic Republic of the Congo (hereinafter the “DRC”, named Zaire between 1971 and 1997) in respect of a dispute concerning “serious violations of international law” alleged to have been committed upon the person of Mr. Ahmadou Sadio Diallo, a Guinean national.

In the Application, Guinea maintained that:

“Mr. Ahmadou Sadio Diallo, a businessman of Guinean nationality, was unjustly imprisoned by the authorities of the Democratic Republic of the Congo, after being resident in that State for thirty-two (32) years, despoiled of his sizable investments, businesses, movable and immovable property and bank accounts, and then expelled.”

Guinea added: “[t]his expulsion came at a time when Mr. Ahmadou Sadio Diallo was pursuing recovery of substantial debts owed to his businesses [Africom-Zaire and Africontainers-Zaire] by the [Congolese] State and by oil companies established in its territory and of which the State is a shareholder”. According to Guinea, Mr. Diallo’s arrests, detentions and expulsion constituted, *inter alia*, violations of

“the principle that aliens should be treated in accordance with ‘a minimum standard of civilization’, [of] the obligation to respect the freedom and property of aliens, [and of] the right of aliens accused of an offence to a fair trial on adversarial principles by an impartial court”.

To found the jurisdiction of the Court, Guinea invoked in the Application the declarations whereby the two States have recognized the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Statute of the Court.

2. On 3 October 2002, the DRC raised preliminary objections in respect of the admissibility of Guinea’s Application. In its Judgment of 24 May 2007 on these preliminary objections, the Court declared the Application of the Republic of Guinea to be admissible “in so far as it concerns protection of Mr. Diallo’s rights as an individual” and “in so far as it concerns protection of [his] direct rights as *associé* in Africom-Zaire and Africontainers-Zaire”. However, the Court declared the Application of the Republic of Guinea to be inadmissible “in so far as it concerns protection of Mr. Diallo in respect of alleged violations of rights of Africom-Zaire and Africontainers-Zaire” (*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, pp. 617-618, para. 98, subparas. 3 (a), (b), and (c) of the operative part).

3. In its Judgment of 30 November 2010 on the merits, the Court found that, in respect of the circumstances in which Mr. Diallo had been expelled on 31 January 1996, the DRC had violated Article 13 of the International Covenant on Civil and Political Rights (hereinafter the “Covenant”) and Article 12, paragraph 4, of the African Charter on Human and Peoples’ Rights (hereinafter the “African Charter”) (*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 692, para. 165, subpara. (2) of the operative part). The Court also found that, in respect of the circumstances in which Mr. Diallo had been arrested and detained in 1995-1996 with a view to his expulsion, the DRC had violated Article 9, paragraphs 1 and 2, of the Covenant and Article 6 of the African Charter (*ibid.*, p. 692, para. 165, subpara. (3) of the operative part).

4. The Court further decided that “the Democratic Republic of the Congo [was] under obligation to make appropriate reparation, in the form of compensation, to the Republic of Guinea for the injurious consequences of the violations of international obligations referred to in subparagraphs (2) and (3) [of the operative part]” (*ibid.*, p. 693, para. 165, subpara. (7) of the operative part), namely the unlawful arrests, detentions and expulsion of Mr. Diallo.

5. In addition, the Court found that the DRC had violated Mr. Diallo’s rights under Article 36, paragraph 1 (*b*), of the Vienna Convention on Consular Relations (*ibid.*, p. 692, para. 165, subpara. (4) of the operative part). It did not however order the DRC to pay compensation for this violation (*ibid.*, p. 693, para. 165, subpara. (7) of the operative part).

6. In the same Judgment, the Court rejected all other submissions by Guinea relating to the arrests and detentions of Mr. Diallo, including the contention that he was subjected to treatment prohibited by Article 10, paragraph 1, of the Covenant during his detentions (*ibid.*, p. 693, para. 165, subpara. (5) of the operative part). Furthermore, the Court found that the DRC had not violated Mr. Diallo’s direct rights as an *associé* in the companies Africom-Zaire and Africontainers-Zaire (*ibid.*, p. 693, para. 165, subpara. (6) of the operative part).

7. Finally, the Court decided, with respect to the question of compensation owed by the DRC to Guinea, that “failing agreement between the Parties on this matter within six months from the date of [the said] Judgment, [this] question . . . shall be settled by the Court” (*ibid.*, p. 693, para. 165, subpara. (8) of the operative part). Considering itself to have been “sufficiently informed of the facts of the . . . case”, the Court found that “a single exchange of written pleadings by the Parties would then be sufficient in order for it to decide on the amount of compensation” (*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 692, para. 164).

8. The time-limit of six months thus fixed by the Court having expired on 30 May 2011 without an agreement being reached between the Parties on the question of compensation due to Guinea, the President of the Court held a meeting with the representatives of the Parties on 14 September 2011 in order to ascertain their views on the time-limits to be fixed for the filing of the two pleadings envisaged by the Court.

9. By an Order of 20 September 2011, the Court fixed 6 December 2011 and 21 February 2012 as the respective time-limits for the filing of the Memorial of Guinea and the Counter-Memorial of the DRC on the question of compensation due to Guinea. The Memorial and the Counter-Memorial were duly filed within the time-limits thus prescribed.

