

ARTICLE¹⁹

**Senegal: How laws addressing
'fake news' and disinformation
threaten freedom of expression**

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Executive summary

In this report, ARTICLE 19 analyses the environment of countering ‘false news’ and disinformation in Senegal.

Senegal enjoys a diverse media landscape with a mix of public and private media outlets, and an active community of independent journalists. However, ARTICLE 19 is increasingly concerned about fundamental freedoms being undermined in the country, in particular the right to freedom of expression, the right to protest and the right to access information. We have witnessed a growing trend in recent years of misusing a legal framework that is purportedly intended to address disinformation instead to chill the activities of scores of journalists, activists, human rights defenders, and political opponents. Law enforcement officials have regularly cited a legal and regulatory framework on ‘false news’ and disinformation to justify this repression.

In terms of legislative framework, ARTICLE 19 is gravely concerned about the impact that the current legislation criminalising disinformation (Article 255 of the Penal Code) has on freedom of expression in Senegal. These provisions of the Penal Code have been used in tandem with other criminal measures, including defamation and insult laws, to severely limit dissent. We also note with great alarm the government’s recent decision to implement internet shutdowns and restrictions on access to social media; against this backdrop, the legislation sets a bleak background for access to diverse information.

While there are some instances in which disinformation may have concerning implications for society, international law is clear that any efforts to address it must be in full compliance with human rights standards to which Senegal is bound under international law. These standards specifically require that any restrictions be defined in law, and be necessary and proportionate to achieve a legitimate aim. We note that concepts such as ‘false information’, ‘disinformation’, or ‘fake news’, are not terms that are defined under international law. Indeed, there is no universally

accepted definition for disinformation. Therefore, undefined terms are not, and cannot be, legitimate aims for justifying restrictions on the right to freedom of expression under Article 19(3) of the International Covenant on Civil and Political Rights (the ICCPR). Further, we note that flawed legal regulations can be *counterproductive*, in that they can impede and chill the work of independent media, thereby obstructing the flow of quality information.

In its most recent Universal Periodic Review, Senegal has already committed to the international community to address concerns regarding freedom of expression in the country, and to better protect journalists and media workers without fear of reprisal. We now urge that Senegal remain true to that commitment. Accordingly, we urge Senegalese lawmakers to repeal Article 255 of the Penal Code in order to promote free and effective access to information and robust public debate. In addition, we urge the government to instead address any fears of disinformation using a multi-stakeholder approach that involves civil society, international and regional mechanisms, industry, and most importantly, avoids imposing criminal sanctions. In doing so, Senegal's response will be consistent with the international consensus that responses to disinformation must protect and promote freedom of expression.

ARTICLE 19's key recommendations

The Senegal Government should:

- Repeal Article 255 of the Penal Code which criminalises the publication of 'false news'. This phrase is undefined together with a multitude of vague provisions in the law, which does not pursue legitimate aims. As such these provisions fail to meet international standards. A broad consensus among the UN General Assembly, Special Procedures, and regional instruments has recently made clear that disinformation laws must comply with human rights law.
- Repeal all criminal defamation measures. Such measures are incompatible with international standards.

- Cease the targeting, imprisonment, and repression of journalists, activists, and human rights defenders merely for reporting on issues of public interest or criticising public officials or institutions.
- Convene a dialogue among stakeholders, including civil society, media, industry (including social media networks), and human rights instruments, to address disinformation without resorting to criminal sanctions.
- Engage in capacity-building efforts to train prosecutors, judges, and law enforcement in relevant international and regional human rights standards. Among other, this might include opening dialogues with the African Commission on Human and Peoples' Rights, as well as incorporating resources from recent reports on disinformation by the Secretary General of the United Nations and the UN Special Rapporteur on freedom of expression.

Introduction

ARTICLE 19's Senegal and West Africa Office recently participated in Senegal's Universal Periodic Review.¹ During its last review in 2018, Senegal accepted numerous recommendations related to freedom of expression to bring its national legislation in line with international standards. These included ensuring that journalists and media workers can freely exercise their rights to freedom of expression without fear of reprisal and ensuring that guarantees of freedom of expression and opinion are respected.² In the most recent review, ARTICLE 19 provided initial analysis of Article 255 of the Penal Code, noting that it has been widely used to prosecute and imprison journalists, activists, and human rights defenders.³

Disinformation can erode trust in public institutions, the government, and authorities, which can pose risks to public health, undermine the integrity of electoral and democratic processes, and help spark unrest. Recent prominent cases include baseless claims about critical information such as election results and Covid-19, where harmful information regarding vaccines undermined public health responses. Senegalese authorities have struggled with addressing the dissemination of potentially dangerous disinformation via both social media and traditional news outlets. At the same time, it is critical to maintain an appropriate balance between protecting freedom of expression and combating disinformation. As a starting point, we recognise that addressing disinformation is a conversation involving many sectors of society, and may involve complex topics such as media literacy and

¹ ARTICLE 19, [Contribution of ARTICLE 19 Senegal and West Africa Office to the fourth cycle of the Universal Periodic Review \(UPR\) of Senegal](#), July 2023.

