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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2783/2016*, **

Communication submitted by:	Karim Meïssa Wade (represented by counsel, Michel Boyon, Mohamed Seydou Diagne and Ciré Clédor Ly)
Alleged victim:	The author
State party:	Senegal
Date of communication:	31 May 2016 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure (rule 92 of the new rules), transmitted to the State party on 6 July 2015 (not issued in document form)
Date of adoption of Views:	23 October 2018
Subject matter:	Criminal proceedings for the misappropriation of public funds
Procedural issues:	Examination under another procedure of international investigation or settlement; abuse of the right of submission; lack of jurisdiction *ratione materiae*; non-substantiation of claims
Substantive issues:	Right to have a conviction and sentence reviewed by a higher tribunal
Article of the Covenant:	14 (5)
Articles of the Optional Protocol:	3 and 5 (2) (a)

1.1 The author of the communication is Karim Meïssa Wade, a national of Senegal born on 1 September 1968. He claims that Senegal has violated his rights under article 14 (5) of the Covenant. The Covenant and its Optional Protocol entered into force for the State party on 13 February 1978. The author is represented by counsel, Michel Boyon, Mohamed Seydou Diagne and Ciré Clédor Ly.

* Adopted by the Committee at its 124th session (8 October–2 November 2018).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V. J. Kran, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany, Margo Waterval and Andreas Zimmermann.

1.2 The author and the State party have made eight submissions to the Committee. On 16 November 2016, the Committee informed the State party and the author of its decision not to consider the admissibility of the communication separately from the merits pursuant to rule 97 (3) of its rules of procedure.

The facts as submitted by the author[1]

2.1 The author held the office of Minister of State, Minister of International Cooperation, Land Management, Air Transport and Infrastructure and Minister of Energy of Senegal from 2009 to 2012. A few months after the opposition candidate's victory over the outgoing President in the presidential election in March 2012, the State party initiated proceedings against the author as part of its efforts to combat corruption and promote good governance. The author claims that these proceedings proved selective and targeted the rank and file and officials of the new opposition and members of the former President's family.

2.2 The author claims that his conduct of public affairs was audited and inspected by the highest monitoring bodies of Senegal, including the State Inspectorate General, the Court of Audit and the Public Procurement Regulatory Authority. None of these bodies is said to have ever made any accusation or allegation against the author.

2.3 On 27 November 2012, the State party filed a complaint against the author with the French courts for "ill-gotten gains". On 27 May 2014, the French National Financial Prosecutor, whose office is in Paris, closed the case on the grounds that the "offence had not been sufficiently substantiated" following an investigation by the Financial Prosecutor's Office and the Central Office for the Prevention of Serious Financial Crime that the author describes as thorough.

2.4 Similarly, the State party brought proceedings against the author in its own territory before the Court for the Prevention of Illicit Enrichment, a court of special jurisdiction, which launched a preliminary inquiry on 2 October 2012. The inquiry ended on 8 March 2013 and the author was charged and placed in pretrial detention on 17 April 2013. Pursuant to article 10 of Act No. 81-54 of 10 July 1981 providing for the establishment of the Court for the Prevention of Illicit Enrichment, pretrial investigations should last for no longer than six months as from the date on which a case is referred to the Investigating Commission. The author therefore claims that the investigation should have ended on 16 October 2013. However, on that very date, he was charged again with the same acts and kept in pretrial detention.

2.5 On 22 November 2013, the author lodged an appeal with the Supreme Court against the decision to bring charges against him by the Investigating Commission of the Court for the Prevention of Illicit Enrichment on the grounds that it had no jurisdiction. According to the author, the Supreme Court took no action in relation to his appeal. He also referred the matter to the Constitutional Council for a ruling on the constitutionality of Act No. 81-54. The Council rejected his petition in a decision dated 3 March 2014.

2.6 On 16 April 2014, the author was brought before the trial bench of the Court for the Prevention of Illicit Enrichment. The trial opened on 31 July 2014. On 23 March 2015, the author was acquitted of the charge of corruption but convicted of illicit enrichment on the grounds that he had not demonstrated that he had come by his property lawfully. He was given a custodial sentence of 6 years and ordered to pay a fine of around €200 million and damages of around €15 million to the State. Moreover, all his assets were confiscated; these reportedly included assets that belonged to third persons but had been arbitrarily declared by experts as belonging to him, without there being any possibility of submitting second expert opinions to the Court in reply. The author also claims that the Court was reactivated through two presidential decrees dated 5 May and 6 July 2012 solely for the purposes of convicting him and removing him from the political scene, even though it had only ever issued two decisions since its establishment.

[1] This factual background is based on the initial communication and the annexes presented by the author and his counsel.

2.7 The author also applied to the Supreme Court for a review on points of law on the grounds that the decisions of the Court for the Prevention of Illicit Enrichment could not be reviewed by a higher tribunal. His appeal was rejected in a Supreme Court decision dated 20 August 2015.

2.8 The author cites a number of statements made by representatives of national and international human rights organizations claiming that the Court for the Prevention of Illicit Enrichment did not guarantee the rights of the accused.

