

MEMORANDUM OF INFORMATION

Subject: Senegal - Information on the situation of Karim Wade

We are taking stock of the state of democracy in our country and abuse of particular gravity, which Karim Wade is a victim of, and which are characterized by his arbitrary detention, for violations of human rights, the decline of the rule of law, the violation of international commitments and non-compliance with decisions of international justice, but also on charges of illicit enrichment which are based on nothing.

Sir Abdoulaye Wade, who was in power until February 2012, organized elections that observers from all around the world agree to say they were fully transparent and consistent with the best democratic standards.

After a transfer of power in the pure republican tradition, a new situation has occurred and you will find attached the analysis of it.

However, without any evidence, members of the Government and the office of the new President of the Republic claimed and accused officials of the former regime of embezzling and hiding significant amounts in banks abroad equal to four thousand (4,000) billion CFA francs (about six (06) billion euros or eight (08) billion U.S. dollars).

Investigation procedures have been opened on the basis of these only charges, which the police have stated as patrimony investigation.

And to this day, no audit, no contradictory or unilateral expertise which could constitute accountability has been made by the new regime.

1. ON THE VIOLATION OF HUMAN RIGHTS AND THE DECLINE OF THE RULE OF LAW

1.1 On the court of illicit enrichment (“CREI “)

Not being able to make any criticism whatsoever to all those who have held ministerial responsibilities under the presidency of Sir Abdoulaye Wade, the new regime of President Macky Sall illegally raised a court established under the presidency of Sir Abdou Diouf and deleted by the latter in 1984 (for thirty (30) years): the Repression Court of Illicit Enrichment (CREI).

Against all odds, the new President of the Republic, Macky Sall, issued a decree dated of 10th May 2012 appointing the members of this non-existent jurisdiction which was repealed by the codification organic law of the judicial organization of 2nd February 1984. However, an order cannot revive a law that was repealed by statute. The Repression Court of Illicit Enrichment

(CREI) is legally non-existent and its instrumental political witch-hunts and liquidation constitute a felony.

That court was repealed for several reasons including because it violates some major international principles:

- Violates the principle of presumption of innocence;
- Violates the principle of access to appeals: as the decisions of the Instruction Commission of the Repression Court of Illicit Enrichment (CREI) are not subject to any appeal. This is a violation of a right guaranteed by the Constitution of Senegal (Universal Declaration of Human Rights, the UN Covenant, the European Convention on Human Rights and the African Charter on Human Rights);
- Violates the principle of equality of arms: because only the Special Prosecutor of the Repression Court of Illicit Enrichment (CREI) has access to appeals in case of non-suit;
- Violates the principle that it is the prosecution's responsibility, here, the State of Senegal, to prove offenses. Reversing the burden of proof that characterizes the Repression Court of Illicit Enrichment (CREI) is in total violation of the general principles universally accepted in the countries of rights.

In all cases, the proceedings before the Repression Court of Illicit Enrichment (CREI) of former Ministers of the Republic, including Karim Wade, violate the privilege of jurisdiction as ministers, for acts committed in the exercise of their duties, are subject to the exclusive jurisdiction of the High Court of Justice, as indeed branded and reaffirmed by the judgment of the Court of Justice of the Economic Community of West African States (ECOWAS) dated of 22nd February 2013. The State of Senegal violates the privilege of jurisdiction of Mr. Karim Wade and violates the decisions of international justice by refusing to apply and comply with the decisions of the ECOWAS Court of Justice as branded by the latter in a new judgment of 19th July 2013, where it recalled that, under the revised Treaty, the implementation of its decisions is not an option but an obligation for the States.

1.2 On the appointment of the members of the CREI

It should be remembered that judges, members of the CREI (Instruction Commission, Prosecution office and trial court) were all appointed following a call for applications with benefits and attractive materialistic advantages, and only those who have expressed an interest were recruited following a written request.

Following such a manifest violation of the procedures for appointing judges, and after referral to the Supreme Court, the President of the Republic issued a second decree annulling the act submitted to the High Court, taking care of appointing again the same magistrates now facing a strong suspicion of collusion with political authority.

