**Human Rights Committee**

**Concluding observations on the fifth periodic report of Senegal**

1. The Human Rights Committee considered the fifth periodic report of Senegal (CCPR/C/SEN/5) at its 3649th and 3650th meetings (see CCPR/C/SR.3649 and CCPR/C/SR.3650), held on 14 and 15 October 2019. At its 3675th meeting, held on 31 October 2019, it adopted the present concluding observations.

**A. Introduction**

2. The Committee welcomes the submission of the fifth periodic report of Senegal, albeit rather late. It expresses appreciation for the opportunity to engage in a constructive dialogue with the State party’s delegation on the measures taken to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/SEN/Q/5/Add.1) to the list of issues (CCPR/C/SEN/Q/5).

**B. Positive aspects**

3. The Committee welcomes the following legislative and institutional measures taken by the State party:

   (a) Act No. 2004-38 of 28 December 2004 abolishing the death penalty;

   (b) Act No. 2010-11 of 28 May 2010 establishing absolute parity between men and women in all institutions in which some or all posts are elective, the implementation of which is monitored by the National Observatory for Gender Parity;

   (c) Act No. 2013-05 of 8 July 2013 amending Act No. 61-10 of 7 March 1961 on the determination of nationality, which allows the foreign husband of a Senegalese woman and their children to acquire Senegalese nationality;

   (d) Act No. 2014-26 of 3 November 2014 on the organization of the judiciary and its implementing decree, No. 2015-1039 of 20 July 2015, whereby courts of major jurisdiction and courts of first instance were established, assize courts were replaced with criminal chambers and provision was made for local justice;

   (e) Act No. 2016-29 of 8 November 2016 amending Act No. 65-60 of 21 July 1965 on the Criminal Code, which introduces non-custodial penalties;

   (f) Act No. 2016-30 of 8 November 2016 amending Act No. 65-61 of 21 July 1965 on the Code of Criminal Procedure, which strengthens, inter alia, fundamental legal...
safeguards and introduces the practice of holding hearings in criminal chambers on a permanent basis;

(g) Organic Act No. 2017-09 of 17 January 2017 repealing and replacing Organic Act No. 2008-35 of 8 August 2008 on the Supreme Court, which provides for a procedure for the compensation of victims of long-term detention;

(h) Organic Act No. 2017-11 of 17 January 2017 on the structure and functioning of the High Council of the Judiciary, which introduces, inter alia, the right of appeal in disciplinary matters and requires a majority vote of the Council members in decisions concerning dismissal or compulsory retirement;

(i) The establishment of the Extraordinary African Chambers within the Senegalese courts to try Hissène Habré, who, in 2016, was convicted of crimes against humanity, war crimes and torture committed in Chad between 1982 and 1990;

(j) The National Action Plan for the Eradication of Gender-based Violence and the Promotion of Human Rights (2017–2021) and the implementation of regional action plans;

(k) The introduction of a computerized register in prisons.

C. Principal matters of concern and recommendations

Applicability of the Covenant in the domestic legal system and follow-up of the Committee’s Views

4. The Committee takes note of article 98 of the Constitution of Senegal, which establishes the primacy of international treaties over domestic legislation, and the State party’s commitment to this principle. However, it regrets the absence of concrete examples of the application of the Covenant by domestic courts and the contradictory messages sent by the State party, particularly with regard to the Committee’s Views on individual cases. The Committee refers in particular to the State party’s responses to the Committee’s Views of 23 October 2018 on the communication concerning Wade v. Senegal (CCPR/C/124/D/2783/2016), in which the Committee found a violation by the State party of article 14 (5) of the Covenant. The Committee is concerned that the Constitutional Council’s decision of 20 January 2019 did not take the Views into account and thus invalidated Mr. Wade’s candidacy on the grounds of his previous conviction (art. 2).

5. The State party should:

(a) Guarantee, in practice, the primacy of the Covenant over national law and an effective remedy for individuals seeking justice in the event of a violation of the Covenant;

(b) Raise awareness of the Covenant among judges, lawyers and prosecutors to ensure that its provisions are invoked before the national courts and taken into account in their decisions;

(c) Ensure that appropriate action is taken to give effect to the Committee’s Views.

