



Submission to the Universal Periodic Review of Senegal

For consideration at the 31st session of the Working Group in November 2018

27 September 2018

Introduction

1. ARTICLE 19 welcomes the opportunity to contribute to the third cycle of Senegal's Universal Periodic Review (UPR). This submission examines the following freedom of expression priorities:
 - Constitutional protections for freedom of expression and related rights;
 - The Criminal Code, in particular in relation to counter-terrorism measures;
 - Media freedom
 - Freedom of peaceful assembly and association;
 - Independent institutions for safeguarding human rights.
2. Senegal accepted numerous recommendations on these themes during its second UPR, in particular accepting recommendations to strengthen the independence of the judiciary and regulatory bodies, on enhancing access to information, and protecting the rights to freedom of expression, assembly and association.¹
3. In the period under review, notwithstanding limited progress on some of these issues, the situation for freedom of expression and information, assembly and association has deteriorated.

Constitutional guarantees for fundamental rights

4. Article 8 of the Constitution of the Republic of Senegal (2001), amended by law N°2016-10 of 5th April 2016, guarantees the freedom of opinion, expression, the right 'to a variety of information', and the right to association and protest. However, this

¹EPU 2013, Accepted recommendations, 124.83 Protect the right to freedom of meeting and expression (Slovenia);

123.84 Respect the rights of freedom of expression, association and meeting in accordance with its national and international legal framework and ensure that its security forces maintain public order without excessive recourse to force (Spain).

same provision also provides that *'these freedoms and rights shall be exercised under the conditions provided by law'*, without requiring limitations on these rights be necessary for the pursuit of a legitimate aim, as specified in Articles 19(3), 21 and 22(2) of the International Covenant on Civil and Political Rights (ICCPR). Moreover, limiting the enjoyment of these rights to citizens only is discriminatory.

5. Article 10 of the Constitution further specifically addresses the freedoms of expression and assembly, providing that *'Everyone shall have the right to freely express and disseminate his opinions by word, pen or image or peaceful march, provided that the exercise of these rights shall not undermine the honour of and respect due to other persons, nor threaten public order.'* As with Article 8, this provision is more permissive of limitations on the freedoms of expression and assembly than Articles 19(3) and 21 of the ICCPR.
6. ARTICLE 19 considers that the 2016 constitutional reform efforts were a missed opportunity to more comprehensively enhance the protection of rights, in particular to increase the complementarity between national protections for freedom of expression and Senegal's obligations under international human rights law.

The Criminal Code

7. Law 22/2016 amending Law No. 65-60 of 21 July 1965 on the Criminal Code contains numerous provisions that do not comply with Senegal's international human rights obligations relating to freedom of expression, and are frequently abused to silence criticism and stifle public debate:
 - **Article 80** criminalises "Acts that compromise public security or cause serious political troubles..." with imprisonment of between 3 and 5 years, and a fine of 100,000 to 1.5 million francs CFA.
 - **Article 254** makes any "Offense against the Head of State by one of the means set forth in Article 248²... is punishable with imprisonment of six months to two years, and/or a fine of 100,000 – 1.5 million francs CFA.
 - **Article 255** criminalises "the publication, dissemination, disclosure or reproduction" of "false news", with imprisonment of between 3 and 5 years, and a fine of 100,000 – 1.5 million francs CFA.
 - **Article 256** criminalises disseminating images contrary to "good morals", punishable by imprisonment of one month - two years and a fine of 25,000 - 300,000 francs CFA.
 - **Articles 258(1) - 261** criminalise various forms of defamation, allowing for imprisonment of between two months and two years, and/or a fine of 50,000 to 1,500,000 francs CFA.

² Art.248:" Are considered as means of public diffusion: the broadcasting, television, cinema, the press, posting, exhibition, distribution of writings or images of all kinds, speeches, songs, cries or threats uttered in public places or meetings, and generally any technical process intended to reach the public".