² Human Rights Council, [Report of the Working Group on the Universal Periodic Review, Senegal](#), A/HRC/40/5, December 2018, Recommendations 144.83-85.

³ [Contribution of ARTICLE 19 Senegal and West Africa Office to the fourth cycle of the Universal Periodic Review \(UPR\) of Senegal](#), July 2023, para 18.

journalism standards. As a result, it must involve many stakeholders ranging from media organisations to religious and political leaders, and civil society.

While ARTICLE 19 commends that Senegal has already stated a commitment to better protect journalists, as well as to protect and promote freedom of expression, it is disappointed that the same aspects of Senegalese law that the government acknowledged it needed to improve upon sadly remain to be addressed. In many respects, abuses have worsened in recent years.

Therefore, ARTICLE 19, together with multiple civil society organisations, has called for the repeal of prohibitions of disinformation in Senegal⁴ and the repeal of Article 255 of the Penal Code, which criminalises the publication of ‘false news’.

In this report, ARTICLE 19 reviews these provisions and prohibitions in greater detail and looks at the impact of their implementation. At the outset, we note that this legal analysis does not discuss every provision of Senegalese legislation and its compatibility with freedom of expression. However, we are deeply concerned about the state of freedom of the press, and of expression generally, in Senegal. We continue to recommend the revision and/or repeal of numerous problematic measures which have been used to unlawfully attack and curtail the rights of journalists and human rights defenders.

⁴ ARTICLE 19, [Senegal: Laws to tackle ‘false news’ must meet international standards](#), 4 July 2022.

Applicable international human rights standards

Article 8 of the Constitution of Senegal guarantees ‘to all citizens the fundamental individual freedoms’, which include ‘freedom of expression’ and ‘freedom of the press’.⁵ Article 9 further provides that

All infringement of the freedoms and all voluntary interference with the exercise of a freedom are punished by the law.

Senegal maintains obligations to protect and promote freedom of association, pursuant to Article 22 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the African Charter on Human and Peoples’ Rights. Additionally, international and regional guidance expands on the compatibility of restrictions on disinformation under international standards.

Restrictions on the right to freedom of expression

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights (UDHR), and given legal force through Article 19 of the ICCPR.⁶

The scope of the right to freedom of expression is broad. It requires States to guarantee to all people the freedom to seek, receive or impart information or ideas of any kind, regardless of frontiers, through any media of a person’s choice. The UN Human Rights Committee (HR Committee), the treaty body of independent experts monitoring States’ compliance with the ICCPR, has affirmed that the scope of the

⁵ Constitution, Republic of Senegal 2001 (Rev. 2016).

⁶ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171. The ICCPR has 167 States parties.

right extends to the expression of opinions and ideas that others may find deeply offensive.⁷

While the right to freedom of expression is fundamental, it is not absolute. A State may, exceptionally, limit the right under Article 19(3) of the ICCPR, provided that the limitation meets a ‘three-part test’. This requires that the limitation must be:

- **Provided for by law**, with any law or regulation required to be formulated with sufficient precision to enable individuals to regulate their conduct accordingly;
- **In pursuit of a legitimate aim**, listed exhaustively as: respect of the rights or reputations of others; or the protection of national security or of public order (*ordre public*), or of public health or morals;
- **Necessary in a democratic society**, requiring the State to demonstrate in a specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.⁸

Additionally, Article 20(2) ICCPR provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence must be prohibited by law.

The HR Committee has made clear that, for laws pertaining to national security in particular, it is not compatible with Article 19(3) of the ICCPR to invoke limitations ‘to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information’.⁹

⁷ See HR Committee, General Comment No. 34 on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para 11.

⁸ *Ibid.*, paras 22 and 34.

⁹ General Comment No. 34, *op. cit.*, para 30.

