



Submission by ARTICLE 19 to the UN Human Rights Committee in advance of the review of Senegal at its 137th Session

September 2019

Introduction

1. ARTICLE 19 welcomes the opportunity to contribute to the fifth periodic country review of Senegal at the 127th Session of the Human Rights Committee.
2. This submission examines Senegal's implementation of the International Covenant on Civil and Political Rights (ICCPR), and responds primarily to the following of the listed issues put to Senegal by the Committee:¹
 - *Constitutional and legal framework within which the Covenant is implemented (art. 2)*
 - *Right to life, prohibition of torture and cruel, inhuman or degrading treatment, conduct of the security forces and treatment of persons deprived of their liberty (arts. 6, 7 and 10)*
 - *Freedoms of expression and association, right of peaceful assembly and protection of journalists and human rights defenders (arts. 6, 7, 9, 19 and 21)*
3. The protection of the rights to freedom of expression, information, assembly and association in Senegal has notably deteriorated. In particular, a restrictive legal framework has increasingly been applied by the government to target journalists, oppositional voices and civil society, as well as peaceful protesters. Media freedom is under continued pressure, with new legislation threatening to entrench rather than reverse limits on media independence, pluralism and diversity. The increasing misuse of the legal framework to restrict expression, in particular of high profile figures, is contributing to a growing climate of fear which is driving self-censorship throughout the country.
4. Our submission bases its analysis on international standards on the rights to freedom of expression and access to information, drawn from the ICCPR itself and the guidance the Committee has previously provided to States, as well as other sources of international human rights law.

¹ United Nations Human Rights Committee, 'List of issues in relation to the fifth periodic report of Senegal', CCPR/C/SEN/Q/5, 10 April 2019.
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSEN%2fQ%2f5&Lang=en

Constitutional framework

5. This section addresses paragraph 1 of the List of Issues, relating to the Constitution and measures taken to ensure the primacy of the Covenant over domestic law and its direct application in the domestic legal system.
6. Article 8 of the Constitution of the Republic of Senegal (2001), amended by law N°2016-10 of 5 April 2016, broadly guarantees to all citizens a set of fundamental individual freedoms, as well as collective rights.² Among the named freedoms and rights are inter alia, 'freedom of opinion, freedom of expression, freedom of association, freedom of assembly [and] freedom of manifestation' as well as the right 'to a variety of information'. However, this same provision provides that 'these freedoms and rights shall be exercised under the conditions provided by law', without requiring that any limitations on these rights be necessary for the pursuit of a legitimate aim, as is required by Article 19(3) of the ICCPR. Moreover, it limits the enjoyment of these rights to citizens only, which is discriminatory.
7. Article 10 of the Constitution specifically addresses the freedoms of expression and assembly in the following terms, 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 stipulated in Articles 19(3) and 21 of the ICCPR.

8. ARTICLE 19 considers that the 2016 constitutional reform efforts were a missed opportunity to more comprehensively enhance the protection of human rights, in particular to increase the complementarity between national protections for freedom of expression and Senegal's obligations under the ICCPR.

Restrictions on freedom of expression

The Criminal Code

9. This section addresses paragraph 25 and 26 of the List of Issues, relating to provisions restrictive of expression contained in the Criminal Code and the judicial harassment of human rights defenders and journalists.
10. Reforms to the Criminal Code in 2016, through the adoption of Law n° 2016-29 of 8 November 2016 amending Law No. 65-60 of 21 July 1965, failed to ensure the compliance of the criminal law with Senegal's obligations under the ICCPR.³ The 2016 Criminal Code contains numerous provisions that unduly restrict the right to freedom of expression, and these provisions are frequently abused to silence criticism of the government and stifle public debate. Among the provisions of particular concern are the following:

² Government of Senegal, Constitution of the Republic of Senegal, 7 January 2001.