2.9 The author had taken several steps to resolve his situation before his conviction by the Court for the Prevention of Illicit Enrichment on 23 March 2015. On 24 December 2012, he and other former ministers had brought an appeal before the Court of Justice of the Economic Community of West African States (ECOWAS). In a decision dated 22 February 2013, the Court of Justice of ECOWAS had declared that the State party had violated the right to be presumed innocent and had ordered it to lift the travel restriction that it had imposed on the applicants, including the author, preventing them from leaving the country.

2.10 On 31 March 2014, the author had submitted a petition to the secretariat of the Working Group on Arbitrary Detention. He recalls the findings of the Working Group, which, in its opinion No. 4/2015 of 20 April 2015 (A/HRC/WGAD/2015/4), concluded that his detention was arbitrary and underlined its non-compliance with the State party's rules of procedure regarding the time limits on pretrial detention. On 29 November 2015, the Working Group rejected the State party's application for a review.

The complaint

3.1 The author asserts that he has exhausted domestic remedies, pointing out that, under Senegalese law, he was unable to appeal against his conviction by the Court for the Prevention of Illicit Enrichment on 23 March 2015. He nevertheless lodged an appeal with the Supreme Court of Senegal on points of law, claiming that his rights under article 14 (5) of the Covenant had been violated. His appeal was rejected on 20 August 2015. He notes that an appeal on points of law only allows the consideration of issues relating to competence or violations of the law and that it rules out any further review of the conviction and sentence. As the Supreme Court ruled that the Court for the Prevention of Illicit Enrichment had jurisdiction to try the author, that Court's judgment became final. The author, drawing on a number of the Committee's Views, therefore requests the Committee to find that he has exhausted domestic remedies.

Violation of article 14 (5) of the Covenant

3.2 The author claims that his rights under article 14 (5) of the Covenant have been violated, as the law governing the proceedings of the Court for the Prevention of Illicit Enrichment makes it impossible to bring an appeal against the conviction and the sentence with a higher tribunal.

3.3 The author outlines the aspects of the State party's legislation that are contrary to article 14 (5) of the Covenant. For example, article 17 of Act No. 81-54 states that the Court's judgments should be pronounced in open court and that an appeal against the judgments on points of law may be filed by the sentenced person or the Public Prosecutor's Office, as provided for by Order No. 60-17 of 3 September 1960 containing the Organic Act on the Supreme Court. The author contends that the Act was already incompatible with the provisions of the Covenant in 1981. Today, article 2 of Organic Act No. 2008-35 of 7 August 2008, on the establishment of the Supreme Court, states that the Supreme Court, barring legal provisions to the contrary, is not to consider cases on the merits. To ensure that its legislation was compatible with its international obligations, the State party adopted Act No. 2008-50 of 23 September 2008 amending the Code of Criminal Procedure, whereby the right of appeal in criminal matters was introduced. The author claims that this attempt to ensure that Senegalese law was compatible with international law has never been extended to Act No. 81-54. He also stresses that even the legislation on the Extraordinary African Chambers, established to try persons accused of crimes against humanity, provides for a system of reviewing convictions and sentences.

3.4 The author claims that the violation of article 14 (5) of the Covenant had been among the grounds he had cited widely for quashing the judgment and that the Supreme Court had distorted his arguments by equating them with criticism of the impartiality and independence of the judges of the Court for the Prevention of Illicit Enrichment. Lastly, in respect of the Constitutional Council's decision of 3 March 2014, the author emphasizes that the Council noted the absence of a right of appeal but was of the view that the absence of such a right did not necessarily entail the absence of a useful or effective remedy and that the inability to appeal to a higher court was therefore not necessarily contrary to the Constitution.[2]

3.5 The author mentions a number of public statements indicating that the Court for the Prevention of Illicit Enrichment does not respect the rights of persons charged with an offence. He notes that the First President of the Supreme Court stated on 15 January 2014 that the State party should review its laws with a view to guaranteeing the right to a fair trial, including the right to appeal against convictions and sentences. He also refers to an interview with Macky Sall, the President of Senegal, who acknowledged on 7 June 2015 that the decisions of the Court for the Prevention of Illicit Enrichment were not subject to appeal, while expressing the view that appeals on points of law constituted a remedy. According to the author, the Minister of Justice at the time of writing, Sidiki Kaba, and his predecessor, Aminata Touré, publicly stated, on 5 November and 19 October 2015 respectively, that the absence of a right to appeal against the judgments of the Court for the Prevention of Illicit Enrichment constituted a violation of the fundamental rights of the people of Senegal.

3.6 The author then refers to paragraph 47 of the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial. Drawing on the Committee's jurisprudence,[3] he stresses that the Committee consistently finds that a violation has been committed when States fail to comply with their obligation to give everyone the right to have his or her conviction and sentence reviewed. He notes that a provision equivalent to article 14 (5) of the Covenant also exists in all regional systems for the protection of human rights.

3.7 The author requests the Committee to: (a) find that the communication is admissible; (b) find that the State party has violated his right to have his conviction and sentence reviewed by a higher tribunal; (c) find that the application of Act No. 81-54 entails a violation of article 14 (5) of the Covenant; (d) call on the State party to quash his conviction and the confiscation orders and fines imposed on him without delay; and (f) request the State party to take all measures for his immediate release.

