

## AFRICA RISK CONSULTING

### Senegal Monthly Briefing August 2015

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#### Senegal Summary 27 August 2015

*The Supreme Court upholds a corruption conviction against Karim Wade, the former number two in the administration of his father, Abdoulaye Wade (2000-2012). Wade launches several international proceedings that aim to challenge the Senegalese rulings. The government and state-owned electricity utility Société Nationale d'Électricité du Sénégal (Senelec) sign an investment guarantee for the Tobene Power Project with the World Bank. Relations between Senegal and Guinea improve following the visit of Guinea's President Alpha Condé (2010-present).*

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#### Supreme Court upholds Karim Wade's corruption conviction

The **Supreme Court** has upheld a corruption conviction against **Karim Wade**, the former number two in the administration of his father, former president **Abdoulaye Wade** (2000-2012). On 20 August the Supreme Court rejected the appeals of Karim Wade and his co-accused on all grounds.<sup>1</sup> The hearing brought to a close the judicial process against Wade in Senegal and upholds the convictions in the **Cour de Repression de l'Enrichissement Illicite (CREI)** on 23 March. The CREI sentenced Wade to a six-year prison sentence and fined him CFA 138 billion (\$227m).<sup>2</sup> Of the CFA 117 billion (\$193m) alleged asset list that CREI assigned to Wade, it ruled that CFA 69 billion (\$114m) was illicit.<sup>3</sup> Following the ruling, state lawyer **Yérém Thiam** claimed that Senegalese judicial proceedings against Wade and his co-accused would continue in an effort to seize the targeted assets assigned to Wade.<sup>4</sup> Thiam says "*ill-gotten gains must return to the State*".<sup>5</sup>

The CREI and Supreme Court rulings are widely viewed as part of President **Macky Sall's** (2012-present) plan to eliminate his political rival.

*"Most people already knew that the Supreme Court would never go against the wish of the government, which is to see Karim kept in prison for a long time."*<sup>6</sup>

Wade's legal team criticised the Supreme Court ruling. Wade's lawyer **Baboucar Cissé** said the Supreme Court followed a "*political agenda*".<sup>7</sup> In the earlier stages of the hearing on 7 August Wade's team left the court following the Supreme Court refusal to meet a request to dismiss **Amadou Baal**, an adviser to the court, from the case.<sup>8</sup> Wade's team said that Baal was previously chief of staff in the justice ministry when he was involved in the CREI process and had publicly expressed his opinions against Wade, and was therefore biased.<sup>9</sup>

Wade's team also pointed to the "*illegal scheduling*"<sup>10</sup> of the appeal hearing. Wade's lawyer, **Seydou Diagne**, also claimed his team were informed in the press of the appeal date and the Supreme Court judges had violated basic laws in not allowing Wade's team two months to prepare their case.<sup>11</sup> In

<sup>1</sup> Jeune Afrique, 20 Aug 2015.

<sup>2</sup> See ARC Briefing for Senegal, April 2015

<sup>3</sup> See ARC Briefing for Senegal, April 2015

<sup>4</sup> Press Afrik, 22 Aug 2015.

<sup>5</sup> Press Afrik, 22 Aug 2015.

<sup>6</sup> Source, investigative journalist, Senegal

<sup>7</sup> Senxibar, 7 Aug 2015.

<sup>8</sup> Leral, 13 Aug 2015.

<sup>9</sup> Leral, 13 Aug 2015.

<sup>10</sup> Senxibar, 7 Aug 2015.

