



ANALYSIS OF THE LAWS AMENDING THE CRIMINAL CODE AND THE CODE OF CRIMINAL PROCEDURE

INTRODUCTION

In the name of the war on terror and cybercrime, the two laws amending the Criminal Code and the Code of Criminal Procedure adopted by Senegal's National Assembly on 28 October 2016 contain draconian provisions. They must be revised in order to bring them into line with Senegal's obligations under international and regional human rights law.

These laws contain terrorism-related offences that are vaguely defined and repressive provisions, particularly with regard to "morality" and "insults" that could be used to suppress dissident opinions, including those of human rights defenders. These laws also contain provisions that threaten the right to a fair trial and create conditions conducive to the use of torture and ill-treatment, in particular against people accused of acts of terror, by extending the period of police custody to up to 12 days and not explicitly establishing that the right of access to a lawyer applies as soon as a person is deprived of their liberty and also includes that lawyer's presence during all interrogations.

The authorities could have taken this opportunity to include the recommendations of human rights organizations, and particularly to repeal a number of draconian measures in the Criminal Code such as defamation of the President of the Republic¹, the dissemination of false news² and acts likely to "cause serious political unrest"³.

The authorities have also ignored the recommendations of UN treaty bodies such as the Human Rights Committee and the Committee against Torture, aimed at ensuring better controls over police custody, guaranteeing rapid access to a lawyer and ruling confessions obtained under torture inadmissible⁴.

¹ Criminal Code, Article 254.

² Criminal Code, Article 255.

³ Criminal Code, Article 80.

See: Amnesty International, *Senegal: failing to live up to its promises: recommendations on the eve of the African Commission on Human and Peoples' Rights' Review of Senegal, 56th session, April-May 2015* (AI Index: AFR49/1464/2015), available from: <https://www.amnesty.org/en/documents/afr49/1464/2015/en/>

⁴ Committee against Torture, Concluding observations on the third periodic report of Senegal adopted by the Committee at its forty-ninth session, CAT/C/SEN/CO/3:

"10. The Committee remains deeply concerned about the practice known as "*retour de parquet*", which prolongs the custody of persons who have already been brought before the prosecutor and violates the right of detainees to be brought promptly before a judge. (...) The State party should: a)

Take effective steps without delay to ensure that all detainees enjoy, *de jure* and *de facto*, all legal safeguards from the moment they are deprived of liberty. This relates particularly to the rights to be informed of the reasons for their arrest, including the charges against them; to have prompt access to a lawyer and, if necessary, to legal aid; to be examined by an independent doctor; to notify a relative, and to be brought promptly before a judge."

"13. (...) However, the Committee regrets that the Senegalese Code of Criminal Procedure contains no explicit provision to this effect and that the State party has provided no information on cases in which the courts have actually ruled as inadmissible confessions obtained under torture (arts. 2 and 15).

The State party should ensure that, whenever a person claims to have confessed under torture, such confessions are not invoked as evidence in the judicial proceedings and a thorough investigation is conducted into the claim. The Committee encourages the State party to amend its law so as to explicitly prohibit the use as evidence of any statement made under duress or as a result of torture."

Human Rights Committee, Concluding Observations of the Human Rights Committee - Senegal, CCPR/C/79/Add.82, para. 14:

"The Committee notes that the criteria enabling a judge to hold an arrested person in pre-trial detention are not defined under the law. It expresses

Faced with an escalation in attacks on the part of armed groups in the sub-region, including Burkina Faso, Côte d'Ivoire, Niger, Nigeria and Mali, all measures that Senegal could legitimately take to protect its population from acts of criminal violence must take place in a context that guarantees the protection of all human rights. The authorities must not, in the name of the war on terror, adopt laws that risk being used to restrict freedom of expression and roll back the rule of law in Senegal⁵.

its concern at the extensive discretionary power given to judges in such situations. Furthermore, in cases of offences against the security of the State, the Committee notes with concern the provisions of the Code of Criminal Procedure allowing special detention in police custody, and in particular allowing the Public Prosecutor to authorize extension of the length of detention. The Committee is also concerned about the lack of access to counsel by detainees. Therefore: The Committee recommends that the State party set out in its Code of Criminal Procedure criteria establishing grounds on which persons awaiting trial may be held in detention which are in conformity with article 9 (3) of the Covenant. Furthermore, the Committee recommends the repeal of provisions dealing with special detention in cases of offences against the security of the State, or the provision of further legal safeguards in such cases.”

