From Crackdown to Reforms: A Roadmap for Media Freedom in Senegal

Protecting Freedom of Expression and Reforming Media Legislation for a Democratic Future

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SUMMARY

In this legal briefing, ARTICLE 19 highlights key provisions in the Senegalese legislation that need to be urgently brought into compliance with international freedom of expression standards.

Senegal has long been regarded as a regional leader in media freedom and democratic values. However, since 2023, there has been a marked increase in legal and administrative actions restricting journalistic activity and free expression. These include arrests and judicial harassment of journalists on charges such as criminal defamation and "spreading false news," as well as the recent suspension of hundreds of media outlets for alleged non-compliance with the Press Code.

The current legal framework, including the Press Code and criminal provisions on defamation, insult, and false information, falls short of international standards.

ARTICLE 19 urges the Government to prioritise urgent reforms, including:

- **Press Code reform:** The current Press Code imposes an outdated and restrictive definition of journalism, requiring formal qualifications and government validation. This excludes bloggers, freelancers, citizen journalists, and human rights defenders from legal protections such as access to information and source confidentiality. The Code also mandates a national press card, with criminal penalties for violations, thus further restricting independent reporting.

- **Regulation of the press:** ARTICLE 19 argues that specific press laws are often misused to limit, rather than protect, free expression. The organisation recommends abolishing or significantly reducing the scope of the Press Code, in line with practices in other democracies, and instead applying general civil and commercial laws to the media.

- **Media licensing:** The recent suspension of hundreds of media outlets undermines media freedom and the public's right to information. ARTICLE 19 calls for the urgent repeal of ministerial decrees requiring validation of the press registration for Press Code compliance

- **Decriminalisation of defamation, insult and false information offence:** ARTICLE 19 urges the government to de-penalise "false

information" and repeal criminal provisions on insult and defamation, which are frequently used to silence dissent and intimidate journalists.

ARTICLE 19 believes that Senegal's recent commitments during the Universal Periodic Review (UPR) present a critical opportunity to overhaul restrictive laws and strengthen protections for freedom of expression. We urge the Government to collaborate with civil society and international experts to bring Senegal's legal framework into compliance with its human rights obligations. Comprehensive legal and policy changes are essential to restore Senegal's reputation as a beacon of media freedom in West Africa.

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INTRODUCTION

Senegal stands at a critical juncture for the protection and promotion of freedom of expression and media freedom. It has been historically regarded as a beacon of media freedom and democratic values in West Africa, with constitutional guarantees supporting freedom of expression and a diverse media landscape comprising numerous independent television, radio, and print outlets.

However, ARTICLE 19 has been increasingly concerned about developments that undermine media freedom in the country. Since 2023, there has been a notable increase in legal and administrative actions that restrict journalistic activities and limit freedom of expression. These include the arrest and judicial harassment of journalists on charges such as criminal defamation[1] or "spreading false news," as seen in the detention of prominent editors and reporters in early 2025.[2] The government's enforcement of these restrictive laws has also intensified, culminating in the suspension of 381 media outlets for non-compliance, a move that threatens to drastically reduce the diversity and plurality of voices in the Senegalese media environment.[3]

This crackdown has occurred alongside broader political tensions marked by protests, contested elections, and internet shutdowns, which have further constrained the civic space and access to information. Legal provisions criminalising defamation, insult, and dissemination of false information remain tools for silencing dissent and fostering self-censorship among journalists. This legal environment has been further exacerbated by government-imposed internet shutdowns and restrictions on social media,[4] particularly during periods of political tension and public protest, severely limiting the public's access to diverse information sources.

Despite these challenges, the election of President Bassirou Diomaye Diakhar Faye in March 2024 presents a critical opportunity for reform. Moreover, Senegal's most recent Universal Periodic Review (UPR) saw the government

[1] See e.g. ARTICLE 19, Senegal: Journalist's prison sentence for defamation violates international free expression standards, 5 July 2021; or ARTICLE 19, Senegal: Repressive legislation threatens freedom of expression, 11 January 2023.

[2] See e.g. CPJ, Journalists arrested in Senegal as prime minister announces 'zero tolerance' for false news, 16 April 2025.