10. In the written proceedings relating to compensation, the following submissions were presented by the Parties:

On behalf of the Government of Guinea,

in the Memorial:

“In compensation for the damage suffered by Mr. Ahmadou Sadio Diallo as a result of his arbitrary detentions and expulsion, the Republic of Guinea begs the Court to order the Democratic Republic of the Congo to pay it (on behalf of its national) the following sums:

- US\$250,000 for mental and moral damage, including injury to his reputation;
- US\$6,430,148 for loss of earnings during his detention and following his expulsion;
- US\$550,000 for other material damage; and
- US\$4,360,000 for loss of potential earnings;

amounting to a total of eleven million five hundred and ninety thousand one hundred and forty-eight American dollars (US\$11,590,148), not including statutory default interest.

Furthermore, as a result of having been forced to institute the present proceedings, the Guinean State has incurred unrecoverable costs which it should not, in equity, be required to bear and which are assessed at US\$500,000. The Republic of Guinea also begs the Court to order the DRC to pay it that sum.

The Democratic Republic of the Congo should also be ordered to pay all the costs.”

On behalf of the Government of the DRC,

in the Counter-Memorial:

“Having regard to all of the arguments of fact and law set out above, the Democratic Republic of the Congo asks the Court to adjudge and declare that:

- (1) compensation in an amount of US\$30,000 is due to Guinea to make good the non-pecuniary injury suffered by Mr. Diallo as a result of his wrongful detentions and expulsion in 1995-1996;
- (2) no default interest is due on the amount of compensation as fixed above;
- (3) the DRC shall have a time-limit of six months from the date of the Court’s judgment in which to pay to Guinea the above amount of compensation;
- (4) no compensation is due in respect of the other material damage claimed by Guinea;

(5) each Party shall bear its own costs of the proceedings, including costs and fees of its counsel, advocates, advisers, assistants and others.”

*

* *

I. INTRODUCTORY OBSERVATIONS

11. It falls to the Court at this stage of the proceedings to determine the amount of compensation to be awarded to Guinea as a consequence of the unlawful arrests, detentions and expulsion of Mr. Diallo by the DRC, pursuant to the findings of the Court set out in its Judgment of 30 November 2010 and recalled above. In that Judgment, the Court indicated that the amount of compensation was to be based on “the injury flowing from the wrongful detentions and expulsion of Mr. Diallo in 1995-96, including the resulting loss of his personal belongings” (*I.C.J. Reports 2010 (II)*, p. 691, para. 163).

12. The Court begins by recalling certain of the facts on which it based its Judgment of 30 November 2010. Mr. Diallo was continuously detained for 66 days, from 5 November 1995 until 10 January 1996 (*ibid.*, p. 662, para. 59), and was detained for a second time between 25 and 31 January 1996 (*ibid.*, p. 662, para. 60), that is, for a total of 72 days. The Court also observed that Guinea failed to demonstrate that Mr. Diallo was subjected to inhuman or degrading treatment during his detentions (*ibid.*, p. 671, paras. 88-89). In addition, the Court found that Mr. Diallo was expelled by the DRC on 31 January 1996 and that he received notice of his expulsion on the same day (*ibid.*, p. 659, para. 50, and p. 668, para. 78).

13. The Court turns to the question of compensation for the violations of Mr. Diallo’s human rights established in its Judgment of 30 November 2010. It recalls that it has fixed an amount of compensation once, in the *Corfu Channel case* ((*United Kingdom v. Albania*), *Assessment of Amount of Compensation, Judgment, I.C.J. Reports 1949*, p. 244). In the present case, Guinea is exercising diplomatic protection with respect to one of its nationals, Mr. Diallo, and is seeking compensation for the injury caused to him. As the Permanent Court of International Justice stated in the *Factory of Chorzów case* (*Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, pp. 27-28), “[i]t is a principle of international law that the reparation of a wrong may consist in an indemnity corresponding to the damage which the nationals of the injured State have suffered as a result of the act which is contrary to international law”. The Court has taken into account the practice in other international courts, tribunals and commissions (such as the International Tribunal for the Law of the Sea, the European Court of Human Rights (ECHR), the Inter-American Court of Human Rights (IACHR), the Iran-United States Claims Tribunal, the Eritrea-Ethiopia Claims Commission, and the United Nations Compensation Commission), which have applied general principles governing compensation when fixing its amount, including in respect of injury resulting from unlawful detention and expulsion.

14. Guinea seeks compensation under four heads of damage: non-material injury (referred to by Guinea as “mental and moral damage”); and three heads of material damage: alleged loss of personal property; alleged loss of professional remuneration (referred to by Guinea as “loss of earnings”) during Mr. Diallo’s detentions and after his expulsion; and alleged deprivation of “potential earnings”. As to each head of damage, the Court will consider whether an injury is established. It will then “ascertain whether, and to what extent, the injury asserted by the Applicant is the consequence of wrongful conduct by the Respondent”, taking into account “whether there is a sufficiently direct and certain causal nexus between the wrongful act . . . and the injury suffered by the Applicant” (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, *I.C.J. Reports 2007 (I)*, pp. 233-234, para. 462). If the existence of injury and causation is established, the Court will then determine the valuation.

