

# Reporters Without Borders (RSF) Reporters sans frontières (RWB)

*UN Human Rights Council Universal Periodic Review for Senegal  
17<sup>th</sup> session – October 21<sup>st</sup> to November 1<sup>st</sup>, 2013*

Contact Genève: Hélène Sackstein [sackstein@rsf-ch.ch](mailto:sackstein@rsf-ch.ch)

## **Written submission by Reporters Without Borders on the state of freedom of information and media circulation in Senegal**

*Information taken from February 2009 UPR (4<sup>th</sup> session)' summary of stakeholders*

### **Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life**

9. L'ONDH et la FIDH ont indiqué que les atteintes à la liberté d'expression de la part des autorités sénégalaises sont de plus en plus importantes et demeurent symptomatiques de l'attitude des autorités nationales à l'égard des libertés collectives et individuelles au Sénégal. Selon ces organisations, ces atteintes se manifestent de façon récurrente par des convocations intempestives à la Division des Investigations Criminelles, par des menaces à l'encontre des journalistes et hommes politiques de l'opposition, des saisies de journaux, des pressions sur certaines maisons d'édition ou imprimeries pour empêcher la parution de livres ou de journaux. De même, l'ONDH et la FIDH ont fait savoir que la presse privée semble tout particulièrement ciblée par ces actes de harcèlement, d'intimidation et de pression dans le but de mettre au pas toute opinion divergente des thèses officielles.

17 AI stated that journalists have also become a regular target of harassment.<sup>18</sup>

10. Reporters Without Borders (RSF) indicated that even though scores of newspapers appear in Dakar, no serious tools exist to handle the regulation of the media and no legislation exist to sanction fairly the journalists responsible for libel or publication of false news.<sup>19</sup> RSF also deplored the lack of political will from the Government to cooperate on the reform of the press law, for example, or to show more transparency and openness to proposals made by local or international NGOs whenever a journalist is arrested. RSF recalled that, faced with an outcry over the imprisonment in 2004 of journalist Madiambal Diagne, President Abdoulaye Wade promised to reform the press law, a measure that Senegalese journalists are still waiting for.<sup>20</sup> RSF recommended that the Government should abolish the existing press law and adopt a new legislation adapted to democratic standards, eliminating prison terms for press offenses and providing a credible regulation tool for the media. It also recommended that the armed forces (police and army) receive training on human rights and press freedom, while sanctions mechanisms should be put in place in order to tackle impunity of law enforcement officers whenever they attack, or wrongfully detain, journalists.<sup>21</sup>

11. AI was concerned about continuing reports of restrictions on the rights to freedom of expression, association and assembly in an attempt to stifle voices critical of the Head of State. AI reported that in the last two years, supporters of opposition parties and human rights defenders have been subjected to arrest, ill-treatment and harassment and that in recent years, several peaceful demonstrations have been banned, and those that took place despite this prohibition were restricted.<sup>22</sup> According to AI, in the last couple of years, several political opponents have been arrested and some were detained for

several months accused of threatening state security or insulting the Head of State. AI said it was concerned that these arrests and detentions were attempts to silence political opposition<sup>23</sup> and called on the Government of Senegal to take concrete and effective measures to protect the rights to freedom of assembly and freedom of expression and to ensure that law enforcement officials are fully trained and equipped to maintain public order without resort to excessive force, with any breaches vigorously and independently investigated.<sup>24</sup>

12. L'ONDH et la FIDH ont noté qu'en pratique, les autorités sénégalaises ne garantissent pas la liberté de manifestation, bien que cette liberté soit consacrée et garantie par la Constitution et qu'à quelques très rares exceptions près, toute velléité de manifestation ou marche pacifique est systématiquement interdite et réprimée dans la violence.<sup>25</sup>

13. Selon l'ONDH et la FIDH, certains segments de la société sénégalaise ayant lancé l'idée d'Assises Nationales pour réfléchir aux maux dont souffrent les Sénégalais et proposer des solutions de sortie de crise, ont fait l'objet de menaces de la part des autorités sénégalaises. De même, certains membres de la société civile ont dû renoncer à participer à ces Assises, en raison des pressions subies.<sup>26</sup> L'ONDH et la FIDH ont recommandé aux autorités sénégalaises de garantir le droit à la liberté d'expression et le droit de réunion pacifique, protégés par les articles 19 §2 et 21 du Pacte international sur les droits civils et politiques, et de mettre fin à tous les actes d'intimidation et de harcèlement à l'encontre des personnes exerçant ces droits.<sup>27</sup>

*In 2009, Senegal did not accept recommendations precisely on media freedom*

*Recommendations examined by Senegal at UPR's 4<sup>th</sup> session (2009), and below Senegal's responses*

**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)**

**Senegal's response in the outcome report:** 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 decriminalise 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);**

**Senegal's response in the outcome report:** 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);**

**Senegal's response in the outcome report:** 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.

### **Overview of the press freedom situation**

Senegal is ranked 59 out of 179 countries listed in the 2013 worldwide press freedom index (+16 in comparison with the previous year)

No journalist currently imprisoned.

