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UNIVERSAL PERIODIC REVIEW

Report of the Working Group on the Universal Periodic Review*

Senegal

Addendum

**Views on conclusions and/or recommendations, voluntary commitments
and replies presented by the State under review**

* The present document was not edited before being sent to the United Nations translation services.

REPLIES BY SENEGAL TO THE RECOMMENDATIONS OF THE WORKING GROUP ON THE UNIVERSAL PERIODIC REVIEW

1. Ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol and the International Convention for the Protection of All Persons from Enforced Disappearance as soon as possible (Haiti); complete the ratification process of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (Mexico).

On 9 April 2009 the Government of Senegal adopted in the Council of Ministers a bill authorizing the President to ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol; it undertakes to complete the ratification procedure as soon as possible.

The International Convention for the Protection of All Persons from Enforced Disappearance was signed by Senegal on 6 February 2007 and ratified on 28 November 2008.

The Government of Senegal undertakes to continue the process of ratification of the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption.

2. Extend invitations to the special rapporteurs on torture and on the independence of judges and lawyers (Mexico); consider extending (Latvia) and implement (Czech Republic) a standing invitation to all special procedures (Latvia, Czech Republic).

Senegal has always accepted requests to visit from special procedures mandate holders of the Human Rights Council. To date it has given its agreement in principle to requests from the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the right to education, the Working Group on Arbitrary Detention, the Special Rapporteur on trafficking in persons, especially women and children, and the Special Rapporteur on the situation of human rights defenders.

A request from the Special Rapporteur on the sale of children, child prostitution and child pornography was received after those mentioned above and will be dealt with in the same spirit.

No request has yet been received from the Special Rapporteur on the question of torture or the Special Rapporteur on the independence of judges and lawyers but Senegal is prepared to consider such requests.

In addition, the Senegalese authorities have already given their agreement to a mission requested by the Committee against Torture, at a date to be agreed.

As to a standing invitation to all special procedures mandate holders, Senegal is prepared to consider this question at a later date. For the moment it prefers to do as it has always done in this regard and give a favourable response to any formal requests for visits.

3. Respect and protect the human rights and the fundamental freedoms of all persons without any form of discrimination (Belgium); undertake immediate measures to deal with the problem of discrimination, facilitate access of women to education and health and fully ensure the protection of women (Mexico).

This recommendation is entirely in line with Senegal's well-known commitment to the promotion and protection of human rights and respect for fundamental freedoms, as upheld by a large body of legislation that allows individuals and groups to invoke a range of effective remedies in defence of their rights and freedoms and of their own legal security.

Senegal has already taken legal and regulatory steps to deal with the problem of discrimination against women and intends to continue to do so, in accordance with this recommendation.

By way of illustration, mention may be made of articles 1, 4, 7, 15.2, 15.9, 17.3, 18 and 25 of the Constitution, which provide unambiguously for the elimination of all forms of discrimination.

In the same vein, on 13 November 2007 Senegal adopted a constitutional law amending articles 7, 63, 68, 71 and 82 of the Constitution and stipulating that "the law shall facilitate equal access for women and men to elected office".

All this can be seen as part of a special effort being made in this area with the implementation of the following measures:

- (a) The preparation of a national strategy on gender equality and equity, 2005-2015;
- (b) Gender mainstreaming in health and education policies and programmes;
- (c) The adoption in 2004 of the Reproductive Health Act.

In terms of protection of women and children, Senegal strengthened its legislation in 1999 with a law amending various provisions of the Criminal Code and the Code of Criminal Procedure to punish excision, rape, paedophilia, indecent assault and corruption of minors, applying the maximum penalty if the victim is a minor under the age of 13 or a woman who is particularly vulnerable.

With regard to female genital mutilation, sustained efforts at awareness-raising, training and support among the general public have resulted in abandonment of the practice of excision in 75 per cent of Senegal's 5,000 communities. Increasingly, those who refuse to comply are prosecuted and punished. By Decree No. 10545 of 10 December 2008, the Minister of Justice established a committee to look into violence against women and children.