15. The assessment of compensation owed to Guinea in this case will require the Court to weigh the Parties’ factual contentions. The Court recalled in its Judgment of 30 November 2010 that, as a general rule, it is for the party which alleges a particular fact in support of its claims to prove the existence of that fact (*I.C.J. Reports 2010 (II)*, p. 660, para. 54; see also *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment of 5 December 2011, para. 72; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, *I.C.J. Reports 2010 (I)*, p. 71, para. 162). The Court also recognized that this general rule would have to be applied flexibly in this case and, in particular, that the Respondent may be in a better position to establish certain facts (*I.C.J. Reports 2010 (II)*, pp. 660-661, paras. 54-56).

16. In the present stage of the proceedings, the Court once again will be guided by the approach summarized in the preceding paragraph. Thus, the starting point in the Court’s inquiry will be the evidence adduced by Guinea to support its claim under each head of damage, which the Court will assess in light of evidence introduced by the DRC. The Court also recognizes that the abruptness of Mr. Diallo’s expulsion may have diminished the ability of Mr. Diallo and Guinea to locate certain documents, calling for some flexibility by the Court in considering the record before it.

17. Before turning to the various heads of damage, the Court also recalls that the scope of the present proceedings is determined in important respects by the Court’s Judgments of 24 May 2007 and of 30 November 2010. Having declared Guinea’s Application inadmissible as to alleged violations of the rights of Africom-Zaire and Africontainers-Zaire (*I.C.J. Reports 2007 (II)*, p. 616, para. 94), the Court will not take account of any claim for injury sustained by the two companies, rather than by Mr. Diallo himself. Moreover, the Court will award no compensation in respect of Guinea’s claim that the DRC violated Mr. Diallo’s direct rights as an *associé* in Africom-Zaire and Africontainers-Zaire, because the Court found that there was no such violation in its Judgment of 30 November 2010 (*I.C.J. Reports 2010 (II)*, p. 690, para. 157, and pp. 690-691, para. 159). The Court’s inquiry will be limited to the injury resulting from the breach of Mr. Diallo’s rights as an individual, that is, “the injury flowing from the wrongful detentions and expulsion of Mr. Diallo in 1995-96, including the resulting loss of his personal belongings” (*ibid.*, p. 691, para. 163).

II. HEADS OF DAMAGE IN RESPECT OF WHICH COMPENSATION IS REQUESTED

A. Claim for compensation for non-material injury suffered by Mr. Diallo

18. “Mental and moral damage”, referred to by Guinea, or “non-pecuniary injury”, referred to by the DRC, covers harm other than material injury which is suffered by an injured entity or individual. Non-material injury to a person which is cognizable under international law may take various forms. For instance, the umpire in the *Lusitania* cases before the Mixed Claims Commission (United States/Germany) mentioned “mental suffering, injury to [a claimant’s] feelings, humiliation, shame, degradation, loss of social position or injury to his credit or to his reputation” (Opinion in the *Lusitania* Cases, 1 November 1923, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. VII, p. 40). The Inter-American Court of Human Rights observed in *Gutiérrez-Soler v. Colombia* that “[n]on pecuniary damage may include distress, suffering, tampering with the victim’s core values, and changes of a non pecuniary nature in the person’s everyday life” (Judgment of 12 September 2005 (Merits, Reparations and Costs), IACHR, Series C, No. 132, para. 82).

19. In the present case, Guinea contends that

“Mr. Diallo suffered moral and mental harm, including emotional pain, suffering and shock, as well as the loss of his position in society and injury to his reputation as a result of his arrests, detentions and expulsion by the DRC.”

No specific evidence regarding this head of damage is submitted by Guinea.

20. The DRC, for its part, does not contest the fact that Mr. Diallo suffered “non-pecuniary injury”. However, the DRC requests the Court to

“take into account the specific circumstances of this case, the brevity of the detention complained of, the absence of any mistreatment of Mr. Diallo, [and] the fact that Mr. Diallo was expelled to his country of origin, with which he had been able to maintain ongoing and high-level contacts throughout his lengthy stay in the Congo”.

*

21. In the view of the Court, non-material injury can be established even without specific evidence. In the case of Mr. Diallo, the fact that he suffered non-material injury is an inevitable consequence of the wrongful acts of the DRC already ascertained by the Court. In its Judgment on the merits, the Court found that Mr. Diallo had been arrested without being informed of the reasons

for his arrest and without being given the possibility to seek a remedy (*I.C.J. Reports 2010 (II)*, p. 666, para. 74, and p. 670, para. 84); that he was detained for an unjustifiably long period pending expulsion (*ibid.*, pp. 668-669, para. 79); that he was made the object of accusations that were not substantiated (*ibid.*, p. 669, para. 82); and that he was wrongfully expelled from the country where he had resided for 32 years and where he had engaged in significant business activities (*ibid.*, pp. 666-667, paras. 73 and 74). Thus, it is reasonable to conclude that the DRC's wrongful conduct caused Mr. Diallo significant psychological suffering and loss of reputation.