In the context of elections, while the HR Committee acknowledges the legitimacy of seeking to protect voters from intimidation or coercion, they urge that such laws ‘must not impede political debate’.¹⁰ This reflects the principle that ‘in circumstances of public debate concerning public figures in the public domain and public institutions, the value placed by [the ICCPR] upon uninhibited expression is particularly high’.¹¹

Regulation of disinformation, ‘false information’ or ‘fake news’

As an initial matter, we note that ‘false information’, ‘disinformation’, and ‘fake news’ are not terms that are defined under international law. Therefore, they are not, as such, legitimate aims for justifying restrictions on the right to freedom of expression under Article 19(3) of the ICCPR. The HR Committee has been explicit now for decades that the ‘prosecution . . . for the crime of publication of false news merely on the ground, without more, that the news was false’ violates human rights.¹²

In recent years, the international community has reiterated and demonstrated increasing consensus on the threat that such restrictions pose for freedom of expression. For example, in 2022, the **UN Secretary General** issued a report on disinformation from a framework of human rights and fundamental freedoms, in which he emphasised that ‘State responses to disinformation must themselves avoid infringing on rights, including the right to freedom of opinion and expression’.¹³ At the outset, the Secretary General warned that:

¹⁰ *Ibid.*, para 28.

¹¹ *Ibid.*, para 38.

¹² Human Rights Committee, [Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Cameroon](#), CCPR/C/79/Add.116, November 1999.

¹³ United Nations General Assembly, [Countering disinformation for the promotion and protection of human rights and fundamental freedoms](#), Report of the Secretary General, A/77/287, 12 August 2022, para 10.

*Any definition of disinformation must not unduly restrict expressions that take the form of irony, satire, parody or humour and that seek to question or even ridicule individual or societal norms, under the guise of combating disinformation. In this context, enabling or requiring censorship of such content under a ‘disinformation’ label risks suppressing artistic, scientific and journalistic work and public debate more generally.*¹⁴

The Secretary General cited the tripartite test of Article 19(3) of the ICCPR, as well as the African Commission on Human and Peoples’ Rights, to emphasise the importance of responses to disinformation adhering to international and regional standards.¹⁵ Ultimately, the Secretary General advised against a criminal approach to addressing disinformation, instead promoting access to robust public information, and ensuring that any regulatory measures be implemented with caution and separate executive function ‘to avoid abusive or manipulative approaches’.¹⁶

The Secretary General’s report followed a strong call by the General Assembly to ensure that attempts to counter disinformation adhered to human rights standards. The General Assembly made it clear that countering disinformation ‘requires’ State responses to be in ‘compliance with international human rights law’ and accordingly did not include criminal measures as an appropriate response.¹⁷ The General Assembly explicitly reiterated the need

to ensure that efforts to counter disinformation promote and protect and do not violate individuals’ freedom of expression and freedom to seek, receive and impart information, and noting that media and information-related technology literacy can

¹⁴ *Ibid.*, para 4.

¹⁵ *Ibid.*, para 14.

¹⁶ *Ibid.*, paras 26 and 27.

¹⁷ *Ibid.*, para 13.

*help to achieve this through independent and free media, awareness-raising and a focus on the empowerment of people.*¹⁸

Elaborating on effective solutions, the call emphasised the need to address disinformation in a multi-stakeholder fashion that includes civil society, media, and business, through ‘education, capacity-building for prevention and resilience to disinformation, advocacy and awareness-raising’.¹⁹ We observe, importantly, that the resolution was adopted without a vote.²⁰ Many West African countries sponsored the resolution on disinformation standards, including Nigeria, Côte d’Ivoire, Burkina Faso, and Guinea.²¹

The **Human Rights Council** subsequently echoed this call, reiterating the need that approaches to disinformation are rooted in human rights, and not used as a ‘pretext to restrict the enjoyment and realization of human rights or to justify censorship, including through vague and overly broad laws criminalizing disinformation’.²²

The **Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression** (the Special Rapporteur on freedom of expression) issued a comprehensive report on international standards surrounding disinformation in 2021.²³ In that report, she found that so-called ‘false news’ laws typically failed to meet the three-pronged test of legality, necessity and legitimate aims set forth in

¹⁸ Resolution adopted by the General Assembly on 24 December 2021, [Countering disinformation for the promotion and protection of human rights and fundamental freedoms](#), A/RES/76/227, 10 January 2022.

¹⁹ *Ibid.*, paras 7-11.