[3] See e.g. MFWA, West Africa: Senegal - 381 Media Outlets to Be Suspended, 22 April 2025.

[4] See e.g. Paradigm Initiative, Digital Rights and Inclusion in Africa, 2023 Report; or ARTICLE 19, Senegal: Urgent call to maintain connectivity, 5 February 2024.

commit to aligning its national legislation with international standards and to better protect journalists and media workers from reprisals.

Alongside domestic civil society organisations and international human rights bodies, ARTICLE 19 has urged the new government to prioritise the protection of media freedom and journalist safety. Previously, we have issued a number of detailed analyses of the current legislation that does not meet international freedom of expression standards. These included analyses of the Press Code,[5] the 'false information' provisions,[6] or a submission for Senegal's UPR.[7]

In this brief, we summarise some of the most pertinent freedom of expression issues in Senegal. The brief draws on the recommendations made in the framework of the UPR, in particular, the decriminalisation of press offenses and other unjustified restrictions on freedom of expression. The brief first outlines the key freedom of expression standards and then offers review of legislation that needs to be amended as a matter of priority. In analysis of each area of legislation, we offer more detail references to applicable freedom of expression standards.

ARTICLE 19 will closely monitor the efforts and actions in these areas. We hope that the Government will closely collaborate with civil society in bringing the Senegalese legal framework into compliance with international human rights law. We stand ready to lend our expertise in the reforms aimed at improving the protection of freedom of expression and human rights. We are keen on sharing our expertise and taking part in potential public consultations alongside other civil society actors.

[5] See e.g. ARTICLE 19, Sénégal: ARTICLE 19 déplore l'adoption d'un code de la presse régressif et demande au Président de la République de ne pas promulguer le code, 18 July 2017 (in French).
[6] ARTICLE 19, Senegal: 'Fake news' and disinformation laws threaten freedom of expression, 17 January 2024.
[7] ARTICLE 19, Senegal: Universal Periodic Review focuses on freedom of expression, 12 September 2023.

INTERNATIONAL FREEDOM OF EXPRESSION STANDARDS

Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Senegal in 1978, protects the right to freedom of expression in broad terms. Under that provision, States parties are required to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers.

In similar terms, the African Charter on Human and Peoples' Rights in Article 9 guarantees the rights of an individual to "receive information" and "express and disseminate his opinions within the law".

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'. 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.

General Comment No. 34 of the UN Human Rights Committee, adopted in July 2011, sets out the authoritative view of the Committee on Article 19:

> This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20. It includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse [...].

The rights to freedom of expression and information are not absolute but may be restricted only under permissible grounds and in compliance with certain conditions:

- First, the restrictions must be '**provided by law**'. This requirement will be fulfilled only where the law is accessible and formulated with sufficient precision to enable the citizen to regulate his conduct.

- Second, the interferences must pursue a **legitimate aim**. They may only be imposed for one of the grounds set out in Article 19(3)(a) or (b) of the ICCPR. There must be an individualised and demonstrable link between the threat to a legitimate aim and a restrictive measure in question.

- Third, they must conform to the strict tests of **necessity and proportionality**. The principle of proportionality requires that any restriction must be the least intrusive measure to achieve the intended legitimate objective. The "chilling" effect which disproportionate sanctions, or even the threat of such sanctions, may have upon the free flow of information must be taken into account when assessing the restrictions.

RESTRICTIONS AGAINST JOURNALISTS AND THE MEDIA

The Universal Periodic Review of Senegal culminated in a series of recommendations involving the reform of the country's Press Code, in particular decriminalisation of press offenses and the need to repeal the current licensing regime for journalists.[8]

ARTICLE 19 regrets that Senegal has yet to implement the recommended reforms to the Press Code. We recall our recommendations in the previous analysis of the Press Code that offer detailed overview of the key incompatibility with international freedom of expression standards. In the light of the UPR recommendations and recent events, we would like to highlight the following issues are particularly problematic and need an urgent overhaul.