National human rights institution

6. While welcoming the State party’s stated intention to reform the Senegalese Human Rights Committee to enable it to be re-accredited with A status by the Global Alliance of National Human Rights Institutions under the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), the Committee regrets that the revision of the relevant law and information on its content have not been shared and that concerns about the financial resources allocated to the institution, its exact mandate and the method for appointing its Chair and members were not clarified during the dialogue (art. 2).
7. The State party should adopt a legislative and regulatory framework to enable the national human rights institution to be brought into line with the Paris Principles. To this end, it should provide the institution with an independent budget that is sufficient to enable it to carry out its mandate in full and should establish a process for appointing its Chair and members that guarantees its independence.

Efforts to combat impunity and address past human rights violations

8. The Committee regrets that the State party continues to justify the law granting amnesty in relation to all offences committed in the context of the internal conflict in Casamance by the need to “quieten resentment, ease tensions and pave the way for a lasting dialogue” (arts. 2, 6, 7 and 14).

9. The State party should:
   (a) Abolish all amnesties for international crimes committed by either of the parties to the conflict so that investigations can be conducted and those responsible punished;
   (b) Provide reparation to the victims and their families.

Non-discrimination

10. While noting the existence of article 3 of Act No. 81-77 of 10 December 1981 on penalties for discriminatory acts, the Committee notes that this Act only covers racial, ethnic and religious discrimination and does not address direct and indirect discrimination. The Committee notes with concern the absence of complaints registered in the State party for acts of discrimination, despite reports it has received of alleged discriminatory acts, including against persons with albinism, persons belonging to sexual or gender minorities and women (arts. 2, 7, 24, 25 and 26).

11. The State party should adopt comprehensive anti-discrimination legislation to ensure that its legal framework:
   (a) Provides effective protection against discrimination in all spheres, including the private sphere, and prohibits direct, indirect and multiple discrimination;
   (b) Includes a comprehensive list of prohibited grounds for discrimination, including colour, language, political or other opinion, national or social origin, property, disability, sexual orientation or gender identity, or other status;
   (c) Provides for effective remedies in cases of violation.

Equality between men and women

12. The Committee notes that Act No. 2010-11 on parity guarantees gender parity only in respect of elective office. The Committee also notes the low representation of women in some parts of the public service, particularly in the judiciary and at the governor and deputy prefect levels. The Committee is further concerned that discriminatory provisions remain in force, including in the Family Code (arts. 2, 3, 23, 25 and 26).

13. The State party should:
   (a) Extend the scope of Act No. 2010-11 on gender parity to cover the entire civil service and take the necessary measures to give effect to provisions on gender parity;
   (b) Repeal any provision contrary to the principle of gender equality, particularly in the Family Code, including provisions on paternal authority, polygamy, inheritance rights, choice of family home, the waiting period for women wishing to remarry after divorce and consent to marriage.
Non-discrimination on the grounds of sexual orientation or gender identity

14. The Committee is concerned about hate speech and calls for violence broadcast in the media, particularly on the part of public figures, against persons belonging to sexual or gender minorities and defenders of their rights. It is also concerned about allegations of arbitrary arrests, privacy violations, harassment and violence, including by law enforcement officials. In this regard, the Committee is concerned that the third paragraph of article 319 of the Criminal Code, which criminalizes sexual acts between consenting adults of the same sex, remains in force and continues to be applied (arts. 2, 9, 17, 19, 21, 22 and 26).

15. **The State party should:**
   
   (a) Take concrete measures as a matter of urgency to address the current campaign of incitement to hatred against people on the grounds of their sexual orientation and against those defending their rights, including partner organizations engaged in efforts to tackle HIV/AIDS;
   
   (b) Repeal the third paragraph of article 319 of the Criminal Code, which criminalizes sexual acts between consenting adults of the same sex, with a view to reducing the stigmatization of the persons concerned;
   
   (c) Give clear instructions to law enforcement officials to stop all arbitrary arrests or violence against people because of their real or perceived sexual orientation or gender identity;
   
   (d) Ensure that any violations are thoroughly investigated and the perpetrators prosecuted as necessary.