President: Macky Sall since April 2012 (succeeding to Abdoulaye Wade 2000-2012)

Behind the image of a democratic country, a model in West Africa, lurks a more complex state of affairs. Journalists are sometimes threatened and their media banned or vandalised. Despite repeated appeals from journalists and the international community, decriminalisation of breaches of press laws has not yet been adopted.

However, Reporters Without Borders notes that 2012 was a year of hope for Senegal. The presidential election took place in a peaceful atmosphere for the media, despite a few regrettable assaults on journalists, and President Macky Sall, who had declared himself willing to decriminalize press offenses, took office. Much remains to be proved in 2013, as it was illustrated by the prison sentence handed down on a journalist in December.

### **Senegal's situation since the change of Presidency in April 2012**

As per RSF latest press release on December 28, 2012:

#### **JOURNALIST CONVICTED – IT'S TIME TO DECRIMINALIZE PRESS OFFENCES**

Reporters Without Borders sent an open letter to President Macky Sall of Senegal in response to the suspension a week ago by the Dakar Criminal Court of the magazine *Exclusif* and the sentencing of its managing editor, El Malick Seck, to six months' imprisonment.

The press freedom organization notes the discrepancy between the president's comments in favour of decriminalizing press offences and the prison sentences that continue to be handed down on journalists. It urges him to use his influence to persuade members of the National Assembly to approve the new press code submitted to them several months ago.

Here is the text of the letter:

Macky Sall □ President of the Republic □ Dakar, Senegal

Paris, 28 December 2012

Subject: Conviction of the journalist El Malick Seck and the decriminalization of press offences.

Dear President

Reporters Without Borders, an international organization that campaigns for freedom of information, wishes to make you aware of its surprise and puzzlement at the discrepancy between your comments in favour of decriminalizing press offences in Senegal and the prison sentences that continue to be handed down on journalists in the country.

At the closing ceremony of the meeting of the African Media Leaders Forum in Dakar last month, you said you were “for decriminalization of press offences”, declaring: “When press offences are decriminalized, it means that there are solutions other than criminal litigation ... The level of democracy in Senegal can allow us to decriminalize press offences and allow the journalist to conduct his investigations.”

However, on 18 December the Dakar Criminal Court suspended publication of the magazine *Exclusif* and sentenced its managing editor El Malick Seck to six months’ imprisonment and ordered him to pay 100 million CFA francs in damages.

The offences were alleged to have taken place in June this year in the fifth issue of *Exclusif* which contained an article by El Malick Seck headlined “Sidy Lamine Niasse: blackmailer”. The journalist wrote that Sidy Lamine Niasse, the head of the Walfadjri media group, had kept the outgoing government at arm’s length and the then-president Abdoulaye Wade had “fired a financial shot across its bows”. *Exclusif* alleged that 460 million CFA francs (more than 700,000 euros) – not 400 million – had been paid into the group’s bank accounts from the public coffers.

Without commenting on the substance of a dispute between colleagues, Reporters Without Borders finds it regrettable that Senegal continues to impose custodial sentences on those found guilty of press offences.

As you know, our organization has for several years been encouraging the authorities in Dakar to decriminalize press offences. In May this year, shortly after your accession to the highest state office, we wrote to you to draw your attention to the new press code that had been before the National Assembly for several months and which would improve the health of the sector and afford greater protection to journalists.

We urged you to use your influence to persuade the members of Senegal’s parliament to approve the code. We also asked you to support the decriminalization of press offences as advocated in the bill, so that journalists who committed offences in the course of their work would receive fairer and more appropriate penalties than prison sentences.

Reporters Without Borders welcomes your recent statements in support of decriminalization of press offences, but would encourage you to turn this commitment into action. Only the National Assembly’s approval of the bill as expeditiously as possible will ensure that your comments do not remain empty words.

It is time for your country to carry through this reform, which was carried out several years ago by other African countries such as Togo and Côte d’Ivoire.

Thank you for your attention in this matter.

Yours sincerely,

Christophe Deloire □ Secretary General

**Recommendations:**

Reporters Without Borders reiterates its recommendations made during UPR's 4<sup>th</sup> session in 2009, and calls upon Senegal's authorities and judiciary to:

- - Abolish the existing press law and adopt a new legislation adapted to democratic standards, eliminating prison terms for press offenses and providing a credible regulation tool for the media;
- - Train the armed forces (police and army) on human rights and press freedom, while sanctions mechanisms should be put in place in order to tackle impunity of law enforcement officers whenever they attack, or wrongfully detain, journalists