<https://www.wipo.int/edocs/lexdocs/laws/en/sn/sn006en.pdf>

³ Government of Senegal, 'Loi n° 2016-29 du 8 novembre 2016 modifiant la loi n° 65-60 du 21 juillet 1965 portant Code pénal', Journal officiel, 25 November 2019. <http://www.igouv.sn/spip.php?article11003>

- **Article 80** which broadly criminalizes 'acts that compromise public security or cause serious political troubles', punishable by imprisonment of between 3 and 5 years, and a fine of 100,000 to 1.5 million francs CFA (176 to 2,640 USD).⁴
- **Article 262** which criminalizes 'insult' punishable with imprisonment of between one and three months and/or a fine of 20,000 to 1.5 million francs CFA (35 to 2,640 USD).⁵
- **Article 254**,^{an} insult provision which criminalizes any public dissemination of 'offense against the Head of State' defined in Article 248 as including *inter alia* broadcast, television, print press, exhibition, speeches, cries in public places or meetings. The offense is punishable by imprisonment of 6 months to 2 years and/or a fine of 100,000 to 1.5 million francs CFA (176 to 2640 USD).⁶ We note that international standards are clear that public officials must tolerate more, rather than less, criticism, given the importance of ensuring effective public scrutiny of government actions.⁷
- **Articles 258(1) - 261**, which criminalize various forms of defamation, allowing for imprisonment of between two months and two years and/or a fine of 50,000 to 1.5 million francs CFA (880 to 2640USD).
- **Article 255**, which vaguely criminalizes 'the publication, dissemination, disclosure or reproduction' of 'false news', with imprisonment of between 3 and 5 years and a fine of 100,000 to 1.5 million francs CFA (176 to 2640 USD). This provision effectively empowers the authorities to control public discourse. We note that the mandate-holders on freedom of expression have found that "general prohibitions on the dissemination of information based on vague and ambiguous ideas, including 'false news' or 'non-objective information', are incompatible with international standards for restrictions on freedom of expression".⁸

⁴Article 80 provides: 'Other maneuvers and acts of nature to compromise public security or cause serious political unrest, to break the laws of the country, will be punished by a three years imprisonment for at least five years plus and a fine of 1,000,000 to 1,500,000 francs. The culprits will be able in addition to being banned from staying. Anyone who will have received, accepted, solicited or approved gifts, present, subsidies, offers, promises, or any other means, view to indulge in a propaganda of nature to compromise public security or to cause political unrest serious, to discredit political institutions or their operation, or to encourage citizens to break the laws of the land, will be punished with imprisonment for one year less and five years at most, and a double fine of the value of promises approved or things received or requested without that fine may be less than 100,000 francs. The guilty may also be struck prohibition of residence. It will never be done restitution of the received things, neither of their value; they will be confiscated in favor of Treasure'.

⁵Article 262 provides: 'The insult committed by the same means to the bodies or persons designated by articles 259 and 260 will be punished by imprisonment of one to three months and a fine of 20,000 to 1 00,000 francs, or of either of these penalties'.

⁶Article 248 provides: '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'.

⁷Article 254 provides: 'The offense to the President of the Republic by one of means set out in Article 248 is punished with a six months imprisonment to two years and a fine from 100,000 to 1,500,000 francs or any of these only two sentences. The penalties provided for in the preceding paragraph are applicable to the offense at person who exercises everything or part of the prerogatives of the President of the Republic'.

⁸Organisation for Security and Cooperation in Europe, 'Joint declaration on freedom of expression and "fake news", disinformation and propaganda', 3 March 2017. <https://www.osce.org/fom/302796>

- **Article 256**, which criminalizes disseminating images contrary to 'good morals', punishable by imprisonment of 1 month to 2 years and a fine of 25,000 to 300,000 francs CFA (44 to 528USD).
- **Article 431.60**, which criminalizes anyone who disseminates through any means of electronic communication, 'all printed matter, all writings, drawings, posters, engravings, paintings, photographs, films or photographs, layout or photographic reproductions, emblems, all objects or images contrary to good morals' subject to the harsh punishment of five to ten years' imprisonment and/or a fine of 500,000 francs to 10 million francs (880 to 17600USD).

