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Countries at the Crossroads 2011 - Senegal

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INTRODUCTION

In 2010, Senegal celebrated 50 years of independence, as well as the tenth anniversary of President Abdoulaye Wade's historic election to office. Beginning in 1963, Senegal was a de facto one-party state under the rule of the Socialist Party (PS). One of Africa's early reformers and a PS member, President Leopold Sedar Senghor, slowly initiated a democratic opening in the mid-1970s. In 1975, Wade was permitted to form one of three officially recognized political parties, the Senegalese Democratic Party (PDS), and ran as its presidential candidate in 1976 and every successive presidential election since then. Throughout the 1980s and 1990s, Senghor's successor, Abdou Diouf, undertook political reforms that restored an unlimited multiparty system, adopted a consensual electoral code negotiated by the major parties, and established semi-autonomous agencies to monitor electoral law and balance in the state-run media.

Wade promised during his 2000 campaign to restore a parliamentary system, which had been replaced by a form of hyper-presidentialism after a political showdown between President Senghor and his Socialist ally Prime Minister Mamadou Dia in 1962. The ratification of Senegal's fourth constitution in 2001, however, did little to change the presidential regime. Instead, President Wade has repeatedly taken actions to strengthen

the power of the presidency over the other branches of government and undermined the autonomy of oversight agencies such as the Authority for Regulating Public Contracts (ARMP). Unchecked presidential power has contributed to an increase in corruption and allegations of misappropriation that seldom reach the Senegalese courts, which are politically constrained from successfully prosecuting well-connected individuals. The capacity of the National Assembly to check executive power has been constrained by the recent reinstitution of a senate in which 65 percent of the members are presidential designees and by the manipulation of the assembly's leadership following its efforts to obtain an account of extra-budgetary spending by an agency headed by President Wade's son, Karim. There is some concern that Karim Wade is being groomed to succeed his father, who plans to run for a third term in office despite a two-term constitutional limit.

Senegal faces a number of challenges. Corruption is a significant brake on economic development, which has been further hindered by the recent global economic downturn. The private sector in Senegal is rather anemic and heavily dependent on favorable relations with state officials for public contracts, though the Senegalese state is notoriously in arrears for its payments to the private sector. Despite a limited advertising base in a weak economy, Senegal's private media is an active watchdog along with a growing number of civil society organizations that focus on governance issues, although questionable professionalism among a few journalists has somewhat tainted the reputation of the Senegalese media and been used to justify its repression. Under the Wade administration, there have been serious infringements on civil liberties, particularly freedom of the press and the right to assemble.

ACCOUNTABILITY AND PUBLIC VOICE

Despite the dominance of the ruling party, Senegal holds regular competitive elections. President Abdoulaye Wade was re-elected in the 2007 election, which was declared free and fair by ECOWAS observers. His re-election was marred, however, by harassment of political opponents and journalists although it was not seen as a serious hindrance to a free and fair election.¹

During the three weeks of official campaigning, state-operated media demonstrated a clear bias for Wade's re-election, despite the fact that Senegal's electoral code requires balanced reporting on candidates. This bias is particularly egregious given that the only national television station is state-run. The worst offender was the state-run daily paper, *La Soleil*, which repeatedly expressed support for Wade, proclaiming itself "the president's newspaper" and publishing a 12-page special section on Wade's platform. While coverage of the president occupied 40 percent of the newspaper's space, all other

candidates combined received less than 9 percent.² Given growing economic hardships since Wade's election in 2000, many political analysts anticipated he would not be able to win a majority in the first round of the presidential elections. Under Senegalese electoral law, this would have required a run-off against the leading opposition candidate. Wade nevertheless managed to win 55.9 percent of the votes, defeating 14 other candidates, including former Prime Minister Idrissa Seck (14.9 percent) and PS leader Ousmane Tanor Dieng (13.6 percent).

The opposition generally praised the Autonomous National Electoral Commission (CENA), which is responsible for the organization of elections and assurance of their transparency. However, the General Direction of the Elections within the Ministry of the Interior, which is responsible for voter registration and electoral lists, was accused of manipulating the process to favor the ruling party through practices that date back to the Socialist regime, such as withholding voter cards from opposition supporters.³ After Wade's victory, opposition leaders demanded a meeting with the president to discuss their proposals for reforms needed before the June 2007 legislative elections, including the replacement of the interior minister, Ousmane Ngom, who was accused of manipulating the voter registry and blocking the distribution of voter cards to opposition supporters. President Wade refused to meet with the opposition until they recognized his re-election, which most had refused to do. In response, the major opposition parties called for a boycott of the legislative elections under the banner *Siggil Senegal* (Stand Up, Senegal).