- **Article 262** makes “insult” punishable with imprisonment of between one and three months, and/or a fine of 20,000 to one million francs CFA.
8. These provisions are routinely used to prosecute journalists and others exercising their freedom of expression rights, increasingly online. In relation to online expression, the following cases are emblematic of the State’s particular efforts to silence the dissemination of alternative and critical views online:
- In May 2017, four people, Houleye Mané, (Journalist at Touba TV), Marième Diouf, Fatou Binetou Ndiaye, and Cheikh Tidiane Sarr, were arrested and temporarily detained, for sharing a satirical photomontage of the President of Senegal, Macky Sall, in a closed WhatsApp group of seven people. In June, four of the group members were charged with “disseminating images contrary to morality” (Article 256 of the Criminal Code) as a conspiracy under Article 73. They were granted provisional release, without a final judgment, on 11 August 2017, though they may be recalled at any time to face trial on these charges³.
 - On 3 August 2017, the singer Amy Collé Dieng was arrested for comments she made in a Whatsapp group that were critical of the President. She was remanded in custody for allegedly ‘insulting the Head of State’ (Article 262 of the Criminal Code), ‘offence to the Head of State’ (Article 80, Article 254 of the Criminal Code) and ‘spreading false news’ (Article 255 of the Criminal Code). She was remanded in detention by the investigating magistrates on 8 August, but granted provisional release without a final judgment on 14 August.⁴
 - On 26 February 2016, officers of the Criminal Investigation Division visited the offices of Radio Walfdjiri, a private radio station, to demand the recordings of the ‘Dine ak Diamono’ programme, broadcast on the Walfdjiri platform TV the On the 25 February.⁵ The topic of the programme was the upcoming March 2016 referendum on the change of the Constitution.
 - On 14 July 2015, Police detained Alioune Badara Fall and Mamadou Seck, the publication manager and journalist of the newspaper “L’Observateur”. The two were interrogated on charges of “disclosure of defense secrets” for an article they wrote on 8 May 2015 about the alleged deployment of 2,100 Senegalese soldiers to Yemen in support of Saudi Arabia. Both were later released and placed under judicial control. On the same day, police summoned the publication manager of “Le Quotidien”, Mouhamed Gueye, for having

³ https://www.seneneews.com/actualites/societe/urgent-ouleye-mane-liberee-provisoirement_201496.html

⁴ https://www.dakaractu.com/AFFAIRE-AMY-COLLE-DIENG-Elle-a-ete-arretee-dans-le-bureau-du-Sous-Prefet-de-Dakar-Plateau-Elle-avoue-avec-fait-ses_a136320.html

⁵ https://senego.com/la-dic-investit-walfadjiri-et-exige-les-bandes-sonores-de-diine-ak-diamono_302899.html

published the integral text of the preliminary investigation of the case of Seck, and was later released.⁶

9. Reforms of the Criminal Code and Code of Criminal Procedure, promulgated on 8 November 2016 through Law No. 2016- 29, modifying Law No.65-60 of 21 July 1965, created new counter-terrorism powers that potentially raise freedom of expression concerns.
10. ARTICLE 19 has particular concerned about the breadth of Article 279-1(16), which criminalises “apology” of terrorism, allowing for up to five years’ imprisonment, and fines of between 500,000 francs and 2 million francs. It falls short of international human rights standards, as expressing sympathy with the cause of terrorists without intentionally inciting terrorist acts, should be protected expression. Young people have faced charged under the law for their social media posts, in circumstances where they were merely expressing opinions on current events, and not inciting terrorism.⁷ The provisions is likely to have a chilling effect on freedom of expression, in particular online.
11. The amendment of the Code of Criminal Procedure also raises concerns. Article 55(2) of Law No. 2016-30 amended Law No. 65-61 of 21 July 1965 to extend the period of time the police are able to hold those suspected of terrorism-related offences in police custody to 96 hours, which can be renewed twice.⁸ This contravenes the requirement that anyone subject to detention be produced in court within 48 hours of arrest, and raises the risk of ill-treatment in detention. ARTICLE 19 is concerned that these powers may be abused to.

Recommendations

- Reform the Constitution, in particular to bring protections on the rights to freedom of expression, peaceful assembly, and association, in line with Senegal’s obligations under international human rights law;
- Reform the Criminal Code and bring it in line with Senegal’s international human rights law obligations, in particular by repealing **Articles 80, 254, 255, 256, 258(1)-261, and 262**;
- Repeal article 279-1(16), decriminalising “apology of terrorism”, and ensuring that people are free to publicly comment on issues relating to terrorism;
- Repeal Article 55(2) of Law No 2016-30, and ensure that all those arrested and detained are brought before a court within 48 hours;
- Cease the practice of harassment of government critics through arbitrary arrest and temporary detention, and drop outstanding charges against persons provisionally released.