11. These provisions are routinely used to prosecute human rights defenders, journalists and others exercising their freedom of expression rights, and increasingly in relation to their online expression. The following emblematic cases reflective of this trend:

- On 29 July 2019, the journalist Adama Gueye was arrested at home by officers of the Criminal Investigation Division, for posts he made on Facebook in which he criticised the way the country is ruled as well as the Head of State.⁹ On the 31 July, he was formally charged with 'offenses against the Head of State' (Article 254 of the Criminal Code) and 'acts that compromise public security' (Article 80 of the Criminal Code), and jailed at Reubeuss, a prison in Dakar. He remains in pre-trial detention, awaiting trial.¹⁰
- On 25 February 2019, rapper and activist Abdou Karim Gueye (also known as 'Karim Xrum Xax') was arrested by plain-clothed police officers of the Urban Security Unit whilst he was livestreaming through Facebook at the Place de l'Indépendance. During the livestream, he criticised the Prime Minister Mouhamed Boun Abdallah Dione, and called for a peaceful protest. Gueye was taken to the central police station of Dakar and initially charged under Article 258(2) of the Criminal Code for public insults and rebellion against the prime minister. He was ultimately convicted by the District Court of Dakar for "acts that compromise public security" (Article 80 of the Criminal Code) on 4 March 2019, and handed a one month suspended sentence and a fine of 50,000 CFA francs (88USD).¹¹
- In May 2017, Houleye Mané, Marième Diouf, Fatou Binetou Ndiaye and Cheikh Tidiane Sarr, were arrested and detained for sharing a satirical photomontage of the President of Senegal, Macky Sall, in a closed WhatsApp group of seven people. They were charged in June 2017 with 'disseminating images contrary to morality' (under Article 256 of the Criminal Code), as a conspiracy under Article 73. They were eventually granted provisional release without a final judgment on 11 August 2017, meaning they may be recalled at any time to face trial on these charges.¹²

We note that the practice of granting individuals arrested for their expression provisional release, instead of either proceeding to trial or dismissing the charges, is becoming a

⁹ Seneweb, Voici les posts Facebook qui ont valu à Adama Gaye son arrestation, 31 July 2019.

https://www.seneweb.com/news/Politique/voici-les-posts-facebook-qui-ont-valu-a- n_289804.html

¹⁰ Jeune Afrique, Sénégal: La justice veut maintenir Adama Gaye en prison le plus longtemps possible', 1 August 2019.

<https://www.jeuneafrique.com/811477/politique/senegal-la-justice-veut-maintenir-adama-gaye-en-prison-le-plus-longtemps-possible/>

¹¹ Sene Plus, Le Rappeur Et Activiste Karim Xrum Xax Condamne a un mois avec sursis, 4 March 2019.

<https://www.seneplus.com/politique/le-rappeur-et-activiste-karim-xrum-xax-condamne-un-mois-avec>

¹² Sene News, 'Urgent: Ouleye Mané libérée provisoirement', 11 August 2019. https://www.senenews.com/actualites/societe/urgent-ouleye-mane-liberee-provisoirement_201496.html

trend. The possibility of facing trial in effect functions as a deterrent against their engagement in other critical expression, generating a clear chilling effect.

- On 3 August 2017, the singer Amy Collé Dieng was arrested for comments critical of the President that she sent in a closed WhatsApp group. She was held in detention and charged variously with “insult” (Article 262 of the Criminal Code), ‘offence to the Head of State’ (Article 254 of the Criminal Code) and ‘spreading false news’ (Article 255 of the Criminal Code). She was granted provisional release without a final judgment on 14 August 2017.¹³
- On 14 July 2015, the police detained the publication manager and journalist of the ‘L’Observateur’ newspaper Alioune Badara Fall and Mamadou Seck. The two were interrogated in relation to allegations of the disclosure of state secrets, under Article 80 and Article 254 of the Criminal Code, for an article published on 8 May 2015 about the alleged deployment of 2,100 Senegalese soldiers to Yemen in support of Saudi Arabia. Although both were later released, they were placed under judicial controls, which included restrictions on their movements outside the country.
- Also on 14 July 2015, the police summoned the publication manager of ‘Le Quotidien’, Mouhamed Gueye, in relation to his publishing key documentation in relation to the preliminary investigation into Mamadou Seck. He was released on the same day.¹⁴

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, 262 and 431.60.
- Cease the practice of harassment of government critics through arbitrary arrest and temporary detention, and drop outstanding charges against persons provisionally released.