²⁰ Countering disinformation and promotion and protection of human rights and fundamental freedoms: resolution / adopted by the General Assembly, [Vote summary](#), 24 December 2021.

²¹ [Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms](#), Report of the Third Committee, A/76/462/Add. 2, 1 December 2021, para 82.

²² Human Rights Council, [Role of States in countering the negative impact of disinformation on the enjoyment and realization of human rights](#), A/HRC/49/L.31/Rev.1, 30 March 2022.

²³ [Disinformation and freedom of opinion and expression: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#), A/HRC/47/25, 13 April 2021.

Article 19(3) of the ICCPR.²⁴ Specifically, these laws usually ‘do not define with sufficient precision what constitutes false information’, and ‘[w]ords such as “false”, “fake”, or “biased” are used without elaboration and assertions based on circular logic are made’.²⁵ She called for States to work with the private sector to call for multi-stakeholder responses to disinformation in order to promote free, independent, and diverse media. The Special Rapporteur’s report followed joint statements from the Special Procedures worldwide, including the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information, expressing that ‘the human right to impart information and ideas is not limited to “correct” statements, that the right also protects information and ideas that may shock, offend and disturb, and that prohibitions on disinformation may violate international human rights standards’.

Other applicable regional standards reinforce these themes. For instance, the **Declaration of Principles on Freedom of Expression and Access to Information in Africa** requires states to ‘repeal laws that criminalise sedition, insult and publication of false news’.²⁶ The Declaration advises the review of ‘all criminal restrictions of content’, including criminal defamation and libel, to ensure they comply with international standards.²⁷

²⁴ *Ibid.*, para 54.

²⁵ *Ibid.* (Giving as an example the definition where ‘a statement is false if it is false or misleading, whether wholly or in part, and whether on its own or in the context in which it appears’.)

²⁶ African Commission on Human and Peoples’ Rights, [Declaration of Principles on Freedom of Expression and Access to Information in Africa](#), November 2019, Principle 22(2).

²⁷ *Ibid.*, Principles 22(1) and 22(3).

Challenges in regulating disinformation

Proliferation of ‘false’ narratives is amplified by the nature of digital communication, and the popularity of global social media networks which incentivise the spread of sensational items, or may even contain misinformation or lack rigorous fact-checking.²⁸ This has led generally to trends such as echo chambers, where communities might only be exposed to the same sources that reinforce their existing views. Overall, the world has witnessed a gradual decline in trust of the media.²⁹

For a comparative perspective, ARTICLE 19 notes that the Council of Europe has identified and classified multiple types of ‘false information’ based on dimensions: ‘truthfulness’ and ‘harm’.³⁰ The Council of Europe’s report stated that ‘untrue information’ which spreads without intention to cause harm should be called ‘misinformation’, while information that is genuine but shared to cause harm is ‘mal-information’ (as is the case with so-called ‘revenge porn’ or harassment). Information that is *both* false and spread with the intention to cause harm is ‘disinformation’. Although ARTICLE 19 maintains that restrictions on the ‘truthfulness’ of information is not a legitimate aim under international freedom of expression standards, this framework to dissect problems related to the reliability of information provides a starting framework for academic discussion of the issue.

Although disinformation has always existed as a potential source of harm in society, the impact of online disinformation presents novel issues and impacts that must be understood thoroughly. It is important that any response to fears of disinformation is carefully crafted, publicly discussed, and based on empirical evidence that complies with international freedom of expression and human rights standards.

²⁸ Robinson Myer, [The Grim Conclusions of the Largest-Ever Study of Fake News](#), The Atlantic, 8 March 2018.

²⁹ UNESCO, [World Trends in Freedom of Expression and Media Development: 2017/2018 Global Report](#), p. 16.

³⁰ Claire Wardle, Hossein Derakhshan, [Information Disorder: Toward an interdisciplinary framework for research and policy making](#), Council of Europe report DGI(2017)09, 27 September 2017.

In the light of international standards mentioned earlier, ARTICLE 19 notes that States should primarily respond to ‘disinformation’ with positive measures, ranging from media literacy to communication campaigns. The government’s proactive provision of timely, accurate, and comprehensive information, including on issues related to public health and elections, is essential in times of crisis. Open, honest, and regular communication by the government with society generates trust, minimises the impact of disinformation narratives, and ultimately helps address the problem much more effectively.

