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**Human Rights Council
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary
Detention at its seventy-second session (20-29 April 2015)****No. 4/2015 (Senegal)****Communication addressed to the Government on 25 June 2014****Concerning: Karim Wade**

The Government has not replied to the communication within the deadline.

The State is a party to the International Covenant on Civil and Political Rights.*

1. The Working Group on Arbitrary Detention was established pursuant to resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was then clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in Council resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

* Senegal became a State party to the Covenant on 13 February 1978.



(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Karim Wade, born on 1 September 1968 in Paris, is a Senegalese national domiciled in Dakar. From 2002 to 2012, he served, in turn, as special adviser to the President of the Republic of Senegal, Chairperson of the Supervisory Board of the National Agency for the Organization of the Islamic Conference and Minister of State.

4. According to information received, on 2 October 2012, the special prosecutor with the Court for the Suppression of Illicit Enrichment, a special Senegalese court set up to try cases of illicit enrichment, launched a preliminary inquiry against Mr. Wade on the basis of article 5 of Act No. 81-54 10 July 1981. He is charged with holding assets that bear no relation to the lawful income he would receive in connection with his official duties.

5. After completing the preliminary inquiry on 8 March 2013, the special prosecutor was said to have summoned Mr. Wade, on 15 March 2013, in order to give him formal notice to demonstrate, within one month, the lawful origin of his property, estimated by the said prosecutor and gendarmes responsible for the preliminary inquiry at 693,946,390,174 CFA francs, or about 1 billion euros, and allegedly including 15 companies under his ownership.

6. According to the source, Mr. Wade submitted a written reply to the formal notice indicating that he was neither the owner or shareholder nor direct or indirect financial beneficiary of these companies, as the true owners, company directors and shareholders reportedly confirmed. The source claims that no evidence was presented by the prosecutor, who nevertheless ordered Mr. Wade's arrest and remand in custody on 15 April 2013. Mr. Wade was then brought before the investigating commission of the Court for the Suppression of Illicit Enrichment pursuant to the special prosecutor's application to commence proceedings for indictment purposes, submitted on the same day, for acts of illicit enrichment committed in the performance of his duties.

7. The source reports that the investigating commission began its questioning of Mr. Wade at his initial appearance, remanded him in custody on 17 April 2013 on the basis of Act No. 81-54, articles 10 and 11, and dismissed the jurisdictional plea that he entered. Mr. Wade has been held at the Rebeuss remand and detention centre in Dakar since 17 April 2013 and has reportedly not been able to receive visits other than from his mother.

8. At the end of the maximum six-month period of the first warrant of detention, on 17 October 2013, under the foregoing Act and Act No. 99-06, article 127 bis, of 29 January 1999, the investigating commission is said to have issued a second summons to him and served a second warrant of detention on him for the same acts, whereas, again according to the source, international letters rogatory and the report of the expert appointed by the investigating commission proved that those companies did not belong to Mr. Wade. The source claims that there was an abuse of procedure aimed at getting around the six-month restriction.

9. At the end of the second warrant of detention, on 16 April 2014, the investigating commission took the decision to send Mr. Wade for trial by the adjudicating court. According to the source, in accordance with Act No. 81-54, article 14, the decision of the Court for the Suppression of Illicit Enrichment must be executed within the two months that follow. However, the source notes that the date of the trial is scheduled for 31 July 2014, or three and a half months after the order on the transfer of proceedings to the adjudicating court was delivered.

10. According to the source, Mr. Wade was therefore held in detention arbitrarily, as this detention did not have any legal basis and thus fell within category I.

11. The source states that Mr. Wade's deprivation of liberty is of an arbitrary nature that also falls within category III. The source claims, in particular, that it constitutes a violation of the right to a fair trial in accordance with the following international norms: articles 8, 9 and 11 of the Universal Declaration of Human Rights; articles 2, 9, paragraphs 1 and 4, and 14, paragraphs 1, 2, and 3 (g) of the Covenant; principles 2, 9, 32 and 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and articles 6 and 7 of the African Charter on Human and Peoples' Rights. The source emphasizes that, in its statement in Luanda (April-May 2014) at the fifty-fifth regular session of the African Commission on Human and Peoples' Rights, the *Rencontre africaine pour la défense des droits de l'homme* (African Meeting for the Defence of Human Rights) underlined most of the violations of the right to a fair trial caused by the rules of procedure of the Court for the Suppression of Illicit Enrichment.