Violence against women and harmful practices

16. The Committee remains concerned about the prevalence of harmful practices in the country, including female genital mutilation, domestic violence, early marriage and sexual abuse against women and girls. It is also concerned at the inadequate enforcement of Act No. 99-05 of 29 January 1999 amending some provisions of the Criminal Code and at the small number of prosecutions for cases of female genital mutilation. The Committee is further concerned at the lack of an express reference to marital rape in article 320 of the Criminal Code.

17. **The State party should:**
   
   (a) Extend the prohibition of forced marriage to traditional and religious marriages and ensure that early marriages are punished under criminal law, not only dissolved;
   
   (b) Ensure that traditional and religious marriages are officially registered and that the age and consent of the spouses are systematically verified, including by requiring the parties to be physically present when the marriage takes place;
   
   (c) Strictly enforce Act No. 99-05 of 29 January 1999, which contains provisions on the prohibition of female genital mutilation, by ensuring that practitioners are prosecuted and convicted;
   
   (d) Consider revising article 320 of the Criminal Code to specifically include marital rape in order to remove any ambiguity as to the scope of this provision.

Death penalty

18. While noting with satisfaction the abolition of the death penalty in domestic law, and noting the State party’s stated intention to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the Committee observes that the ratification process has not yet been initiated.

19. **The State party should expedite the ratification of the Second Optional Protocol to the Covenant and continue to raise public awareness on the abolition of the death penalty.**
Infanticide

20. The Committee expresses its concern at cases of infanticide in the State party, caused by factors such as the stigmatization and shaming of women who are pregnant as a result of extramarital relationships or rape. It is concerned about the fact that only women are punished for these acts despite the frequent involvement or instigation of third parties in the commission of infanticide. The Committee regrets the lack of psychological support for women prisoners who have committed infanticide (arts. 6, 7 and 10).

21. The State party should tackle the causes of infanticide, in particular through awareness-raising and information for women on sexual and reproductive health and the provision of psychosocial support for the women concerned. The State party should take prompt and vigorous measures to protect the right to life of newborns and ensure that all perpetrators of infanticide, and those who induce women to commit infanticide, are brought to justice.

Maternal mortality and voluntary termination of pregnancy

22. The Committee notes that abortion is a criminal offence under the third paragraph of article 305 of the Criminal Code, except in cases where the life or health of the pregnant woman is in danger, and that this has resulted in the practice of clandestine abortions in conditions that put women’s lives and health at risk. The Committee is concerned to note that women who have clandestine abortions are prosecuted and serve sentences in the State party’s prisons (arts. 3, 6 and 7).

23. The State party should bring its legislation and practice into line with article 6 of the Covenant, taking into account the Committee’s general comment No. 36 (2018) on the right to life, and to that end should:

(a) Amend its legislation to guarantee effective access to safe, legal abortion where carrying a pregnancy to term would cause the woman substantial suffering, including where the pregnancy is the result of rape or incest or the pregnancy is not viable;

(b) Reverse the burden of proof so as not to place the onus on women to have to prove that their lives are in danger in order to have access to voluntary medical termination of pregnancy;

(c) Consider removing criminal penalties for women who have abortions and for medical practitioners who assist them, as such measures drive women to resort to unsafe abortions that put their lives and health at risk;

(d) Ensure that medical facilities offering legal abortion services are available and accessible to women and that women are not driven by legal obstacles, including criminal provisions, to resort to unsafe abortions that put their lives and health at risk;

(e) Ensure that abortion is performed only with the voluntary consent of the woman and criminally punish any attempt to coerce a woman into having an abortion;

(f) Strengthen educational and awareness-raising programmes focusing on women’s sexual and reproductive health and rights.

Excessive use of force

24. The Committee notes with concern the allegations of excessive use of force at political rallies and demonstrations and the deaths that have occurred in this context. It regrets the lack of information on the outcome of investigations, sentences handed down and reparations granted to victims or their families (arts. 6 and 7).

25. The State party should see to it that all instances of excessive use of force are promptly, impartially and effectively investigated and that those responsible are brought to justice. It should ensure that training for law enforcement officials on the use of force is consolidated, taking due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The State party should also
ensure that its legislation on the use of force is in accordance with the Covenant and the aforementioned Principles.