While voter turnout is typically lower for legislative elections, participation in 2007 dipped to 35 percent from 70 percent in the presidential election. Wade's PDS party won 131 of the 150 seats (87 percent), up from 89 of the 120 seats (74 percent) in the previous legislature. The twelve other parties that decided to run candidates won no more than three seats each, receiving less than 5 percent of the vote.⁴ Most analysts consider the boycott to have been a tactical error, though the decision to boycott was likely motivated by their lack of preparedness and limited resources for the legislative elections, rather than a political strategy.

In March 2009, the opposition came back to successfully contest Senegal's local elections. After having been repeatedly postponed for what many suspected were political motivations, local elections had an usually high turnout of 50 percent. While the PDS performed well in rural areas, receiving an overall plurality of 48.5 percent of votes, opposition victories occurred in most major towns, including Dakar, where President Wade's son Karim lost his first bid for elected office. The opposition claimed that the local elections were a referendum on the Wade administration's performance, especially scandals surrounding Karim, but the ruling party attributed its poor showing to

economic problems from the global recession.⁵ Despite their electoral victory, opposition leaders have accused the Wade administration of disrupting their efforts to administer their localities, especially the PS mayor of Dakar, Khalifa Sall, since his defeat of Karim Wade.

The National Assembly has on occasion asserted itself beyond its historical role of rubber stamping presidential policy, though the current near-monopoly of the ruling party in the legislature makes this increasingly difficult. Competition within the ruling party has permitted some demonstration of independence, such as president of the National Assembly Macky Sall's March 2008 request for an audit of the National Agency for the Organization of the Islamic Conference (ANOCI), which is headed by Karim Wade.⁶ Infuriated by the audacity of the legislature to request an account from an executive branch official, President Wade pushed for legislation that shortened the assembly president's term, effectively dismissing Sall after that legislation's landslide passage. After Sall was expelled from the PDS, he formed his own party, Alliance for the Republic Yaakaar (Belief). The justification for the shortening of Sall's term included "misunderstandings between the executive and the legislative power ... [and] a crisis of confidence between the president of the Republic ... and the president of the National Assembly."⁷

The re-creation of the Senegalese Senate in 2007 has also been interpreted as a means to side-line an "undisciplined" assembly. The Senate was initially created in the waning years of the PS regime, when that regime was similarly losing effective control over the National Assembly and seeking to create patronage positions to prop up lagging support within the divided ruling party. After the PDS took power, the Senate was dissolved as an expensive and unnecessary political tool of its Socialist predecessors. By February 2007, however, President Wade had changed his tune, declaring the need for the Senate to "deepen and consolidate [Senegal's] democratic system."⁸ While its predecessor was composed of senators indirectly elected by a college of locally elected officials, only 35 of the 100 seats in the new Senate are similarly selected, with the remaining 65 directly appointed by the president. As 34 of the 35 elected seats went to PDS candidates in the August 2007 senatorial elections, the ruling party now controls 99 percent of the Senate.⁹ Technically the Senate's legislative power is comparable to that of the National Assembly, but given the method of selection, it functions primarily as a presidential check on the assembly rather than as an autonomous legislative power.

There are numerous examples of President Wade's utilizing his party's legislative super-majority to push through legal reforms, including a return to the seven-year presidential term starting with the 2012 election, which some critics maintain is an effort to insure that Karim inherits power. In September 2009, President Wade announced his intention

to run again in 2012, asserting that he is not constrained by the constitutional limit of two terms as his tenure clock was reset when the constitution was revised in 2001, a justification used by various other African leaders. With the reintroduction of a constitutional provision for a presidentially appointed vice president, the concern is that Wade may resign after winning a third term, ceding power to his filial dauphin, following the model of President Leopold Sedar Senghor, who handed the reins to Abdou Diouf in 1980. An extension of the presidential term would permit Karim more time to consolidate power before he would have to stand for election.¹⁰

Senegal has a vibrant civil society that benefits from a broadly supportive legal framework. Although there are over 12,000 registered civil society organizations (CSOs), most are not officially registered, in part because the registration process is cumbersome, lengthy, and dependent on the political sensitivity of the organization. For example, the 1996 accreditation of Senegal's first human rights organization (RADDHO) took six years. It is commonly suggested today that registration is expedited for political allies of the ruling party.