22. The Court has taken into account the number of days for which Mr. Diallo was detained and its earlier conclusion that it had not been demonstrated that Mr. Diallo was mistreated in violation of Article 10, paragraph 1, of the Covenant (*ibid.*, p. 671, para. 89).

23. The circumstances of the case point to the existence of certain factors which aggravate Mr. Diallo's non-material injury. One is the context in which the wrongful detentions and expulsion occurred. As the Court noted in its Judgment on the merits,

“it is difficult not to discern a link between Mr. Diallo's expulsion and the fact that he had attempted to recover debts which he believed were owed to his companies by, amongst others, the Zairean State or companies in which the State holds a substantial portion of the capital” (*I.C.J. Reports 2010 (II)*, p. 669, para. 82).

In addition, Mr. Diallo's

“arrest and detention aimed at allowing such an expulsion measure, one without any defensible basis, to be effected can only be characterized as arbitrary within the meaning of Article 9, paragraph 1, of the Covenant and Article 6 of the African Charter” (*ibid.*).

24. Quantification of compensation for non-material injury necessarily rests on equitable considerations. As the umpire noted in the *Lusitania* cases, non-material injuries “are very real, and the mere fact that they are difficult to measure or estimate by money standards makes them none the less real and affords no reason why the injured person should not be compensated therefore as compensatory damages” (*RIAA*, Vol. VII, p. 40). When considering compensation for material or non-material injury caused by violations of the Covenant or the African Charter, respectively, the Human Rights Committee and the African Commission on Human and Peoples' Rights recommended “adequate compensation” without specifying the sum to be paid (see, for example, *A. v. Australia*, HRC, 3 April 1997, communication No. 560/1993, United Nations doc. CCPR/C/59/D/560/1993, para. 11; *Kenneth Good v. Republic of Botswana*, ACHPR, 26 May 2010, communication No. 313/05, *28th Activity Report*, Ann. IV, p. 110, para. 244). Arbitral tribunals and regional human rights courts have been more specific, given the power to assess compensation granted by their respective constitutive instruments. Equitable considerations have guided their quantification of compensation for non-material harm. For instance, in *Al-Jedda v. the United Kingdom*, the Grand Chamber of the European Court of Human Rights stated that, for determining damage,

“[i]ts guiding principle is equity, which above all involves flexibility and an objective consideration of what is just, fair and reasonable in all the circumstances of the case, including not only the position of the applicant but the overall context in which the breach occurred” (Application No. 27021/08, Judgment of 7 July 2011, *ECHR Reports* 2011, para. 114).

Similarly, the Inter-American Court of Human Rights has said that the payment of a sum of money as compensation for non-pecuniary damages may be determined by that court “in reasonable exercise of its judicial authority and on the basis of equity” (*Cantoral Benavides v. Peru*, Judgment of 3 December 2001 (Reparations and Costs), IACHR, Series C, No. 88, para. 53).

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25. With regard to the non-material injury suffered by Mr. Diallo, the circumstances outlined in paragraphs 21 to 23 lead the Court to consider that the amount of US\$85,000 would provide appropriate compensation. The sum is expressed in the currency to which both Parties referred in their written pleadings on compensation.

B. Claim for compensation for material injury suffered by Mr. Diallo

26. As previously noted (see paragraph 14), Guinea claims compensation for three heads of material damage. The Court will begin by addressing Guinea’s claim relating to the loss of Mr. Diallo’s personal property; it will then consider Guinea’s claims concerning loss of professional remuneration during Mr. Diallo’s unlawful detentions and following his unlawful expulsion from the DRC; and, finally, it will turn to Guinea’s claim in respect of “potential earnings”.

1. Alleged loss of Mr. Diallo’s personal property (including assets in bank accounts)

27. Guinea claims that Mr. Diallo’s abrupt expulsion prevented him from making arrangements for the transfer or disposal of personal property that was in his apartment and also caused the loss of certain assets in bank accounts. Guinea refers to an inventory of items in Mr. Diallo’s apartment that was prepared 12 days after he was expelled, claiming that the inventory understated his personal property because it failed to include a number of high-value items that were in the apartment. It states that all of these assets have been irretrievably lost and estimates the value of lost tangible and intangible assets (including bank accounts) at US\$550,000.

28. The DRC contends that Guinea was responsible for having produced the inventory in question as evidence before the Court, only later to declare it incomplete. Citing Guinea’s role in preparing the inventory, the DRC characterizes that inventory as “credible” and “serious”, and

contends that Guinea cannot now claim that Mr. Diallo owned additional assets not reflected in it. The DRC further asserts that it cannot be held responsible for the alleged loss of any property that was in the apartment because the DRC did not order Mr. Diallo's eviction from the apartment and because Mr. Diallo's personal property was under the control of officials from the Guinean embassy and of Mr. Diallo's friends and relatives. Further, the DRC states that Guinea has provided no evidence regarding bank assets.

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29. The Court here addresses Guinea's claim for the loss of Mr. Diallo's personal property, without taking into account property of the two companies (to which Guinea also refers), given the Court's prior decision that Guinea's claims relating to the companies were inadmissible (see paragraph 17 above). The personal property at issue in Guinea's claim may be divided into three categories: furnishings of Mr. Diallo's apartment that appear on the above-referenced inventory; certain high-value items alleged to have been in Mr. Diallo's apartment, which are not specified on that inventory; and assets in bank accounts.