Parties' observations on admissibility

Issue considered by the Working Group on Arbitrary Detention (Optional Protocol, art. 5 (2) (a))

State party

4.1 The State party emphasizes that, on 24 June 2014, the author submitted a complaint to the Working Group on Arbitrary Detention in which he referred to the inability to appeal against the decisions made by the Investigating Commission of the Court for the Prevention of Illicit Enrichment. It is of the view that the Working Group did not respect its own rules of procedure, noting that new working methods, which were formally adopted only on 4

[2] Constitutional Council, Decision No. 1-C-2014 of 3 March 2014, para. 24.

[3] *Khalilova v. Tajikistan* (CCPR/C/83/D/973/2001), para. 7.5; *Bandajevsky v. Belarus* (CCPR/C/86/D/1100/2002), para. 10.13; *Gomaríz Valera v. Spain* (CCPR/C/84/D/1095/2002), paras. 7.1, 8 and 9; *Terrón v. Spain* (CCPR/C/82/D/1073/2002), para. 7.4; *Domukovsky et al. v. Georgia* (CCPR/C/62/D/623/1995, 624/1995, 626/1995 and 627/1995), para. 18.11; *Thomas v. Jamaica* (CCPR/C/65/D/614/1995), para. 9.5; *Kelly v. Jamaica* (CCPR/C/41/253/1987), para. 5.12; *Gómez Vázquez v. Spain* (CCPR/C/69/D/701/1996), para. 11.1; *Lumley v. Jamaica* (CCPR/C/65/D/662/1995), paras. 7.3 and 7.5; *Reid v. Jamaica* (CCPR/C//51/355/1989), para. 14.4; *Aliboeva v. Tajikistan* (CCPR/C/85/D/985/2001), para. 6.5; and *Saidova v. Tajikistan* (CCPR/C/81/D/964/2001), para. 6.5.

August 2015 and 12 July 2016, were used for the Working Group's adoption on 20 April 2015 of opinion No. 4/2015. The State party, in its view, has been denied justice, as its arguments were rejected by the Working Group, which acted on the basis of an inapplicable procedural rule, because they were submitted after the deadline.

Author

4.2 The author notes that his submission to the Working Group on Arbitrary Detention was made in March 2014, before the verdict against him, which was read on 23 March 2015, and that it did not touch on the violation of article 14 (5) of the Covenant. He did, however, among other complaints, contest the absence of any possibility to appeal against the decisions made by the Court's Investigating Commission. He also stresses that, according to the Committee's jurisprudence, the submission of a complaint to the special procedures of the Human Rights Council is not considered a concurrent submission to another procedure of international investigation or settlement.

4.3 The author points out that, under article 5 (2) (a) of the Optional Protocol, the Committee may consider complaints previously submitted to another international procedure of investigation or settlement provided that the subject matter and grounds are actually distinct.

Matter considered by the Court of Justice of ECOWAS (Optional Protocol, arts. 3 and 5 (2) (a), and Committee's rules of procedure, rule 96)

State party

5.1 The State party indicates that, on 24 December 2012, the author submitted a complaint to the Court of Justice of ECOWAS concerning human rights violations, in particular the violation of his right of appeal in the event of a conviction. The State party contends that, in its judgment of 22 February 2013, the Court, ruling on this point, found the author's complaint unjustified and refused to evaluate States' domestic laws and decisions. This judgment thus brought to an end the international investigation or settlement procedure initiated by the author. The State party rejects the argument that, because the judgment of the Court for the Prevention of Illicit Enrichment was not pronounced until March 2015, the judgment of the Court of Justice of ECOWAS did not deal with the same facts, rights or matter. The State party also maintains that, after he was placed in pretrial detention, the author submitted a second application to the Court of Justice of ECOWAS in which he again referred to the lack of a right to appeal against the judgments of the Court for the Prevention of Illicit Enrichment. In a judgment of 19 July 2013, the Court of Justice of ECOWAS confirmed the legality of the author's detention.

Author

5.2 The author, for his part, states that the judgment of the Court of Justice of ECOWAS was pronounced on 22 February 2013, whereas his conviction and sentencing by the Court for the Prevention of Illicit Enrichment took place on 23 March 2015. The application made by the author to the Court of Justice of ECOWAS on 24 December 2012 sought solely to contest the absence of a fair trial. He also stresses that the Court's judgment of 22 February 2013 did not deal with the same facts or substantive rights as the communication submitted to the Committee, let alone the same matter. At the time, the author had not been a victim of a violation of article 14 (5) of the Covenant.

Abuse of the right of submission (Committee's rules of procedure, rule 96)

State party

6.1 The State party is of the view that the author, in accordance with rule 96 (c) of the Committee's rules of procedure, should have submitted his communication to the Committee by 21 February 2016. Since the author has not provided any reason for missing the deadline, the State party invites the Committee to find the communication inadmissible on the grounds that it constitutes an abuse of the right of submission.