The political influence of CSOs is primarily that of a watchdog, as opposed to an active participant in the formulation of public policy. Testimony by CSO leaders during legislative deliberation, for example, is rare. Government officials do frequently attend forums with CSOs, particularly those funded or organized by international donors. The Wade administration, however, not only refused to participate in but also attempted to undermine the recent National Caucus (AN), organized to promote state-society dialogue on various socioeconomic and political issues facing Senegal. Rather than engage with the more than 140 participating CSOs, the government pressured prominent individuals to decline invitations to participate. Indeed, Farba Senghor, then the minister of handicrafts and air transportation, as well as chief of propaganda for the PDS, publicly threatened retribution against any businessman, marabout, or functionary who participated in the meetings.

Farba Senghor has been at the forefront of several confrontations, including threatening a reporter in August 2007 and publically stigmatizing two private newspapers that were subsequently ransacked in August 2008 by armed attackers driving a state-owned vehicle.¹¹ Although 12 men were convicted for the vandalism, the managing editor of one of the papers, *24 Heures Chrono*, was also sentenced to prison for offending the head of state, publishing false news, and threatening public order based on an article that alleged the president and his son were involved in money laundering. President Wade ultimately pardoned the editor, but the convicted vandals also received a presidential pardon in 2009.¹² This episode illustrates the rising level of intimidation and attacks on journalists from Senegal's numerous private media outlets.¹³ Senegal is

frequently criticized for penal offenses that stifle freedom of expression and the press, including criminal defamation and offending the head of state, as well as its lack of a freedom of information act.¹⁴ Since 2004, when President Wade pledged support for the decriminalization of defamation, at least a dozen journalists have been sentenced to prison on libel charges.¹⁵

Inadequacies of the legal code, combined with frequent harassment and attacks on journalists, have arguably created a climate for self-censorship in Senegal, although clearly not all journalists have succumbed to this pressure. Most prominent is Abdou Latif Coulibaly, who has led a crusade against government corruption and impunity through his investigative journalism and several earth-shaking books that have led to his international acclaim as well as harassment and criminal prosecution for defamation by the Senegalese government.¹⁶

The open hostility toward the media by various officials as well as powerful Muslim leaders is believed to have been fueled by the president's own contemptuous attitude toward journalists.¹⁷ Perhaps the most egregious example was his response to the attack on two journalists who were violently beaten in 2008 by police officers after a soccer match. While attending a conference of the National Association of Black Journalists in Chicago, President Wade maintained that the hospitalized journalists had provoked the incident. When asked if he nevertheless condemned their beating, he replied: "Who is a journalist? They are all politicians!"¹⁸

By contrast, Senegal has next to no regulation of the internet, and there are currently many Senegalese websites and blogs that feature political commentary critical of government policies and performance. The lack of censorship may reflect, however, Senegal's relatively limited access to the internet, and may change as internet access increases.¹⁹ Given Senegal's high illiteracy rate, the most important source of news is radio with more than 80 radio frequencies allocated for community, public, and private radio stations.²⁰

CIVIL LIBERTIES

Protection of civil liberties has noticeably declined since President Wade assumed office, with conditions significantly deteriorating since his re-election in 2007. Police brutality and the use of torture during detention are rampant in Senegal. While torture is not explicitly prohibited in the 2001 constitution, the Senegalese penal code banned it in 1996. However, allegations are rarely investigated, let alone prosecuted, without significant external pressure, and rare convictions do not lead to punishment proportional to the perpetrators' crime. This may be attributed in part to the lack of an effective National Observer for Places of Deprivation of Liberty, as required under the

Optional Protocol of the Convention against Torture, which Senegal ratified in 2006. After a three-year delay, Senegal finally created an observatory in 2009; however, to date, no one has been appointed to the position of national observer. According to human rights organizations, torture is commonly used in Senegal to both punish and extract (sometimes false) confessions from detainees. Defendants frequently receive prison terms based on these forced confessions, in violation of the United Nations Convention against Torture, which Senegal ratified in 1986.