Media Freedom

Press Code

12. This section addresses paragraph 25 of the List of Issues, related to provisions in the Press Code.

13. On 20 June 2017, a new Press Code (Law N°2017-27 of 13 July 2017) was adopted by the National Assembly with a view to replacing the 1996 Press Code.¹⁵ Although an application

¹³ Dakar Actu, ‘AFFAIRE AMY COLLÉ DIENG: Elle a été arrêtée dans le bureau du Sous-Préfet de Dakar-Plateau (...) Elle avoue avec fait ses déclarations dans un groupe WhatsApp’, 3 August 2017, 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

¹⁴ Sene Web, ‘Alioune Badara Fall, Mamadou Seck et Mouhamed Guèye inculpés et placés sous contrôle judiciaire’, 17 July 2015, http://www.seneweb.com/news/Justice/alioune-badara-fall-mamadou-seck-et-mouh_n_159722.html

decree required to clarify certain provisions of the 2017 Press Code has yet to be passed, its provisions are in force.

14. The 2017 Press Code has been presented by the government as seeking to establish a coherent and transparent legal framework that *inter alia*, guarantees press freedom, promotes competition between media players, ensures media pluralism and diversity, provides equitable access to the media for all, and responds to the digital transformation of the media sector. However, these objectives have not been achieved through the reforms. The 2017 Press Code overly restrictive provisions found in the 1996 Press Code, and enables the government to continue its close scrutiny and supervision of media, undermining its independence.¹⁵ The highly restrictive approach has contributed to a growing climate of fear and chilling effect on media freedom in the country.
15. The following provisions of the 2017 Press Code provide for a concerning level of direct state regulation of the media:
 - **Article 4** restrictively defines a ‘journalist’ in formal terms, requiring a journalist to hold 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, including the guidance of the Committee.
 - **Together, Articles 22–36, 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.
 - **Article 192** broadly empowers certain administrative authorities (such as the Governor, Prefect or Sub-Prefect) to seize a press company, suspend or stop the broadcasting of a programme, or provisionally close a media outlet, in the interest of, *inter alia*, protecting State security or territorial integrity.
16. Despite prior commitments from the President to decriminalize media regulations, criminal and administrative sanctions were retained in Section 3 of the 2017 Press Code, with more severe penalties available in some instances than those contained in the 1996 Code. The offences attracting criminal or administrative liability include, *inter alia*, the following:
 - **Article 194**, provides sanctions of imprisonment of 3 months to 1 year and/or a fine of 100,000 to 1 million francs CFA for failure to comply with obligations set out in the 2017

¹⁵ Government of Senegal, Loi n° 2017-27 du 13 juillet 2017 portant Code de la Presse, 13 July 2017.

<http://www.jo.gouv.sn/spip.php?article11233>

¹⁶ ARTICLE 19, Senegal: Legal analysis of the Press Code, 23 August 2017. <https://www.article19.org/resources/senegal-legal-analysis-of-the-press-code/>

Press Code relating to the required professional experience of an outlet's publication director (Article 171) and editor-in-chief (Article 73) and to the foreign ownership of online media outlets (Article 178).¹⁷

- **Article 198** provides for penalties of up to 3 years in prison and/or a fine of up to 500,000 francs CFA (835 USD) for 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 1 year and/or a fine of up to 500,000 francs CFA (835 USD).
- **Article 201** provides fines of 200,000 to 500,000 francs CFA (334-835 USD) for the failure to comply with Article 92 of the Press Code, which requires newspapers to include certain mandatory information in their printed editions, including the addresses of the publication director, the managing directors, owners, and printers.¹⁸
- **Article 204** criminalizes the failure to register a publication in accordance with rules set out in the Press Code, punishable by imprisonment of 2 to 6 months and/or a fine of 200,000 to 500,000 francs CFA.

17. The authorities have additionally harassed and intimidated media outlets, with the seeming intent of discouraging the printing or broadcast of content that goes against the government's official line. For example, on 26 February 2016, officers of the Criminal Investigation Division visited the offices of Radio Walfadjiri, a private radio station, to seize the recordings of the 'Dine ak Diamono' programme broadcast on the Walfadjiri platform TV on the 25 February.¹⁹ The topic of the programme was the upcoming March 2016 referendum on Constitutional reforms.