30. As to personal property that was located in Mr. Diallo's apartment, it appears that the inventory of the property in Mr. Diallo's apartment, which both Parties have submitted to the Court, was prepared approximately 12 days after Mr. Diallo's expulsion from the DRC. While Guinea complains about omissions from the inventory (the high-value items discussed below), both Parties appear to accept that the items that are listed on the inventory were in the apartment at the time the inventory was prepared.

31. There is, however, uncertainty about what happened to the property listed on the inventory. Guinea does not point to any evidence that Mr. Diallo attempted to transport or to dispose of the property in the apartment, and there is no evidence before the Court that the DRC barred him from doing so. The DRC states that it did not take possession of the apartment and that it did not evict Mr. Diallo from the apartment. Mr. Diallo himself stated in 2008 that the company from which the apartment was leased took possession of it soon after his expulsion and that, as a result, he had lost all of his personal effects. Therefore, taken as a whole, Guinea has failed to prove the extent of the loss of Mr. Diallo's personal property listed on the inventory and the extent to which any such loss was caused by the DRC's unlawful conduct.

32. Even assuming that it could be established that the personal property on the inventory was lost and that any such loss was caused by the DRC's unlawful conduct, Guinea offers no evidence regarding the value of the items on the inventory (either with respect to individual items or in the aggregate).

33. Despite the shortcomings in the evidence related to the property listed on the inventory, the Court recalls that Mr. Diallo lived and worked in the territory of the DRC for over thirty years, during which time he surely accumulated personal property. Even assuming that the DRC is correct in its contention that Guinean officials and Mr. Diallo's relatives were in a position to dispose of that personal property after Mr. Diallo's expulsion, the Court considers that, at a minimum, Mr. Diallo would have had to transport his personal property to Guinea or to arrange for its disposition in the DRC. Thus, the Court is satisfied that the DRC's unlawful conduct caused some material injury to Mr. Diallo with respect to personal property that had been in the apartment in which he lived, although it would not be reasonable to accept the very large sum claimed by Guinea for this head of damage. In such a situation, the Court considers it appropriate to award an amount of compensation based on equitable considerations (see paragraph 36 below). Other courts, including the European Court of Human Rights and the Inter-American Court of Human Rights, have followed this approach where warranted (see, e.g., *Lupsa v. Romania*, Application No. 10337/04, Judgment of 8 June 2006, *ECHR Reports* 2006-VII, paras. 70-72; *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, Judgment of 21 November 2007 (Preliminary Objections, Merits, Reparations and Costs), IACHR, Series C, No. 170, paras. 240 and 242).

34. The Court next considers Guinea's contention that Mr. Diallo's apartment contained certain high-value items not specified on the inventory described above. Guinea mentions several items in its Memorial (e.g., a diamond-studded watch and two paintings by a renowned artist), but offers few details and provides no evidence to support the assertion that the items were located in Mr. Diallo's apartment at the time of his detentions and expulsion. There is no statement by Mr. Diallo describing these goods. There are no records of purchase, even as to items allegedly purchased from well-known establishments selling high-value luxury items that can be expected to keep records of sales, and which are located outside the territory of the DRC, thus making them accessible to Mr. Diallo. Guinea has put forward no evidence whatsoever that Mr. Diallo owned these items at the time of his expulsion, that they were in his apartment if he did own them, or that they were lost as a result of his treatment by the DRC. For these reasons, the Court rejects Guinea's claims as to the loss of high-value items not specified on the inventory.

35. As to assets alleged to have been contained in bank accounts, Guinea offers no details and no evidence to support its claim. There is no information about the total sum held in bank accounts, the amount of any particular account or the name(s) of the bank(s) in which the account(s) were held. Further, there is no evidence demonstrating that the unlawful detentions and expulsion of Mr. Diallo caused the loss of any assets held in bank accounts. For example, Guinea does not explain why Mr. Diallo could not access any such accounts after leaving the DRC. Thus, it has not been established that Mr. Diallo lost any assets held in his bank accounts in the DRC or that the DRC's unlawful acts caused Mr. Diallo to lose any such financial assets. Accordingly, the Court rejects Guinea's claim as to the loss of bank account assets.

36. The Court therefore awards no compensation in respect of the high-value items and bank account assets described in paragraphs 34 and 35 above. However, in view of the Court's conclusions above (see paragraph 33) regarding the personal property of Mr. Diallo and on the basis of equitable considerations, the Court awards the sum of US\$10,000 under this head of damage.