⁵ This analysis and the recommendations contained herein are limited to certain articles as revised by the laws amending the Criminal Code and Code of Criminal Procedure. It does not attempt to offer an analysis of all laws in general, nor of the Criminal Code or Code of Criminal Procedure as a whole.

TERRORISM-RELATED OFFENCES THAT ARE VAGUE AND ILL-DEFINED

The definitions of terrorism-related offences given in the law revising the Criminal Code are vague and ambiguous. They risk turning the lawful exercise of freedom of expression, association and peaceful assembly into an offence.

DEFINITION OF “ACTS OF TERRORISM”

Article 279-1, which defines “acts of terrorism”, largely incorporates existing offences and increases their applicable sentences. These include “attacks and conspiracies”, “violence or assaults committed against persons and damage or destruction committed during gatherings”, “theft and extortion” and “ICT-related offences”, when they are committed “intentionally in relation to an individual or collective enterprise aimed at intimidating a population, gravely disturbing the public order or normal functioning of national or international institutions, or forcing a government or international organization to perform or abstain from performing any act through terror”⁶.

This definition of “acts of terrorism” is problematic in a number of ways. First, many of the concepts contained in it are particularly hazy. For example, as regards the motivation behind an “act of terrorism”, notions such as the intimidation of a population or disturbance of the public order or normal functioning of national institutions are vague and ill-defined, making it impossible to clearly establish the circumstances by which an already reprehensible act should become an “act of terrorism”. This runs counter to the principle of legality⁷.

Moreover, some acts such as “damage or destruction committed during gatherings” when coupled with hazy notions such as “disturbing the normal functioning of national institutions” risk resulting in extremely severe criminal sanctions⁸ and dissuading many people from participating in peaceful assemblies. In fact, the organizers and participants of lawful or unlawful gatherings where *de facto* violence or assaults are committed risk suffering a criminal sanction under articles 279-1 and 98 of the Criminal Code even if they were not involved in this violence and even if such acts were rare within a largely peaceful gathering⁹. Such results raise serious problems with regard to the principle of individual responsibility and represent an attack on freedom of peaceful assembly.

Linking “ICT-related offences”, particularly including insults¹⁰ or the distribution of texts “contrary to morality”¹¹, with a vague notion such as “disturbing the public order” similarly risks exposing people who express a dissident opinion about the authorities or religious groups online to life imprisonment. Such a provision could dissuade many people from legitimately exercising their right to freedom of expression.

DEFINITIONS OF OTHER TERRORISM-RELATED OFFENCES

The law creates a number of other terrorism-related offences, particularly the recruitment of others to form part of a group or to participate in committing an “act of terrorism”¹²; the supply of arms with a view to committing an “act of terrorism”¹³; supporting a group, a member of a group or any other person to participate in committing an “act of terrorism”¹⁴; agreeing, organizing or preparing “acts of terrorism”¹⁵; participating in a “terrorist group”¹⁶; all punishable by forced labour in perpetuity. The law includes the offence of justifying “acts of terrorism”, punishable

⁶ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, Article 279.1.

The numbering of the articles corresponds to that of the Criminal Code and Code of Criminal Procedure, as revised.

⁷ “The first requirement of article 15, paragraph 1 [of the Covenant], is that the prohibition of terrorist conduct must be undertaken by national or international prescriptions of law. To be “prescribed by law” the prohibition must be framed in such a way that: the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct.”

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, E/CN.4/2006/98, para. 46.

⁸ Article 279-1 specifies that “acts of terrorism” shall be punished by forced labour in perpetuity.

⁹ Criminal Code, Article 98.

¹⁰ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, article 431.43.

¹¹ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, Article 431.60.

¹² Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, article 279.2.

¹³ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, Article 279.5.

¹⁴ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, article 279.3.

¹⁵ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, article 279.4.

¹⁶ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, Article 279.5.

by five years' imprisonment and a fine of between 500 000 CFA and 2 000 000 CFA¹⁷.