Recent developments in Senegal – enforcement of disinformation laws

Senegal is currently facing a severely repressive climate for freedom of expression. False news accusations have served as a central weapon to silence activists and journalists, particularly following the Covid-19 pandemic. Between June 2022 and present, numerous journalists, activists, commentators, and political figures have been charged with publishing false news, with false news charges often coupled with other offences.

ARTICLE 19 specifically points out the following cases, which are not exhaustive:

- In June 2022, Abdou Bara Dolly,³¹ a member of parliament, was arrested after making critical remarks against President Macky Sall during a demonstration organised by the two opposition coalitions (Yewi Askan and Wallu) in Dakar. He was charged and placed under a detention order for the offences of insulting the head of state, dissemination of false news, and defamation. After almost a month in detention, Dolly was finally granted provisional release.
- In August 2022, Pape Ibra Guèye, also known as Papito Kara,³² an online activist, was arrested for disseminating false news, as well as other charges. The same month, online activist Outmane Diagne was arrested and detained for spreading false news as well as for deleting and modifying newspaper data after he shared the front pages of satirical newspapers on his Facebook page, accompanied by three ‘smiling face’ emojis. He also remains in custody.
- Journalist Pape Alé Niang³³ was arrested in November 2022 and detained for ‘spreading false information likely to discredit public institutions’. He was

³¹ See e.g. Channels TV, [Senegal Lawmaker Imprisoned For Offending President – Lawyer](#), 11 June 2022.

³² See e.g. ARTICLE 19, [Senegal: Rise in censorship and crackdown on expression](#), 22 September 2022.

³³ See e.g. CPJ, [Senegalese journalist Pape Alé Niang arrested over broadcast about opposition politician](#), 4 August 2023.

subsequently released but is still under judicial control and other repressive measures.

- Rapper and activist Mor Talla Gueye, known as 'Nitt Dof',³⁴ was arrested in January 2023 and charged with disseminating false news, contempt of court, and making death threats against judicial authorities. He was placed under a detention order following a Facebook post in which he had 'insulted' the regime and judicial authorities.
- Journalist Pape Ndiaye,³⁵ who works for the Walfadjri news channel, was arrested on 7 March 2023 and placed under a detention order. He is being prosecuted for 'dissemination of false news' and contempt of court after comments he made regarding the case against opposition politician Ousmane Sonko.
- On 10 March 2023, Cheikh Hadjibou Soumaré,³⁶ the former Prime Minister of Senegal between 2007 and 2009, was charged with defamation and spreading false news. Soumaré had questioned President Sall in a letter regarding the veracity of a donation of '12 million euros, or 7.9 billion CFA francs' to a 'French political figure'. He has been released and placed under judicial supervision.
- El Malick Ndiaye,³⁷ the communication officer for the political party the African Patriots of Senegal for Work, Ethics and Fraternity, which was founded by Sonko, was summoned and prosecuted for allegedly sharing false news on 22 March 2023. Specifically, he was charged with spreading false news of a nature to discredit institutions following a tweet he posted that said an 'individual dressed in a uniform of the Brigade d'intervention Polyvalente had sprayed Sonko with an unknown substance'.

³⁴ See e.g. Rewmi.com, [Justice: Fans of rapper 'Nitt Doff' will speak to the press](#) (in French)

³⁵ See e.g. Sene.News, [Dissemination of false news: Pape Ndiaye de Walf finally saved by 3 messages?](#), 5 May 2023 (in French).

³⁶ See e.g. Africa.News, [Senegal: Cheikh Hadjibou Soumaré placed under judicial supervision](#), 13 March 2023 (in French).

³⁷ See e.g. Rewmi.com, [El Malick Ndiaye summoned for 'spreading false news'](#) (in French).

- Most recently, journalist Pape Sané was recently arrested on 13 November 2023 on false news accusations following a Facebook post paying tribute to a former government official during a period of political unrest.³⁸

These measures have occurred against a broader backdrop of repression against the media and access to information in general. The aforementioned cases reveal how existing false news, criminal defamation, and insult laws have been used in conjunction to limit criticism of public officials despite the government's commitment to repeal them.³⁹ These measures also occur with developments such as the government's extreme step in summer 2023 to shut down access to various social media, including WhatsApp, Twitter, and Facebook.⁴⁰ The result is a limitation of the public's access to information, as well as chilling the ability of independent media and commentators to freely operate and contribute to a vibrant information environment in Senegal.

³⁸ ARTICLE 19, [Senegal: Release journalist Pape Sane and end crackdown on journalists](#), 16 November 2023.

³⁹ See [Report of the Working Group on the Universal Periodic Review, Senegal](#), Recommendation 144.81.