12. The source claims that the Court was maintained despite its supposed abrogation. This special court established pursuant to Act No. 81-54 in order to try cases of illicit enrichment is known to have been implicitly abrogated under Act No. 84-19 of 12 February 1984, as it was not mentioned therein. The lawyer and former Minister of Justice, Doudou Ndoye, has interpreted this in the same way, as is shown in an article published in the Senegalese daily newspaper *WalFadjri* on 14 April 2014. The source also reported that, according to article 67 of the Senegalese Constitution, such a court may be re-established only by law, which was not the case here, as the Court was supposedly reactivated by a presidential decree on 12 May 2012, followed by another decree on 6 July 2012 after the first decree was shelved. In the source's view, therefore, this court has no lawful existence and the two warrants of detention are thus null and void.

13. Alternatively, the source reports that the Court for the Suppression of Illicit Enrichment lacks jurisdiction to try Mr. Wade, as the facts in question occurred when Mr. Wade was performing official duties as Minister of the Republic, which means that he enjoyed exemption from jurisdiction under article 101, paragraph 2, of the Constitution. Moreover, the source emphasizes that, in accordance with article 7 of Act No. 81-54, in the event of facts constituting illicit enrichment involving a person who has immunity or an exemption from jurisdiction, the case must be transmitted to the competent court at the legal proceedings stage. Mr. Wade should therefore have been tried by the High Court of Justice rather than the Court for the Suppression of Illicit Enrichment, as the Court of Justice of the Economic Community of West African States (ECOWAS) stressed in its decision of 22 February 2013.

14. The source states that, at the time of the preliminary investigation, Mr. Wade's lawyers and other former ministers of Senegal subject to the same proceedings referred the matter to ECOWAS, which found, in its decision of 22 February 2013, that all possible proceedings against Mr. Wade fell to the High Court of Justice. The source reports that the Senegalese State has never complied with it. The State failed to do so despite: an official notice of the decision, which, under article 62 of the regulations of the Court of Justice, is binding from the moment that it is given; a letter

from the Chairperson of the ECOWAS Commission; and a new decision rendered on 19 July 2013 which points out that the enforcement of decisions of the Court of Justice is not an option but rather an obligation under article 15, paragraph 4, of the Revised Treaty of ECOWAS.

15. Furthermore, according to information received, the possibility for any judicial review is ruled out under article 13 of Act No. 81-54 except when a case is dismissed, as a request for such a review may be appealed against in the Court for the Suppression of Illicit Enrichment by the special prosecutor. The source states that the appeal for judicial review made by Mr. Wade to the investigating commission was rejected for this reason and the submission of the case to the chief clerk of the Court for the Suppression of Illicit Enrichment on 22 April 2013 with a view to filing an appeal on points of law against the decision of the investigating commission of 17 April 2013 was also refused in a statement dated 23 April 2013.

16. The source reports that Mr. Wade had lodged an application with the President of the Court for the Suppression of Illicit Enrichment on 19 April 2013 in order to enjoin the clerk to register the appeal, which was also refused by an order dismissing the plea handed down on 23 April 2013. Mr. Wade then took his case to the Supreme Court of Senegal, which declared the appeal against this decision admissible in a decision dated 6 February 2014 and referred the proceedings to the Constitutional Council in order for it to rule on the plea of unconstitutionality of the above-mentioned Act. However, the Council dismissed the plea on 3 March 2014, while the source points out that the lack of the right of appeal to a higher court is at variance with the international conventions duly ratified by Senegal. The source states that the prosecutor of the Court for the Suppression of Illicit Enrichment requested the Supreme Court on 6 June 2014 to cancel the last decision of the Supreme Court dated 6 February 2014.

