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PRESIDENTIAL AUTHORITY AND THE 2001 CONSTITUTION OF SENEGAL

JUDY SCALES-TRENT*

ABSTRACT

This article begins with a brief introduction to Senegal and a summary of its constitutional history, from the First Constitution in 1960, through the modifications made to the 2001 Constitution. Through these changes we see the radical increase of presidential authority over time. The article then describes Okoth-Ogendo's notion of an "African Paradox," which he describes as a commitment to the notion of a Constitution, but without the classical notion of constitutionalism. Next, it applies Okoth-Ogendo's analytic framework to Senegal to see if that country is part of this "African Paradox." The article concludes by describing the demonstrations and riots that took place in Senegal in June 2011, as the Senegalese reacted with rage to the President's latest proposal to modify the Constitution.

I. INTRODUCTION

In October of 2000, I left the United States to spend a year in Dakar, Senegal, as a Fulbright Scholar. While there, I conducted research on Senegalese women lawyers and taught a law school class at Cheikh Anta Diop University. During that year, the country adopted a new Constitution and elected a new president. As you might imagine, it was a very exciting time for the Senegalese, and particularly interesting to my law school students. This evening, I want to talk briefly about Senegal, its constitutional history, and the Constitution of the Third Senegalese Republic, enacted in 2001. I will then address recent changes to that Constitution and explore what the changes mean in light of the dream of constitutionalism.

But before talking about Senegal's constitutions, let me tell you a little about this country which I love.

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II. CONTEXT

Senegal is a very small country, with only about thirteen million people, just south of the Sahara Desert.¹ Its capital, Dakar, is on the Atlantic Coast, at the most western point of Africa.² It is not that far away. In fact, Dakar is so close to us here in the United States that a New Yorker can fly to Dakar faster than he can fly to Paris.

At the beginning of the twentieth century, after decades of warfare, the French gained control of a large part of western Africa. In the Senegambian region, this meant the conquest of many kingdoms, including Siin and Saloum, Fouta Jallon and Jolof, Waalo and Boal.³ This destruction of Senegambian political structures led to the rapid rise of Islam in the region as an alternative political and social structure.⁴ In 1960, the French occupation of west Africa came to an end, and a new country, Senegal, came into existence.⁵ Today, Senegal is ninety-four percent Muslim,⁶ in a country with a Constitution that provides freedom of religion and with people who are proud of their acceptance of other religions. According to the scholar Léonardo Villalón, a major reason for the stability of Senegal has been the power of the Islamic brotherhoods in the country, which acts to counterbalance the power of the state.⁷

The Senegalese economy is not good today, for many reasons, including the privatization of the economy under structural adjustment programs demanded by the World Bank and the International Monetary Fund.⁸ Decades of drought have had a harmful impact on agriculture. And there is less and less arable land as the Sahara Desert spreads south because of global warming. Fishing has always been a major industry, because Senegal is on the Atlantic Coast. But it is getting harder and harder for Senegalese fishermen to make a living, because as Asia and Europe deplete their own stock of fish, they have been sending huge trawlers to the African coast, trawlers which are now depleting that stock too.⁹

1. *Background Note: Senegal*, U.S. Dep't of State, <http://www.state.gov/r/pa/ei/bgn/2862.htm> (last visited Oct. 25, 2011).

2. *Id.*

3. BOUBACAR BARRY, *Senegambia and the Atlantic Slave Trade* 1-2, 301 (1998).

4. LEONARDO VILLALÓN, *ISLAMIC SOCIETY AND STATE POWER IN SENEGAL: DISCIPLES AND CITIZENS IN FATICK* 61 (1995).

5. MARTIN MEREDITH, *THE FATE OF AFRICA: FROM THE HOPES OF FREEDOM TO THE HEART OF DESPAIR* 69 (2005).

6. *Background Note: Senegal*, *supra* note 1.

7. VILLALÓN, *supra* note 4, at 25-27.

8. Fatou Sow, *Fundamentalisms, Globalisation and Women's Human Rights in Senegal* 11 *GENDER & DEV.* 69 (2003).

9. *Background Note: Senegal*, *supra* note 1.

Thus, we see a poor country getting poorer. Young men are leaving the countryside for the cities, then leaving Senegal altogether, in order to support their families. In 2000, twenty percent of all Senegalese lived other countries.¹⁰ Senegalese immigrants live around the world, working, for example, in France and Italy, in Dubai and China, and throughout the United States. Indeed, so many Senegalese have moved here that in many cities, including Atlanta, Newark, Baltimore, New York City, and Washington DC, Senegalese hold parades every summer to celebrate the life of the Cheikh Amadou Bamba, founder of an important Muslim brotherhood in Senegal.¹¹

Senegalese leave the country, of course, to find work and send money back home. This helps families and enriches the Senegalese economy, but it leaves wives without husbands, and children without fathers. Working abroad also carries important risks as economies around the world are linked. So when the American economy is struggling, . . . when jobs here are being lost, . . . it means that many Senegalese immigrants in the United States are not working, and many children back in Senegal are not eating very well.

