

Translated from French

Republic of Senegal

One People – One Goal – One Faith

Ministry of Justice

Replies from the Government of Senegal concerning the implementation of General Assembly resolution 74/181 of 18 December 2019, entitled “Criminal accountability of United Nations officials and experts on mission”

Acts Nos. 65-60 and No. 65-61 of 21 July 1965 on the Criminal Code and the Code of Criminal Procedure, respectively, are cornerstones of the Senegalese criminal justice system.

These instruments, which have undergone numerous amendments over the years, are supplemented by specific criminal texts and other criminal provisions contained in certain special laws.

The Convention on the Privileges and Immunities of the United Nations of 13 February 1946, which could have constituted an obstacle to the prosecution of nationals serving as United Nations officials or experts on mission, provides in section 15 that “the provisions of sections 11, 12 and 13 are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative”.

By affirming the non-opposability of sections 11, 12 and 13 in respect of States in such cases, the Convention allows the obstacle of the privileges and immunities it provides to be overcome.

No specific criminal laws have been established in Senegal to deal with nationals serving as United Nations officials or experts on mission, but there are provisions that, in the light of the foregoing considerations, could be applied to them.

Paragraph 10 concerning, inter alia, establishment of the jurisdiction of the Senegalese courts over serious crimes committed by Senegalese nationals while serving as United Nations officials or experts on mission

The Code of Criminal Procedure provides that the Senegalese courts retain jurisdiction over

any Senegalese citizen who, while abroad, commits a serious offence punishable under Senegalese law (art. 664, first para.). The same applies in the case of an act that is classified as an ordinary offence under Senegalese law and is also punishable under the law of the country where it was committed (art. 664, second para.).

It should be noted that, in order for the Senegalese courts to retain jurisdiction over a Senegalese national who has committed a serious offence abroad, the act in question must constitute an offence under Senegalese law. By contrast, in the case of an ordinary offence, the law requires both dual criminality and, when the offence is committed against an individual, a request from the public prosecutor's office preceded by a complaint from the victim or an official complaint addressed to the Senegalese authorities by the authorities of the country where the act was committed (Code of Criminal Procedure, art. 666).

The Senegalese courts do, however, retain jurisdiction to try ordinary offences involving breaches of State security as well as forgery of the State seal and undermining of national currencies when such offences are committed outside the territory of the Republic (art. 664, third para.). They also retain jurisdiction over any Senegalese national who commits an ordinary or minor offence in the areas of forestry, farming, fishing, customs or direct taxation in the territory of a neighbouring State (art. 670, first para.).

In addition, article 130 of Act No. 2018-03 of 23 February 2018 on combating money-laundering and the financing of terrorism establishes the jurisdiction of the Senegalese courts to try the offences covered by the Act when they are committed by any person, regardless of nationality, in one of the States members of the West African Economic and Monetary Union or in a third State provided that, in the latter case, jurisdiction is conferred on the Senegalese courts under an international convention. This provision thus enables the prosecution of nationals who are serving as United Nations officials or experts on mission and have allegedly committed acts of money-laundering or financing of terrorism.

Paragraph 12 concerning mutual legal assistance in criminal proceedings against United Nations officials or experts on mission, facilitation of the possible use of information and material obtained from the United Nations, protection for victims and witnesses, and ways of responding to host States seeking support and assistance in enhancing investigations

Senegal is a signatory to major universal instruments, including the United Nations Convention against Transnational Organized Crime and the United Nations Convention against

Corruption. These texts encourage States to afford one another, and to request, mutual legal assistance in criminal matters. Our country has also signed numerous bilateral agreements on criminal matters, thus strengthening its international judicial cooperation arrangements.

The issue of protection for victims and witnesses is not dealt with in a comprehensive criminal law instrument, but it has been addressed in a number of texts against specific offences.

Under Act No. 2005-06 of 10 May 2005 on combating trafficking in persons and similar practices, victims benefit, for example, from immunity from criminal prosecution for the acts specified, except where they have contributed to the commission of an offence (art. 12).

Persons who report to the competent authority an act covered by this law before the offence has been committed may be exempted from punishment (art. 13).

The same text provides that, for the safety of victims and witnesses, the trial court may order that they be heard in camera or permit them not to appear at the hearing. Victims may also be granted residence or refugee status in accordance with the laws in force (art. 14).

Legal assistance is provided to minor victims and those who are especially vulnerable (art.16).

Other texts contain provisions that are similar or not far removed from those just described. This is true, for example, of Act No. 2018-03 of 23 February 2018 on combating money-laundering and the financing of terrorism, article 95 of which is entitled "Anonymous testimony and protection of witnesses", and Act No. 2018-02 of the same date on the suppression of counterfeiting, which, in article 22, provides for exemption from punishment or a discharge for perpetrators who are repentant.