6.2 The State party also points out that the author had initially expressed the view that his case should be heard by the High Court of Justice, a court whose decisions are not subject to appeal, rather than the Court for the Prevention of Illicit Enrichment. To then invoke article 14 (5) of the Covenant and call for a review of the decision of the Court for the Prevention of Illicit Enrichment is considered by the State party to be tantamount to procedural bad faith on the part of the author. In its view, it involves an abuse of rights *ratione materiae* that makes the communication inadmissible.

Author

6.3 The author first contends that abuse of the right of submission is not a reason for inadmissibility *ratione temporis* and refers to rule 96 (c) of the Committee's rules of procedure. He observes that the Optional Protocol does not establish time limits within which a communication must be submitted.

6.4 The author then contends that the time limit of five years after the exhaustion of domestic remedies, established in rule 96 (c) of the rules of procedure, has been respected. The only remedy afforded to the author was an application to the Supreme Court. The Supreme Court delivered a judgment on 20 August 2015 but did not respond to the author's claim that his rights under article 14 (5) of the Covenant had been violated.

6.5 Lastly, the author maintains that, on account of special circumstances, his submission should not be considered an abuse of the right of submission. He notes that the violation he alleges had not occurred on 22 February 2013. It occurred on 23 March 2015, as he was convicted and sentenced by the Court for the Prevention of Illicit Enrichment. He also points to the exact wording of article 14 (5) of the Covenant, in which reference is made to "everyone convicted of a crime". In addition, the author points out that, under rule 96 (f) of the Committee's rules of procedure, he could not have submitted a complaint to the Committee earlier without its being found inadmissible on grounds of non-exhaustion of domestic remedies. Lastly, assuming that the three-year time limit has elapsed, the starting point should be the conviction and sentence of 23 March 2015.

Insufficiently substantiated claims (Optional Protocol, art. 3)

State party

7.1 The State party, referring to previous cases in which the Committee has found that claims under article 14 (5) of the Covenant are insufficiently substantiated,[4] notes that the Committee has consistently decided that communications that do not sufficiently substantiate the allegations they contain are inadmissible. The State party contends that the author's allegations that his rights under article 14 (5) of the Covenant have been violated create confusion by implying, incorrectly, that the article imposes an obligation on States parties to establish a court of appeal. It points out that the Committee has consistently found that States parties are not obliged to establish a system in which the right of appeal is automatically granted. The State party argues that the only obligation arising from article 14 (5) of the Covenant is the obligation to allow a review by "a higher tribunal", as stated in the article in question, not a court of appeal.

Author

7.2 The author submits that it is incumbent on the party arguing that a complaint is inadmissible to provide specific reasons for its argument. He contends that the communication is sufficiently substantiated with respect to the fact that Act No. 81-54 on the Court for the Prevention of Illicit Enrichment, Organic Act No. 2008-35 on the Supreme Court and the Code of Criminal Procedure of the State party do not comply with the Covenant. He notes that article 14 (5) of the Covenant is applicable in all the courts in

[4] *Oubiña Piñeiro v. Spain* (CCPR/C/87/D/1387/2005), paras. 6.1 and 6.2; *García González v. Spain* (CCPR/C/87/D/1441/2005), para. 4.3; and *Villamón Ventura v. Spain* (CCPR/C/88/D/1305/2004), paras. 6.5 and 6.6.

the State party but the Court for the Prevention of Illicit Enrichment and that Act No. 81-54 departs from ordinary law.

7.3 With regard to Organic Act No. 2008-35, the author has sufficiently substantiated his allegations that the Supreme Court may consider only points of law, not findings of fact. He refers to article 2 of the Act, which states that "the Supreme Court, barring legal provisions to the contrary, shall not consider cases on the merits", and notes the requirement for a review in fact and in law mentioned in the Committee's general comment No. 32 (2007).

7.4 The author also maintains that the complaint is sufficiently substantiated in respect of the judgment of the Court for the Prevention of Illicit Enrichment of 23 March 2015 and the Supreme Court's judgment of 20 August 2015. He indicates that Act No. 81-54 has never been brought into line with the Covenant. It is for the Committee to decide whether, in the context of this complaint, the Supreme Court could be considered a higher tribunal within the meaning of article 14 (5) of the Covenant. The author underscores the commonly held view that courts of cassation consider only points of law and that they review judgments and other decisions without examining the merits of a dispute and are thus not courts of third instance. The review conducted by the Supreme Court for its judgment of 20 August 2015 was so cursory that it could not comply with the requirements of article 14 (5) of the Covenant, as the Court had stated that the evidence and facts had been put before the judges of the Court for the Prevention of Illicit Enrichment for a final decision and that the Supreme Court could not discuss them.

7.5 As evidence that the State party's authorities are aware that the current legislation is not in line with the Covenant, the author adds that, in early 2014, the Government formulated a bill on reform of the Court for the Prevention of Illicit Enrichment, especially intended to remedy the current shortcomings vis-à-vis article 14 (5) of the Covenant. Lastly, the author points out that he submitted 37 annexes containing clear, tangible evidence to substantiate the communication.