⁴⁰ ARTICLE 19, [Sénégal: Déclaration conjointe sur les restrictions d'internet et des réseaux sociaux](#), 6 June 2023.

Analysis of the prohibitions of disinformation in Senegal

National legislation prohibiting disinformation

In Senegal, a range of laws can be used to broadly limit freedom of expression in specific circumstances, including where it infringes on the rights of others or poses harm to the state:

- Multiple laws prohibit the publication of false information, namely Article 255 of the Penal Code and the Draft Bill on the Framework of the Use of Social Networks, which will be discussed in greater depth below.
- Defamation is a criminal offence in certain cases (Article 258 of the Penal Code), and can even be punishable by imprisonment.
- Insulting the head of state is criminalised under Article 80 of the Penal Code.

These laws typically carry substantial criminal penalties, which include, in the case of the false information laws, at least one and up to three years in prison. These laws all raise human rights concerns because, in contravention of Article 19(3) of the ICCPR, they lack clear definitions and explanations of how these restrictions are prescribed by law, pursue a legitimate aim, and are necessary in a democratic society. They are also particularly problematic, because under Article 139 of Senegal's Penal Procedure Code, when individuals, groups, or media outlets disseminate 'false news', a detention warrant is *mandatory*. As a result, these charges all but guarantee a severe interference with the ability of the media to operate for the totality of criminal proceedings.

ARTICLE 19's analysis of disinformation legislation

Prohibitions of disinformation, contained in Article 255 of Senegal's Penal Code, provide for a broad prohibition on 'false news', 'fabricated or falsified documents', or

information ‘falsely attributed to third parties’.⁴¹ These penalties apply to not only the ‘publication’ of such content, but also its ‘dissemination, disclosure, or reproduction’. These penalties apply whenever the conduct ‘leads to disobedience to the laws of the country, undermines the moral values of the population, or discredits public institutions or their functions’.

Article 255 of the Penal Code also prohibits any conduct that is ‘likely to lead’ to such disobedience or ‘similar consequences’. There is no exception for good faith. Violating of Article 255 is a serious offence, carrying significant monetary penalties of up to 1,500,000 francs and imprisonment from one to three years.

ARTICLE 19 notes, at the outset, that the provisions of Article 255 are fatally flawed under each of the international human rights standards outlined above. As it is a criminal restriction on publication, dissemination, and reproduction of ‘news’ and ‘documents’, this is a restriction on freedom of expression. Such a disinformation measure must therefore be considered under a framework of international human rights law, as has been reaffirmed by the United Nations Secretary General, the General Assembly (without a vote), and Special Procedures.

We would like to highlight the following problems.

Article 255 of the Penal Code does not meet the requirement of legality

Article 255 of the Penal Code uses numerous overbroad terms without any clear definition of what they mean, thus failing the requirement that restrictions on freedom of expression should be ‘provided by law’.

We recall that the Special Rapporteur on freedom of expression’s report on disinformation, referenced previously, highlights how definitions such as ‘false news’

⁴¹ Penal Code, Article 255.

without any elaboration are vague and fatally flawed under the test of legality.⁴² There is no definition provided of what it means to be 'likely to lead' to negative outcomes, or what it means to 'attempt' to publish false information. Phrases like 'dissemination' and 'disclosure' specify that the Law does not simply apply to publications, but could be used to accuse individuals of false statements in personal communications.

Additionally, Article 255 of the Penal Code fails to properly define the outcomes that are prohibited, which are so broad that they can include nearly anything. For example, nearly anything arguably 'leads to disobedience to the laws of the country', or 'undermines the moral values of the population'. Further, prohibiting any expression that 'discredits public institutions or their functions' effectively prohibits criticism of the government. Even if these phrases were eliminated from Article 255, it would fail to be specific enough to meet requirements under Article 19(3) of the ICCPR, as it goes even further to punish any conduct that is 'likely to lead' to those outcomes or anything 'similar'. Nowhere defined are 'moral values' which can again include nearly anything.

As phrased, Article 255 means that it is a criminal act to attempt to express something that is likely to lead anyone to commit any violation of Law. It is also a crime to attempt to express something that is likely to lead anyone to discredit a public institution. Finally, it is a crime to attempt to express something that is likely to lead someone to undermine a moral value. This breadth gives broad licence to punish nearly any speech, and goes well beyond even the examples of unacceptable disinformation laws that have been cited by the Special Rapporteur.