As part of the reform of the Criminal Code and the Code of Criminal Procedure, the following new provisions have been proposed:

(a) The right of accredited associations whose mission under their constitutions includes combating violence against women, to bring a civil suit for damages in cases involving rape, indecent assault, indecent exposure, paedophilia, forced prostitution, genital mutilation, sexual harassment or procuring;

(b) The prescription period in cases of sexual violence where the victim is a minor at the time of the offence to run from the date the victim attains the age of majority, in order to better protect their rights;

(c) The right of all criminal investigation police to enter and search homes whenever and wherever minors may be at risk.

4. Safeguard separation of powers and independence of jurisdictions (the Netherlands); enhance effectiveness of the judiciary, inter alia in terms of the length of pretrial detention (Czech Republic).

Senegal accepts this recommendation and wishes to provide the following information to confirm its implementation.

On attaining independence Senegal adopted standards ensuring the rule of law, namely the separation of powers and the institution of a judiciary whose independence is established by the Constitution.

The preamble to the Constitution proclaims Senegal's commitment to the separation of powers and the appropriate checks and balances, and article 88 goes on to proclaim the independence of the judiciary from the executive and legislative branches of Government.

The Constitution also establishes the independence of judges, who are subject only to the law in the performance of their duties (art. 89). The independence of judges is ensured by special measures that protect them throughout their career, the most important of which is security of tenure.

Judges' statutory guarantees are also protected by Organization Act No. 92-27 of 30 May 1992, which can be amended by Parliament only through a special procedure requiring an absolute majority. An all-party bill has been drafted amending the Act to reinforce judges' statutory guarantees and give judges greater independence.

The bill provides, among other things, for reinforcement of judges' security of tenure, a limit on the period of suspension from duties, amendment in judges' favour of the criteria for dismissal or compulsory retirement and the right of appeal against these disciplinary measures.

The duration of pretrial detention for minor offences is governed by article 127 bis of the Code of Criminal Procedure, which stipulates that the detention order is valid for only six months and is not renewable.

For serious offences there is no limit on pretrial detention, but such detention is monitored and supervised by the President of the indictment division, in the exercise of the powers of that office.

In addition, the creation of new appeal courts, each to sit twice a year, is an effective means of doing away with lengthy periods of detention. Three appeal courts are now in operation and two more are being established. In addition, legislation has been adopted establishing a national commission on reparation for prolonged detention.

5. Contribute towards combating impunity internationally, in particular by implementing (Switzerland) as soon as possible (Ireland) the mandate bestowed on it by the African Union and to bring the former head of State of Chad, Mr. Hissène Habré to justice (Ireland, Switzerland).

This recommendation is in line with Senegal's earlier decision to implement the African Union mandate and meet its obligations as a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Now that the necessary constitutional, legal and regulatory measures are in place, Senegal is ready to hold the trial of Hissène Habré.

At the twelfth African Union Summit held in February 2009, Senegal requested a thorough review of this issue. Following its deliberations, the African Union reiterated its commendation of Senegal for the steps it had taken to carry out the mandate and called on the international community to pay its contributions directly to the African Union Commission (resolution Assembly/AU/Dec.240 (XII)).

6. Amend the Penal Code to decriminalizing homosexual activity (United Kingdom, Belgium, Canada) between consenting adults (United Kingdom) in line with the provisions of ICCPR, particularly articles 2 and 26 (Canada); remove the article of the Penal Code criminalizing sexual conduct, which is not in compliance with the Universal Declaration of Human Rights (the Netherlands); review national legislation which results in the discrimination, prosecution and punishment of people solely for their sexual orientation or gender identity (Slovenia); put an end to the legal prohibition of same-sex sexual acts or practices between consenting adults, release individuals arrested on the basis of this provision (Czech Republic); free all persons imprisoned on the grounds of their sexual orientation (Belgium); launch a national debate which may lead to the decriminalization of homosexuality (Ireland); adopt measures to promote tolerance towards homosexuality, which would also facilitate more effective educational programmes for HIV/AIDS prevention (Czech Republic).