Deaths in custody

26. The Committee is concerned about allegations of deaths in custody and the lack of clear statistics on the causes of these deaths, investigations carried out, sentences imposed and reparations granted to beneficiaries. In addition to the case of Ibrahima Mbow, who was shot dead during a riot in 2016, the Committee has received reports of six suspicious deaths in custody since early 2019, which allegedly resulted either from ill-treatment in police custody or from poor conditions of detention, including prison overcrowding (arts. 2, 6, 7 and 10).

27. The State party should take urgent measures to ensure that all deaths in custody are thoroughly and impartially investigated, that victims’ beneficiaries receive reparations and that those responsible are prosecuted and punished in a manner commensurate with the gravity of their acts.

Torture and ill-treatment

28. The Committee regrets the lack of detailed information on complaints of torture or ill-treatment, investigations carried out, prosecutions initiated, convictions handed down and reparations granted. It also regrets the lack of information on disciplinary measures taken. In this regard, the Committee notes with concern that investigations are often carried out by the same unit targeted by the complaint and that the prosecution of a law enforcement officer requires an authorization, called a “prosecution order”, issued by the minister to whom the alleged perpetrator is answerable. The Committee regrets the lack of statistics on cases in which confessions obtained through torture have been declared inadmissible during judicial proceedings. The Committee also regrets that the definition of torture in domestic law is not fully in line with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (arts. 2 and 7).

29. The State party should:

(a) Review its legislation in order to criminalize torture in accordance with the provisions of the Convention against Torture, using the definition in article 1 of the Convention, provide for penalties proportionate to the gravity of these acts and guarantee the inadmissibility of confessions obtained through torture;

(b) Ensure that all allegations of torture are impartially and thoroughly investigated by services that are independent and separate from those implicated, that the perpetrators are prosecuted and punished in proportion to the gravity of their acts and that victims receive reparations.

Trafficking in persons

30. While welcoming the adoption of Act No. 2005-06 of 10 May 2005 on combating trafficking in persons and related practices and on the protection of victims, and the establishment of the National Unit to Combat Trafficking in Persons, in particular women and children, the Committee is concerned about the extremely low number of prosecutions and convictions under this law, particularly in respect of the exploitation of women and children (arts. 7, 8, 24 and 26).

31. The State party should ensure the strict enforcement of Act No. 2005-06 on combating trafficking in persons and related practices, including by systematically conducting impartial and thorough investigations into cases of trafficking, by opening up the possibility for civil society organizations to associate themselves with criminal proceedings before the courts and by guaranteeing legal aid as a matter of priority for all victims of trafficking and their families.

Refugees and asylum seekers

32. The Committee is concerned about information on the precarious status of refugees and asylum seekers in Senegal and in particular about the excessively long waits for the
National Commission on Eligibility for Refugee Status to render its decisions. The Committee is also concerned at the absence of a mechanism for appealing against the Commission’s decisions and at the fact that the draft bill on refugee status and statelessness, initiated in 2012 and intended to remedy these shortcomings, has still not been adopted. In addition, the fact that the identity cards issued to refugees are not always recognized by public services and private institutions such as banks has an adverse impact on the rights of refugees and asylum seekers. Lastly, the Committee notes with concern that Act No. 61-10 of 7 March 1961 on Senegalese nationality, most recently amended in 2013, provides for the acquisition of nationality only for newborn foundlings and not for all foundlings, regardless of their age. The law does not provide for the acquisition of nationality by children born in Senegal to non-Senegalese parents, which might make them stateless (arts. 7, 13 and 26).

33. The State party should:

(a) Review its legislation to bring it into line with the Covenant and the Convention relating to the Status of Refugees;

(b) Increase the financial and human resources of the National Commission on Eligibility for Refugee Status in order to make it more effective;

(c) Reduce delays in responding to applications for refugee status;

(d) Revise Act No. 61-10 on Senegalese nationality in order to avoid the risk of statelessness, in particular for all foundlings found in Senegalese territory, irrespective of their age, and children born in Senegal to foreign parents.