Need for the press regulation

At the outset, ARTICLE 19 points out that press laws should be viewed with caution as they are often a tool for governments to excessively restrict, rather than protect, the right to freedom of expression and information. Given the instrumental importance of the press in a democratic society, it stands to reason that journalists and their publications should not be subject to greater restrictions on the right to express themselves than ordinary people. Indeed, most advanced democracies have moved to abolish their press laws and regulate the print media through laws of general application, such as the civil and commercial codes, which apply to all citizens without distinction.

ARTICLE 19 recognises that in those countries which still maintain a specific law on the print media, the government's motivation may derive from a desire to improve journalistic standards of professionalism and ethical conduct. We note that despite such a legitimate purpose, a press law may easily be abused to over-regulate and selectively control what newspapers and other periodicals may say. Part of the purpose of the internationally recognised necessity test - a test notably absent from the Press Code - is to make sure that regulation concerning the media is kept to a minimum.

[8] See, ARTICLE 19 UPR submission, *op.cit.*

Most progressive democracies recognize that print media does not necessitate regulation in the way that broadcast media does. Laws to impose specific regulation on print media are absent in most established democracies due to a deliberate policy of preventing unnecessary regulation.

ARTICLE 19 believes that a careful consideration should, therefore, be given to simply abolishing or at a minimum greatly reducing the scope of the Press Code. We believe that this is entirely feasible, since the print media would by no means be placed in a legal vacuum. The examples of some countries in Eastern Europe, like the Czech Republic, Slovakia, Hungary, Romania and Bulgaria - countries which underwent a long period of dictatorship - show that even young democracies with an immature free media do not need a press law. ARTICLE 19 believes that Senegal should follow the same suit and simply abolish the Press Code.

Definition of journalists

Article 4 of Senegal's Press Code imposes an outdated and restrictive definition of a journalist.

A university degree in journalism or, alternatively, a bachelor's diploma, followed by two years of experience in a media outlet, is required for being recognised as a journalist. The required professional experience must also be validated by a government commission.

ARTICLE 19 notes that international human rights law firmly establishes that journalists perform the indispensable role of a 'public watchdog', which is essential for the realisation of the right of the public to receive information of public interest.[9]

Under international standards, journalism should not be a regulated profession. In this respect, the Human Rights Committee (which is a body tasked with interpreting the ICCPR) clearly defines journalism through functional interpretation rather than as a rigid professional status:

[9] See, for instance, European Court, *Lingens v Austria*, 1986, App. No. 9815/82, para 44; *The Observer and Guardian v. the UK*, 26 November 1991, App. No. 13585/88, para 59; *Busuioc v. Moldova*, 21 December 2004, App. No. 61513/00, para 56.

> A function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.[10]

As a point of comparative law, the Recommendation adopted by the Council of Europe's Committee of Ministers provides:

> The term "journalist" means any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication.[11]

ARTICLE 19's analysis: Instead of adopting the similar approach, the Press Code effectively turns journalism into a regulated profession, which is incompatible with the functional approach adopted in international standards. Bloggers, human rights defenders, freelancers, activists, citizen journalists, and other commentators, all of whom essentially perform the function of informing the public on issues of public interest, are effectively excluded from the Press Code. This has far-reaching practical implications. Crucially, the provisions on access to information (Article 5) and protection of sources (Article 16) only apply to recognised journalists. This defies the essential international standards on the right to gather information and protect one's sources to any person performing a journalistic function. It effectively allows the authorities to cherry-pick journalists and curb the emergence of independent and pluralistic voices.

National press cards

Articles 22-36 of the Press Code further complicate the status of a journalist under Senegalese law by requiring a national press card. The absence of the card essentially denies the journalist a possibility to gather news, for example, at a protest. The associated restrictions are particularly concerning because violations of the press card rules are punishable by criminal law, making them manifestly disproportionate. In this regard, recognised journalists with considerable professional experience have been arrested in Senegal,[12] on the basis of denying their journalist status due to the absence of the national press card.

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[10] General Comment No. 34, Freedoms of Opinion and Expression (Article 19), CCPR/C/GC/34, 12 September 2011, para 44.
[11] Recommendation No. R (2000)7 of the Committee of Ministers to Member States on the right of journalists not to disclose their sources of information, adopted 8 March 2000.
[12] PressAfrik, Journalist Serigne Saliou Gueye jailed for lack of press card, 26 May 2023.