The country's poverty means that there are many homes without electricity or running water,¹² medical facilities, few roads or highways, and too many children never go to school.¹³ The Senegalese want a better life, and they want their government to do something about it. So they are keenly interested in what the government is doing and what they are not doing; they are interested in who has the power. And sorting out where the power lies is the primary job of a Constitution. But in order for you to understand the Constitution of 2001 and current constitutional issues in Senegal, I need to give you a little historical context.

10. Papa Demba Fall, *International Labour Migration and Local Development in the Upper Valley of the Senegal River: The Premises of a New Citizenship*, 2 (Université Cheikh Anta Diop de Dakar, 2005), available at <http://matrix.msu.edu/~ucad/papadembafall/maoumy/Texte/ailhsephis%20%20final%20version.pdf>.

11. Zain Abdullah, *Sufis on Parade: The Performance of Black, African and Muslim Identities*, J. AM. ACAD. RELIGION 1-2 & n.2 (2009).

12. *Résultats du Troisième Recensement Général de la Population et de l'Habitat* (2002), République du Sénégal: Ministère de l'Economie et des Finances, 9, 11 (2006), <http://sitere-sources.worldbank.org/INTSENEGALINFRENCH/Resources/461584-1175072268436/TROISIEMERECENSEMENTPOPULATIONETHABITATSENEGAL.pdf>.

13. *Background Note: Senegal*, *supra* note 1.

III. CONSTITUTION OF THE FIRST AND SECOND SENEGALESE REPUBLICS (1960 AND 1963)

A. *Constitution of the First Senegalese Republic: 1960*

When Senegal gained its independence from France in 1960, it considered it important to have a Constitution, in order to demonstrate its sovereign existence and enter the world of nations. But because France had created the country “Senegal” during the colonial era, this new country had no constitutional history. The new Senegalese government, therefore, based the Constitution of the First Senegalese Republic on the Constitution of the Fifth French Republic.

The first government created a Constitution with shared power. In the Executive branch, President Léopold Senghor shared power with the President of the Council of Ministers and head of government, Mamadou Dia. And the legislative body, the National Assembly, could exert some power over the government through investigations, a vote of no confidence, or a vote of censure, through which they expressed their desire to replace the government. In the 1960 Constitution, the President did not have the authority to dismiss the National Assembly or members of government, but he gained that right through constitutional legislation in 1961. Following the French system, the judiciary was not an important third branch of government, as it is in the United States: “separation of powers” here means essentially the separation between the executive and legislative branches of government.¹⁴

In December 1962, Mamadou Dia, head of the Council of Ministers, tried to take over all power through a *coup d'état*, causing a grave crisis in this new country. As a result, President Senghor decided it was important to centralize executive authority in the presidency in order to stabilize the country.¹⁵ This led to the creation of the Second Senegalese Republic, and a new Constitution.

B. *Constitution of the Second Senegalese Republic: 1963*

Under the second Constitution, there was no longer a Prime Minister. Power that once belonged to President of Council, as head of the government, now belonged to the President, who had the authority to determine and conduct the policies of the nation and assure the execution of laws. The Council of Ministers still existed, but it became simply a way for the Executive to organize work. The Ministers were now responsible to the President and not to the National Assembly.

14. ISMAILA MADIOR FALL, L'ÉVOLUTION CONSTITUTIONNELLE DU SÉNÉGAL DE LA VEILLE DE L'INDÉPENDANCE AUX ÉLECTIONS DE 2007 32-41 (2007).

15. *Id.* at 44-48.

The President was head of the administration and of the armed forces. He had the authority to name governmental ministers and to select the personnel for all military and administrative positions, including judges. The President could now submit proposed laws directly to the people instead of to the National Assembly, and he had exceptional powers in case of crisis. However, he no longer had the power to dissolve the National Assembly, nor could the National Assembly reverse the government through a vote of censure.¹⁶

During the next forty years, there would be many changes made to the Constitution through the enactment of laws. Many of the changes were about the notion of shared executive power. The position of Prime Minister was eliminated twice (1963, 1983) and added twice (1970, 1991). The President gained the authority to dissolve the National Assembly once the National Assembly censured the government; he also gained the right to select and remove the Prime Minister, without having to give any reason for that removal. In 1998, the Constitution was modified to create a Senate.¹⁷

In 2000, after forty years of control by the Socialist Party, a declining economy and increasing unemployment, the Senegalese were desperate for a change. They voted out the Socialist party and voted in a new President, long-time opposition candidate Abdoulaye Wade. His campaign platform as well as his slogan, in Wolof, had been “*Sopli!*”: “Change!” During his campaign, Wade told the Senegalese people that if they wanted him to become President and improve their lives, they would have to create a new Constitution, one that would give him enough authority to make the changes the country needed. And so they did. In January 2001, the Senegalese voted to create the Constitution of the Third Senegalese Republic.