Police custody, pretrial detention and access to a lawyer

34. The Committee is concerned about reports of violations of judicial safeguards, in particular:

(a) Periods of police custody in excess of 48 hours without the person’s being automatically referred to the prosecutor’s office, in accordance with the practice known as “retour de parquet”;

(b) The lack of statistics on police custody and pretrial detention for offences against State security or terrorism or on the number of criminal or disciplinary sanctions imposed for violations of statutory time limits;

(c) The material impossibility for the State party to guarantee access to a lawyer upon arrest, due to the very limited number of lawyers registered with the Bar, as well as their concentration in the capital, which has led to a lack of effective access to legal aid throughout the country;

(d) The alarming proportion of prisoners in pretrial detention (almost half of the prison population) and the fact that, currently, the length of pretrial detention is limited by law only for cases involving less serious or minor offences (arts. 9 and 14).

35. The State party should:

(a) Take the necessary measures to ensure that police custody time limits are respected in practice, by combating, in particular, the practice of “retour de parquet”;

(b) Ensure the restricted and supervised use of police custody in cases of crimes against State security or terrorism;

(c) Guarantee access to a lawyer from the moment of arrest, including by taking measures to broaden access to the legal profession and encourage lawyers to practise outside the capital;

(d) Guarantee access to legal aid, particularly in the regions, and ensure that the system is allocated a sufficient budget to function properly;

(e) Take all necessary measures to ensure that pretrial detention is used only in exceptional circumstances and is not excessively prolonged, in accordance with
article 9 of the Covenant and in the light of the Committee’s general comment No. 35 (2014) on liberty and security of person.

Independence of the judiciary

36. While welcoming the adoption of Organic Act No. 2017-10 of 17 January 2017 on the regulations governing the judiciary, which provides for a number of measures to ensure greater independence of the judiciary, the Committee remains concerned about the composition of the High Council of the Judiciary, which is headed by the President of the Republic and whose Vice-President is the Minister of Justice, and the fact that only one third of its members are elected. The Committee also notes with concern that judges and prosecutors can be transferred, either on a temporary basis or on the grounds of the needs of the service, which can undermine their independence. It is also concerned at the violations of the discretionary power of prosecutors, who are placed under the authority of the Minister of Justice. In this regard, the Committee has received worrying reports of interference, particularly in politically sensitive cases (art. 14).

37. The State party should take urgent measures to protect the full autonomy, independence and impartiality of judges, including through a revision of Organic Act No. 2017-10, so that the President of the Republic and the Minister of Justice are no longer members of the High Council of the Judiciary and to guarantee that judges and prosecutors have security of tenure. The State party should ensure the independence of prosecutors, including by prohibiting any form of interference by the executive in judicial cases.

Conditions of detention

38. The Committee is very concerned about the conditions of detention in the State party, whose prisons have an occupancy rate of more than 270 per cent, due in large part to the sizeable proportion of the prison population in pretrial detention and the insufficient number of non-custodial sentences handed down by judges. It is concerned about the lack of information on rehabilitation measures, especially for young people and women. Lastly, the Committee is concerned about the insufficient budget allocated to the prison administration (arts. 6, 7, 9 and 10).

39. The State party should:

(a) Remedy the problem of prison overcrowding, in particular by encouraging judges to apply Act No. 2016-29, which introduces non-custodial sentences, and by increasing the number of inspections of detention centres by judges and prosecutors;

(b) Undertake renovation work on the Rebeuss prison and complete the construction of new prisons to relieve overcrowding in existing facilities.

Exploitation and abuse of children

40. Despite the State party’s child protection and anti-trafficking efforts, the Committee notes the persistence of child exploitation and abuse, including sexual abuse, in gold-mining and tourist areas. The Committee is also concerned about the following situations and the abnormally low number of prosecutions of alleged perpetrators (arts. 2, 6, 7 and 24):

(a) The situation of children forced to beg (estimated to number 100,000 in the State party);

(b) Corporal punishment in the family and also in some schools;

(c) The persistence of sexual abuse in secondary schools in Senegal;

(d) Cases of exploitation and severe abuse of children by teachers in Qur’anic schools (sometimes resulting in death or serious injury to the children concerned).