17. Mr. Wade also referred the matter of annulling the proceedings initiated by the Court for the Suppression of Illicit Enrichment to the indictments chamber of Dakar, but the chamber declined jurisdiction on 21 November 2013. The source claims that Mr. Wade was therefore deprived of the possibility of any appeal in addition to facing a breach of the principle of equality of arms. The source states that a preliminary draft of a bill on the abrogation and replacement of the Court by the Court for the Suppression of Economic and Financial Offences introduced the right to file an appeal at the investigative stage of proceedings and to have a conviction reviewed.

18. According to the source, under article 3 of Act No. 81-53 of 10 July 1981 and article 6, paragraphs 4 and 6, of Act No. 81-54, the person is presumed guilty for lack of sufficient proof of the licit origin of the enrichment within the time limit set by the special prosecutor. The source reports that Mr. Wade had presented on numerous occasions evidence that he was not at the head of these companies, but this was completely ignored by the prosecutor, since the investigating commission nevertheless sent him to be tried for acts of illicit enrichment. The information received also indicates that, even before the investigation was launched, the above-mentioned prosecutor violated the principle of the presumption of innocence at a press conference on 9 November 2012.

19. The source also points to the fact that the Constitutional Court of Senegal confirmed that the right to the presumption of innocence was violated in a decision dated 3 March 2014, in which it considered that the complainant could put up a defence by offering evidence to the contrary. However, the source states that, under article 3 of Act No. 81-53, proof of a voluntary disposition in itself is not enough to demonstrate the lawful origin of assets, thus ruling out the principle of evidentiary procedure.

20. While Senegal filed a complaint against Mr. Wade for fraud with the French courts in December 2012, the source states that, on 19 May 2014, the public prosecutor of the national financial prosecution service decided to close the case.

21. On 5 June 2014, the International Federation for Human Rights, the Senegalese League of Human Rights and the Rencontre africaine pour la défense des droits de l'homme issued a joint press release in which the Court for the Suppression of Illicit Enrichment was described as a special court that violated the right of defence of accused persons and failed to guarantee the right to a fair trial, in accordance with the provisions of the African Charter on Human and Peoples' Rights and the Covenant.

Response from the Government

22. On 25 June 2014, the Working Group sent to the Government all the information received from the source. The Government then had 60 days to reply. The deadline expired on 24 August 2014, on a Sunday. The Government's reply should therefore have been submitted on 25 August 2014. However, the reply was not submitted to the secretariat of the Working Group until 26 August 2014 and the Government had not requested an extension of the deadline or provided any explanation. As a result, the Government response cannot be allowed into the record or taken into account in the assessment of the Working Group.

Comments from the source

23. Further to the initial submission, the source constantly submitted updated information while the Working Group's deliberations were still under way. As the information added nothing to the substance of the initial claim, there had been no need to transmit it to the Government for a reply. However, some of the information clarified the initial statement of claim.

24. For example, with regard to the visits that Mr. Wade received, in response to the Working Group's query, the source pointed out the need to distinguish between three periods:

- During the investigation phase, Mr. Wade allegedly received visits from some 50 persons per week. However, some members of his immediate family, including the person who was caring for his children in Paris, were said to have been systematically denied a visiting permit despite numerous requests;
- The number of visitors is said to have declined considerably between the date of service of the order on the transfer of proceedings and the start of the trial. A number of requests for permits were reportedly refused.
- Furthermore, since the beginning of the trial, only Mr. Wade's mother was said to be able to visit him, with the exception of three other persons on 11 August.

25. In the source's view, such a significant drop in the number of visits (aside from those of his mother and his lawyers) — allegedly authorized only on Mondays — undermined the credibility of the communiqué from the Senegalese Ministry of Justice, dated 12 June 2014, which indicated that all requests for visiting permits made by Mr. Wade's immediate family had been granted by the special procurator. The source further claims that the Court for the Suppression of Illicit Enrichment issued visiting permits only for a specific date, contrary to the other courts which were said to issue valid permits throughout the procedure.