In addition, deaths during detention are rarely investigated or prosecuted. In one notorious incident in February 2007, an accused thief who appeared to have been beaten by police died in custody. His funeral in the southern city of Kolda sparked a violent demonstration that police repressed with live ammunition, leading to one death. As of late 2010, the subsequent investigation had not resulted in any report or charges.²¹

The National Human Rights Organization (ONDH), an NGO, has also denounced Senegal's "abnormally long preventative detentions," citing various examples of defendants who have ultimately been sentenced to one to six months in prison after having already served four years in preventative detention. Others who have been acquitted after six or more years in prison have received no reparations for their excessive detention.²²

Excessive delays in detention are exacerbated by the poor conditions of Senegal's prisons, which are overcrowded and lack adequate sanitation. Prisoners reportedly face sexual assault and lack access to medical care. The ONDH reported a national ratio of one doctor per 5,000 inmates, and the International Red Cross claims that the government spends less than a dollar a day per inmate to cover all costs, one of the lowest rates in the world.²³

Article 1 of Senegal's constitution recognizes "equality before the law of all citizens without distinction based on origin, race, sex or religion." Senegal has signed a wide array of international conventions and passed various laws to promote the rights and protection of women and girls, including the recently passed Law on Parity that requires gender equality on all party candidate lists for elected office. Currently, women hold 18 percent of the seats in the National Assembly, 40 percent in the Senate, and 6.5 percent of the mayoral positions. Women also hold nearly a quarter of the ministerial posts, including 15 percent of the elite *Ministres d'Etat*.

Senegalese women have a weaker position than men in terms of pay and access to employment.²⁴ In an effort to promote women's economic empowerment, the Ministry of Family and Female Entrepreneurship has financed more than 700 projects for women since 2005 to encourage them to enter new fields.²⁵ Senegalese women also have equal property rights and access to bank loans under Senegalese law; however, religious

customs and social practices continue to make it difficult for Senegalese women to inherit land or obtain a loan.

Gender inequality in Senegal reflects the need for further reform, such as revision of the family code and better enforcement of existing legislation. Instead of reinforcing the rights of women under the family code, such as the right to opt for a monogamous marriage, in 2003 Islamic leaders pressed for the restoration of Muslim courts and the establishment of Shari'a as the main source of family law. However, the secular tradition of the Senegalese state won out and the debate quickly died down. The state has failed to apply existing provisions in the penal code against domestic violence, sexual harassment, and assault. Various women's organizations have called for the creation of a gender observatory, as promised by President Wade in 2007. An observatory could help address continuing problems related to forced marriage, female genital mutilation (outlawed in 1997), and maternal deaths due to illegal abortions.²⁶

Protection of the disabled will hopefully be advanced by the June 2010 passage of the Law on Social Orientation that guarantees handicapped Senegalese various civil rights. Representatives of the disabled, however, have already expressed concern regarding the implementation of provisions, such as the creation of a high authority responsible for handicapped persons, to insure that this is not just another empty legal shell.²⁷ As for the law's provision that 15 percent of civil service posts are to be reserved for handicapped persons, this goal seems more symbolic than realistic, given their limited numbers and restricted access to education to date.

The disabled community was stunned by the prime minister's edict in August 2010 to enforce a 1975 law banning begging on public thoroughfares. Initially instituted to insure public safety, the law is now being enforced to protect children from being forced to beg for their Koranic instructors, although all classes of beggars were rounded up. For many disabled Senegalese, begging is their only source of income. Leaders in the disabled community have, therefore, vehemently criticized the state's "unilateral" decision to ban begging and the rounding up of beggars as arbitrary acts that demonstrate their status as merely partial citizens.²⁸

Human rights organizations, on the other hand, have praised the state's action as long-overdue support for their campaign to stop the exploitation of Senegalese children. Two recent reports by international actors have increased pressure on the Senegalese government to protect children from exploitation, physical and sexual abuse, and human trafficking. *Talibes* (Koranic students) reportedly beg for upwards of seven hours a day, ostensibly in exchange for Koranic instruction, while living under horrific conditions and often subjected to various forms of abuse.²⁹ The forced begging of talibes is considered

child trafficking under the UN Trafficking in Persons Protocol because religious leaders (marabouts) transport or receive talibes for purposes of exploitation.³⁰

Although nine marabouts were arrested for the exploitation of their talibes as beggars in September 2010, they only received a six-month suspended sentence and a \$200 fine, a far cry from the 5-year and \$4,000 maximum penalty under the law.³¹ Since then, the Senegalese media has reported that many marabouts intend to continue the practice of requiring their talibes to beg.