National Audiovisual Regulatory Council

18. 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 4 January 2006, establishing the CNRA, empowers the President to directly appoint all of the CNRA members, without public consultation. This grants the President undue influence and control over the CNRA, and in turn, over the media in Senegal.

¹⁷ Article 71 provides: 'The written press organ must have a publication director, who must be a journalist with at least ten (10) years of professional experience'.

Article 73 provides: 'The written press organ also has an editor-in-chief who is a journalist having acquired at least seven (7) years of professional experience'.

Article 178 provides: 'The online press company fulfils the following obligations: the capital must be held by one or more persons of Senegalese nationality at the rate of fifty-one percent (51%) at least; the capital can not be held by a natural or legal person with foreign nationality directly or indirectly above twenty percent (20%)'.

¹⁸ Article 92 provides: Every newspaper shall include the following information in each edition: - the name of the director of publication and, where appropriate, the managing director, and owners; name and address of the printing works; the number of the draw of the last edition'.

¹⁹ Senego, 'La DIC investit Walfadjiri et exige les bandes sonores de Diiné Ak Diamono', 26 February 2016. https://senego.com/la-dic-investit-walfadjiri-et-exige-les-bandes-sonores-de-diine-ak-diamono_302899.html

19. The CNRA is not directly accountable to the public, but rather must submit reports of its activities directly to the President, before it can be released to the public, the according to Article 13 of the Law.²⁰ This further undermines transparency and trust in the regulator.
20. The CNRA's powers to impose significant sanctions has led to tensions between the regulator and the broadcasters under its authority. This has been exacerbated by the seemingly arbitrary manner in which the sanctions are applied, with examples of private and independent media facing investigation and sanctions, whilst public media who promote the official line, but who may have clearly violated the law, escaping sanction.

Recommendations:

- Review and amend the 2017 Press Code, to bring it in line with international standards, to ensure a free and enabling environment for independent, pluralistic and diverse media, including in particular to:
 - Repeal all criminal and administrative offences contained within the 2017 Press Code, in particular Articles 192, 194, 198, 199, 201, 203, 204, 207 and 208;
 - Revise the definition of 'journalist' in Article 4 to reflect a functional definition in line with international human rights standards.
 - Repeal the provisions for the National Press Card in Section 2, Articles 22-36 and Articles 198-199, 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

21. This section addresses paragraphs 11 and 27 of the List of Issues, on the freedom of peaceful assembly and the excessive use of force at political rallies and demonstrations.
22. The right to freedom of peaceful assembly in Senegal is subject to a system of prior declaration, by which organisers of assemblies are required, under Article 96 of the Criminal Code, to notify their local council of their intention to hold an assembly or demonstration at least 72 hours in advance. The failure to notify is punishable under the following Article 97 by imprisonment of 1 to 3 years and a fine of 100,000 to 500,000 francs (167-835 USD). In practice, this notification procedure effectively 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, in particular those organized by opposition parties and civil society organizations. The ability to organize spontaneous assemblies is also compromised.
23. 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. For example, Decree No. 007580/Mint/SP of 20 July 2011, issued by the Ministry of the Interior, prohibited all demonstrations in the areas surrounding government and parliamentary buildings. The ban applies to:

²⁰ Article 13 provides: On or before March 31 of each year, the National Audiovisual Regulatory Council a report on its activities during the past year. It also outlines in this report, the overall situation of the broadcasting sector from the perspective of the application of laws and regulations governing that sector.

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".

The government justified the ban on the broad basis of protecting public security. When the Ministry of the Interior first issued the Decree it was described as temporary, but the ban has yet to be lifted and has effectively become permanent.