26. According to the source, the international conventions on the fight against corruption and organized crime applicable to Senegal are as follows: the African Union Convention on Preventing and Combating Corruption, adopted in Maputo on 11 July 2003, and the United Nations Convention against Corruption, adopted in New York on 31 October 2003. These conventions provide for the criminalization of illicit enrichment and require respect for human rights, including the right to a fair trial.

27. Furthermore, the source criticizes the special prosecutor and the investigating commission for violating Mr. Wade's right to the presumption of innocence by shifting the burden of proof. The special prosecutor and the investigating commission allegedly asked Mr. Wade to account for the source of his property without first providing evidence that the property was indeed his.

28. Moreover, a number of facts supposedly prove that almost none of the property in question belonged to Mr. Wade. First of all, the source observes that the investigating commission referred Mr. Wade to the adjudicating court on the basis of property nearly eight times smaller than the one which the special prosecutor had asked him to account for. Secondly, the co-defendants would not have persisted in denying ownership of this property if the prosecution had submitted anything at all in writing to refute them. Furthermore, the international letters rogatory executed in France, Monaco and Luxembourg allegedly confirmed that Mr. Wade was not the holder of any bank account, real estate or company that had been attributed to him. Those investigations are said, moreover, to show that there were no bank transfers or financial flows from 2002 to 2012 between the accounts of Mr. Wade and his co-defendants. The source claims that the prosecution is based only on testimonies that, nevertheless, are not likely to contradict the certificates of shares in the companies provided by the co-defendants which, according to the business law of the Organization for the Harmonization of Business Law in Africa (OHADA), prove share ownership.

29. The source reports that, for the rest of the property attributed to Mr. Wade — namely the balance of a supposed bank account opened at ICBC bank in Singapore in the name of the African Handling Service company of Guinea-Bissau owned by Mr. Wade — no evidence has been produced that would indicate that Mr. Wade was the direct or indirect holder of this bank account. During the preliminary inquiry and investigation into the case by the investigating commission, Mr. Wade, allegedly, was never accused or given a formal notice or even a hearing about this supposed bank account in Singapore. He was allegedly informed of the account and the sum of money it represented — one third of the property attributed to him — only when the order referring the case for trial was handed down. Although international letters rogatory had been sent to the Singaporean authorities concerning this matter on 10 April 2014, no question about the disputed account was said to be put to Mr. Wade during his interrogation on 9 April 2014. Furthermore, on 16 April 2014, the investigating commission decided to refer the case to the adjudicating court without waiting for the results of the investigation.

30. The procedure in current use by the Court for the Suppression of Illicit Enrichment is said to be a breach of the principle of the presumption of innocence and the right to due process of law, as Mr. Wade is now allegedly being tried for growing rich without being able to prove that the source of his wealth is lawful.

31. The source also provided clarification on the events that followed the opening of the trial on 31 July 2014. First, Mr. Wade's lawyers entered a plea of incompetence of the Court for the Suppression of Illicit Enrichment. They believe that their client should enjoy an exemption from jurisdiction given that the acts of which he is accused were allegedly committed when he was a minister as part of his functions. The plea was rejected by the Court on 18 August 2014. The Court held that the offence with

which Mr. Wade was charged had not been constituted until 15 April 2013, i.e. after his reply to the formal notice that had been served to him. He had no longer been a minister then for more than a year. The court decision was said to be contrary to article 101, paragraph 2, of the Senegalese Constitution and article 7 of Act No. 81-54.

32. Upon notification of the decision, Mr. Wade's lawyers then made an appeal for cassation and requested the Court for the Suppression of Illicit Enrichment to postpone giving a ruling pending the decision of the Supreme Court. On 20 August 2014, the Court for the Suppression of Illicit Enrichment rejected the request.

33. Mr. Wade's lawyers also filed for some twenty applications for the proceedings to be set aside on grounds of nullity. However, the source indicates that, whereas the Court for the Suppression of Illicit Enrichment had adjourned the case for consideration in order to respond to the defence of nullity and objections to jurisdiction raised, in the end, it indicated at the hearing on 1 September 2014 that it had joined all the arguments to the merits. The decision was said to violate Mr. Wade's right to a fair trial.