⁴² [Disinformation and freedom of opinion and expression: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#), A/HRC/47/25, 13 April 2021, para 54.

Article 255 of the Penal Code does not pursue a legitimate aim

ARTICLE 19 notes that even if Article 255 of the Penal Code satisfied the first part of the tripartite test (it does not), it still fails to achieve a legitimate aim.

Key terms used in Article 255 of the Penal Code are all terms that are not defined under international human rights law. ARTICLE 19 recalls that protecting persons from ‘false news’ or other form of disinformation is not, as such, a legitimate aim for justifying restrictions on the right to freedom of expression under Article 19(3) of the ICCPR.

As four special mandates on freedom of expression cautioned in their 2017 Joint Declaration, the label of ‘fake news’/‘false news’ is increasingly being used by persons in positions of power to denigrate and intimidate the media and independent voices, increasing the risk of such persons to threats of violence, and undermining public trust in the media.⁴³ An important point of principle remains that ‘the human right to impart information is not limited to “correct statements”, [and] that the right also protects information and ideas that may shock, offend or disturb’. The four special mandates made clear 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’.⁴⁴

The prohibition of offences against an undefined set of ‘moral values’ or prohibition of criticism of the government and public officials are plainly *not* acceptable aims

⁴³ [Joint Declaration on Freedom of Expression and ‘Fake News’, Disinformation and Propaganda](#), adopted by the UN Special Rapporteur on Freedom of Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 3 March 2017.

⁴⁴ *Ibid.*

under human rights standards. The State bears the burden of demonstrating that any limitation to protect ‘public morals’ is *essential* and strictly conducted in a manner of non-discrimination.⁴⁵ The Declaration of Principles on Freedom of Expression and Access to Information in Africa makes clear that ‘States shall not prohibit speech that merely lacks civility or which offends or disturbs’.⁴⁶

Article 255 fails to articulate any specific harms; at its core, it punishes promoting ‘disobedience’, expression leading to the ‘discrediting’ of public institutions, or any speech that ‘undermines’ moral values. These do not articulate any tangible harms. The functions described portray actions that journalists, activists, and human rights defenders may be perceived to conduct.

Article 255 of the Penal Code fails to be necessary and proportionate

Article 255 of the Penal Code imposes severe penalties of up to three years in prison, as well as excessive fine, for what is in effect a limitless number of interpretations of conduct. By nature, such a prohibition is disproportionate. It is further unclear what aim the prohibition is necessary to achieve; as a general rule, international human rights standards will fail to recognise overbroad criminal prohibitions limiting freedom of expression as necessary to achieve any legitimate legal aim.

Criminal offences, and in particular custodial sentences, will as a starting matter typically be severely disproportionate as applied to speech. The purported ‘harm’ that is done to society by speech—which is almost always impossible to measure or quantify—will pale in comparison to strict prison and monetary penalties. This kind of liability must be subject to the most stringent of procedural safeguards, and must generally be rejected in favour of civil recourse. Otherwise, the threat of sanctions alone will threaten to have a severe chilling effect.

⁴⁵ [Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights](#), April 1985.

⁴⁶ [Declaration of Principles on Freedom of Expression and Access to Information in Africa](#), Principle 23(3).

It is for this reason that we recommend, for example, in cases of defamation, where an individual experiences unfair attacks on their reputation causing substantial harm, that the appropriate course of redress should still be through civil defamation laws that comply with international law. ARTICLE 19 hence urges that such harms are instead dealt with through the relevant civil laws.

Additional problems with prohibitions in Article 255 of the Penal Code

In addition to the fatal flaws discussed, Article 255 of the Penal Code is framed so broadly that it serves to establish a criminal defamation law. This is an unacceptable restriction on freedom of expression.

ARTICLE 19 recalls that international and regional instruments have repeatedly maintained their incompatibility with international standards, and they should be replaced, where necessary, with appropriate civil defamation laws (which themselves must still not impose excessive penalties).⁴⁷ This position has been echoed by international and regional instruments, including the African Court on Human and Peoples' Rights⁴⁸ and the Community Court of the Justice of the Economic Community of West African States.⁴⁹ Civil defamation laws with excessive penalties are typically abused to limit criticism and stifle public debate.

Specifically, in prohibiting speech that 'discredits' public institutions or is considered false, the Law serves to criminalise criticism and commentary on government bodies. At a minimum, defamation laws must provide a burden on the accuser to establish that false statements are made with specific intent; i.e. knowledge of their

⁴⁷ For a summary of problems with criminal defamation laws, see ARTICLE 19, [Defining Defamation. Principles on Freedom of Expression and Protection of Reputation](#), July 2000.