Parties' observations on the merits

Factual context and conviction of the author for corruption

State party

8.1 The author was a government minister from 2009 to 2012. The 2012 presidential election signalled the people's desire for redoubled efforts to fight corruption. The Government thus took a number of measures, including reactivating the Court for the Prevention of Illicit Enrichment. The author's private means were estimated at €1.1 billion, an amount that raised serious questions in civil society and drew the attention of the courts. All the political arguments made by the author, according to the State party, are irrelevant to a complaint based on article 14 (5) of the Covenant.

8.2 On 2 October 2012, the special prosecutor of the Court for the Prevention of Illicit Enrichment, proceeding in accordance with article 5 of Act No. 81-54, opened a preliminary investigation. As a result of the author's lifestyle and private means, disproportionate to his official income, the special prosecutor asked the commander of the national gendarmerie investigation unit to open an investigation. The State party refers to article 3 of Act No. 81-53, under which enrichment is deemed illicit when a person is unable to demonstrate that the resources linked to his or her property and lifestyle were come by lawfully.

8.3 On 15 March 2013, after the completion of the investigation on 8 March 2013, the special prosecutor notified the author that he had one month to demonstrate that his wealth had been come by lawfully. On 17 April 2013, the author was charged and taken into custody along with five other suspects on the basis of articles 10 and 11 of Act No. 81-54. The author applied to the Supreme Court, which referred the case to the Constitutional Council for a ruling on the constitutionality of Act No. 81-54. The Council ruled on 3 March 2014 that the Act was constitutional.

8.4 On 16 April 2014, the author was brought before the Court for the Prevention of Illicit Enrichment to be tried for having accumulated, between 2000 and 2012, a fortune estimated at 117,037,993,117 CFA francs (approximately €178 million) without being able to prove that he had come by it lawfully. The trial began on 31 July 2014. The author submitted a formal objection to the jurisdiction of the Court for the Prevention of Illicit Enrichment over his case, which it dismissed in a decision of 18 August 2014. He then lodged an appeal against the decision on points of law with the Supreme Court. The author also filed an application for release that was rejected by the Court for the Prevention of Illicit Enrichment in a decision of 29 December 2014. The author also lodged an appeal against that decision on points of law with the Supreme Court, which was rejected on 30 March 2015.

8.5 The author was convicted by the Court for the Prevention of Illicit Enrichment in a decision of 23 March 2015, against which he lodged an appeal with the Supreme Court on points of law. In an extensively reasoned decision of 20 August 2015, the Supreme Court issued opinions concerning the author's request for interim release, the impartiality of the judges of the Court for the Prevention of Illicit Enrichment, the validity of the membership of the latter court, the violation of the right to a fair trial, the failure to recognize the presumption of innocence, the placement of the author's companies in receivership, the confiscation of all the author's assets and the admissibility of the State party's criminal complaint. The Court rejected the author's various petitions.

8.6 The author was granted a pardon by a presidential decree on 24 June 2016. The pardon exempts him from having to serve the remainder of his prison sentence. His freedom is unconditional. Any execution on the person would imply that the author has decided to evade the Court's judgment. It would not involve a new prison sentence and, in any event, execution on the person is not decided arbitrarily but must follow a judicial process.

Author

8.7 The author stresses that the State party's observations on the merits are unfounded and seek only to tarnish his honour and reputation. He points out that: (a) he has never been convicted of corruption in the State party or elsewhere, as he was acquitted of that charge by the Court for the Prevention of Illicit Enrichment in its ruling of 23 March 2015; (b) the French National Financial Prosecutor's Office dismissed the State party's complaint against him; (c) the French courts refused to execute the judgment of the Court for the Prevention of Illicit Enrichment of 23 March 2015; (d) the Court for the Prevention of Illicit Enrichment, in its judgment, followed rules incompatible with the requirements of international law, as noted by prominent human rights defenders and legal experts in the State party; (e) the State party's justice system was being used for political ends; (f) he was arbitrarily detained, as recognized by the Working Group on Arbitrary Detention in its opinion No. 4/2015, the issuance of which was met with a strong response by the State party; (g) the Court of Justice of ECOWAS found that his rights had been violated; and (h) the World Bank concluded that he could not be shown to have engaged in any unlawful activity.

8.8 With regard to the allegation that he had property worth €1.1 billion, the author contends that assets were falsely attributed to him and that they were greatly overestimated by expert witnesses in a procedure conducted with complete disregard for the adversarial principle, as shown by the Court for the Prevention of Illicit Enrichment's systematic refusal to grant his requests to enter statements from expert witnesses for the defence.

8.9 The author states that the presidential pardon of 24 June 2016 applies only to prison sentences, not to financial penalties. Furthermore, articles 681 to 700 of the Code of Criminal Procedure establish long prison terms for non-payment of court-ordered fines, restitution and damages owed to the State. The public authorities have explicitly and publicly expressed their determination to collect the amount owed by the author and their readiness to take him into custody. Lastly, the author was never notified of the decree pardoning him. He was released without any of the formalities necessary for the discharge of a prisoner.