2. Alleged loss of remuneration during Mr. Diallo's unlawful detentions and following his unlawful expulsion

37. At the outset, the Court notes that, in its submissions at the conclusion of its Memorial, Guinea claims US\$6,430,148 for Mr. Diallo's loss of earnings during his detentions and following his expulsion. However, Guinea makes reference elsewhere in its Memorial to a sum of US\$80,000 for Mr. Diallo's loss of earnings during his detentions. As presented by Guinea, this claim for US\$80,000, although not reflected as a separate submission, is clearly distinct from its claim for US\$6,430,148 which, in the reasoning of the Memorial, only concerns the alleged "loss of earnings" following Mr. Diallo's expulsion. The Court will interpret Guinea's submissions in light of the reasoning of its Memorial, as it is entitled to do (see, e.g., *Nuclear Tests (Australia v. France)*, *Judgment, I.C.J. Reports 1974*, p. 262, para. 29; *Nuclear Tests (New Zealand v. France)*, *Judgment, I.C.J. Reports 1974*, p. 466, para. 30). Therefore, in the present Judgment, it will first consider the claim of US\$80,000 for loss of professional remuneration during Mr. Diallo's detentions (see paragraphs 38-46) and then will examine the claim of US\$6,430,148 for loss of professional remuneration following his expulsion (see paragraphs 47-49).

38. Guinea asserts that, prior to his arrest on 5 November 1995, Mr. Diallo received monthly remuneration of US\$25,000 in his capacity as *gérant* of Africom-Zaire and Africontainers-Zaire. Based on that figure, Guinea estimates that Mr. Diallo suffered a loss totalling US\$80,000 during the 72 days he was detained, an amount that, according to Guinea, takes account of inflation. Guinea states that remuneration from the two companies was Mr. Diallo's "main source of income" and does not ask the Court to award compensation in respect of any other income relating to the period of Mr. Diallo's detentions. Guinea further asserts that Mr. Diallo was unable to carry out his "normal management activities" while in detention and thus to ensure that his companies were being properly run.

39. In response, the DRC contends that Guinea has not produced any documentary evidence to support the claim for loss of remuneration. The DRC also takes the view that Guinea has failed to show that Mr. Diallo's detentions caused a loss of remuneration that he otherwise would have received. In particular, the DRC asserts that Guinea has failed to explain why Mr. Diallo, as the sole *gérant* and *associé* of the two companies, could not have directed that payments be made to him. According to the DRC, no compensation for loss of remuneration during the period of Mr. Diallo's detention is warranted.

40. The Court observes that, in general, a claim for income lost as a result of unlawful detention is cognizable as a component of compensation. This approach has been followed, for example, by the European Court of Human Rights (see, e.g., *Teixeira de Castro v. Portugal*, Application No. 44/1997/828/1034, Judgment of 9 June 1998, *ECHR Reports* 1998-IV, paras. 46-49), by the Inter-American Court of Human Rights (see, e.g., *Suárez-Rosero v. Ecuador*, Judgment of 20 January 1999 (Reparations and Costs), IACHR, Series C, No. 44, para. 60), and by the Governing Council of the United Nations Compensation Commission (see United Nations Compensation Commission Governing Council, *Report and Recommendations Made by the Panel of Commissioners Concerning the Fourteenth Instalment of "E3" Claims*, United Nations doc. S/AC.26/2000/19, 29 September 2000, para. 126). Moreover, if the amount of the lost income cannot be calculated precisely, estimation may be appropriate (see, e.g., *Elci and Others v. Turkey*, Application Nos. 23145/93 and 25091/94, Judgment of 13 November 2003, ECHR, para. 721; *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*, Judgment of 26 May 2001 (Reparations and Costs), IACHR, Series C, No. 77, para. 79). Thus, the Court must first consider whether Guinea has established that Mr. Diallo was receiving remuneration prior to his detentions and that such remuneration was in the amount of US\$25,000 per month.

41. The claim that Mr. Diallo was earning US\$25,000 per month as *gérant* of the two companies is made for the first time in the present phase of the proceedings, devoted to compensation. Guinea offers no evidence to support the claim. There are no bank account or tax records. There are no accounting records of either company showing that it had made such payments. It is plausible, of course, that Mr. Diallo's abrupt expulsion impeded or precluded his access to such records. That said, the absence of any evidence in support of the claim for loss of remuneration at issue here stands in stark contrast to the evidence adduced by Guinea at an earlier stage of this case in support of the claims relating to the two companies, which included various documents from the records of the companies.

42. Moreover, there is evidence suggesting that Mr. Diallo was not receiving US\$25,000 per month in remuneration from the two companies prior to his detentions. First, the evidence regarding Africom-Zaire and Africontainers-Zaire strongly indicates that neither of the companies was conducting business — apart from the attempts to collect debts allegedly owed to each company — during the years immediately prior to Mr. Diallo's detentions. In particular, the record indicates that the operations of Africontainers-Zaire had, even according to Guinea, experienced a serious decline by 1990. In addition, as the Court noted previously, the DRC asserted that Africom-Zaire had ceased all commercial activities by the end of the 1980s and for that reason had been struck from the Trade Register (*I.C.J. Reports 2007 (II)*, p. 593, para. 22; *I.C.J. Reports 2010 (II)*, p. 677, para. 108); this assertion was not challenged by Guinea. It appears that disputes about the amounts payable by various entities to Africom-Zaire and Africontainers-Zaire continued into the 1990s, in some cases even after Mr. Diallo's expulsion in 1996. But there is no evidence of operating activity that would have generated a flow of income during the years just prior to Mr. Diallo's detentions.