34. Mr. Wade's defence then filed a request for the hearing of the case to be deferred to a later date so that discussions could be held in the presence of the principal co-defendant of Mr. Wade, Ibrahim Aboukhalil, who was then seriously ill and recognized as being not fit to appear by an expert appointed by the Court for the Suppression of Illicit Enrichment. The expert had nevertheless refused his medical repatriation to France and had demanded that he appear before the Court at the hearing of 1 September 2014. This decision had been condemned by certain civil society organizations in the name of the right to health and the right to life. In a decision dated 2 September 2014, the Court for the Suppression of Illicit Enrichment nevertheless rejected the requests for the hearing to be deferred and decided to hold the trial in the absence of Ibrahim Aboukhalil. The source maintains that Mr. Wade's right to a fair trial with due hearing of the parties was violated given that Ibrahim Aboukhalil continued to claim 70 per cent of the property that the prosecution attributed to Mr. Wade.

35. The source further states that, on 12 September 2014, the Court for the Suppression of Illicit Enrichment is said to have surreptitiously visited Ibrahim Aboukhalil at his bedside for a hearing on the facts without informing the parties, apart from the lawyers of the person concerned. This supposedly shows once again the Court's indifference to respect for due process of law.

36. The source also states that, on 2 September 2014, Mr. Wade's lawyers filed a request for recusal of the President of the Court for the Suppression of Illicit Enrichment. This request is justified by the fact that the President allegedly continued to show bias and thus undermined the presumption of innocence with respect to Mr. Wade. Furthermore, he allegedly made inappropriate remarks regarding Mr. Wade's lawyers on several occasions. This request was rejected, however, by the Senior President of the Supreme Court by an order on 17 September 2014.

37. In general, the source reports that the President of the Court for the Suppression of Illicit Enrichment increasingly held the defence back from stating its case during the proceedings. Moreover, the prosecutor was said to have interrogated the co-defendants on a number of occasions about documents not listed in the proceedings that were not a part of the case file, without the Court for the Suppression of Illicit Enrichment excluding these documents from the proceedings. In addition, the source mentions that, in a letter dated 3 September 2014, the President of the Court demanded that the defence team give the reasons for which it wished to grant a hearing to witnesses who have not been heard by the investigating commission. However,

according to the source, there is no provision under the Code of Criminal Procedure that stipulates a restriction of this kind.

38. The source further observes that, by a decision dated 19 August 2014, the joint chambers of the Supreme Court overturned the ruling of the criminal division of the Supreme Court dated 6 February 2014, thus acceding to the request made by the prosecutor-general to that effect on 6 June 2014.

39. Furthermore, a press release of the *Rencontre africaine pour la défense des droits de l'homme* indicates that, on 29 December 2014, the Court for the Suppression of Illicit Enrichment rejected Mr. Wade's application for provisional release. This allegedly infringed the right to the presumption of innocence, as the decision was not justified by the need to prevent the peace from being breached, evidence from disappearing, the accused from absconding or witnesses from being bribed or coerced or to protect the defendant against revenge by those affected by the offence. It also allegedly infringed the right to be tried within a reasonable time limit, as the period of investigation and adjudication in this case extended well beyond reasonable time limits. Lastly, the right of all accused persons before a court or a tribunal to be treated equally and enjoy the same benefits was allegedly violated. According to the source, such equal treatment did not in fact apply, as, for some defendants, it was considered that provisional release was not likely to lead to either breaches of the peace or the coercion of witnesses or even a flight risk, whereas for others, all these risks were considered to be plausible.

40. Recently, the source immediately informed the Working Group of the fact that, on 23 March 2015, the Court for the Suppression of Illicit Enrichment had rendered its decision in the case concerning Mr. Wade and had found the defendant guilty and sentenced him to 6 years' imprisonment.