⁴⁸ [Lohé Issa Konaté v. Burkina Faso](#), African Court on Human and Peoples' Rights, App. No. 004/2013, 5 December 2014.

⁴⁹ [Federation of African Journalists v. Republic of Gambia](#), Community Court of the Justice of the Economic Community of West African States, Suit No: ECW/CCJ/APP/36/15, 13 March 2018.

falsity. However, the Law does not even provide even minimal safeguards, as it specifically punishes conduct whether or not it is made in 'good faith'.

Related legislative provisions

Other provisions serve to compliment and exacerbate the problem of criminalising disinformation in Senegal. For instance, the Draft Bill on the Framework of the Use of Social Networks (2018) (the Draft Bill) contains disinformation provisions, punishing in Article 16 'conveying or popularising sensitive, misleading, defamatory, or insulting data, regardless of whether the sender is the original author of the information'.⁵⁰

Article 15 prohibits the disclosure or publication of sensitive or prohibited data through social networks. Article 15 further imposes a penalty for this disclosure of imprisonment of 1 to 3 years, as well as a fine of up to 1 million francs CFA (1,718 USD).

This Draft Law also raises human rights concerns because, in contravention of Article 19(3) of the ICCPR, it lacks clear definitions of how these restrictions are prescribed by law, pursue a legitimate aim, and are necessary in a democratic society. The scope of what would be considered sensitive, prohibited, misleading, or insulting is not made clear. Articles 15 and 16 would thus fail to provide sufficient guidance for individuals and give an overly wide degree of discretion to those charged with the enforcement of that law.

⁵⁰ Draft Bill on the Framework of the Use of Social Networks, Article 16.

Conclusions and recommendations

ARTICLE 19 recalls that the United Nations Secretary General, in his report on disinformation, provided a helpful framework for addressing fears of disinformation while remaining compliant with international standards.⁵¹ Those measures include promoting education and access to robust public information. The Special Rapporteur on freedom of expression recommended a similar approach in her thematic report on the subject, calling on States to work with the private sector to call for multi-stakeholder responses to disinformation in order to promote free, independent, and diverse media.⁵²

Based on the international human rights standards and the analysis of the relevant legislation, ARTICLE 19 recommends the following:

For the government:

- Repeal Article 255 of the Penal Code criminalising the publication of false news.
- Drop the proposed Draft Bill on the Framework of the Use of Social Networks (2018).
- Review all punitive measures, including criminal restrictions on defamation or publication of false information, and ensure that they are necessary, proportionate, justifiable, and compatible with international human rights laws and standards. In cases where they fail to be, those provisions must be repealed.
- Cease the targeting and harassment of journalists, activists, and human rights defenders, particularly for merely criticising or reporting on public officials and institutions.

⁵¹ [Countering disinformation for the promotion and protection of human rights and fundamental freedoms](#), paras 26 and 27.

⁵² [Disinformation and freedom of opinion and expression: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#), A/HRC/47/25, para 87.

- Convene and facilitate multi-stakeholder dialogues, to include civil society, media, Special Procedures, regional instruments, and industry, to develop effective strategies and mechanisms to counter disinformation while upholding the right to freedom of expression and the right to receive information.
- Invest resources in education, media literacy, and critical-thinking skills, including among vulnerable populations, to enable people to better navigate the complex and evolving online media landscape.
- Build the capacity of relevant actors including the judiciary, prosecutors, parliamentarians, and law enforcement agencies to address disinformation misinformation in compliance with international laws and standards. This capacity-building can include organising trainings with representatives from the African Commission on Human and Peoples' Rights.

For media organisations and journalists:

- Improve fact-checking efforts and adopt guidelines within newsrooms to ensure the production and dissemination of accurate and reliable information. Organise regular training sessions for journalists on fact-checking methodologies and ethical reporting practices.

For social media networks:

- Adopt the recommendations of the Special Rapporteur on freedom of expression, including the exploration of internal mechanisms to address disinformation on social media networks.
- Stay abreast of standards on combating disinformation online, while simultaneously promoting robust freedom of expression and not imposing censorship.

These recommendations, if implemented by the respective responsible entities, will help address the challenges posed by disinformation and be effective in protecting freedom of expression in Senegal. ARTICLE 19 remains available to assist authorities and stakeholders in achieving these aims.