Discrimination against the homosexual community has been an increasingly visible problem, including increasing arrests and prosecutions for same-sex acts under Senegal's penal code, which criminalizes homosexual relations. This was the case in the December 2008 prosecution of nine male HIV/AIDS activists criminally charged with having sexual relations with other men. Activists from AIDES Senegal, an officially registered NGO that provides HIV/AIDS prevention services to men who have sex with men, were tortured during their arrest and detainment even after each confessed (under duress) to being a "goorjigen" (man/woman in Wolof). The defendants were sentenced to eight years in prison.³² The conviction was later overturned, but there was no investigation into the allegations of torture, and most of the men had to go into hiding in order to escape hostility. The frenzy surrounding this mounting homophobia has been reinforced by the media; one Senegalese journal actually blamed homosexuals who "have abused the tolerance of their compatriots in seeking to live too openly in their sexual deviance, going so far as to organize and publicize their marriages."³³ Many Muslim leaders have publicly condemned homosexuality,³⁴ and the government has indicated that it has no intention of decriminalizing homosexuality.³⁵

President Wade is particularly susceptible to pressure from the Muslim community, having closely associated himself with the Murid Sufi brotherhood. Muslims represent over 90 percent of the population, although they are subdivided into several prominent Sufi brotherhoods, the two largest being the *Tijaniya* and the *Muridiya*. Constitutionally a secular country, the government has historically upheld its citizens' rights to practice the religion of their choice, and political leaders have courted support from all sects and attempted to balance their distribution of political resources among them. In contrast with his predecessors, however, Wade has been criticized for publicly prostrating himself before the Murid supreme leader and lavishing the Murid community with public funds, including an approximately \$213 million modernization program for the Murid holy city of Touba announced in December 2007.³⁶

Tensions with the Christian minority have also been raised as a result of gaffes by the president, such as his comparison of the scantily-dressed figures in Dakar's new

Monument of African Renaissance to Catholic images of Jesus Christ in attempt to defend the monument against charges that it is un-Islamic. This blunder compounded the scandal created by Wade's assertion that he should personally receive a percentage of the proceeds generated by the monument, citing intellectual property rights as it was his idea.³⁷

In terms of ethnic relations, Senegal has historically been socioeconomically dominated by the Wolof ethnic group, which represents approximately 40 percent of the population, although over 80 percent of Senegalese speak Wolof as the lingua franca the country. Fortunately, there have been relatively few ethnic tensions, let alone violence in Senegal. This can be attributed primarily to the inclusive form of ethnic arithmetic used by Senegalese politicians since the time of President Senghor that insures both ethnic elites and their constituents access to public resources. The notable exception to this is the southern region of Casamance, where a rebel group has led a secessionist movement since the early 1980s. Nevertheless, the Jola ethnic group, which dominates both this region and the rebel movement, has not experienced significant bias or violence outside the region, and many Jola have been calling for peace for over a decade.

Senegal's constitution guarantees freedom of association and assembly, and the right to strike and collective bargaining are also recognized under Senegalese law. Nevertheless, NGO and trade union activists are often harassed, as are journalists and opposition leaders. Senegalese authorities regularly refuse to permit and repress both authorized and unauthorized demonstrations. In May 2007, for example, female teachers were beaten up by the police after the disruption of an authorized demonstration by the United Teachers' Front. While some protests are permitted in Senegal, any that are seen as politically sensitive or ill-timed are not authorized and are regularly suppressed. Organizers nevertheless often press forward with their planned rallies, risking inevitable harassment and frequently arrest.

Freedom of association in Senegal is limited by various restrictions, including the authorities' broad powers to dissolve a trade union by a simple administrative decision, in violation of the Convention on Trade Union Rights to which Senegal is a signatory. In addition, NGOs and trade unions cannot legally exist without approval by the Ministry of the Interior, which has allegedly led to discrimination in their recognition. Politicians have also been accused of creating unions in "attempts to take over and divide the trade union movement." Some unions have even been recognized without holding a constitutive assembly, while others have had to wait for years for official recognition.³⁸

The right to strike is constitutionally limited by the proviso that strikes cannot infringe upon freedom to work or jeopardize an enterprise. In addition, authorities have the power to requisition workers to replace strikers to ensure public safety, order, and continuity of public services and "other essential needs." In cases where union activists have been threatened, fired, or even physically assaulted by their employers, typically no disciplinary or legal actions have been taken. For example, no action was taken against a hospital director who in January 2009 locked a local leader of the General Workers' Federation of Senegal in his office and beat him in response to criticism of the management and a two-month delay in salaries.³⁹

