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ALEX SAAB'S WIN IN AFRICAN HUMAN RIGHTS CASE WILL BE A CAUSE OF SERIOUS CONCERN FOR UNITED STATES

THE OUTCOME CONFIRMS UNITED STATES DOES NOT WANT INDEPENDENT AFRICAN INSTITUTIONS

On 11 August, 2021, my colleague Dr Jose Manuel Pinto Monteiro and I filed a petition at the African Commission over the illegal detention of Alex Saab contrary to judgment of the Ecowas Court delivered on March 15, 2021 which had ordered his release and set aside the extradition proceedings. We also challenged the dehumanising conditions under which Alex Saab was detained in Cape Verde. Our application for provisional measures was considered and granted by the African Commission on October 13, 2021.

In an extraordinary "coincidence", on 13 October the Constitutional Court of Cape Verde ("the Constitutional Court") hurriedly signed a certificate authorising the extradition of Alex Saab to the United States. My colleague Dr Pinto and many of his respected peers are very clear that the Constitutional Court had no legal authority to sign such a certification. This was the role of the Barlavento Court of Appeal ("TRB"), but more on that later.

The action of the Constitutional Court was followed on 14 October with an urgent letter from the Minister of Justice to the United States Ambassador to Cape Verde asking him to make all necessary arrangements to take Alex Saab to the United States. On Saturday 16 October a plane belonging to the DoJ arrived on the island of Sal and, without any notification to the defence team, Alex Saab was forcibly taken by paramilitaries and handed over to US officials.

Why the rush?

First, we must remember that throughout the 491 days of Alex Saab's detention in Cape Verde, the government gained notoriety as a nation that was happy to sign international agreements but showed a distinct reluctance when it came to the enforcement of decisions made against it by those same bodies. On 15 March and 24 June, the ECOWAS Court of Justice ruled that Alex Saab's detention was illegal, that he be freed immediately and the extradition process against him be terminated. Cape Verde refused to comply using spurious reasons why the binding decisions of the Court were not binding upon it. On 8 and 16 June the UN Human Rights Committee, in awarding Interim Measures in favour of Alex Saab, instructed Cape Verde to cease any extradition process until the HRC had completed an investigation into the merits of Alex Saab's claims of torture and denial of his right to health given his status as cancer patient. Cape Verde not only failed to comply but refused to even acknowledge the communications. This was followed by an unprecedented letter dated 19 July 2021 (made public on 15 October) in which 5 UN bodies expressed alarm at Alex Saab's fate at the hands of the Cape Verdean authorities. No surprise of course that Cape Verde refused to express remorse or comply.

So, three strikes and out would be more than enough for any self-respecting state that was not a vassal. Therefore, when Cape Verde got wind of the Commission's decision to grant Provisional Measures on 13 October the public humiliation of a fourth strike set alarm bells ring in Praia. Cape Verde and the United States fully understood that Provisional Measures meant the Commission could take another year to reach a final decision on the merits of Alex Saab's application. This was obviously something that did not suit the political agenda of the United States. By forcing Cape Verde to act before being "officially notified," the United States was able to achieve its aim of getting Alex Saab to Miami by any means possible.

The illegality of the action of the Constitutional Court is clear. The TRB is the body which must certify extradition but, importantly, it could not sign such certification as it was fully aware that the legal process in opposition to the extradition was categorically not complete. Why? Because on 29 September Dr Pinto had filed a motion with the TRB stating the Geneva Public Prosecutor had earlier in 2021 ended a three year-long investigation into allegations of money laundering against Alex Saab by ruling there was no evidence to support the allegations. That ruling, along with the payment of compensation amounts to a "not guilty" verdict under Swiss Law. As the funds in question were the same funds which are at the heart of the US's allegations against Alex Saab, the defence's position was that Alex Saab could not be extradited to face a trial for a matter in which he had already been found not guilty.

This is an extraordinary miscalculation on the part of the United States and its accomplices. Alex Saab and his defence team will not let this matter rest. Alex Saab and Venezuela have suffered significant harm. They will take all necessary steps to right the wrongs done to them.

Moreover, the extraterritorial politically motivated judicial overreach of the United States is a twenty-first century form of colonialism. Africa must wake up to that reality. Africa and Africans deserve better and the only way we will truly achieve independence of thought and independence of institutions is through our own efforts and not through the platitudes of wolves disguised as sheep.

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