Despite new precautions, the Administrative Chamber of the Supreme Court decided to cancel the appointment of the Deputy Prosecutor who participated to all proceedings. But against all odds, the Court decided that the nullity resulting law applies only after a period of one (01) month.

All these violations cast a dark shadow on the neutrality and the independence of a political jurisdiction.

1.3 The CREI is a political jurisdiction

It is useful to remember that the law which established the CREI orders that the investigation of any case shall not exceed six (06) months. However, the trial record against Karim Wade which was to be completed by October 17th 2013, is still running in the total illegality. But since the decisions of the Investigatory Chamber cannot be subject to any appeal, the CREI can therefore most illegally maintain someone in jail without a fight.

But more seriously, at the end of six (06) months, Karim Wade is the subject of a second charge for the same offence and the same facts, justifying a new mandate for six (06) other additional months. Karim Wade is subject to arbitrary detention.

The two (02) procedures continue even more to be prosecuted whereas any junction cannot be ordered.

But on the merits, the law on illicit enrichment shall not be applied to enrichment facts that may constitute the offense, but the answer is deemed unsatisfactory by the Special Prosecutor who constitutes the offense.

Thus, the offense of illicit enrichment depends exclusively on the judgment of the Special Prosecutor.

Indeed, the law stipulates that it is the Special Prosecutor's prerogative to make a formal notice to the person concerned who has to prove the non illicit origin of the property, and gives it a period of one (01) months to do so.

The offense is committed when the Prosecutor considers the response unsatisfactory. This is a potestative condition from a party to the proceedings and that requires another party to participate in self-incrimination.

These special provisions make of this exceptional jurisdiction a political jurisdiction, in charge of judging the former political staff which was in business. Nothing and nobody could prevent a desired conviction by the political authority to eliminate political opponents.

Moreover, only Abdoulaye Wade' supporters are prosecuted.

1.4 On the violation of the decisions of the international justice

In a decision dated of February 22nd 2013, the Court of Justice of the Economic Community of West African States (ECOWAS) unequivocally states:

1. Article 101 of the Constitution of Senegal confers a privilege of jurisdiction to ministers and former ministers for acts committed in the exercise of their duties and that “... *the role of prosecution lies with the High Court of Justice*”, which makes the Special Prosecutor of the CREI radically incompetent for a prosecution against the ministers who served under the presidency of Sir Abdoulaye Wade.

2. The ban on leaving the territory of Senegal issued by the Special Prosecutor against a dozen ministers who served under Abdoulaye Wade’s presidency is null and void because “... *not based on any legal basis*”.

3. The State of Senegal by the statements of the Special Prosecutor of the CREI has “... *violated the presumption of innocence*”.

4. The implementation of its decisions is not an option but an obligation for the States.

Despite these unequivocal provisions, the State of Senegal has not complied and decided to violate its own international commitments and the Constitution that citizens freely adopted.

Thus, for almost one (01) year now a dozen former ministers and senior state officials under the presidency of Abdoulaye Wade, including the coordinator of our party, are forbidden to leave the country in any illegality and without any judicial proceedings having been brought against them. It is a violation of the freedom to come and go.

This witch-hunt led by the new regime of Macky Sall is selective as it seeks to neutralize and exclude any political opponents, and destroy the first political opposition of Senegal namely the Senegalese Democratic Party (PDS).

By these violations of human rights, and non-compliance with its international commitments, the State of Senegal marginalizes itself from international law and exploits justice for political purposes under the pretext of good governance.

Faced with such gross violations and net interfering with justice denounced by a large number of human rights advocates, including the Senegalese League for Human Rights (“LSDH”), we thought it was important to keep you informed and to raise your awareness regarding this situation prevailing in Senegal.

2. ON THE CHARGES OF ILLICIT ENRICHMENT AGAINST KARIM WADE

Karim Wade has been in prison for eight (08) months and prosecuted by the State of Senegal for illicit enrichment. The State of Senegal blames him for not having been able to justify the lawful origin of a patrimony of 793 billion CFA francs (1.2 billion euros or 1.6 billion U.S. dollars). Such patrimony does not belong to him, he never possessed it and it was arbitrarily assigned to him, and purposely overstated by the Special Prosecutor of the Repression Court of Illicit Enrichment (CREI).