On the question of decriminalizing "homosexuality", it must be noted that there is no law against homosexuality in Senegal. It is not an offence to be a homosexual in Senegal and no one can be prosecuted on those grounds, in accordance with the constitutional principle of the legality of offences. The Senegalese Criminal Code does, however, define unnatural acts on a person of the same sex as an offence (art. 319).

No one is currently imprisoned in Senegal for homosexuality. The prison sentences imposed on a number of young Senegalese for unnatural acts have been appealed and the competent court has declared the proceedings null and void on the procedural grounds of violation of the rules governing house searches.

7. Take specific and effective measures (Switzerland, Sweden) including legislative action (Sweden) required in order to ensure respect for freedom of expression (Switzerland, Sweden), association (Switzerland) and the press in accordance with international standards (Sweden); abrogate article 80 of Criminal Code pertaining to the infringement to the safety of State, which restricts the right to freedom of expression (France); respect its commitments concerning the freedom of expression which it undertook by ratifying the ICCPR (Canada).

Freedom of expression is proclaimed and guaranteed by the Constitution, which also stipulates that the conditions for the enjoyment of that freedom shall be determined by law. The legal regime governing the exercise of the freedom of expression contains no requirement for prior authorization to establish a press or for scrutiny of the content of newspapers in advance of publication. The exercise of the freedom of expression is subject to restrictions based on the law and the requirement to protect privacy and public order.

In most cases where journalists are prosecuted, it is for ordinary offences, which are subject to the rules of criminal procedure where prosecution and trial are concerned. At present there are no journalists in conflict with the law as a result of State action.

The question of the repeal of article 80 of the Criminal Code, on threats to national security, has been taken up by the Commission on Reform of the Criminal Code and the Code of Criminal Procedure.

8. Act on the promise made by the President in 2004 to reform the press law and to eliminate prison terms for press offences (Ireland); take forward plans (United Kingdom) to decriminalize press offences (United Kingdom, the Netherlands) as agreed by the President of the Republic in 2004 and as reported to the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (United Kingdom); revise its legislation on freedom of the press in order to bring it into line with international standards (Belgium); provide training on human rights and freedom of the press to the police and armed forces in order to prevent any deterioration in this field (Holy See).

In 2004 Senegal expressed its willingness to decriminalize press offences and this undertaking was recently repeated by the Head of State.

The security forces are given initial training in human rights and, following recommendations from civil society, the Government undertakes to introduce human rights into training programmes.

9. Ensure the effective freedom of demonstration and freedom of association (France); protect the rights of assembly and freedom of expression in the country (Slovenia).

In respect of freedom of demonstration and freedom of assembly, there is no requirement for the administrative authorities to be informed in advance. Where an administrative authority bans an event, applicants may bring an action for annulment in the administrative court. It is generally preferable for the parties to reach an amicable settlement in such disputes rather than going through the courts; that means, however, that there is no case law scrutinizing the grounds advanced by administrative authorities for banning public demonstrations.

10. Provide law enforcement and judicial officials with specific training regarding the protection of human rights of women, children and persons of minority sexual orientation or gender identity, and ensure proper investigation and punishment of any human rights violations committed by this personnel (Czech Republic).

Human rights training modules are taken by students at the Police Training and In-Service Training College and at the Gendarmerie Colleges. This training is reinforced by seminars and workshops organized jointly with the judiciary and other actors in this sector.

The Directorate-General of Police is prepared to introduce protection of vulnerable groups such as women and children into the initial training curriculum.

Exemplary punishment, including dismissal, is imposed on any member of the services convicted of human rights violations. Penalties are handed down after an enquiry with all due process guarantees.