43. Secondly, in contrast to Guinea's claim in the present phase of the proceedings devoted to compensation that Mr. Diallo was receiving monthly remuneration of US\$25,000, Guinea told the Court, during the preliminary objections phase, that Mr. Diallo was "already impoverished in 1995". This statement to the Court is consistent with the fact that, on 12 July 1995, Mr. Diallo obtained in the DRC, at his request, a "Certificate of Indigency" declaring him "temporarily destitute" and thus permitting him to avoid payments that would otherwise have been required in order to register a judgment in favour of one of the companies.

44. The Court therefore concludes that Guinea has failed to establish that Mr. Diallo was receiving remuneration from Africom-Zaire and Africontainers-Zaire on a monthly basis in the period immediately prior to his detentions in 1995-1996 or that such remuneration was at the rate of US\$25,000 per month.

45. Guinea also does not explain to the satisfaction of the Court how Mr. Diallo's detentions caused an interruption in any remuneration that Mr. Diallo might have been receiving in his capacity as *gérant* of the two companies. If the companies were in fact in a position to pay Mr. Diallo as of the time that he was detained, it is reasonable to expect that employees could have continued to make the necessary payments to the *gérant* (their managing director and the owner of the companies). Moreover, as noted above (see paragraph 12), Mr. Diallo was detained from 5 November 1995 to 10 January 1996, then released and then detained again from 25 January 1996 to 31 January 1996. Thus, there was a period of two weeks during which there was an opportunity for Mr. Diallo to make arrangements to receive any remuneration that the companies allegedly had failed to pay him during the initial 66-day period of detention.

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46. Under these circumstances, Guinea has not proven to the satisfaction of the Court that Mr. Diallo suffered a loss of professional remuneration as a result of his unlawful detentions.

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47. In addition to the claim for loss of remuneration during his unlawful detentions, Guinea asserts that the unlawful expulsion of Mr. Diallo by the DRC deprived him of the ability to continue receiving remuneration as the *gérant* of Africom-Zaire and Africontainers-Zaire. Based on its claim (described above) that Mr. Diallo received remuneration of US\$25,000 per month prior to his detentions in 1995-1996, Guinea asserts that, during the period that has elapsed since

Mr. Diallo's expulsion on 31 January 1996, he has lost additional "professional income" in the amount of US\$4,755,500. Guinea further asserts that this amount should be adjusted upward to account for inflation, such that its estimate of Mr. Diallo's loss of professional remuneration since his expulsion is US\$6,430,148.

48. The DRC reiterates its position regarding the claim for unpaid remuneration from the period of Mr. Diallo's detentions, in particular the lack of evidence to support the claim that Mr. Diallo was receiving remuneration of US\$25,000 per month prior to his detentions and expulsion.

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49. For the reasons indicated above, the Court has already rejected the claim for loss of professional remuneration during the period of Mr. Diallo's detentions (see paragraphs 38-46). Those reasons also apply with respect to Guinea's claim relating to the period following Mr. Diallo's expulsion. Moreover, Guinea's claim with respect to Mr. Diallo's post-expulsion remuneration is highly speculative and assumes that Mr. Diallo would have continued to receive US\$25,000 per month had he not been unlawfully expelled. While an award of compensation relating to loss of future earnings inevitably involves some uncertainty, such a claim cannot be purely speculative (cf. *Khamidov v. Russia*, Application No. 72118/01, Judgment of 15 November 2007 (Merits and Just Satisfaction), ECHR, para. 197; *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, Judgment of 21 November 2007 (Preliminary Objections, Merits, Reparations and Costs), IACHR, Series C, No. 170, paras. 235-236; see also Commentary to Article 36, Draft Articles on Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission*, 2001, Vol. II (2), pp. 104-105 (concerning "lost profits" claims)). Thus, the Court concludes that no compensation can be awarded for Guinea's claim relating to unpaid remuneration following Mr. Diallo's expulsion.

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50. The Court therefore awards no compensation for remuneration that Mr. Diallo allegedly lost during his detentions and following his expulsion.

3. Alleged deprivation of potential earnings

51. Guinea makes an additional claim that it describes as relating to Mr. Diallo's "potential earnings". Specifically, Guinea states that Mr. Diallo's unlawful detentions and subsequent expulsion resulted in a decline in the value of the two companies and the dispersal of their assets.

Guinea also asserts that Mr. Diallo was unable to assign his holdings (*parts sociales*) in these companies to third parties and that his loss of potential earnings can be valued at 50 per cent of the “exchange value of the holdings”, a sum that, according to Guinea, totals US\$4,360,000.

52. The DRC points out that Guinea’s calculation of the alleged loss to Mr. Diallo is based on assets belonging to the two companies, and not assets that belong to Mr. Diallo in his individual capacity. Furthermore, the DRC contends that Guinea provides no proof that the companies’ assets have, in fact, been lost or that specific assets of Africom-Zaire or Africontainers-Zaire to which Guinea refers could not be sold on the open market.

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53. The Court considers that Guinea’s claim concerning “potential earnings” amounts to a claim for a loss in the value of the companies allegedly resulting from Mr. Diallo’s detentions and expulsion. Such a claim is beyond the scope of these proceedings, given this Court’s prior decision that Guinea’s claims relating to the injuries alleged to have been caused to the companies are inadmissible (*I.C.J. Reports 2007 (II)*, p. 617, para. 98, subpara. (1) (b) of the operative part).