IV. CONSTITUTION OF THE THIRD SENEGALESE REPUBLIC (2001)

This new Constitution included changes with respect to both rights and the structure of the government. The new rights include: freedom of the press, freedom of association, freedom to demonstrate, freedom for unions to organize; cultural, religious and philosophical freedom; and the right to property, work, health, and education (Art. 8, 10, 11). The right to private communication now includes electronic communication (Art. 13). This new document also states that laws cannot be applied retroactively (Art. 9).

There are also many new constitutional rights for women. The new Constitution states that every individual has the right to bodily integ-

16. *Id.* at 56-57, 62.

17. *Id.* at 58, 61, 150-151.

rity, especially in terms of protection against all physical mutilation, language intended to eliminate female genital mutilation. (Art.7). It gives women the right to own land, and to be in charge of their own property (Art.15 and Art. 19); the right to improved conditions of life, especially for women in the countryside (Art. 17). The new Constitution prohibits discrimination in employment, salary and tax (Art. 25). It also prohibits forced marriages (Art. 18) and states that all children, girls as well as boys, have the right to access to school (Art. 22).

Why this emphasis on women's rights? It is because women's lives in Senegal are very hard. There are too many early marriages and early pregnancies, which lead to a high rate of maternal mortality.¹⁸ Over half of all Senegalese women have had no formal schooling.¹⁹ Although polygamy is now decreasing, about twenty-five percent of all women are in polygamous marriages,²⁰ where they often compete for their husband's attention by trying to have more children than the other wives. This, of course, leads to increased health risks for the women. Women do over eighty percent of all agricultural work,²¹ and then, in addition, must also do all the housework in a setting where there is often neither electricity nor wells for water. During the year I spent in Senegal, I really began to understand how hard their lives are when I saw women crouched over, weeding, in the hot sun, with children strapped on their backs; when I saw groups of women, standing around a mortar, pounding grain together with huge pestles in slow motion; when I saw women and girls walking down the road carrying bundles of wood, or large bowls full of vegetables or meat, or a huge calabash of buttermilk, on their head, on their way to market. So it is quite wonderful that the 2001 Constitution gave Senegalese women all these new rights.

The problem is, however, that Senegal, like most francophone countries, has no enabling legislation: there is no way for women to go to

18. The maternal mortality ratio for Senegal in 2008 was four hundred ten. To get a sense of the value of this number, that same year the maternal mortality ratio for Ireland was three, and for Belgium, five. The United Nations defines this ratio as "the annual number of female deaths from any cause related to pregnancy. . . per one hundred thousand live births, for a specified year." *Statistics and Indicators on Women and Men- Table 3B: Maternal Mortality and Infant Mortality*, U. N. Stat. Div., <http://unstats.un.org/unsd/demographic/products/indwm/tab3b.htm> (last visited Oct. 25, 2011).

19. *Résultats du Troisième Recensement Général de la Population et de l'Habitat*, *supra* note 15, at 64.

20. *Rapport de Synthèse de la Deuxième Enquête Sénégalaise auprès des Ménages*, République du Sénégal, Ministère de l'Economie et Finances, Direction de la Prévision et de la Statistique 33 (2004), http://www.ansd.sn/publications/rapports_enquetes_etudes/enquetes/ESAM_1.pdf.

21. *Senegal: Country Gender Profile*, Inter Africa Network for Women, Media, GENDER EQUITY & DEV. 21 (2007), http://www.jica.go.jp/activities/issues/gender/pdf/e06_sen.pdf.

court to protect these rights.²² A government official explained this to a group of women only a few weeks ago.²³ The right of women to own their own land, and own good land, has been an important issue for some time now. It is an issue that women have been organizing about. And a few weeks ago, over one thousand Senegalese women gathered in front of the town hall in the town of Djilor to express their frustration with a social system in which women have little access to land of their own to farm. They wanted the government to do something about it.²⁴ But the government official present at this demonstration explained to the women that, although the Constitution did indeed give women the right to own land, it did nothing to help them obtain that land: they would have to figure out for themselves how to get their families and communities to give land to them.²⁵

One of the major structural changes in the Constitution of 2001 was the elimination of the Senate (Art. 59). But it is clear that the major focus of this document was the continued expansion of presidential authority. We can see this in many places:

- Under the Constitution of 1963, the President determined the policies of the country, which the government implemented under the direction of the Prime Minister. (Art. 36). The 2001 Constitution repeats that it is the President who determines policies. It adds, however, that he is also in charge of the institutions, national independence, and the integrity of the national territory. There is no longer any reference to the role of the government. (Art. 42).
- Formerly, the President could submit proposed laws for a vote by national referendum, when such law was proposed by the Prime Minister. (Art. 46). Under the new document, the President can still propose laws by national referendum when proposed by the Prime Minister. But now he can also submit any law proposing a revision of the Constitution by referendum, *without* input from the Prime Minister. (Art. 1).
- Under the Constitution of 1963, the President could call the National Assembly into extraordinary session only when it was proposed by the Prime Minister. (Art. 52). The new Constitution gives the President the authority to call for this session on his own initiative, without waiting for the Prime Minister's proposal. (Art. 63).