⁶ http://www.seneweb.com/news/Justice/alioune-badara-fall-mamadou-seck-et-mouh_n_159722.html

⁷ <https://www.bbc.com/afrique/region-45683455>

⁸ See Official Gazette No. 6976 of Saturday 26 November 2016.

Media Freedom

12. During its last UPR, the government of Senegal accepted recommendations to ensure media freedom, including to reform the Press Code, in particular to repeal custodial sentences for press offences.⁹ However, in the period under review new criminal restrictions have been enacted to undermine media freedom.

Press Code

13. On 20 June 2017, a new Press Code (Law N°2017-27 of 13 July 2017) replaced the previous 1996 legislation. The new code claims to establish a coherent and transparent legal framework that guarantees press freedom, promotes competition between media players, ensures media pluralism and diversity, and equitable access to the media for all, and that responds to the digital environment. However, these objectives are not achieved through the reforms, which instead retained measures criminalising the media and maintained close State supervision, undermining independence.¹⁰

14. The following provisions of the Press Code provide for a concerning level of direct State regulation of the media, undermining media independence and pluralism:

- **Article 4** restrictively defines a “journalist” in formal terms, requiring a person to have a government-approved journalism degree, or any other university degree with two years’ professional experience, rather than a broader functional definition in line with international standards;
- **Articles 22 – 36, and 198 and 199** establish a press card regime, providing for excessive government control over which media are able to cover specific events. To comply with international standards, press card regimes should be administered by a body independent of government on the basis of specific criteria that are non-discriminatory, reasonable and published in advance, and should be applied only when there are real space constraints necessitating restricted access to events. The regime set out in the law is much broader than this.
- **Article 68** requires press companies to register with the Ministry of Communication as soon as they are created. This provision contravenes international standards; such registration should not be obligatory, but on a voluntary basis, and with an independent regulatory body.

15. The retention of criminal and administrative sanctions in Section 3 of the Press Code, with more severe penalties available in some instances, contradicts prior Presidential

⁹ EPU 2009, Noted recommendations, 98-8 Act upon the promise made by the President in 2004 to reform the press law and eliminate custodial sentences for press offences (Ireland); drive forward plans (to decriminalise press crimes) (United Kingdom, Netherlands).

¹⁰ <https://www.article19.org/resources/senegal-legal-analysis-of-the-press-code/>, consulted on 15.02.2018

pronouncements to decriminalize media regulations. Particular provisions of concern include:

- **Article 198**, which provides for penalties of up to three years in prison and/or a fine of up to 500,000 francs, any person who obtains a national press card obtained on the basis of a partially or totally inaccurate declaration
- **Article 199** criminalizes the use of a press card which has been fraudulently obtained, punishable by imprisonment of up to one year, and/or a fine of up to 500,000 francs.

National Audiovisual Regulatory Council

16. The National Audiovisual Regulatory Council (CNRA) lacks the independence, diversity and pluralistic membership required of an effective and independent regulator. Article 3 of law N°2006-04 of 04 January 2006 creating the CNRA provides for all the members to be appointed directly by the President, without public consultation.
17. The CNRA, rather than being accountable to the public, reports directly to the President, and only after then is the report made public, as set out in Article 13 of the Law.
18. The CNRA's powers to impose significant sanctions has led to tensions between the regulator and the audio-visual content producers under its authority. This has been exacerbated by the ability of public media, such as RTS, to clearly violate the law without sanction, causing private media to similarly question the authority of the CNRA.
19. With the 2019 presidential elections fast approaching, it is critical that the media regulatory framework be brought into compliance with international freedom of expression standards.

Recommendations:

- Revise the definition of "journalist" in Article 4, to reflect a functional definition in line with international human rights standards;
- Repeal all criminal and administrative offences within the Press Code, in particular Articles 192, 194, 198, 199, 201, 203, 204, 207 and 208, as set out in Section 3 of the law; Repeal the provisions for the National Press Card in Section 2, Articles 22 to 36 and Articles 198 and 199 of the Press Code, ensuring any replacement regime complies with international standards;
- Repeal article 68, requiring the registration of press companies;

- Adopt a law establishing an independent audiovisual authority, to replace the CNRA.