<sup>11</sup> RFI, 6 Aug 2015.

addition, the court ruled against a request from Wade's lawyers to defer the case on the grounds that Wade and his co-accused had filed cases at the **Cour Commune de Justice et d'Arbitrage (CCJA)** of the **Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA)** based in **Abidjan (Côte d'Ivoire)** (see below).<sup>12</sup> Cissé said the ruling "*undermines the judicial institutions*" but "*was expected*".<sup>13</sup>

*"The business community in Senegal doesn't want to openly express any opinion about Karim Wade's case. People seem to think that if their view diverges from the official position, that they would be sanctioned by being deprived of procurement contracts. But when you talk to some business people privately, they don't understand why Karim is the only (former official) charged by the CREI."*<sup>14</sup>

Human rights monitors have mostly supported the claims of Wade's team. Prominent African human rights monitor **Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO)** said in a statement that it "*expresses its deep disappointment*"<sup>15</sup> with the Supreme Court ruling because it ignored the **United Nations (UN) Working Group on Arbitrary Detention** opinion (see below).<sup>16</sup> RADDHO also reiterated its request to the government to abolish, or at least restructure, the CREI.<sup>17</sup>

### **...but international proceedings are set to challenge the Senegalese ruling**

Wade and his co-accused have launched several international proceedings to challenge the CREI and Supreme Court rulings. They have highlighted a UN Working Group on Arbitrary Detention report dated 7 May stating that Wade's detention is arbitrary and recommended that the government ensure "*full compensation*" to "*remedy the prejudice inflicted*".<sup>18</sup>

The UN has approved an extension of a review of the Wade case from 2 to 19 September (previously 2 to 14 September) following a request from Wade's lawyers and despite the objections of Senegalese state lawyers.<sup>19</sup> Senegalese state lawyers will travel to the UN's **New York (United States)** headquarters to meet with UN officials to put forward their case.<sup>20</sup> If the UN re-affirms its request to release Wade and the Senegalese government refuses to release him, the **International Court of Justice (ICJ)** will hear the case.<sup>21</sup> The ICJ has the power to lift sanctions against the bank accounts of Wade and the co-accused.<sup>22</sup>

Some of Wade's co-accused have launched arbitration at the World Bank's **International Centre for Settlement of Investment Disputes (ICSID)**, which could also undermine the Senegalese rulings.<sup>23</sup> As noted above, Wade and the co-accused have also lodged cases at the CCJA of the OHADA based in Abidjan.

*"There are question marks over whether this procedure (Wade's CCJA case) will be approved there... but you can be sure that no decision taken at any level will convince Macky Sall to free Karim Wade before the date of the next presidential election has passed (2017 or 2019, depending on a planned referendum on presidential term limits). The imprisonment of Wade is mainly a political matter...all Senegalese know this very well."*<sup>24</sup>

<sup>12</sup> Sud Quotidien, 7 Aug 2015.

<sup>13</sup> Le Monde, 20 Aug 2015

<sup>14</sup> Source, investigative journalist, Senegal

<sup>15</sup> RADDHO, 20 Aug 2015.

<sup>16</sup> RADDHO, 20 Aug 2015.

<sup>17</sup> RADDHO, 20 Aug 2015.

<sup>18</sup> See ARC Briefing for Senegal, Jun 2015

<sup>19</sup> Leral, 25 Aug 2015.

<sup>20</sup> Press Afrik, 22 Aug 2015.

<sup>21</sup> Leral, 25 Aug 2015.

<sup>22</sup> Leral, 25 Aug 2015.

<sup>23</sup> La Gazette, 9 Aug 2015.

<sup>24</sup> Source, investigative journalist, Senegal

## World Bank provides investment guarantee for Tobene Power Project

The government and state-owned electricity utility **Senelec (Société Nationale d'Électricité du Sénégal)** have signed an investment guarantee for the **Tobene Power Project** with the **World Bank Group's International Development Association (IDA)** and lenders **Citibank** and **BNP Paribas**.<sup>25</sup> The independent power producer (IPP), **Tobene Power SA**, signed the agreement on 14 August.<sup>26</sup> The IDA guarantee will “*provide a mechanism to enhance credit*” for Senelec’s payments to Tobene Power for the supply of electricity from the project.<sup>27</sup> Senelec will be the sole off-taker for the IPP.<sup>28</sup> The guarantee will also help attract additional private sector financing to the project.<sup>29</sup> Tobene Power has been an energy sector priority of the government. The World Bank said the project is in line with the government’s economic roadmap **Plan Senegal Emergent (PSE)**, which aims to improve energy security.<sup>30</sup>