22. ISMAILA MADIOR FALL, *supra* note 14, 122-123.

23. Charles Gaiky Diene, *Journée mondiale de l'alimentation: Un millier de femmes rurales réclament des terres*, WALFADJRI, Oct. 18, 2010, http://www.walf.sn/economique/suite.php?rub=3&id_art=68123.

24. *Id.*

25. *Id.*

- The 1963 Constitution authorized the President to dissolve the National Assembly only after a motion of censure of the government. (Art. 75 bis). Under the 2001 Constitution, the President received the authority to dissolve the National Assembly and call for new elections on his own initiative, without waiting for the National Assembly to act. (Art. 87). He can also call for new elections without dissolving the National Assembly. (Art. 105).
- The President can now dissolve the Councils of all local communities. (Art. 105).

Thus, it is not difficult to see that under the 2001 Constitution, the President gained even more power than before. He controls the Prime Minister, the National Assembly, the civil service, the armed forces, and local governments. And President Wade has not hesitated to use his expanded authority. Since 2001, he has dismissed five Prime Ministers²⁶ and dismissed the National Assembly.²⁷ It is very likely that he has also dismissed and replaced local elected officials. But even if he has not, since those officials know that the President could dismiss them at any time, the President's wishes would be a strong influence on their political behavior.

This Constitution did, however, place two important limitations on presidential authority. First, it made it harder for him to gain approval for a proposal to revise the Constitution. Under the 1963 Constitution, the President could avoid sending a proposed constitutional revision to the people in a referendum, by submitting it to the legislature convened as a whole. His proposal would be approved if it gained *three-fifths of the votes of the legislature convened as a whole*. (Art. 89). Under the 2001 Constitution, his proposal would pass only if approved by three-fifths of the votes of *all the members of the National Assembly*. (Art. 103) (emphasis added).

The second limitation under the 2001 Constitution was that the President could only be elected twice. (Art. 27). And this is something I would like you to keep in mind. We will get back to this later, when I talk about contemporary constitutional issues in Senegal.

A few weeks ago, as I was thinking about my visit here to talk about the Senegalese Constitution of 2001, I decided to take another look at the text to see if there had been any recent changes to the Constitution between its enactment in 2001 and today. I was surprised at the number of changes, but I shouldn't have been: Senegal is noted for

26. Bashir Fofana, *Instabilité Gouvernementale Chronique Depuis l'Alternance: Wade a utilisé 122 ministres en 10 ans*, XIBAR.NET, http://www.xibar.net/INSTABILITE-GOUVERNEMENTALE-CHRONIQUE-DEPUIS-L-ALTERNANCE-Wade-a-utilise-122-ministres-en-10-ans_a25283.html (last visited Oct. 25, 2011).

27. ISMAILA MADIOR FALL, *supra* note 14, at 145-146.

the many changes to its Constitution. In a speech at the State Department several years ago, Dr. Marina Ottaway noted, "It is difficult for me to imagine a Constitution which has been amended more often than the Senegalese Constitution. . . It is amended for election purposes; it is amended for political purposes."²⁸

Let me tell you about a few of the most important changes in the Senegalese constitutional law since the enactment of the Constitution of the Third Senegalese Republic in 2001:

- (1) The President may now choose a Vice-President, who is second in power to him. (Art. 26).
- (2) The President can delegate certain of his powers to the Vice-President. (Art. 50).
- (3) There is now a Senate, as well as a National Assembly. Some of the Senators are chosen by the President, after consultation with the Prime Minister and the President of the National Assembly. At least two-fifths of Senators must be women. (Art. 60.1).
- (4) If the President cannot continue his duties, he is replaced temporarily by the President of the Senate. (Art. 39).
- (5) The Prime Minister must countersign all presidential acts. There are, however, certain exceptions to this rule, including those acts related to the creation of the Vice-Presidency and the role of the Vice President; and those acts related to the selection, role, and mandate of Senators. (Art. 43).

So we have here the creation of two new governmental institutions: the Vice-Presidency and the Senate. And the President has a heavy hand on both of them. His desire for control over them was so strong that a law was passed (Art. 43) which states that the Prime Minister does not have to approve either their creation or their role. It seems very likely then that the President has political plans for both institutions. Given this understanding, although I would like to be thrilled that Article 60.1 provides that now at least two-fifths the Senators must be women, one can only question how many of the women the President will pick, and how independent these women will be allowed to be.