The State of Senegal supports such charges as also all the evidence and documents transmitted adequately demonstrate that, on the one side, Karim Wade is not the owner, is not

an economic beneficiary, is not a shareholder and is not entitled to this patrimony (companies, lands, properties and bank accounts were arbitrarily assigned to him), and, on the other side, that Karim Wade has no legal, economic and financial link with the companies complained or their respective shareholders.

These wild accusations resulting from a combinatorial operation of the Special Prosecutor of the CREI were possible thanks to the combination of reversing the burden of proof and lack of access to appeals that characterize the "CREI", and that violate the key international principles which are yet guaranteed by the Universal Declaration of Human Rights, the Covenant of the United Nations, the European Convention on Human Rights, the African Charter on Human Rights.

In the proceedings of illicit enrichment for which Karim Wade is currently in jail, no report or audit of the facts of misappropriation of public funds and/ or corruption has been opposed by the State of Senegal to this day, and he was alleged no mismanagement in the exercise of public office.

2.1 Companies falsely attributed to Karim Wade:

To mount these accusations of illicit enrichment against Karim Wade, the State of Senegal, (i) on the one hand, arbitrarily declared that Karim Wade was the owner of 40 companies which constitute 99% of the assets of 793 billion CFA francs unit (ie EUR 1.2 billion or USD 1.6 billions), and (ii) on the other hand, misleadingly used the fanciful notion of “available financial burden of companies”, unknown in accounting and financial management, to consciously overstate the company values and arbitrarily inflate the assets allocated to Karim Wade.

Karim Wade was declared owner of these companies although he brought, before his prosecution, all evidence that he was not a direct or indirect shareholder of these forty (40) companies, and much less, their beneficial owner.

These serious manipulations have allowed the State of Senegal to acknowledge:

- Karim Wade of being the owner of the company DP WORLD Dakar (property of the Government of Dubai and the United Arab Emirates and manager of the container terminal of the Port of Dakar), while at the same time:

- (i) the Government of Senegal negotiates with the leaders of DP WORLD to avoid arbitration in Paris that would have condemned Senegal to pay hundreds of billions of CFA francs in damages to DP WORLD, to have abused DP WORLD under provisional administration in the context of the proceedings against Karim Wade.
- (ii) the State of Senegal sells its 10 % stake in DP WORLD Dakar to DP WORLD and cashes 24 billion CFA Francs from DP WORLD to replenish the state budget.

- Karim Wade of being the owner of Aviation Handling Services (AHS), owned by the wealthy family Bourgi which has installed in West Africa since the beginning of last century and created the company AHS with a total capital 260 million CFA francs (395,000 euros or USD 540,000) but that the State improperly assessed at 250 billion CFA Francs (or 380 million euros or USD 520 million);
- Karim Wade of being the owner of bankrupt companies which are closed for several years but that the State of Senegal estimates at tens of billions of CFA francs;
- Karim Wade of owning forty (40) companies while their shareholders and beneficial owners are well known and identified and that they have brought the requisite proof that they were shareholders and beneficial owners of these companies as also evidenced by the records of shareholders, bylaws, subscription forms, minutes of general meetings and Board of Directors, the evidence and testimony before the Instruction Commission of the CREI;
- Karim Wade of owning forty (40) companies whereas responses to requests for international legal assistance in Senegal formally showed that Karim Wade is neither a shareholder or beneficial owner, and that he has no economic, legal or financial interest with these companies;
- Karim Wade of owning forty (40) companies whereas responses to requests for international legal assistance in Senegal have also demonstrated that there is no financial flows between these 40 companies and Karim Wade. In other words, Karim Wade has never received any payment from these companies or made any payment to these companies.

2.2 Real properties and vacant lands falsely attributed to Karim Wade:

To mount these charges against Karim Wade, the State of Senegal also arbitrarily assigned real properties and vacant lands to Karim Wade for a total amount of twenty three (23) billion CFA Francs. For this, the Special Prosecutor of the CREI has (i) on the one hand attributed to him vacant lands which the State itself owns, and (ii) secondly grossly inflated assessment of these lands. Worse, the Special Prosecutor, in its prosecution against Karim Wade, points the family home of Point E, which President Abdoulaye Wade has owned since 1972.