Tobene Power will develop, own, build and operate the 96 megawatt (MW) heavy fuel oil power plant in **Taiba Ndiaye**, around 90 km northeast of **Dakar**.<sup>31</sup> The plant will also have the capacity to convert to operate on natural gas.<sup>32</sup> The project is currently under construction and is expected to start operation in early 2016.<sup>33</sup> The plant will provide guaranteed capacity of around 70 MW, nearly 15% of Senegal’s electricity consumption.<sup>34</sup> The plant will reportedly supply electricity to 1.5m residents.<sup>35</sup>

**Melec PowerGen**, a subsidiary of **Lebanon’s Matelec Group** owned by **Samer Nasr**, will construct the plant and take a 90% share in the project.<sup>36</sup> The **International Finance Corporation (IFC)** will take the remaining 10% share. Melec has also led development of the IFC-financed **Kounoune** power plant in Senegal, which is currently operating.<sup>37</sup>

The investment guarantee follows initial World Bank support for the Tobene Power project in August 2014. The IFC confirmed \$124m funding and the IDA approved an initial \$40m equivalent partial risk guarantee during the **United States (US)-African Leaders Summit** in **Washington (US)** on 4 to 5 August 2014.<sup>38</sup> At the same time Tobene Power signed a 20-year power purchase agreement with Senelec.<sup>39</sup> However, the project has faced several delays and some businesspeople raised concerns about the tender process for the project.

*“Some Senegalese businessmen wanted to contest the contract in the courts, saying that the call for tenders had not been fair.”<sup>40</sup>*

## Sall mends relations with Guinea

Relations between Senegal and Guinea have improved following the official visit of Guinea’s President **Alpha Condé** (2010- present) to **Dakar** from 6 to 9 August.<sup>41</sup> As the visit came to a close Condé declared that “*relations between our two countries have never been better*”.<sup>42</sup> The visit is Condé’s third to Senegal since taking power in 2010.<sup>43</sup>

<sup>25</sup> World Bank, 14 Aug 2015.

<sup>26</sup> World Bank, 14 Aug 2015.

<sup>27</sup> World Bank, 14 Aug 2015.

<sup>28</sup> www.ifc.org

<sup>29</sup> World Bank, 14 Aug 2015.

<sup>30</sup> World Bank, 14 Aug 2015.

<sup>31</sup> World Bank, 14 Aug 2015.

<sup>32</sup> World Bank, 14 Aug 2015.

<sup>33</sup> World Bank, 14 Aug 2015.

<sup>34</sup> Jeune Afrique, 18 Nov 2013.

<sup>35</sup> Ventures Africa, 12 Aug 2014.

<sup>36</sup> www.ifc.org

<sup>37</sup> www.ifc.org

<sup>38</sup> Ventures Africa, 12 Aug 2014.

<sup>39</sup> Ventures Africa, 12 Aug 2014.

<sup>40</sup> Source, investigative journalist, Senegal

<sup>41</sup> RFI, 10 Aug 2015.

<sup>42</sup> RFI, 10 Aug 2015.

<sup>43</sup> Les Afriques, 3 Aug 2015.