These offences are ill-defined and overly broad in their field of application, thus running counter to the principle of legality. For example, the law contains no definition of justifying terrorism. Other notions such as that of "group", "participation in a group" or "support" given with a view to committing an "act of terrorism" are not clearly defined and prevent a clear, precise and sufficiently direct link from being made between the "group" and the "act of terrorism"¹⁸. In particular, notions such as "providing support" or even "any participation" do not establish the form in which such participation or support would be likely to result in criminal liability, nor whether such participation or support has been or is likely to play a real role in the chain of events leading to the primary offence committed. Such provisions risk, for example, being used to incriminate anyone moving in the same circles as a person suspected of an "act of terrorism", including their immediate family.

Finally, the law criminalizes the "failure to denounce acts of terrorism"¹⁹, and "harbouring terrorists"²⁰, punishable with a prison sentence of five to ten years and a fine of between 500 000 CFA and 2 000 000 CFA. This provision creates an obligation for everyone, under threat of criminal proceedings, to denounce "acts of terrorism" even though these are not clearly defined and without taking into account the threats, pressures and risks that may be suffered by people in the extended circles of armed groups or their possible simple technical or geographic inability to inform the administrative or judicial authorities. The law offers no protective measures for people who denounce an "act of terrorism" and no specific service to facilitate their access to the administrative or judicial authorities. It could, for example, be used against the victims of an "act of terrorism", whether an uprising or armed attack, who did not "warn the administrative or judicial authorities immediately, while it was still possible to prevent it or limit its effects"²¹.

The vague and ambiguous nature of all these terrorism-related offences is exacerbated by a provision in the law which stipulates that the conduct in question "is punishable even when no act of terrorism has been committed or attempted, provided a material act intended to carry it out is undertaken"²², without however defining what this material act comprises.

These definition issues raise major concerns for human rights not only because they mean that the terrorism-related offences established by law do not meet international standards on key legal principles such as the principle of legality and individual responsibility²³ but also because these definitions give the Senegalese authorities and security forces greater powers of arrest, detention, search and confiscation of assets as defined in the rest of the law. As indicated by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, "The adoption of overly broad definitions of terrorism therefore carries the potential for deliberate misuse of the term – including as a response to claims and social movements of indigenous peoples – as well as unintended human rights abuses"²⁴.

¹⁷ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, Article 279.1.

¹⁸ On this point, the recommendation of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism should be noted:

"The Special Rapporteur would like to highlight once again the need for the principle of legality and legal certainty to be respected whenever reference is made to terrorism or to terrorist groups. (...) In addition, the need for precision and clarity in the definition also extends to the definition of the link between the group or entity and the terrorist act. In the absence of a definition, words or expressions that leave much leeway for interpretation, such as "supports", "involved in" or "is associated with", may be used to list groups or entities improperly. This is particularly problematic in the light of the absence of a universal definition of terrorism."

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/61/267, para. 32.

¹⁹ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, Article 279.7.2.

²⁰ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, Article 279.7.1.

²¹ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, Article 279.7.2.

²² Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, Article 279.8.

²³ The International Covenant on Civil and Political Rights, Article 15.

²⁴ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin: Ten areas of best practices in countering terrorism, A/HRC/16/51, para. 26.

DRACONIAN PROVISIONS

The law revising the Criminal Code contains provisions aimed at restricting freedom of expression, particularly when online, and which could be used to target LGBTI (Lesbian, Gay, Bisexual, Trans and Intersex) people, journalists, whistle-blowers and human rights defenders.

INSULTS MADE THROUGH A COMPUTER SYSTEM

The law revising the Criminal Code criminalizes, for example, “insults made through a computer system to a person by virtue of their belonging to a group characterized by race, colour, heritage, national or ethnic origin or religion or towards a group of persons distinguished by one of these characteristics” and punishes it with a prison sentence of between six months and seven years and a fine of between 500 000 CFA and 10 000 000 CFA²⁵.

As the law does not define what constitutes an insult, this provision could be used to shield some individuals from public criticism and would thus have the effect of stifling freedom of expression. In the Senegalese context, this provision could particularly be used to suppress those who are critical of religious groups. In 2016, Amnesty International recorded at least two cases of people sentenced for insults to religion.

OBJECTS OR IMAGES CONTRARY TO MORALITY

The law revising the Criminal Code also criminalizes the manufacture, posting, exhibiting or distribution, by any electronic means, of “all printed materials, all writings, drawings, posters, engravings, paintings, photos, films or shots, photographic matrices or reproductions, logos, and all objects or images contrary to morality”.²⁶ This offence is punishable by a five to ten-year prison sentence and/or a fine of between 500 000 CFA and 10 000 000 CFA. This provision incorporates an offence that already exists in the Criminal Code²⁷ and extends it to electronic communications, considerably increasing the sentences and anticipated related punishments, in particular a ban on issuing electronic messages or a definitive ban on accessing a website²⁸.