Compatibility of the Court for the Prevention of Illicit Enrichment and the Supreme Court with the relevant domestic and international framework

State party

9.1 The Court for the Prevention of Illicit Enrichment, established pursuant to Act No. 81-54, is a specialized court responsible for investigating cases pertaining to a category of persons clearly identified in connection with acts of illicit enrichment and for punishing such persons if appropriate. The State party submits that other States, such as France, with its Court of Justice of the Republic, have established special courts to try government officials and that the existence of such courts is not incompatible with the Covenant. It notes that the Constitutional Council, in its decision of 3 March 2014, confirmed the constitutionality of Act No. 81-54.

9.2 The Court for the Prevention of Illicit Enrichment began operations in 1983. Since then, it has heard two cases and handed down one conviction. The Act establishing the Court has never been repealed. Decree No. 2012-502 of 10 May 2012 on the appointment of judges to the Court was adopted to combat the scourge of corruption. The author was indeed convicted, but, as the State party reports, so were three other people. The Court was thus not established for the sole purpose of trying the author. At the procedural level, cases are referred to the Court by the Investigating Commission, which itself investigates at the request of the special prosecutor. The Court then renders a judgment that, in accordance with article 17 of Act No. 81-54, may be challenged before the Supreme Court.

9.3 The Supreme Court was established pursuant to Order No. 60-17 of 3 September 1960 and inaugurated on 1 November 1960. In the Senegalese judicial system, the Supreme Court is a higher court than the Court for the Prevention of Illicit Enrichment. The supervision exercised by the Supreme Court covers all aspects of a judgment, including the conviction and sentence.

9.4 With regard to the international legal framework, the State party stresses that combating corruption is an international obligation and recalls that it has ratified various relevant international and regional instruments. These instruments all place an obligation on the State party to take the necessary measures to define and combat illicit enrichment.

9.5 The State party emphasizes that the decisions of the Court of Justice of ECOWAS are themselves not subject to appeal. The State party also refers to article 2 of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and paragraph 18 of the explanatory report to the Protocol, which states that "review [by a higher tribunal] is in certain cases limited to questions of law, such as the *recours en cassation*. In others, there is a right to appeal against findings of facts as well as on the questions of law. The article leaves the modalities for the exercise of the right and the grounds on which it may be exercised to be determined by domestic law."

Author

9.6 In paragraph 24 of its decision No. 1-C-2014, the Constitutional Council acknowledged that it was impossible for the author to submit an appeal that would enable a court to review his conviction and sentence. Under the State party's criminal law, the convictions and sentences handed down for serious, less serious and minor matters (when they involve prison sentences) can be reviewed only through appeals.

9.7 The author draws the Committee's attention to the State party's adoption, on the pretext of combating illicit enrichment, of criminal legislation including special procedural rules different from the ordinary rules of procedure applicable to all citizens. Under Act No. 81-54, the Court for the Prevention of Illicit Enrichment may reverse the burden of proof and deliberately deprive defendants of their right to have their conviction and sentence reviewed by a higher tribunal. Only the Public Prosecutor's Office, not the person investigated, may file an appeal during the investigation phase, and no appeal of the Court's rulings on the merits is provided for.

9.8 The author notes again that under article 2 of Organic Act No. 2008-35, the Supreme Court, in ruling on appeals on points of law, should not consider cases on the merits, barring legal provisions to the contrary. He points out that there is no personal appearance of the parties or hearing, nor are any questions about the facts that need to be answered raised. Lawyers alone may make very brief oral pleadings to clarify aspects of their written ones. While the State party's legal system admittedly provides for a mechanism for contesting the decisions of the Court for the Prevention of Illicit Enrichment, the Supreme Court is not competent to rule on the conviction and sentence.

9.9 Even if the Court for the Prevention of Illicit Enrichment is a specialized court not meant to try ordinary citizens, it has imposed a sentence only on the author, alone among the 200 prominent political figures and high-ranking officials who served under the previous President.

9.10 The author notes that the European Convention on Human Rights does not apply to the State party. He is surprised that the State party makes no mention of the African Charter on Human and Peoples' Rights or the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa of the African Commission on Human and Peoples' Rights.

Violation of article 14 (5) of the Covenant

State party

10.1 The State party has never prevented the author from exercising his right to a remedy before a higher tribunal (see paras. 8.4 and 8.5), which is not to be confused with the right to an appeal before a higher tribunal. The author lodged an appeal on points of law against the judgment of 18 August 2014 delivered by the Court for the Prevention of Illicit Enrichment and then against its judgment of 23 March 2015. He has therefore exercised his right to an effective remedy, which should not be confused with the right to an appeal before a higher tribunal.

10.2 The State party submits that the 18-month investigation was thorough and that the facts were verified and cross-checked. During the trial, from July 2014 to February 2015, all the facts, which were debated by both the prosecution and the defence, were reconsidered, and witnesses were heard. All the rights of the defence were systematically respected throughout the proceedings.

10.3 The author lodged an appeal on points of law against the conviction handed down by the Court for the Prevention of Illicit Enrichment in its judgment of 23 March 2015. The State party contends that the author submitted a 97-page brief to the Supreme Court that made reference to a violation of the law, an absence of reasons for the conviction, a lack of a legal basis and a misconstruction. The State party submits that, in these circumstances, the author was necessarily aware that the Supreme Court had the power to review the decision to convict and sentence him with a view to setting it aside.