Freedom of Peaceful Assembly and Association

20. Despite accepting recommendations during its last UPR to protect the right to freedom of peaceful assembly and association,¹¹ violations of this right have continued in the period under review.
21. The right to freedom of peaceful assembly is subject to a system of prior declaration, by which organizers are required to notify their local council of their intention to hold an assembly or demonstration at least 72 hours in advance. Failure to notify is punishable under article 96 of the Criminal Code. In practice, this notification procedure functions as a system of prior authorization, as the need to “maintain law and order” has been routinely referred to as justification to refuse permission to assemblies organized by opposition parties and civil society organizations.
22. Furthermore, regulations have been introduced which impose a blanket ban on peaceful assemblies in certain high-profile public spaces. These regulations prevent the holding of assemblies within the sight and sound of their intended audience, undermining their expressive impact.
23. For example, Decree No. 007580/Mint/SP of 20 July 2011, issued by the Ministry of the Interior, prohibits all demonstrations *“in the area between Avenue El Malick Sy and Cap Manuel [...] especially in front of the buildings housing the National Assembly, the Senate, the Economic and Social Council, the Courts and Tribunals, the Palace of the Republic, the Administrative Building and “Place de l’Indépendance”*, on the basis of protecting security. Though when it was introduced, this measure was described as temporary, the ban has remained in place and effectively become permanent.
24. In the period under review, many peaceful assemblies have been denied authorisation to take place, and dispersed, including through the use of disproportionate force, on the grounds of “maintaining law and order” including:
- On 9 March 2018, a march organized by the Senegalese Democratic Party (PDS in French) against malfunctions in the distribution of voting cards in the 2017 parliamentary elections around the Ministry of Home Affairs was severely repressed when the authorities fired tear gas at peaceful protesters. The gas caused widespread panic, in particular in a nearby school which was affected
 - On 19 April 2018, a march planned by opposition parties to protest against the draft law on sponsorship and due to take place in Dakar city around the Ministry of Home Affairs was banned, under Decree N°007580.

¹¹ See recommendation 124-83 and 124-84 supra.

- On 4 September 2018, a march of opposition parties to defend democracy¹² was harshly repressed when the authorities fired tear gas at peaceful protesters and arrested the opposition leaders Mamadou Diop Decroix, President of And-Jëf/Parti Africain pour la Démocratie et le Socialisme authentique (AJPADS); Omar Sarr, Secretary General of Parti Démocratique Sénégalais(PDS); Thierno Bocoum and Déthié Fall of (Rewmi), and Thierno Alassane Sall, Secretary General of République des Valeurs(RV).They were released the 5 September 2018.

Recommendations

- Repeal all legislation and regulations which prohibit the holding of peaceful assemblies or protests in designated public spaces, within the sight and sound of their intended audience, including in particular Ministerial Decree No. 007580/Mint/SP prohibiting assemblies in several areas of the city of Dakar;
- Repeal Article 96 of the Criminal Code;
- Develop a new law to protect and promote the right to peaceful assembly in accordance with Article 21 of the ICCPR, with full and effective public participation, and with a national action plan for its implementation in line with the UN Special Rapporteurs' Practical Recommendations for the Proper Management of Assemblies;
- Adopt a specific protocol for the use of force during demonstrations, based on international human rights standards, and review and update existing human rights training for police and security forces, including in the UN Basic Principles on the Use of Force and Firearms, to ensure consistent application of international human rights standards whilst managing protests.
- Immediately and impartially investigate all instances of excessive force against peaceful protesters.

Right to Information

25. Despite accepting recommendations to adopt legislation providing a right to access government-held information, Senegal still not have adopted an access to information law, although the bill and the financial impact study of the law have been filed for several months with competent authorities.

Recommendation:

- With the full and effective participation of civil society, adopt a law on access to information in line with the Constitution and Senegal's international human rights law obligations, and ensure its full and effective implementation.