RULE OF LAW

The Senegalese constitution provides for judicial independence from the executive and legislature, but the judiciary's autonomy is compromised in practice by the politicized process by which the members of judiciary are appointed, promoted, and transferred. The president of the republic names judges to positions based on advice from the Superior Council of Magistrates (CSM) without legislative confirmation. The president, assisted by the minister of justice, also chairs the CSM, which "functions more like a secretariat for the minister of justice than an institution with its own powers."⁴⁰ This effectively gives the executive branch control over the judiciary. The executive has used this power to promote like-minded individuals, by "posting a troublesome judge to a remote jurisdiction or promoting more pliable ones to senior positions," which has resulted in judicial self-censorship.⁴¹ There is nevertheless some evidence of judicial autonomy, such as the Constitutional Court ruling against disproportionate allocation of legislative seats by the president in 2006. However, this is outweighed by examples where the judicial system is seemingly towing the political line of President Wade and his ruling party, including the criminal prosecution of journalists critical of the regime. Even the successful appeal for the release of the HIV/AIDS activists in 2009 can be tied to the government changing its course after it came under international pressure, as opposed to juridical review of the merits of the case.

In terms of the prosecution of public officials, Senegal has an ad-hoc High Court of Justice (HCJ) that tries cases of official misconduct and corruption. Presided over by a member of the judiciary, the HCJ is elected from among the legislature, which, as previously noted, is dominated by the ruling party. Until the arrest of former Prime Minister Seck in 2005, the HCJ had laid dormant for decades, despite rampant allegations of corruption among top officials by the media and various international actors.

The contrast between Seck's treatment by the judicial system and that of Karim Wade is illustrative of the HCJ's politicized nature and the political manipulation of the judicial system more generally. In December 2004, Seck lost his position as prime minister after a falling out with President Wade, who allegedly saw his growing popularity as a political threat.⁴² In July 2005, the government alleged that Seck had misappropriated funds from a municipal project and charged him with "endangering national security." In August, the National Assembly voted to also prosecute him for embezzlement through the HCJ. Following a political rapprochement between Seck and Wade, the charges for threatening state security were dropped, and an investigative panel of the Supreme Court partially dismissed the corruption charges and ordered him released from prison in early 2006.⁴³ In contrast, Karim Wade and other ranking officials of the ANOCI were never questioned by the legislature regarding allegations of corruption that were widely covered in the media.⁴⁴

Under Senegalese law, all detainees and defendants are innocent until proven guilty; however, this legal principle is rarely adhered to during arrests, interrogations, or criminal prosecution. Senegalese law also guarantees the right to a fair public trial, but enjoyment of this right is significantly influenced by the defendant's wealth. While defendants are entitled to counsel, the state is unable to provide one for indigent defendants. In general, Senegal's judicial system is weakened by a lack of adequate resources, including insufficient or often under-qualified personnel.⁴⁵

Senegal is renowned as one of the few African countries to have never experienced a coup d'état. But while the military have characteristically refrained from interfering in the political process, security forces have been repeatedly used by the executive branch to suppress political opposition in the name of social order. In December 2008, for example, security forces severely repressed various demonstrations held around country against declining living conditions, high unemployment, and deepening poverty. A demonstration in Kédougou deteriorated into violence and destruction of public property. Security forces fired live ammunition, killing at least one person and wounding several others. Dozens of detainees alleged that they were brutally beaten and even electrocuted to force confessions of their involvement. Although President Wade pardoned the 19 people convicted in March 2009, Amnesty International maintains that they were pardoned to shield the perpetrators of torture from prosecution and end investigations.⁴⁶

Amnesty International has lodged similar charges against the general amnesty granted after the government signed a peace accord in 2004 with leaders of the Movement of Casamançais Democratic Forces (MFDC), which has been waging a secessionist struggle since the early 1980s. Amnesty International maintains that "By declaring an amnesty

before taking any legal proceedings against the soldiers of government forces and armed members of the MFDC responsible for serious human rights violations and abuses," President Wade deprived hundreds of victims and their families of their right to justice and reparations for extrajudicial executions, abductions, torture, and long-term arbitrary detention without trial.⁴⁷ Despite sporadic violence, the decline in the intensity of the Casamance conflict has also meant a reduction in human rights violations on both sides of the conflict. Unfortunately, this has not brought an end to human rights violations by Senegal's security forces.