The notion of “morality” is not defined in the Criminal Code and has been used in Senegal to restrict freedom of expression and suppress people due to their sexual orientation or choice of dress.

The crime of “unnatural acts”²⁹, which criminalizes sexual relations between consenting individuals of the same sex, is considered a “crime against decency” and is punishable with five years’ imprisonment and a fine of between 100 000 CFA and 1 500 000 CFA. Since 2015, Amnesty International has documented at least 26 cases of individuals arrested in Senegal on the basis of their actual or assumed sexual orientation. Charges such as “criminal conspiracy” or “distribution of indecent images” are often used to increase the severity of the sentence.

The crime of “attacks on morality” is also used to suppress people, particularly women, who are exercising their freedom of expression through the choice of the clothes they wear. In June 2016, the artist Ramatoulaye Diallo, also known as Déesse Major, was held for three days on charges of “indecent behaviour” and “attacks on morality” for distributing an online video in which she appeared in a costume that was considered indecent. The complaint made against her was eventually dropped and she was released.

²⁵ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, article 431.43.

²⁶ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, Article 431.60.

²⁷ Criminal Code, Article 256: “Any person who has committed any of the following will be subject to a prison sentence of between one month and two years and a fine of 25 000 to 300 000 CFA:

- Manufactured or held with a view to its sale, distribution, hire, display or exhibition;
- Imported or had imported, exported or had exported, transported or had transported knowingly for the same purposes;
- Posted, displayed or screened to the public;
- Sold, hired, placed up for sale or hire, even if not publicly;
- Offered, even if at no charge, even if not publicly, in any form whatsoever, directly or by other means;
- Distributed or surrendered with a view to its distribution, by any means whatsoever;

All printed materials, writings, drawings, posters, engravings, paintings, photos, films or shots, photographic matrices or reproductions, logos, and all objects or images contrary to morality.”

²⁸ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, Article 431.61.

²⁹ Criminal Code, Article 319.

PRIVACY AND PERSONAL DATA PROTECTION SYSTEM LIKELY TO HINDER THE PUBLIC INTEREST WORK OF JOURNALISTS, WHISTLE-BLOWERS AND HUMAN RIGHTS DEFENDERS

The law revising the Criminal Code contains provisions aimed at protecting personal data and privacy. The law criminalizes, for example, the act of “storing on any electronic medium, without the express consent of the interested party, personal data which, directly or indirectly, indicates the racial or ethnic origin, political, philosophical or religious opinions or union membership or health status of that person.”³⁰ It also criminalizes “anyone who, by any means, intentionally violates another’s right to privacy: 1. by capturing, recording, transmitting or distributing words spoken privately or confidentially, without the author’s consent; 2. by taking, recording, transmitting or distributing a person’s image while in a private place, without their consent.”³¹

This privacy and personal data protection system does not anticipate any exceptions where an overriding public interest is at stake and thus risks violating the public interest activities of journalists, human rights defenders and whistle-blowers. These provisions could, for example, be used against people who record and disseminate information on human rights protection.

Amnesty International has already noted a number of cases of people convicted of “personal data distribution” after exposing issues of corruption.

RESTRICTED ACCESS TO “CLEARLY ILLICIT” CONTENT

The law revising the Code of Criminal Procedure enables the Senegalese authorities to restrict access to sites with “clearly illicit content”, particularly in order to put a halt to “online unrest”³². This law could be used in an excessive and abusive manner to condemn and suppress the online expression of dissident opinions, including on social media.

This provision contains concepts that are poorly defined and overly broad. As the law does not specify the notion of “clearly illicit content”, it could relate to offences such as insult, affront, defamation, attacks on morality, unnatural acts or calls to a protest that has not been notified in advance, and this raises numerous problems in terms of its compliance with international human rights law. Moreover, the law also fails to define the extremely vague notion of “online unrest”.

This procedure for restricting access is also problematic insofar as it may be required by a “judicial police officer by judicial delegation or by authorization of and under the control of the Public Prosecutor”, him or herself reporting to the Public Prosecutor’s Office, outside of any investigation or instruction, rather than solely by an investigating judge or by an impartial and independent court.