ARTICLE 19's analysis: ARTICLE 19 points out that like all restrictions on freedom of expression, restrictions on newsgathering must comply with this three-part test. In particular, the UN Human Rights Committee stated that the 'necessity test' in this context means that an accreditation procedure should not be susceptible to political interference and should impair the right to gather news as little as possible. It added that:

> Limited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain places and/or events. Such schemes should be applied in a manner that is non-discriminatory and compatible with Article 19 and other provisions of the Covenant, based on objective criteria and taking into account that journalism is a function shared by a wide range of actors.[13]

Likewise, the jurisprudence of the European Court for Human Rights provides a useful reference point on this issue. The Court expressly stated that the gathering of information as an essential preparatory step for journalism is an inherent protected part of the freedom of the press. Similar protection for the gathering of information in public interest is afforded to other actors, including NGOs[14] or even a private individual.[15]

ARTICLE 19 notes that this provision is unnecessary, as journalist cards are normally issued by the entity engaging the services of the journalist, as well as beyond the scope of this legislation, as the Press Code relates only to print media and "journalists" are note exclusive to such media.

In any event the matter of issuing journalist cards, even if done in a nationally uniform manner, should be treated as a matter of self-regulation by media agencies in voluntary cooperation with each other instead of being prescribed by law.

[13] General Comment No. 34, *op.cit.*, para 44.

[14] European Court, *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v Austria*, 28 November 2013, App. No. 39534/07, paras 34-36.

[15] European Court, *Kenedi v. Hungary*, 26 May 2009, App. No. 31475/05.

Content moderation requirements for editors/administrators

Another highly problematic provision of the Press Code (Article 179) imposes content moderation requirements on the editors/administrators of the websites and social media pages of online media. Notably, they are required to remove comments by users on these platforms if they contain "indecent" or "inappropriate" content. A range of provisions establish responsibility, including criminal sanctions, for the failure to moderate such content.

ARTICLE 19's analysis: ARTICLE 19 finds that these rules do not only constitute an intrusion into editorial independence of a media outlet but a censorship measure, which is incompatible with the three-tier test of legality, legitimacy, and necessity and proportionality.

Validation of press enterprises

A range of other direct regulatory duties and restrictions are imposed on print, audio-visual and online media and individual journalists.[16] Deviations from this very stringent regulatory regime are punishable by a range of sanctions directly imposed by the authorities.

Since October 2024, ARTICLE 19 has been alarmed with efforts of the Government, through the Ministry of Communication, Telecommunications and Digital Media, to target media outlets deemed non-compliant with the Press Code.

We note that on 29 July 2024, the Ministry of Communication issued a decree about a new registration platform ("Déclaration médias du Sénégal") and deadline for all media publishers - both print and digital - to comply fully with the provisions of the Press Code. Media outlets were mandated to regularise their status by registering and demonstrating compliance with the Press Code's requirements.

Subsequently, the Decree of 1 October 2024 established the Senegalese Commission for the Examination and Validation of Press Enterprises. The

[16] ARTICLE has listed and analysed these in more detail: Sénégal: ARTICLE 19 déplore l'adoption d'un code de la presse régressif et demande au Président de la République de ne pas promulguer le code - ARTICLE 19.

Commission's primary mandate is to evaluate media outlets' compliance with the Press Code, using a registration platform as the basis for official recognition. Over the following six months, 639 media outlets submitted to this process. By February 2025, only 258 outlets were declared compliant, while 381 were found non-compliant and thus at risk of sanction.

The regulatory overhaul reached a critical point on 22 April 2025, when the Minister of Communication, Telecommunications and Digital Media issued a decree ordering the immediate suspension of all broadcasting, publication, and content sharing by media outlets that failed to comply with the Press Code. The decree empowered law enforcement, specifically the Territorial Surveillance Directorate of the National Police, to enforce these suspensions and prevent non-compliant outlets from operating.

The Government justified these measures as necessary to ensure professional standards and curb disinformation.

ARTICLE 19's analysis: ARTICLE 19 notes that the above decree in effect represent an impermissible licensing system of print and digital media.