Amnesty International charged that Senegalese "authorities have consistently ensured impunity for members of the security forces responsible for human rights violations."⁴⁸ A major obstacle to the prosecution of members of Senegal's security forces is the requirement of an *ordre de poursuite*, authorization from the supervising ministry – the Ministry of the Interior in the case of police officers and the Ministry of Defense in the case of gendarmes and military personnel. This procedure in effect grants the executive branch veto power over any judicial proceedings against members of the security forces. Contributing to this impunity, Senegalese security forces are under the jurisdiction of military courts, which typically are less likely than civilian courts to convict.

The Senegalese constitution guarantees its citizens the right to property. Under Article 15, no one can be deprived of their right to property except in cases of "public necessity" for which they must receive a "just and prior indemnity," a provision that does not seem to be widely abused. The article also states that men and women have the same rights to "possess and own land" under the terms set by Senegalese law.

In 2008, the government streamlined procedures for registering property and reduced associated costs. However, in practice the administration of property title and land registration procedures are considered uneven, particularly outside urban areas. In terms of adjudication, Senegal's poorly staffed commercial courts results in decisions that "can be arbitrary and inconsistent." Enforcement of intellectual property rights in particular is weak despite an adequate legal and regulatory framework.⁴⁹ Land seizures, particularly in Dakar, are not uncommon when individuals with political and economic influence have their eye on a piece of property.

ANTICORRUPTION AND TRANSPARENCY

While President Wade has clearly sought to establish a legacy as an anticorruption reformer, but the government continues to lack effective internal accountability mechanisms and external checks and audits. Agencies established to combat corruption continue to be underfunded, understaffed, and undercut when they attempt to hold government agencies and public officials accountable.⁵⁰

Inadequacies in the government's anticorruption campaign are glaringly obvious to Senegalese citizens, as well as journalists and advocates for transparency, most notably the lack of a legally mandated declaration of assets by public officials. In Nigeria, a country renowned for its rampant corruption, 71 percent of those surveyed by Transparency International (TI) indicated that the government is effective in its struggle against corruption, whereas 72 percent of Senegalese surveyed believe the government's efforts are ineffective. Consequently, Senegal's ranking in TI's Corruption Perception Index continues to slide, dropping from 85 out of 180 to 105 out of 178 countries in just two years.⁵¹

Both grand and petty corruption are widespread in Senegal, with bribery and other facilitation payments considered normal despite frequent airing in the media. This was the justification used in 2009 when the departing IMF representative to Senegal, Alex Segura, received a \$200,000 parting gift from President Wade. After accepting the money, Segura contacted the IMF ethics bureau, which instructed him to take it to his home country of Spain, where it was returned to the Senegalese embassy. After an initial denial of government involvement, President Wade maintained that it was a Senegalese tradition to give a farewell gift and that the large sum of money was a mistake by an aide. The Economist Intelligence Unit was not reassured: "That a presidential aide was able to stuff a briefcase from a stockpile of cash, with an amount decided at his own discretion and without a due account being made, is perhaps more worrying than if the President had in fact intended to reward, bribe, or embarrass Mr. Segura," who had been a harsh, outspoken critic of fiscal malpractice and mismanagement by the Senegalese government.⁵²

Senegal has a well-developed commercial and investment code, but its application is not always consistent and lacks transparency. A recent example is the controversy surrounding the cell phone company Millicom, which first obtained a license in 1998 for \$100,000. After operating in Senegal for 12 years, Senegal sought to renegotiate the license. In February 2010, however, an American website published an article that claimed that Karim Wade and a special counselor for new technologies had demanded that \$200 million be given to them personally in exchange for renewing Millicom's license. The alleged informant, a representative of Millicom's Senegalese affiliate, later denied witnessing such a shakedown, while the Senegalese government claimed that this was the fee to be paid to the state, a price that they argued reflects the market price.⁵³