Another change has been in the method for revising the Constitution. As noted earlier, the 2001 Constitution made it harder for the President to get a constitutional revision through the legislature, because he needed the approval of *three-fifths of all the members of the National Assembly*. Since then, the Constitution has been revised to

28. Marina S. Ottaway, *Obstacles, Challenges, and Consequences of Bringing Democracy to Africa's Authoritarian Governments*, U.S. Dep't of State (May 23, 2003) (transcript available at <http://web.archive.org/web/20090116110624/http://www.state.gov/s/p/of/proc/21722.htm>).

once more make it easier for him to get a constitutional revision. A new law now states:

...There is no need to get approval by referendum when the President decides to submit the proposed change to a joint meeting of Parliament. In this situation, the change in the constitution is approved if it gets *three-fifths of the recorded votes*. (Title XII: Revision of the Constitution) (emphasis added).

Now, the President no longer needs to three-fifths of the vote of *all* members of the Parliament: he only needs three-fifths of the votes of those who happen to be there the day he decides to submit the proposal. How much easier could it be! All the President has to do is wait until a day when he knows his party is in the majority, then submit his proposal for a vote.

Two provisions in the original text of the 2001 Constitution have been removed since then:

- (1) Parliament can meet in extraordinary session on its own motion; and
- (2) The President of the Senate and National Assembly serve during the complete term of the legislature.

It is easy to see that removing first provision weakens an already weak legislature. But the second one is more confusing: why should it matter if the President of the legislative bodies serves a complete term or not? I am going to ask you to keep this question in mind for a minute while I talk a little about what has been going on in Senegal recently. Then the purpose of this second change will become clear.

V. CURRENT CONSTITUTIONAL ISSUES IN SENEGAL

This is a good time to be discussing the Constitution of Senegal, because today the country is addressing two issues of constitutional import. The first issue involves President Wade's son, Karim, who is being given great governmental responsibilities by his father. Many Senegalese are upset by this. "Why should he be an important leader in our country? What background does he have for this kind of work?" they ask. And the answer is: "Not much." He was born in France to a French mother. Although he attended elementary and secondary school in Dakar, he attended university in France. He married a French woman and lived in France, working and raising his family, until his father became President in 2001, when he moved to Senegal. He was never active in politics, nor did he ever hold a government position, before 2001. And the Senegalese are particularly offended by the fact that Karim, who was raised speaking French, does not speak any of the Senegalese national languages.

In 2004, President Wade gave his son a very high-profile task: Karim would be responsible for all the development related to the 2008 Islamic Summit in Dakar.²⁹ Much like the Olympic Games, this is a huge international event, one which provides the host country with a lot of money to develop roads, airports, and hotels for the guests. Four thousand visitors, including presidents and kings, would be coming from Islamic countries around the world.

I arrived in Dakar for a three-week visit in March 2008, right before the opening of the Summit. As my Senegalese friend and I drove into the city from the airport, I saw, along the ocean front, huge buildings, only half built.

“What are those buildings?” I asked.

“They are supposed to be the luxury hotels for visitors to the Islamic Summit,” he replied.

“But they aren’t finished, and nobody is working on them. Where are the workers?”

“They walked off.”

“But why? I know they need the work. . .”

“They left because they weren’t getting paid. There’s no money left. Corruption. . .the money’s all gone.”

I didn’t think much more about that conversation until two weeks later, when I went downstairs in my hotel for breakfast. The manager stopped me on my way to the dining room, and said: “Madame, I am so sorry, but you have to leave the hotel today.”

I was shocked, but I knew that she was wrong. I reminded her that I had a reservation for another week.

“Yes, Madame,” she replied. “I know, and I am really very sorry, but there are not enough hotel rooms available in Dakar for all the visitors expected for the Islamic Summit, so the President is making everybody in hotel rooms in Dakar leave. He wants to use all those rooms for the Summit.”

As an American lawyer, my first thought was about what would happen in the United States if an American President tried to empty out all the hotel rooms in New York City within twenty-four hours to make room for an international event: I can’t imagine it would take very long for a national association of hotel owners to go to federal court to request a temporary restraining order against the President! But in Dakar, the President had his way: we all just left the hotels. After the Summit there was enormous discussion in the press and on the radios and television about whether Karim had met his responsi-

29. Amadou Diof, *Organisation du Sommet de l’OCI: Wade met en selle son fils Karim*, Walfadjiri, June 20, 2004, http://www.walf.sn/politique/suite.php?rub=2&id_art=10495.

bilities with respect to development for the Summit. People agreed that he had not. The President of the National Assembly, for one, asked him to appear before the Assembly to present an accounting of the money spent for the Summit. And it was then that his father, the President, probably enraged that Parliament would so insult both father and son by calling for an account of expenditures, had the president of the National Assembly removed from that position.³⁰

How did he do that? Recall now that one of the provisions removed from the 2001 Constitution stated that the President of the Senate and the National Assembly serve during the complete term of the legislature. Once that provision was removed, it became possible for the President to think about removing the President of the National Assembly from that position when he angers you.