EXTENDED SURVEILLANCE AND DATA ACCESS CAPACITIES

The law revising the Code of Criminal Procedure broadens the investigative powers of the security forces in relation to surveillance and access to computerized data and threatens the right to freedom of expression, opinion and the right to privacy.

Articles 90.4 and 90.17 permit an investigating judge to order “persons with a particular knowledge” of an IT system or data communication, encryption or transmission service to provide information on the functioning of that system and how to comprehensively access its data.

These articles are formulated in an imprecise manner and seem to extend the investigating judge’s powers of investigation beyond the specific data on a targeted individual linked to the criminal activity in question. These powers, in fact, seem to extend to the very functioning of the IT system, thus compromising all of the data contained therein. These provisions run counter to the recommendations of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye: “Court-ordered decryption, subject to domestic and international law, may only be permissible when it results from transparent and publicly accessible laws applied solely on a targeted, case-by-case basis to individuals (i.e., not to a mass of people) and subject to judicial warrant and the protection of due process rights of individuals.”³³

³⁰ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, Article 431.21.

³¹ Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, article 363a.

³² Law No 23/2016 amending Law No 65-61 of 21 July 1965 on the Criminal Code, Article 90.14.

³³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, A/HRC/29/32,

Article 90-10 authorizes a judicial police officer, on the authorization of and under the control of the Public Prosecutor, to “use remote software and install it in the IT system in question in order to gather relevant evidence useful to the investigation or instruction.” As the prosecution service reports to the Public Prosecutor’s Office, this provision amounts to an authorization of hacking, one of the most intrusive forms of surveillance, without any judicial oversight.

This provision runs counter to the recommendation of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which calls on States to “establish strong and independent oversight bodies that are adequately resourced and mandated to conduct ex ante review, considering applications for authorization not only against the requirements of domestic law, but also against the necessity and proportionality requirements of the Covenant [International Covenant on Civil and Political Rights].”³⁴

para 60.

³⁴ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/69/397, para. 61.

VIOLATIONS OF THE RIGHTS TO LIBERTY AND TO A FAIR TRIAL

In the name of the war on terror and cybercrime, the law revising the Code of Criminal Procedure introduces provisions that threaten the right to liberty and to a fair trial, particularly by increasing the length of police custody in some cases and not clearly establishing that the right to access a lawyer applies as soon as a person is deprived of their liberty and includes that lawyer's presence during all interrogations.

EXTENDING THE LENGTH OF POLICE CUSTODY IN RELATION TO TERRORISM

The legal length of ordinary police custody is 48 hours, renewable once, on the decision of the Public Prosecutor, their delegate or the investigating judge. These periods are doubled for crimes and offences against national security and crimes and offences committed during a state of emergency, i.e. to a maximum of eight days' police custody³⁵. The law revising the Code of Criminal Procedure extends the period of police custody in cases of terrorism to 96 hours, renewable twice, i.e. a maximum of 12 days³⁶.

These provisions run counter to international standards, which demand that anyone who is arrested must be taken before a judge as soon as possible, establishing that a period of more than 48 hours following arrest or detention is considered excessive³⁷.

The law has ratified a practice that already existed in Senegal. At least 30 people are currently in detention for terrorism-related offences and several of them have been held for more than 48 hours before being taken before a judge. For example, Imam Ndao, arrested on 27 October 2015 at his home in Kaolack, was taken before an investigating judge 11 days after his arrest and charged, among other things, with an "act of terrorism" and justifying terrorism. The security forces refused to let his lawyers speak to him during the first four days of his detention.

RESTRICTED ACCESS TO A LAWYER

The Code of Criminal Procedure contained restrictions on accessing a lawyer, particularly insofar as the person in detention was only informed of their right to a lawyer at the end of the first period of detention, i.e. 24 or 48 hours for crimes and offences against national security or crimes and offences during a state of siege or state of emergency³⁸. The law revising the Criminal Code removes this restriction but does not clearly establish that a person must have access to a lawyer from the moment they are deprived of their liberty. It also retains other restrictions.

The law specifies, for example, that the first interview between the detainee and their lawyer may not exceed 30 minutes and that "the lawyer may not report on this interview to anyone during the period of police custody"³⁹, thus making the lawyer's important role in preventing torture and other ill-treatment particularly difficult.