Senegal is a signatory to various international conventions to combat corruption and has a relatively comprehensive legal framework criminalizing corruption, though it lacks regulations protecting whistle-blowing. The primary problem lies with enforcement largely, which is attributable to the weakness of the institutions responsible for their

application. Over a quarter century ago, Senegal created a Court for the Repression of the Unlawful Accumulation of Wealth (CREI), which remains inactive today. In 2004, the Wade administration created the National Commission against Non-Transparency, Corruption, and Misappropriation (CNLCC). Although formally independent, the CNLCC is not permitted to make public the annual reports it submits to the president, nor can it initiate judicial proceedings. Its lack of legal expertise, resources, and regular funding make it susceptible to political pressure and undermine its effectiveness. Similarly constrained, Senegal's National Cell for the Treatment of Financial Information (CENTIF), which was instituted in 2005, has not yet prosecuted a single case related to corruption, money laundering, or other financial crimes it is responsible for investigating. The autonomy of the Supreme Audit Institution (IGE) is even further limited. Serving at the pleasure of the president, the IGE can only initiate an investigation at his request. On the other hand, Senegal's ombudsman's office receives regular funding and is well staffed, with the head mediator protected by a six-year mandate. However, the agency has limited investigative powers, relying on cooperation with the IGE and other public investigative agencies.⁵⁴

Even when there has been significant political pressure, the government has failed to take action against corrupt officials, except when politically motivated, as in the case of Idrissa Seck. A prominent recent example of Senegal's faint-hearted attitude toward pursuing allegations of corruption is the failure to investigate accusations of the mismanagement of ANOCI funds. Responsible for public contracts to complete infrastructure projects in preparation for an OIC summit in 2008, ANOCI's legal status was somewhat ambiguous, with its accounts held separate from the official budget. There were various allegations of kickbacks and other forms of corruption lodged against both Karim Wade as the head of ANOCI and its managing director, Abdoulaye Balde. While political pressure from the president prevented the National Assembly from even questioning Karim, the judicial proceeding against Balde was dropped due to insufficient evidence before CENTIF could even complete its investigation.⁵⁵ Minimally, the alleged "catalogue of mismanagement" should have resulted in an extensive investigation if not reprimands, dismissals, and/or prosecution of those responsible. To date, the final accounts of the ANOCI remain unpublished.⁵⁶

Another recent case is that of Modibo Diop, the former head of the Senegalese Rural Electrification Agency (ASER). As a direct result of pressure from the international financial institutions that were funding the project, an investigation about corruption allegations was initiated against Diop, who was sent to prison, where he remains despite his claims of innocence.⁵⁷

Many Senegalese businesses are dependent on state contracts, but the awarding process lacks transparency and the majority of contracts were until recently awarded without competitive bidding. In 2008, however, Senegal adopted a new procurement code that limits the possibility of awarding contracts without public and open bidding, along with the creation of an independent regulatory agency, the Authority for Regulating Public Contracts (ARMP), to clamp down on the awarding of non-competitive contracts. Although the ARMP, like other anticorruption agencies, is underfunded and without the authority to publicly publish its reports or initiate judicial investigations, in just two years, Senegal dramatically reduced the percentage of government contracts awarded without bids from over 70 percent to just 6 percent. However, after the agency cancelled an uncompetitive contract between Global Voice and Senegal's telecommunications agency (ARPT) in June 2010, President Wade dealt a serious blow to the agency, decreeing that the ARMP does not have authority over the executive and its ministries.⁵⁸

The capacity of governmental institutions, the media, and civil society organizations to hold public officials accountable for corruption is undermined by a lack of transparency in the national budget process. The Open Budget Initiative once again gave Senegal a score of 3 out of 100 in its 2010 Open Budget Index due to the scant information provided to the public on the government's budget and financial activities. Although various budget proposals, reports, and audits are produced and are ultimately leaked to the press by members of parliament, they are not disseminated to the public, nor is complete information provided. This lack of budget transparency is compounded by the absence of freedom of information legislation and weak budgetary oversight by both the legislature and the IGE, as well as a lack of legislative control over extra-budgetary aid received from international donors.⁵⁹

RECOMMENDATIONS

- The government should empower the legislature as a check on presidential power, including elimination of presidential selection of senators.
- The government should enhance judicial autonomy through revision of the role of the executive in the nomination and promotion of members of the judiciary and the legislative approval of judicial nominations.
- The government should reinforce the role of the media as a political watchdog through the decriminalization of defamation, the transformation of the state-run media into a more autonomous public broadcaster, and the privatization of the state newspaper.
- The government should augment the anticorruption campaign through increased budget transparency and accountability, including reinforcement of the role and

competence of civil society actors and the *Cours des Comptes*, as well as the elimination of extra-budgetary international aid outside the supervision of the legislature.

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