Karim Wade has also been trying to legitimize his political aspirations in Senegal. Perhaps he could gain popular support through an election, and not have to continually turn to his father for power. In March 2009, Karim ran for a seat on a municipal council from his home district in Dakar, "Point E," the small community where President Wade and his wife lived before he was elected President.³¹ He lost.³² Within a few weeks, President Wade named his son Minister of State in charge of International Cooperation, Air Transport, Planning and National Development for the entire country, and Development of Infrastructures, which includes all transportation systems, communication systems, and power plants.³³ Last month, in September 2010, President Wade added "Minister of Finance" to his son's portfolio.³⁴ And a few weeks ago, after months of riots and demonstrations in Senegal because of the continuing failure of electricity, Wade transferred the National Development portfolio to someone else, and named his son Minister of Energy.³⁵

The Senegalese joke about this. They say: "*Karim contrôle la terre, la mer, et le ciel!*" "Karim controls the land, the sea, and the sky!" They joke, but they are not happy about it. Is President Wade planning to name his son Vice President, and transfer presidential author-

30. *Jusqu'ou ira Karim Wade?*, JEUNE AFRIQUE, Jan. 21, 2008, http://www.jeuneafrique.com/Articleimp_LIN20018jusquedawmi0_jusqu-ou-ira-karim-wad.

31. *Karim Wade dans l'arène*, JEUNE AFRIQUE, Jan. 26, 2009, <http://www.jeuneafrique.com/Article/ARTJAJA2507p012-013.xml0/>.

32. *Background Note: Senegal*, *supra* note 1.

33. *Karim Wade prend le ministère des Infrastructures*, AGENCE FRANCE PRESSE, Apr. 3, 2009, <http://www.jeuneafrique.com/Article/DEPAFP20090501T190124Z/>.

34. *Decrêt Présidentiel: Wade fait de Karim Wade un ministre des Finances bis*, SENEWEB, Oct. 10, 2010, http://www.seneweb.com/news/Societe/d-cret-pr-sidentiel-wade-fait-de-karim-wade-un-ministre-des-finances-bis_n_36234.html.

35. *Composition du gouvernement: Nous publions ici le décret portant réaménagement du gouvernement*, XIBAR.NET, http://www.xibar.net/Composition-du-gouvernement-Nous-publions-ici-le-decret-portant-reamenagement-du-gouvernement_a27740.html (last visited Oct. 25, 2011).

ity to him? Does he think Senegal is a monarchy? Is the President grooming his son to take over after he leaves the presidency?

Or perhaps we should say. . . *“if”* he leaves the presidency!

For the second constitutional issue on people’s minds today in Senegal is the presidential election of 2012. They are distressed because, after winning the presidential election in 2001 and 2007, . . . and after stating, in 2007, that he would not run for another term, President Wade recently announced that in 2012, at the age of 85, he will run for a third term as President.³⁶

But wait, you will say: “Doesn’t the 2001 Constitution say that the President can only be elected twice?” Yes, you are right. But here is Wade’s reasoning: he reminds us that he was first elected under the 1963 Constitution, which, he says, does not count for the purposes of the term limitations in the 2001 Constitution. Therefore, according to Wade, it is perfectly constitutional for him to be elected once under the 1963 Constitution and twice more under the 2001 Constitution.³⁷

So we find ourselves in a rather strange place. President Wade, a very successful lawyer, former law school professor and law school dean, in many ways follows the Constitution to the letter, but somehow we are not seeing the kind of democracy we expected to see. What is this all about?

VI. THE AFRICAN POLITICAL PARADOX

The Kenyan scholar H.W.O. Okoth-Ogendo calls this “the African political paradox”: “constitutions without constitutionalism.”³⁸ He defines this as a “commitment to the idea of the constitution, and rejection of the classical notion of constitutionalism.”³⁹

Why is this so? Okoth-Ogendo provides several reasons why an African country might choose this ideological framework. The first is that the basic law in any society must be socially relevant,⁴⁰ and the Senegalese Constitution was not based on the needs of the Senegalese people. It didn’t grow out of the Senegalese national experience. It was based on constitutional principles developed in eighteenth century France and incorporated into the French Constitution. A second

36. *Quand Abdoulaye contredit Wade*, JEUNE AFRIQUE, Aug. 23, 2010, <http://www.jeuneafrique.com/Article/ARTJAWEB20100823163333/>.

37. *Recevabilité de la candidature de Wade en 2012: Quand des ‘constitutionnalistes’ éprouvés montrent les limites de leur suffisance*, WALFADJRI, www.walf.sn/contributions/suite.php?rub=8&id_art=66642 (last visited Oct. 25, 2011).

38. H.W. O. Okoth-Ogendo, *Constitutions without Constitutionalism: Reflections on an African Political Paradox*, in CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD 67 (Douglas Greenberg et al. eds., 1993).

39. *Id.* at 65.