These provisions run counter to international and regional standards regarding the right to a lawyer, as these require that all people arrested or placed in detention must be able to communicate with a lawyer from the moment they are deprived of their liberty, without any restriction as to the maximum duration of the first interview⁴⁰. Article 5 of Regulation No 05/CM/UEMOA relating to the harmonization of the rules governing the legal profession in the West African Economic and Monetary Union, which is directly applicable in Senegal, stipulates in particular: "Lawyers assist their clients from the moment of their arrest, during the preliminary investigations, at the police station, gendarmerie or before the prosecutor."

In the Senegalese context, unrestricted access to a lawyer from the moment a person is deprived of their liberty and

³⁵ Law No 23/2016 amending Law No 65-61 of 21 July 1965 on the Criminal Code, Article 55.

³⁶ Law No 23/2016 amending Law No 65-61 of 21 July 1965 on the Criminal Code, Article 677.28.

³⁷ Concluding Observations of the Human Rights Committee, El Salvador, CCPR/SLV/CO/6, para. 14; Reports of the Special Rapporteur on Torture, E/CN.4/2003/68, para. 26(g); A/65/273, para. 75; Conclusions and Recommendations of the Committee against Torture on Venezuela, CAT/C/CR/29/2, para. 6(f); European Court: *Kandzhov v Bulgaria* (68294/01), 2008, para. 66-67.

³⁸ Law No 65/61 of 21 July 1965 on the Criminal Code, article 55.

³⁹ Law No 23/2016 amending Law No 65-61 of 21 July 1965 on the Code of Criminal Procedure, article 55.

⁴⁰ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, M(2)(f); Resolution 13/19 of the Human Rights Council, A/HRC/RES/13/19, para. 6; General Comment No. 34 of the Human Rights Committee, CCPR/C/GC/32, paras 32-34; Concluding Observations of the Human Rights Committee on Georgia, CCPR/C/79/Add.75, para. 27; Concluding Observations of the Human Rights Committee, Jordan, CCPR/JOR/CO/4, para. 9; Conclusions and Recommendations of the Committee against Torture on Latvia, CAT/C/CR/31/3, para. 6(h) and 7(c); European Court: *Dayanan v. Turkey* (7377/03) 2009, para. 30-33.

during all interrogations constitutes a particularly important measure for preventing torture⁴¹. Most of the 27 cases of torture and ill-treatment documented by Amnesty International in Senegal since 2007 took place while in police custody. For example, Amadou Ka died while in detention at the central police station in Thiès in February 2015. According to a number of witnesses present at the time of his arrest, the police officers beat him with truncheons even though he was handcuffed, before taking him to the station. His death was notified to his family when they went to take him medication the following day.

⁴¹ Robben Island Guidelines, para. 20(c).

RECOMMENDATIONS

The war on terror must not be waged to the detriment of human rights and the rule of law. Amnesty International is thus calling on the Senegalese authorities to:

- Ensure that all criminal offences, including those relating to terrorism, are clearly defined and meet principles of legality, legal certainty and individual responsibility;
- Remove or amend the provisions of the Criminal Code and the Code of Criminal Procedure that limit the right to freedom of expression and which do not comply with national and international laws on human rights protection, particularly those concerning “morality”, insults, “online unrest”, and restricted access to content considered illicit;
- Amend the provisions of the Criminal Code so that it cannot be used to harm the public interest activities of journalists, human rights defenders and whistle-blowers. In particular, revealing information related to human rights violations must under no circumstances be criminalized;
- Amend the provisions of the Code of Criminal Procedure on accessing IT systems and electronic data in order to ensure respect for the right to privacy and freedom of opinion and expression, particularly ensuring that:
 - orders demanding the decryption of computerized data only target people (not groups) in a focused manner, on a case-by-case basis, on the basis of reasonable suspicion and following judicial authorization;
 - orders to intercept, gather and record computerized data, by whatever method, including hacking, must be subject to judicial authorization;
- Revise the Code of Criminal Procedure in order to bring it into line with international standards on the right to liberty and to a fair trial, particularly ensuring that:
 - all those arrested are taken before a judge as soon as possible;
 - all those arrested or placed in detention are able to communicate confidentially and effectively with their lawyer from the moment they are deprived of their liberty and have that lawyer present during all interrogations.