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54. For these reasons, the Court awards no compensation to Guinea in respect of its claim relating to the “potential earnings” of Mr. Diallo.

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55. Having analysed the components of Guinea’s claim in respect of material injury caused to Mr. Diallo as a result of the DRC’s unlawful conduct, the Court awards compensation to Guinea in the amount of US\$10,000.

III. TOTAL SUM AWARDED AND POST-JUDGMENT INTEREST

56. The total sum awarded to Guinea is US\$95,000 to be paid by 31 August 2012. The Court expects timely payment and has no reason to assume that the DRC will not act accordingly.

Nevertheless, considering that the award of post-judgment interest is consistent with the practice of other international courts and tribunals (see, for example, *The M/V “Saiga” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, ITLOS, para. 175; *Bámaca-Velásquez v. Guatemala (Reparations and Costs)*, Judgment of 22 February 2002, IACHR, Series C, No. 91, para. 103; *Papamichalopoulos and Others v. Greece (Article 50)*, Application No. 33808/02, Judgment of 31 October 1995, ECHR, Series A, No. 330-B, para. 39; *Lordos and Others v. Turkey (just satisfaction)*, Application No. 15973/90, Judgment of 10 January 2012, ECHR, para. 76 and *dispositif*, para. 1 (b)), the Court decides that, should payment be delayed, post-judgment interest on the principal sum due will accrue as from 1 September 2012 at an annual rate of 6 per cent. This rate has been fixed taking into account the prevailing interest rates on the international market and the importance of prompt compliance.

57. The Court recalls that the sum awarded to Guinea in the exercise of diplomatic protection of Mr. Diallo is intended to provide reparation for the latter’s injury.

IV. PROCEDURAL COSTS

58. Guinea requests the Court to award costs in its favour, in the amount of US\$500,000, because, “as a result of having been forced to institute the present proceedings, the Guinean State has incurred unrecoverable costs which it should not, in equity, be required to bear”.

59. The DRC asks the Court “to dismiss the request for the reimbursement of costs submitted by Guinea and to leave each State to bear its own costs of the proceedings, including the costs of its counsel, advocates and others”. The DRC contends that Guinea lost the major part of the case and that, moreover, the amount claimed “represents an arbitrary, lump-sum determination, unsupported by any serious and credible evidence”.

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60. The Court recalls that Article 64 of the Statute provides that, “[u]nless otherwise decided by the Court, each party shall bear its own costs”. While the general rule has so far always been followed by the Court, Article 64 implies that there may be circumstances which would make it appropriate for the Court to allocate costs in favour of one of the parties. However, the Court does not consider that any such circumstances exist in the present case. Accordingly, each party shall bear its own costs.

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61. For these reasons,

THE COURT,

(1) By fifteen votes to one,

Fixes the amount of compensation due from the Democratic Republic of the Congo to the Republic of Guinea for the non-material injury suffered by Mr. Diallo at US\$85,000;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Caçado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde; *Judge ad hoc* Mahiou;

AGAINST: *Judge ad hoc* Mampuya;

(2) By fifteen votes to one,

Fixes the amount of compensation due from the Democratic Republic of the Congo to the Republic of Guinea for the material injury suffered by Mr. Diallo in relation to his personal property at US\$10,000;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Caçado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde; *Judge ad hoc* Mahiou;

AGAINST: *Judge ad hoc* Mampuya;

(3) By fourteen votes to two,

Finds that no compensation is due from the Democratic Republic of the Congo to the Republic of Guinea with regard to the claim concerning material injury allegedly suffered by Mr. Diallo as a result of a loss of professional remuneration during his unlawful detentions and following his unlawful expulsion;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Caçado Trindade, Greenwood, Xue, Donoghue, Gaja, Sebutinde; *Judge ad hoc* Mampuya;

AGAINST: *Judge* Yusuf; *Judge ad hoc* Mahiou;

(4) Unanimously,

Finds that no compensation is due from the Democratic Republic of the Congo to the Republic of Guinea with regard to the claim concerning material injury allegedly suffered by Mr. Diallo as a result of a deprivation of potential earnings;

(5) Unanimously,

Decides that the total amount of compensation due under points 1 and 2 above shall be paid by 31 August 2012 and that, in case it has not been paid by this date, interest on the principal sum due from the Democratic Republic of the Congo to the Republic of Guinea will accrue as from 1 September 2012 at an annual rate of 6 per cent;

(6) By fifteen votes to one,

Rejects the claim of the Republic of Guinea concerning the costs incurred in the proceedings.

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde; *Judge ad hoc* Mampuya;

AGAINST: *Judge ad hoc* Mahiou.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this nineteenth day of June, two thousand and twelve, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Guinea and the Government of the Democratic Republic of the Congo, respectively.

(Signed) Peter TOMKA,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge CANÇADO TRINDADE appends a separate opinion to the Judgment of the Court; Judges YUSUF and GREENWOOD append declarations to the Judgment of the Court; Judges *ad hoc* MAHIOU and MAMPUYA append separate opinions to the Judgment of the Court.

(Initialled) P.T.

(Initialled) Ph.C.