40. *Id.* at 67.

reason he gives for the cavalier treatment of African constitutions by its elite is that the Africans had seen the colonial elite convert the African economy into a kind of private estate. So why should the new African elite want to change this system, once the French returned power to them? Yet another reason given for the lack of constitutionalism is that the Constitution is often seen as a liability.⁴¹ As President Wade argued when he was campaigning for a new Constitution, a Constitution that provided a fragmented power structure would only slow down the new President, thus slowing down all economic development as well as the formulation of progressive policies on, for example, health, education, and agriculture.⁴²

So African state elites found new ways to recentralize power as it existed under colonial rule, and reconstitute, in a sense, the colonial state, despite the presence of a Constitution. How did they do this? Okoth-Ogendo suggests three ways:

- (1) by extending the executive power to appoint and dismiss all officers in the public service;
- (2) by amending the Constitution whenever necessary to deal with a political crisis; and
- (3) by using the coercive power of the state to limit the rights set out in the Bill of Rights.⁴³

We see the clearest evidence of this, he continues, in the rise of “the imperial presidency.” By this he means the supremacy of the president over all other organs of government; the “infinite eligibility” of the President for election; and the high degree of paranoia that surround the exercise of executive power, a paranoia fueled by the high attrition rate found among political functionaries and civil servants. This potential for attrition generates a concern for survival, and leads those who surround the president to agree with him all the time.⁴⁴

And we can see all of this in Senegal. The President now has the authority to appoint all members of the armed forces, and all civil service workers, including the Prime Minister and the Vice-President; the Constitution, easily altered, has been amended many times to address political issues. The Senegalese government has also been cited recently by Amnesty International for using its coercive power to limit freedom of expression in that country. For example, in an effort to protect the authority of the President, in the past several years the state has suspended radio stations, interrogated journalists, deported a

41. *Id.* at 72.

42. *Id.* at 68-72.

43. *Id.* at 72-74.

44. *Id.* at 72-73.

singer, raided a private television station, and imprisoned a newspaper publisher.⁴⁵

We have seen that under the changes to the 2001 Constitution, the President is supreme over all other organs of government, and considers himself “infinitely eligible” for election. Wade has also fueled the high degree of paranoia that surrounds his exercise of power by frequently appointing, then replacing, political appointees. A comparison of President Wade with the presidents of the First and Second Senegalese Republics in this regard, is telling. Between 1960 and 1980, President Leopold Senghor had seventy-eight ministers in his cabinet. The next president, Abdou Diouf, who served for the next twenty years (1980-2000) had one hundred nine ministers, four prime ministers, and reorganized his cabinet twenty times. But since Wade was elected president in 2000, in the past ten years alone he has had one hundred twenty-two ministers and six prime ministers, and has reorganized the cabinet seventeen times. The most recent reorganization was in June 2010.⁴⁶ How could those appointees not be concerned about their survival in Wade’s political world?

When Okoth-Ogendo wrote about African constitutions and political elites in 1993, he was not thinking about Senegal. He probably wasn’t even thinking of any of the francophone African countries. But he described the situation in Senegal perfectly.

What does the average Senegalese man or woman think about how the power is structured in the Constitution and how President Wade is using that power? First of all, it is not clear how much the Senegalese in general know about the Constitution. It is written in French, and there is a high illiteracy rate in Senegal, in French, as well as in the Senegalese national languages.⁴⁷ And the government has not even translated the Constitution into national languages. Presumably the Senegalese could learn about the Constitution through radio or television, but the lack of electricity in large parts of the country means a limited media audience. After President Wade’s election, as he lobbied his countrymen to vote for the proposed new Constitution, he gave a talk on television about it, and included a question and answer

45. *Amnesty International Report 2010*, AMNESTY INT’L, <http://www.amnesty.org/en/region/senegal/report-2010> (last visited Oct. 25, 2011); *Amnesty International Report 2009*, AMNESTY INT’L, <http://www.amnesty.org/en/region/senegal/report-2009> (last visited Oct. 25, 2011); *Interdit de séjour au Sénégal, Tiken Jah Fakoly décide de braver la décision des autorités*, POLITICO, July 26, 2010, http://www.politicosn.com/Interdit-de-sejour-au-Senegal-Tiken-Jah-Fakoly-decide-de-braver-la-decision-des-autorites-II-revient-a-Dakar-le-31_a1001.html; *Un mois de prison avec sursis pour le journaliste Latif Coulibaly*, JEUNE AFRIQUE, Nov. 16, 2010, <http://www.jeuneafrique.com/Article/ARTJAWEB20101116150733/>.

46. Fofana, *supra* note 26.

47. The official language of Senegal is French. In 2001 there were six official national languages: Diola, Malinké, Pular, Sérère, Soninké and Wolof. Sen. Const., art. I (2001).

period with journalists, lawyers, judges, law school professors, and representatives of non-governmental entities. But for those who managed to find a radio or television to listen to this discussion, it was held almost entirely in French, with only a few questions and answers in Wolof, the *lingua franca* in Senegal. And even if the Senegalese people had read and studied the proposed Constitution, even if they had been able to discuss that document with the President in their own language. . . of what use is a Constitution that the President can change whenever he wants, to meet his own political goals?