10.4 The State party also submits that the Supreme Court responded appropriately to each of the author's claims by reviewing the evidence and the proper application of the law. The review conducted by the Supreme Court culminated in an extensively and carefully reasoned judgment, not simply a review of matters of legal procedure meant only to censure arbitrariness or the denial of justice. The Court determined whether the fair trial requirement had been met, the evidence had been legally obtained, there were legal bases for the conviction and sentence and the law in the strict sense had been properly applied.

Author

10.5 The author contests the State party's assertion that he exercised his right to have his conviction and sentence reviewed by a higher tribunal in accordance with article 14 (5) of the Covenant. An appeal on points of law is limited to final rulings and involves a review of matters of law alone, not of the facts of a case, even though a conviction and a sentence can be handed down only after consideration of the facts. As the Supreme Court is the only court that may review the judgments of the Court for the Prevention of Illicit Enrichment, and it does not have the power to review the evidence or the facts on which a judgment is based, there can be no choice but to find a violation of article 14 (5) of the Covenant.

10.6 The author considers the violation of article 14 (5) of the Covenant in the light of articles 367, 482, 484, 497 and 503 to 505 of the Code of Criminal Procedure, which establish the right to appeal to a higher court in serious and lesser criminal matters.

10.7 In response to the State party's assertion that the Supreme Court's ruling of 20 August 2015 was extensively reasoned, the author points out that the reasons that were given had nothing to do with the review of the conviction and sentence.

Issues and proceedings before the Committee

Admissibility

11.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

11.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that, in its opinion No. 4/2015 adopted on 20 April 2015, the Working Group on Arbitrary Detention concluded that the deprivation of liberty of Karim Meïssa Wade was arbitrary. It also notes the State party's argument that the opinion had a procedural defect. The Committee points out that it is not its role to consider the validity of the opinions of the Working Group. It also points out that, although it is required under article 5 (2) (a) of the Optional Protocol to ascertain that the matter is not being examined under another procedure of international investigation or settlement, nothing precludes it from considering communications on cases previously dealt with by another protection body,[5] even when the body has adopted a decision on the merits,[6] unless the State party has made a reservation explicitly prohibiting successive appeals. As the Working Group had concluded its consideration of the case before the present communication was submitted to the Committee, the Committee will not consider whether consideration of a case by the Working Group constitutes a matter being examined under another procedure of international investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol.[7] The consideration of the author's case by the Working Group is therefore not an obstacle to the admissibility of the communication.

11.3 The Committee notes that the author appealed to the Court of Justice of ECOWAS, which delivered one judgment on 22 February 2013 and another on 19 July 2013. The Committee acknowledges the State party's argument that the judgment of 22 February 2013 concerned the same author and the same facts on which the alleged violation of article 14 (5) of the Covenant is based. The Committee notes, however, that the judgment of the Court of Justice of ECOWAS was delivered more than two years before those delivered by the State party's courts, on 23 March 2015 for the Court for the Prevention of Illicit Enrichment and 20 August 2015 for the Supreme Court. The Committee is of the view that although the author and the facts may be similar, the subject matter of the application is not, as the violation of article 14 (5) of the Covenant alleged by the author could not have occurred on or before 22 February 2013. The Committee also notes that, although it is required under article 5 (2) (a) of the Optional Protocol to ascertain that the matter is not being examined under another procedure of international investigation or settlement, nothing precludes it from considering communications on cases previously dealt with by another protection body, even when the body has adopted a decision on the merits, unless the State party has made a reservation explicitly prohibiting successive appeals (see para. 11.2). The judgments of the Court of Justice of ECOWAS are therefore not an obstacle to the admissibility of the communication.

11.4 The Committee takes note of the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in

[5] *L.E.S.K. v. Netherlands* (CCPR/C/45/D/381/1989), para. 5.2.

[6] *Wright v. Jamaica* (CCPR/C/40/D/349/1989), para. 2.8.

[7] *Al-Rabassi v. Libya* (CCPR/C/111/D/1860/2009), para. 6.2.

this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

11.5 The Committee also notes the State party's argument that, under rule 96 (c) of the Committee's rules of procedure, the author's submission of the communication is an abuse of the right of submission *ratione temporis*, as the author had three years after the conclusion of another procedure of international settlement to submit his complaint to the Committee (see para. 6.1). The Committee refers to its conclusions in paragraph 11.3 and notes that, although the facts and the author in this case are the same as or similar to those in the judgment of the Court of Justice of ECOWAS of 22 February 2013, the subject matter is not, as the alleged violation of article 14 (5) of the Covenant took place on 20 August 2015.[8] The State party's argument that the communication should be found inadmissible because it had been submitted after the three-year deadline should therefore be dismissed. The Committee also points out that, in any event, the Optional Protocol does not establish a deadline of any sort for the submission of communications and that the time that has elapsed between an alleged violation and the submission of a communication does not in itself constitute an abuse of the right of submission, other than in exceptional circumstances.[9] The period of time between the judgment of the Court of Justice of ECOWAS and the submission of the complaint to the Committee is therefore not an obstacle to the admissibility of the complaint.