Discussion

41. Article 9 of the Universal Declaration of Human Rights prohibits arbitrary arrest and detention by stipulating that "no one shall be subjected to arbitrary arrest, detention or exile". This prohibition is a fundamental rule of customary international law and is recognized as a peremptory norm of general international law or *jus cogens*.¹ It is also mentioned in article 9 of the Covenant and article 6 of the African Charter on Human and Peoples' Rights, which are international instruments to which Senegal is a party. In addition, principle 2 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988, states that "arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law".

42. The Working Group observes that, on the basis of the credible and consistent evidence provided by the source, the different time limits for preventive detention and the trial and for deliberation were not respected, in violation of the very provisions of Senegalese law concerning the deprivation of liberty, which thus entails a violation of the above-mentioned provisions of the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. That being the case, Mr. Wade's deprivation of liberty is of an arbitrary nature that falls within category I.

¹ See, inter alia, the established practice of the United Nations as expressed by the Human Rights Committee in its general comment No. 29 (2001) on states of emergency, para. 11.

43. The source states that Mr. Wade's deprivation of liberty is also of an arbitrary nature that falls within category III. However, in the Working Group's view, among the many arguments made by the source, only the ones relating to the presumption of innocence, the equal treatment of the defendants and the period of the proceedings could possibly prevail.

44. In fact, the source challenged the shifting of the burden of proof that stemmed from a presumption of illegality, as the defendant cannot show that the origin of his property is lawful. For the source, there was a violation of the presumption of innocence, because the shifting of the burden of proof in question means that the impossibility for a person to prove ownership of property can only lead to the conclusion of illegal ownership. However, in the view of the Working Group, this type of shifting is common in tax and anti-money-laundering matters and does not violate the conventions of the African Union and the United Nations concerning corruption adopted in 2003, to which Senegal has been a party, respectively, since 12 April 2007 and 16 November 2005.² Even if a shifting of the burden of proof violated the right to a fair trial and pointed to a conclusion on category III, in this case, the law accepts the type of shifting done and, in the Working Group's view, there is, therefore, no violation of the presumption of innocence.

45. Secondly, with regard to provisional release, the rule in criminal matters remains that preventive detention pending the outcome of a trial must continue to be the exception so that any preventive detention is to be duly justified by the circumstances determined by the law and verified by the judge. In this case, the Working Group is not convinced that the circumstances required by the law were objectively established for preventive detention to continue. Moreover, Senegalese law sets strict time limits on the procedure, which have not been observed in the present case, as the preventive detention was even longer. Under these conditions, the difference in treatment between Mr. Wade and the other defendants who were released on bail is not justified and further violates the right to a free trial in these proceedings against Mr. Wade.

46. In conclusion, the Working Group stresses that this case does not relate to the charge that is the subject of the proceedings against Mr. Wade but rather to the conditions under which these proceedings were carried out. Corruption in all its forms is contrary to international law and order³ and every effort must be made to combat and punish it without infringing the rights of the accused.

Disposition

47. In the light of the foregoing paragraphs, the Working Group concludes the following:

The deprivation of liberty of Mr. Karim Wade is arbitrary, as it is in breach of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights and thus falls into categories I and III of the categories applicable to the consideration of the cases submitted to the Working Group.

48. The Working Group therefore requests the Senegalese Government to take the necessary steps to remedy the harm suffered, by providing full compensation, in accordance with article 9, paragraph 5, of the Covenant.

² In both conventions, this type of shifting of the burden of proof is made in cases of illicit enrichment in which the impossibility for the defendant to prove the legal origin of his property points to a presumption of illegality. See article 20 of the United Nations Convention and article 8 of the African Union Convention.

³ *World Duty Free Company Limited v. the Republic of Kenya*, International Centre for the Settlement of Investment Disputes, case No. ARB/00/7, decision, August 2006, para. 157.

49. The Working Group recalls that the Human Rights Council has requested all States to cooperate with the Working Group, take account of its views and take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁴ The Working Group therefore requests the full cooperation of Senegal in implementing this opinion in order to provide an effective remedy for a violation of international law.

[Adopted on 20 April 2015]

⁴ Human Rights Council resolution 24/7, paras. 3, 6 and 9.