41. The State party should adopt urgent measures to put an end to ill-treatment, exploitation, trafficking and all other forms of violence and torture against children, and should in particular:
(a) Put an end to all forms of exploitation and abuse of children, including by teachers in the traditional Qur’anic schools (daaras);

(b) In the framework of the National Child Protection Strategy, establish a national database on all cases of domestic violence against children and carry out a comprehensive assessment of the extent, causes and nature of such violence;

(c) Expedite the adoption of the Children’s Code while ensuring that it complies with the provisions of the Covenant;

(d) Ensure the strict application of article 298 of the Criminal Code, which criminalizes intentional physical violence against and neglect of children, by providing the entire judicial chain with resources adapted to the scale of the phenomenon;

(e) Accelerate the adoption of the bill on the modernization of Qur’anic schools while ensuring that the adopted law is compatible with the State party’s obligations under the Covenant and provides for an inspection system with the necessary resources;

(f) Allow civil society organizations to associate themselves with criminal proceedings before the courts in all cases of child trafficking and abuse.

Birth registration

42. Despite the State party’s efforts, the Committee notes that the birth registration rate remains low, especially in rural areas (arts. 16 and 24).

43. The State party should strengthen its birth registration policy and in particular:

(a) Modernize its civil registration system and increase the budget allocated to it;

(b) Provide free birth registration, at least for children under the age of 5, especially in rural and remote areas;

(c) Strengthen mobile birth registration teams with a view to reaching the most remote areas.

 Freedoms of expression and association, right of peaceful assembly and protection of journalists and human rights defenders

44. The Committee is concerned about the continued inclusion of press offences in the new Press Code and the numerous allegations of arrests, in particular of journalists and human rights defenders, on the basis of these and other offences, such as the offences of insulting the Head of State or producing and disseminating documents or images online that are contrary to good morals. The Committee is also concerned about the recurrence of political statements aimed at denigrating the work of journalists and human rights defenders who take a stand against the Government’s position or who denounce human rights violations. Lastly, the Committee notes the restrictive conditions imposed on demonstrations, which are automatically banned in central Dakar (arts. 7, 9, 19, 21 and 22).

45. The State party should take the legislative and institutional measures necessary to ensure that any restrictions on the exercise of freedom of expression comply with the strict requirements set out in the Covenant, and should in particular:

(a) Decriminalize press offences and the offence of insulting the Head of State;

(b) Guarantee and respect the right of assembly and demonstration of the general public, politicians and civil society organizations;

(c) Ensure that regulatory institutions such as the Regulatory Authority for Telecommunications and Post and the National Media Regulatory Council can exercise their mandates impartially and independently;
(d) Investigate harassment, intimidation, hate speech and threats against journalists, political opponents and human rights defenders and prosecute and convict the perpetrators.

Participation in public affairs

46. The Committee is concerned that persons deprived of their liberty in Senegal, whether in pretrial detention or serving sentences, cannot, in practice, exercise their right to vote or to stand for election and that the law does not seem to place a clearly defined time limit on this deprivation of political rights. In this regard, the Committee is concerned about the decision of the Constitutional Council of 20 January 2019 to invalidate the candidacy of the two main political opponents without setting a time limit on their ineligibility to stand for election (art. 25).

47. Taking into account the Committee’s general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service, the State party should take the necessary measures to bring its legislation into line with the Covenant and clearly define the categories of convicted persons who are denied their civil and political rights and for how long.

D. Dissemination and follow-up

48. The State party should widely disseminate the Covenant, its fifth periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public.

49. In accordance with rule 75 (1) of the Committee’s rules of procedure, the State party is requested to provide, by 8 November 2021, information on the implementation of the recommendations made by the Committee in paragraphs 27 (deaths in custody), 33 (refugees and asylum seekers) and 41 (exploitation and abuse of children) above.

50. In accordance with the Committee’s planned review cycle, the State party will in 2025 receive from the Committee the list of issues prior to submission of the report and will have one year to submit its replies to the list of issues, which will constitute its sixth periodic report. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. The next constructive dialogue with the State party will take place in Geneva in 2027.