ARTICLE 19 reiterates that international standards on freedom of expression do not recognize the system of licensing of press or digital media. Such systems are not considered permissible under the "necessity" test mentioned above; only the licensing of broadcasters is ever recognised as necessary, if only to prevent chaos on the airwaves. Licensing systems for print and digital press do not, therefore, exist in democratic countries.

On this basis, ARTICLE 19 finds it difficult to think of any legitimate interest which might justify instituting a licensing system under the recent decrees.

We note that under international law, a *technical* registration requirement for the print and digital media may not breach the guarantee of freedom of expression as long as it meets the following conditions:

- There is no discretion to refuse registration, once the requisite information has been provided;
- The system does not impose substantive conditions upon the media;
- The system is not excessively onerous; and
- The system is administered by a body which is independent of government.

We note that the UN Human Rights Committee, which oversees the ICCPR, has also noted, "effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression." Registration requirements which do not respect these conditions offend freedom of expression principles since they cannot be justified on the grounds listed in the ICCPR, such as the rights or reputations of others, national security, or public order, health or morals.

We believe that the suggested system in the decrees and under the Press Code does not meet these standards. To the extent that it introduces restrictions on and control by the government, the requirements under the new decrees violate the right to freely receive information and ideas.

Recommendations

- The entire Press Code should be repealed, rather than amended in favour of an approach that prioritises self-regulation of the press. If the Press Code is retained, it should declare – either in the Preamble or in Article 1 – the intention to promote freedom of expression. In particular, it should state that its aim to abolish censorship and to provide freedom of media in accordance with the right to freedom of expression. It should also explicitly recognise that the main mission of the media is to report the news and to act as a public watchdog of government. Finally, it should require that state bodies always use the least restrictive means of action when their bodies interfere with the exercise of the right to freedom of expression.

- The definition of "journalist" in the Press Code should be replaced with a more functional definition of journalism and apply to any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of communication.

- The requirement of a press card or any other licensing requirements for individual journalists should be abolished. Press cards should be dealt with via self-regulation. They should emphatically not be used as a qualification for employment. If press accreditation is required, it should only be imposed if - due to limited space - all interested journalists cannot attend a meeting or follow the activities of a particular body. The legislation should provide safeguards against arbitrary refusals of accreditation, such as clear accreditation rules. The accreditation should be overseen by an

independent body, such as a journalists' union and journalists should be granted a right to appeal refusals for accreditations to court.

- Content moderation requirements and associated sanctions imposed on the editors/administrators of the websites and social media pages of online media for the content produced by third parties should be abolished in entirety.

- All decrees and provisions in the Press Code relating to direct or indirect registration and licensing requirements by the print and digital press and the respective sanctions for their breach (should be removed. Technical registration requirements should only be allowed if no discretion is allowed to refuse registration; no substantive conditions can be imposed on the media; the system is not excessively onerous; and the system is administered by an independent body.

DEFAMATION AND INSULT

Despite Senegal commitments to decriminalise several problematic provisions of the Penal Code, the Code continues to include the offenses of defamation (Article 258, paragraph 1, Articles 259-261) and insult (Article 258, paragraph 2). ARTICLE 19 notes that provisions of the Penal Code have been used in tandem with other measures against civil society and the press to severely limit dissent and jail critics of the government.[17]

ARTICLE 19 notes that protection of reputation is one of the legitimate grounds on which freedom of expression can be restricted. However, any defamation measure must still pass the other pongs of the three-tier test: legality and necessity and proportionality. Protection of reputations must be weighed against public interest considerations. The room for restrictions is particularly narrow in the case of public officials and when freedom of the press is at stake.[18]

We also note that international human rights bodies have increasingly adopted a highly critical approach to **criminalisation of defamation**. For instance, the UN Human Rights Committee has called on states to consider decriminalising defamation and noted that imprisonment is never an appropriate penalty.[19] It actively recommended decriminalization of defamation in Uzbekistan[20], Cameroon,[21] and Tunisia;[22] and endorsed decriminalisation of defamation in North Macedonia as "steps in the right direction towards ensuring freedom of opinion and expression particularly of journalists and publishers."[23]

Similarly, the Special Rapporteur on Freedom of Expression warned that the subjective character of many defamation laws, their overly broad scope and their application within criminal law have turned them into powerful mechanisms to stifle investigative journalism and silence criticism.[24] He