24. Many peaceful assemblies have arbitrarily been denied authorization to take place, and dispersed, including through the use of disproportionate force, on the grounds of "maintaining law and order". We highlight the following emblematic examples:

- On 15 May 2018, Falou Sene, a student of Gaston Berger University (UGB) of Saint-Louis, was killed by police whilst participating in a peaceful assembly protesting the delays in the payment of student grants. The protest was violently repressed with clashes breaking out between some protesters and the police. The police used live ammunition against protesters. Investigations into the killing of Sene were initiated on the instructions of the President, and the officer responsible was identified and is awaiting trial. Investigations into the excessive use of force and the injuries caused to peaceful protesters during this incident have not taken place.
- On 14 June 2019, hours before it was due to take place, the security forces refused authorization to a demonstration organized in Dakar by opposition parties and civil society organizations, in protest against alleged corruption implicating Aliou Sall – the President's brother – relating to oil and gas extraction projects in the country. At least 20 protesters who made their way to the planned site of the protest were arrested, and the police fired tear gas at protesters.
- On 27 June 2019, the Prefect of Dakar issued a statement banning all events – including protests - scheduled to take place in Dakar on the 28 September, invoking "serious threats to public order" as the justification for the ban.
- On 4 September 2018, a march of opposition parties to defend democracy was harshly repressed when the police fired tear gas at peaceful protesters and arrested 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 following day.²¹
- On 19 April 2018, a march planned by opposition parties to protest against planned changes to electoral law ahead of Presidential elections, which was due to take place in Dakar within the sight and sound of the Ministry of Home Affairs, was refused

²¹ The 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.

authorization, under the abovementioned Decree N°007580. A heavy police presence was used to deter protesters from gathering.

- On 9 March 2018, a march organized by the Senegalese Democratic Party (PDS) targeting the Ministry of Home Affairs and protesting problems in the distribution of voting cards in the 2017 parliamentary elections, was severely repressed when security forces, including the police, fired tear gas at peaceful protesters.²² The gas caused widespread panic, in particular in a nearby school which was affected.

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 Articles 96 and 97 of the Criminal Code, criminalizing the organization of authorized assemblies.
- 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 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. This section addresses paragraph 28 of the List of Issues, relating to legal provisions guaranteeing the right to information.

26. The adoption of an access to information law has stalled. In spite of a draft bill and an accompanying financial impact study having been filed for several months with the competent authorities, no further action has been taken.

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.

²² RFI Afrique, Sénégal: une manifestation de l'opposition dispersée dans le centre de Dakar, 9 March 2019. <http://www.rfi.fr/afrique/20180309-senegal-une-manifestation-dispersee-le-centre-dakar>

National Human Rights Institutions

27. This section addresses paragraph 2 of the List of Issues, related to the transparency and effectiveness of national human rights institutions.

The Senegalese Human Rights Committee (SHRC)

28. The government has yet to take the necessary steps to reform the national human rights commission in line with the Paris Principles, particularly with regard to strengthening its work and reinforcing its independence.

29. The SHRC 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°97-04 of 10 March 1997 establishing the SHRC is not effective, as it does not even require consultation on the appointment of the SHRC's President. The appointment of a ruling party activist and Mayor, Mr. Pape Sene as the President of the SHRC in late 2015, has further undermined the institution's independence.²³

30. 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 SHRC 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 prior to publication.

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

31. 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.

32. Article 17 of Law No. 2012-30 does not sufficiently ensure the independence of OFNAC.²⁴

- 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.²⁵

33. The mechanism through which OFNAC members are appointed undermines its independence, and demonstrates a lack of genuine political will to tackle corruption.²⁶

²³ Seneweb' Présidence du Csdh : Me Pape Sène nommé, les droit-de-l'homnistes ruent dans les brancards, 2 January 2019. https://www.seneweb.com/news/Politique/presidence-du-csdh-me-pape-sene-nomme-le_n_171125.html

²⁴ Article 17 provides: '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'.

²⁵ Article 5(2) provides: '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'.

Recommendations

- Guarantee the independence of institutions mandated to protect and promote human rights in Senegal, in particular the SHRC, 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; and
 - Ensuring their functional independence from the government.
- Implement the 2007 recommendations of the Sub-Committee on Accreditation to strengthen the SHRC 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.

²⁶ Press Affrik, 'Observations of Professor Jacques Mariel Nzouankeu', 26 August 2016. https://www.pressafrik.com/OFNAC-Fin-aux-fonctions-de-Nafi-Ngom-Keita-Pr-Jacques-Mariel-Nzouankeu-explique-l-illegalite_a152357.html