These serious manipulations allow the Government of Senegal to accuse illogically:

- Karim Wade of owning a plot of 33,000 m² on the cornice while the State owns this land since the real owner has been expropriated for public interest and prior to the prosecution against Karim Wade. Worse, the Government has proposed a compensation for expropriation of three hundred eighty eleven (391) million CFA Francs (or 596,946 Euros) to the real owner of the land while, at the same time, the Special Prosecutor proclaims Karim Wade as owner of this land estimated at eight (8) billion CFA Francs;

- Karim Wade of owning two (02) lands (3,000 m² to 5,000 m² on the VDN and at Yoff Airport), which are the full property of the State as evidenced by the statements of immovable rights obtained by the Department of Land Conservation of Dakar;
- Karim Wade of owning two (02) lands for an amount of 1.5 billion CFA francs, while the lands were leased by the State for a total of four (04) million CFA Francs per year. Lease terminated by the State after one (01) year;
- Karim Wade of owning the Eden Roc building, belonging to the Bourgi family which is one of the largest developers and property owners in Senegal. It should be noted at the same time that a part of the land on which was built the Eden Roc project of the Bourgi family was assigned permanently by a decree signed by the Prime Minister Macky Sall;

Karim Wade only owns a home under construction at Point E which is the extension of the house of President Abdoulaye Wade, given to him as part of a parental partition, and a building (4 floors) accommodating the staff at the service of President Abdoulaye Wade and their family.

Abroad, the only property of Mr. Karim Wade is an apartment located in Paris, Rue de la Faisanderie, acquired at a price of 381,679 Euros (two hundred and fifty million CFA Francs) through on a loan from Société Générale to be repaid over seven (07) years.

The refund is in progress.

2.3 Bank accounts falsely attributed to Karim Wade:

To build these accusations against Karim Wade, the State of Senegal through the Special Prosecutor of the CREI assigns to Karim Wade twenty-seven (27) bank accounts in Monaco and payments made in the financial statements between 2002 and 2013. For this, the Special Prosecutor handled and processed exculpatory materials for Karim Wade and transmitted by the justice of Monaco as incriminating evidence, such as the findings of the court expert committed by the Instruction Committee who are in favor of Karim Wade and formally demonstrate that:

- Karim Wade is not the holder, is not legal representative, does not have any signing authority, and is not the beneficial owner of these 27 accounts belonging to natural or legal persons which Karim Wade has no economic, financial or legal link with;
- The elements of the mutual legal assistance and the report of the expert committed by the judges establish that there have never been any financial flows between these 27 accounts and Karim Wade.

The Monaco bank confirmed this absence of financial flows between the holders of the twenty seven (27) accounts and Karim Wade.

Ultimately, Karim Wade holds a single account in Monaco which has a balance of \$ 1.3 billion CFA Francs that comes from a personal donation to President Abdoulaye Wade by an Arabic Head of State he asked his son Karim to conserve. President Wade had also taken care prior to proceedings against his son to inform the President Macky Sall of the existence of the account and stating him that “the amount available to the Julius Baer Bank on the account of my son Karim Wade comes from a personal donation of a leader of an Arabic country that our country and its leaders have always maintained personal relations of brotherhood with... and that he had the leisure to interrogate our arabic counterpart about the reality of this gift”.

CONCLUSIONS

Karim Wade is a political prisoner detained arbitrarily and held hostage by the Senegalese regime of President Macky Sall as part of an illegal procedure violating human rights, the Constitution and the international commitments of Senegal, implemented before a political jurisdiction, the “CREI”, which does not exist in the Senegalese judiciary and that no longer exists since 1984.

Despite the wild accusation of personal enrichment of nearly eight hundred (800) billion CFA francs, the new Senegalese authorities have so far no charge or evidence to establish the truth of their accusation, while Karim Wade has been held in detention for eight (8) months.

His automatic release and the end of all proceedings against him appear not only as a legal necessity, but also as a pledge to restore the Senegalese justice heavily exploited in this case called “tracking down ill-gotten wealth”, which threatens the peace and social and democratic stability of Senegal.