[17] Senegal: Repressive legislation threatens freedom of expression - ARTICLE 19.
[18] General Comment No. 34, *op.cit.*, para 38.
[19] General Comment No. 34., *op.cit.*, para 47.
[20] Human Rights Committee, Concluding Observations on Uzbekistan, 24 March 2010, CCPR/C/ARG/CO/4.
[21] Human Rights Committee, Concluding Observations on Cameroon, 28-29 August 2010, CCPR/C/CMR/CO/4.
[22] Human Rights Committee, Concluding Observations on Tunisia, 28 March 2008, CCPR/C/TUN/CO/5, para 18.
[23] Human Rights Committee, Concluding Observations on the Former Yugoslav Republic of Macedonia, 3 April 2008, CCPR/C/MKD/CO/2, para 6.
[24] Report of the Special Rapporteur on Freedom of Expression, A/HRC/7/14, 28 February 2008, para 39.

explicitly urged Governments to: (a) repeal criminal defamation laws in favour of civil laws, and (b) limit sanctions for defamation to ensure that they do not exert a chilling effect on freedom of opinion and expression and the right to information.[25]

The African Commission on Human and People's Rights in its Declaration of Principles on Freedom of Expression and Access to Information in Africa called on states to "repeal laws that criminalise sedition, insult and publication of false news" and review "all criminal restrictions of content", including criminal defamation and libel.[26]

ARTICLE 19 has also long argued that laws criminalising defamation are an unnecessary and disproportionate measure and, as such, constitutes a violation of the right to freedom of expression.[27]

As regards the prohibition of insult, it is entirely incompatible with the right to freedoms of expression and opinion. International human rights law does not recognise 'the right' not to be offended and protects speech that can be subjectively perceived as 'insulting'. The Declaration of Principles on Freedom of Expression and Access to Information in Africa confirms that "States shall not prohibit speech that merely lacks civility or which offends or disturbs". [28] It follows that criminalisation of insult can never be justified by protection of the rights or reputations of others.

ARTICLE 19's analysis: ARTICLE 19 observes in particular the following concerns with prohibitions of defamation and insult:

- **Legality**: Prohibitions are extremely overbroad. The defamation provisions speak of 'any false allegation of a fact' that harms the 'honour' of a person, even if does not specifically name the person in question and make the allegation in a 'dubious' manner. Moreover, a separate provision (Article 259) criminalises defamation against 'the courts, army, and public administration', which is essentially a tool to stifle criticism of the government. Such restriction is manifestly incompatible with international

[25] Report of the Special Rapporteur on Freedom of Expression, E/CN.4/2001/64, 13 February 2001, para 47.
[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(1-3).
[27] See ARTICLE 19, Defining Defamation: Principles on Freedom of Expression and Protection of Reputation, 2017, with a particular reference to Principle 4.
[28] Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 23(3).

human rights law. None of the provisions pass the test of legality and, as such, must be repealed for this reason alone.

- **Legitimacy:** While the defamation provisions can be argued to pursue the legitimate aim of protection of reputation of others, the prohibition of insult pursues no such aim. Therefore, the provision on insult (Article 258 para 2) violates international human rights law. Further, we note that international law does not protect the 'reputation' of the state or its institutions, such as the army or individual government bodies. It follows that Article 259 on defamation of the state bodies cannot be justified by a legitimate aim.

- **Necessity and proportionality:** Senegal punishes defamation and insult with criminal fines and imprisonment, which are not a proportionate response even to the most malicious and intentional attacks on one's reputation. As noted above, the Human Rights Committee vehemently stated that imprisonment is never an appropriate penalty for defamation. The resort to criminal law in itself is an unjustified restriction of the right to freedom of expression. It is designed to produce a chilling effect on journalism and criticism of the government.

Recommendations

ARTICLE 19 recommends abolish criminal defamation for civil laws as a more proportionate measure to protect one's reputation, while ensuring that civil remedies are subject to robust safeguards against strategic lawsuits against public participation (SLAPPs). Priority should be given to non-pecuniary remedies, such as the right to reply and correction. Prohibitions of insult should be abolished in their entirety.