11.6 Regarding the State party's claim of a lack of jurisdiction *ratione materiae* given that the author invokes a right to a second hearing that is beyond the scope of article 14 (5) of the Covenant, the Committee is of the opinion that this is a matter that cannot be considered at the admissibility stage. Accordingly, it will examine this claim on the merits.

11.7 Lastly, the Committee notes the State party's argument that the author has not sufficiently substantiated his complaint. However, it finds that, in his various submissions, the author has sufficiently substantiated his claims for admissibility purposes, as he has provided sufficient evidence of how the law and the Supreme Court ruling of 20 August 2015 were incompatible with article 14 (5) of the Covenant.

11.8 The Committee is of the opinion that the author has sufficiently substantiated his claims regarding article 14 (5) of the Covenant and that there is no obstacle to admitting them. Accordingly, it proceeds with its consideration of the merits involving the alleged violations of the article.

Consideration of the merits

12.1 The Committee has considered the communication in the light of all the information submitted to it by the parties in accordance with article 5 (1) of the Optional Protocol.

12.2 The Committee notes the State party's argument that the right to an appeal is not explicitly enshrined in the Covenant. The Committee points out that it is the role of each State party to organize its judicial system as it sees fit and does not attach importance to the organizational form adopted as long as the law of the State party allows anyone convicted of a crime to have his or her conviction and sentence reviewed by a higher tribunal.[10] Although a factual retrial is not required under the Covenant,[11] a procedure enabling a substantial and effective review of the conviction is, and the review should make possible an assessment of the evidence and facts, not simply a reconsideration of points of law.[12]

12.3 The Committee notes that the Court for the Prevention of Illicit Enrichment, the court of first and last resort that convicted and sentenced the author, conducts public and adversarial hearings and that, in accordance with article 17 of Act No. 81-54, appeals on points of law may be filed with the Supreme Court by the sentenced person or the Public Prosecutor's Office as provided by Order No. 60-17 of 3 September 1960 containing the Organic Act on the Supreme Court. It also notes that, under article 13 of Act No. 81-54, the

[8] *Zogo Andela v. Cameroon* (CCPR/C/121/D/2764/2016), para. 6.14.
[9] *Alba Cabriada v. Spain* (CCPR/C/82/D/1101/2002), para. 6.3.
[10] *H.K. v. Norway* (CCPR/C/112/D/2004/2010), para. 9.3; and *Reid v. Jamaica*, para. 14.3.
[11] *Rolando v. Philippines* (CCPR/C/82/D/1110/2002), para. 4.5; and *H.K. v. Norway*, para. 9.3.
[12] *Gómez Vázquez v. Spain*, para. 11.1.

decisions of the Investigating Commission of the Court for the Prevention of Illicit Enrichment cannot be challenged. Article 2 of Organic Act No. 2008-35, for its part, states that the Supreme Court, barring legal provisions to the contrary, is not to consider cases on the merits. The Committee also takes note of the amendment of the Code of Criminal Procedure under Act No. 2008-50 of 23 September 2008, introducing the right to an appeal in criminal cases, in addition to the right to an appeal on points of law, and points out that the amendment does not apply to the decisions of the Court for the Prevention of Illicit Enrichment.

12.4 The Committee further notes the State party's arguments that: (a) the investigation conducted by the Court's Investigating Commission was thorough; (b) the Court's judgment made it possible to reconsider all the facts of the case; and (c) the Supreme Court's review was not simply a review of formal matters. However, the Committee, after careful consideration of the Supreme Court's decision of 20 August 2015, observes that the Supreme Court, in accordance with article 2 of Organic Act No. 2008-35 (which confines the Court's review to points of law), cited the findings of fact of the Court for the Prevention of Illicit Enrichment and rejected the author's pleas and arguments for discussing the evidence and the facts subject to the overriding discretion of the Court for the Prevention of Illicit Enrichment. It is clear from the judgment of 20 August 2015 that the Supreme Court did not assess the evidence and the facts used by the Court for the Prevention of Illicit Enrichment. In view of the foregoing, the Committee cannot accept the State party's argument that an appeal on points of law submitted to the Supreme Court amounts to a review by a higher tribunal in accordance with article 14 (5) of the Covenant and refers to its general comment No. 32 (2007), which states that a review that is limited to the formal or legal aspects of the conviction without any consideration whatsoever of the facts is not sufficient under the Covenant.

12.5 The Committee acknowledges the importance of the legitimate aim of fighting corruption for States but also stresses that rules of procedure and the right to a fair trial must be respected in that fight.

13. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of article 14 (5) of the Covenant with regard to Karim Meïssa Wade.

14. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This provision requires that States parties make full reparation to individuals whose Covenant rights have been violated. In this case, the conviction and sentencing of the author must be reviewed, in accordance with article 14 (5) of the Covenant. The State party is under an obligation to ensure that similar violations do not occur in future.

15. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation is found to have occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.