¹²The assembly was also related to the confirmation of the already announced candidacies of Karim Meissa Wade and Khalifa Ababacar Sall, the establishment of an independent authority to organize elections, the access to the electoral register for all, the withdrawal of the law on sponsorship, the distribution of voter cards to rights holders and the release of political prisoners.

Reinforcement of national institutions to protect and promote human rights

26. During its last UPR, the government accepted recommendations to strengthen the independence of the judiciary and regulatory bodies, and to strengthen the national human rights commission.¹³ No progress has been made.

The Senegalese Human Rights Committee (CSDH)

27. Senegal accepted recommendations to bring the national human rights commission in line with the Paris Principles, particularly with regard to strengthening its work and reinforcing its independence. However, the situation for the CSDH has continued to deteriorate in the period under review, with much-needed reforms not taking place.

28. The CSDH has not attained “A” status under the Paris Principles. The recommendations issued by the Sub-Committee on Accreditation in 2007, which were aimed at enhancing the institution’s independence through changes to its funding, selection and appointment of members, among other issues, have not been implemented. The independence stipulated by law N°7-04 of 10 March 1997 establishing the CSDH is not effective, as it does not even require consultation on the appointment of President. The appointment of a ruling party activist and Mayor, Mr. Pape Sene as the President of the CSDH in late 2015, has further undermined the institution’s independence¹⁴.

29. Transparency also remains an issue. Despite its mandate to independently monitor, consult and engage in dialogue regarding the situation for human rights in the country, in the public interest, the CSDH has not published its annual activity reports for several years. In part, this seems to be a result of the requirement that the report be submitted to the President of the Republic prior to publication.

The National Office for the Fight against Fraud and Corruption (OFNAC).

30. Established by Law No. 2012-30 of 28 December 2012, OFNAC is an independent administrative authority whose main mandate encompasses the prevention and fight against fraud, corruption and similar practices.

31. Article 17 of Law No. 2012-30 does not sufficiently ensure the independence of OFNAC:¹⁵

¹³ UPR 2013, Accepted recommendations, 123.8 Take measures to further strengthen the national institutions of human rights (Pakistan); 123.9 Continue its efforts as regards the harmonious and productive activities of the institutions responsible. 123.10 Strengthen the independence and capacity of institutions for the promotion and protection of human rights (Niger); 123.11 Make the necessary resources available to the national Unit to Combat Trafficking in Persons, the national Observatory for Gender Equality, the Human Rights Directorate and the National Human Rights Council (South Africa).

¹⁴ http://www.seneweb.com/news/Politique/presidence-du-csdh-me-pape-sene-nomme-le_n_171125.html.

¹⁵ Article 17: “OFNAC draws up each year a report of activities which includes in particular the proposals of measures to prevent acts of fraud or corruption. This report is given to the President of the Republic. It is made public by any appropriate means”.

- OFNAC is required to make the report on its activities public, however, this publication is preceded by the submission of the report to the President, who thereby appears to have editorial control over its content and release;
- Furthermore, the Law on the Declaration of Assets inhibits the work of OFNAC, as it prohibits it from publishing any information related to assets to the public, even where this is in the public interest in exposing corruption.¹⁶

32. The mechanism through which OFNAC members are appointed undermines its independence, and demonstrates a lack of genuine political will to tackle corruption.¹⁷

Recommendations

Guarantee the independence of institutions mandated to protect and promote human rights in Senegal, in particular the CSDH, and OFNAC, including in particular by:

- providing for their sustainable funding, ensuring their financial and budgetary autonomy;
- providing for a transparent, impartial and participative appointment mechanism;
- ensuring their functional independence from the government,

Implement the 2007 recommendations of the Sub-Committee on Accreditation to strengthen the CSDH in accordance with the Paris Principles, including by reforming Law N°97-04 of 10 March 1997 with the full and effective participation of civil society.

¹⁶ Article 5(2):" The declarations filed and the observations made may be communicated only at the express request of the declarant or his successors in title or at the request of the judicial authorities.

¹⁷ Observations of Professor Jacques Mariel Nzouankeu on 26 August 2016, https://www.pressafrik.com/OFNAC-Fin-aux-fonctions-de-Nafi-Ngom-Keita-Pr-Jacques-Mariel-Nzouankeu-explique-l-legalite_a152357.html, consulted on 26.03.2018.