'FALSE INFORMATION'-RELATED RESTRICTIONS

ARTICLE 19 observes that Senegal has multiple laws that effectively prohibit or penalise the dissemination of 'false information'.[29]

Most strikingly, the Penal Code of Senegal (Article 255) contains a broad prohibition on 'false news', 'fabricated or falsified documents', or information 'falsely attributed to third parties', which 'leads' or is 'likely to lead' to 'disobedience to the laws of the country, undermines the moral values of the population, or discredits public institutions or their functions'. The prohibition applies not only to the 'publication' of such content, but also its 'dissemination, disclosure, or reproduction'. The penalties prescribed are severe: imprisonment of up to three years in prison, as well as excessive fines.

We are aware that provisions of Article 255 have been widely used to prosecute and imprison journalists, activists and human rights defenders.[30]

ARTICLE 19 recalls that mere falsity of information cannot be used to restrict freedom of expression has been articulated in international standards. For instance, the Human Rights Committee unequivocally stated that the ICCPR does not permit general prohibition of an erroneous opinion.[31] Similar conclusions were made by four freedom of expression mandates who also called for abolishing vague and ambiguous ideas, including 'false news' or 'non-objective information'.[32] In 2022, the **UN Secretary General** advised against a criminal law approach to addressing disinformation, instead recommending to promote access to robust public information, and ensure that any regulatory measurements be implemented with caution and separate executive function "to avoid abusive or manipulative approaches."[33]

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[29] This overview specifically focuses on the relevant criminal provision and the Draft Bill on the Framework of the Use of Social Networks. However, the discussed standards and approaches also apply to other provisions of Senegalese legislation that in practice or effect penalise 'false information'. Defamation is discussed as a separate issue in the next section.

[30] Senegal: Release journalist Pape Sane and end crackdown on journalists - ARTICLE 19

[31] *Ibid*, para 49.

[32] See e.g. Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda, adopted on 3 March 2017; or the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Disinformation and freedom of opinion and expression, A/HRC/47/25, 12 August 2022, para 41.

[33] UN 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, paras 10, 26-27.

ARTICLE 19's analysis: ARTICLE 19 reiterates that, while Senegal's 'false information' provisions could be interpreted as ostensibly purporting public order as a justification, this legislation does not satisfy the requirements of legality, legitimacy, and necessity and proportionality.

- Legality: Article 255 of the Penal Code is not formulated with sufficient precision to pass the pong of 'provided by law'. The term 'false news' is inherently overbroad and vague. Its criminalisation presents a risk for selective application and abuse, which has already turned into a form of censorship in Senegal. Law enforcement authorities should not be given discretion to become 'arbiters of truth'. Furthermore, the legislation provides no definitions of 'misleading' data, or what it means to be 'likely to lead' to negative outcomes, or how one can 'attempt' to publish false information. This lack of clarity results in the inability of individuals to regulate their own conduct.

- Legitimacy: The purported legitimate aim of Article 255 of the Penal Code is convoluted. It mentions the objective to curb 'disobedience of the law', uphold 'moral values', and protect 'public institutions from discrediting'. The only reasonable link to a recognised legitimate aim would be to the protection of 'public order'. However, the provision fails to articulate any tangible harm or setting the threshold for an individualised link between 'false information' and the impugned harm. Moreover, 'discrediting' of public institutions does not fall under any legitimate aim. It is designed to be a general prohibition of 'false information', which is manifestly incompatible with international standards on restrictions.

- Necessity and proportionality: Article 255 of the Penal Code imposes severe sanctions, including imprisonment. ARTICLE 19 notes that the choice of criminal law to restrict 'false information' is problematic in and of itself. As a matter of principle, criminal law should be used to curb violations which carry utmost social harm. The sanctions are disproportionate and should be immediately repealed. Moreover, the very threat of imposing these sanctions produces a severe chilling effect on journalists and uninhibited public debate in Senegal.

Recommendations

- Article 255 of the Penal Code should be immediately repealed.

- Senegal Government should primarily respond to 'disinformation' with positive measures, ranging from media literacy to communication campaigns. Open, honest, and regular government communications generate trust, minimise the impact of disinformation narratives, and ultimately help address the problem much more effectively.