Discussions on security and energy dominated the agenda.<sup>44</sup> Guinea's first round presidential election is scheduled for 11 October and is expected to result in a deterioration of the fragile security environment in Guinea. Sall and Condé also discussed key regional issues – Sall is currently the rotating chair of the **Economic Community of West African States (ECOWAS)**, while Condé is the ECOWAS mediator for the political crisis in **Guinea-Bissau**.<sup>45</sup> The leaders also confirmed that negotiations have started for a joint military cooperation agreement to patrol common borders, to combat the terrorism threat emanating from the neighbouring **Sahel** region.<sup>46</sup> Finally, officials from the two countries signed a cooperation accord to develop hydropower resources and protect river ecosystems.<sup>47</sup>

The Senegalese government decision to close its border with Guinea in May 2014 and again from August 2014 to January 2015 to prevent the spread of Ebola strained relations between the two countries and undermined significant cross-border trade.<sup>48</sup> Prior to the re-opening of the border in November, ECOWAS called for a removal of restrictions on the movements of people and goods.<sup>49</sup> Condé accused Senegal of “*stigmatising*”<sup>50</sup> Guinea over the border closure.<sup>51</sup> Senegal recorded a single case of Ebola, a student who entered Senegal at the Guinea border, in late August 2014. Senegalese authorities successfully prevented an outbreak in the country. However, Senegal did provide a vital link in the international Ebola response effort. The government opened a “*humanitarian corridor*” for **World Food Programme (WFP)** flights in September and Dakar's port was also a logistics base for the response effort.<sup>52</sup>

Relations between the two countries deteriorated soon after Condé took power in 2010. After an alleged assassination attempt against Condé on 19 July 2011, he accused several Senegal-based Guinean political and business figures of involvement in the alleged incident.<sup>53</sup> Condé also accused former president Wade of supporting his opponent in the 2010 presidential election, **Cellou Dalein Diallo**.<sup>54</sup>

*“Both presidents benefited from this visit. Before Condé's arrival, his opponents were feeling at home in Dakar. Everybody knows that Cellou Dalein spends a lot of time in Dakar... more than in Conakry. He has numerous supporters in the Guinean community in Senegal, as well as among the Senegalese government.*

*“But Sall did not want his relationship with Guinea to deteriorate, especially since he has been elected ECOWAS chairman. And Condé can always finance the rebels of (Senegal's southern) Casamance, to create unrest in Senegal. The reconciliation allows both parties to solve problems at home.”<sup>55</sup>*

## Implications

The Senegalese government may face difficulties upholding the CREI conviction in international jurisdictions. Several sources have noted widespread irregularities in the initial investigations process run from the Gendarmerie and subsequent CREI judicial process. The international proceedings highlight the Wades' litigious style and his team will persist with several international judicial avenues. Sall's image will face a significant setback locally and internationally if international proceedings, particularly the UN jurisdictions, rule in favour of Wade. This will undermine the Senegalese judiciary at a time when the government has received significant international support for

<sup>44</sup> RFI, 10 Aug 2015.

<sup>45</sup> RFI, 10 Aug 2015.

<sup>46</sup> RFI, 10 Aug 2015.

<sup>47</sup> RFI, 10 Aug 2015.

<sup>48</sup> See ARC Briefing for Senegal, Jan 2015.

<sup>49</sup> RFI, 26 Jan 2015.

<sup>50</sup> RFI, 26 Jan 2015.

<sup>51</sup> RFI, 26 Jan 2015.

<sup>52</sup> See ARC Briefing for Senegal, Nov 2014

<sup>53</sup> Les Afriques, 3 Aug 2015.

<sup>54</sup> Les Afriques, 3 Aug 2015.

<sup>55</sup> Source, investigative journalist, Senegal

the continuing trial of former **Chadian** military ruler **Hissène Habré** (1982-1990), on charges of war crimes, in an **African Union (AU)**-supported **Extraordinary African Chambers (EAC)** in Senegal.

The Tobene Power project will be a much-needed addition to the Senegalese energy mix. The Sall administration has faced several difficulties launching and completing large power sector projects. The reports around the tender process highlight the continuing political and corruption risks around government contracts in Senegal.

Improved relations between Senegalese and Guinean officials are a positive development for the security environment in Senegal and the sub-region. However, significant political violence in Guinea is expected around the Guinean election, which increases security risks around the Senegalese border.

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