I think the average Senegalese would not care very much at all about the Constitution, or any changes to that document, if the President was making good on his promise to develop the country and create jobs. In 2001, the Senegalese voted for a change. “*Sopi!*” they shouted. “We want change! Give us work. . .give us a way to feed our families. . .give us hope!” But where are the changes that would make their lives better?

Actually, it would have been surprising if Wade’s election and the new Constitution *had* led to changes in Senegal. As Marina Ottaway has noted, President Wade was a member of the same political elite that had been running the country since 1960. By watching how Presidents Senghor and Diouf ran the country for forty years, he had learned that continual revision of the Constitution was a helpful tool for maintaining power. So this new election and new Constitution did not signal a transfer of power to another political philosophy, or to another social class or ethnic group or religious group, or even to a new generation.⁴⁸ The changes brought in by the election of Wade and the Constitution of 2001. . .the changes the people longed for. . .would be symbolic: they would not be real.

But changes are needed for there is a growing discontent in Senegal. And in a country where twenty-five percent of the population is in Dakar, fifty-eight percent of the population is under the age of twenty, and many of them have no jobs, the government has a growing and very serious problem.

VII. UPDATE

I made this presentation in October 2010. Eight months later, on Wednesday, June 22, 2011, the U.S. Embassy in Dakar sent out a warning to Americans to avoid crowds and demonstrations the following day, when the Senegalese National Assembly would begin deliberating a controversial new bill to amend Article 33 the Constitution,

48. MARINA OTTAWAY, DEMOCRACY CHALLENGED: THE RISE OF SEMI-AUTHORITARIANISM 103-104 (2003).

which sets out the rule for presidential elections.⁴⁹ Article 33 states that a President cannot win on the first round of votes unless he has received *an absolute majority* of the votes cast in the election. The bill proposed by President Wade would change Article 33 to allow a President to be elected on the first round with only *twenty-five percent of the votes*.⁵⁰

The demonstrators did not wait for the National Assembly deliberations. On Wednesday, the day before the deliberations, there were demonstrations, conflicts with police, injuries leading to hospitalization, and arrests – in Dakar, around the National Assembly building and at Cheikh Anta Diop University; in the Dakar suburb of Pikine; in the center of the country, in Kaolack; and in Ziguinchor, a city in the South. There were demonstrations as well in France and the United States.⁵¹ On some of the signs you could see the words: “This is the Senegalese spring!”⁵²

On Thursday June 23rd, the demonstration in downtown Dakar turned into riots. Demonstrators not only threw rocks and chunks of concrete at the police, they also burned cars, and set fire to some public buildings and the homes of some of the leading politicians. The police used water cannons, tear gas and guns to disperse the crowd. One hundred two demonstrators were wounded, including two who had been shot by the police. Thirteen police were also wounded.⁵³ The American Embassy closed its doors due to “civil unrest.”⁵⁴ That same day, President Wade backed down and withdrew the bill.⁵⁵

49. Press Release, Warden Message: Alert for Possible Demonstrations (June 22, 2011), http://photos.state.gov/libraries/senegal/323269/pdf/2011-06-22warden_message_re-opening_of_national_assembly.pdf.

50. *Senegal: Wade fait machine arrière sur la réforme constitutionnelle*, JEUNE AFRIQUE, June 23, 2011, http://www.jeuneafrique.com/Articleimp_ARTJAWEB20110623140859.

51. *Contre le ticket présidentiel: Les Sénégalais décrètent le mercredi rouge avant le jeudi noir*, SENEWEB, June 23, 2011, www.seneweb.com/news/Société/contre-le-ticket-presidentiel-les-sénégalais-decrètent-le-mercredi-rouge-avant-le-jeudi-noir_n_47055.html.

52. *Wade Rénonce à sa Réforme Constitutionnelle*, JEUNE AFRIQUE, June 23, 2011, http://www.jeuneafrique.com/Articleimp_ARTJAWEB20110623202303.

53. *Les Emeutes à Dakar ont fait 102 blessés dont 13 policiers*, JEUNE AFRIQUE, June 24, 2011, http://www.jeuneafrique.com/Articleimp_ARTJAWEB20110624163847; *Manifestations: l'hôtel des députés saccagé et incendié*, SENEWEB, June 23, 2011, www.seneweb.com/news/Société/manifestations-l-hôtel-des-deputés-saccagé-et-incendié_n_47075.html; Adam Nossiter, *Protests Upend Leader's Plan in Senegal*, N.Y. TIMES, June 24, 2011, at A4.

54. Press Release, Warden Message: Continued Civil Unrest (June 23, 2011), <http://photos.state.gov/libraries/senegal/323264/warden-messages/wm062411.pdf>.

55. *Wade Rénonce à sa Réforme Constitutionnelle*, *supra* note 52.