

SENEGAL

Criminal Provisions

Terrorists acts are generally covered as offences defined in the Senegalese Penal Code. Terrorist acts may be covered as “attempts on life (murder, assassination, poisoning, etc.), offences against the person (kidnapping, illegal restraint, destruction, hijacking, etc.), and conspiracy (theft, extortion, etc.)” Legislation has not yet been enacted that would treat terrorist acts as an aggravation of crimes under the Penal Code. Article 45 of the Penal Code provides that “accessories to the commission of an offence must receive the same penalties as perpetrators and co-perpetrators.” Under Article 46, individuals who have “procured weapons, tools, or any other means used for an act” are classified as accessories to the crime.

Terrorist organizations may also be targeted by Penal Code provisions aimed at penalizing criminal associations. It is a crime, under Penal Code Article 238, to form an association (regardless of its duration or number of members), “for the purpose of preparing one or more offences against persons or property.” Individuals who are affiliated with association like those described in Article 238 may also be subject to criminal penalties under Penal Code Article 239. Furthermore, Article 240 provides liability for individuals who voluntarily assist perpetrators of a crime “by providing them with instruments to commit an offence, means of correspondence or meeting places.” While Senegal has no specific measures prohibiting the making available of funds, financial assets or economic resources to terrorists, such actions “may be criminalized either as complicity or concurrence of offences in relation to the principal offense.” Article 80 of the Penal Code criminalizes “other practices and acts of a nature such as to jeopardize public security, give rise to serious political unrest or infringe the laws of the country” and carries a penalty of 3 to 5 years imprisonment and a fine of FCFA 100,000 to 1,500,000.

Provisions in the Code of Criminal Procedure (Articles 665, 666, 667, 668, and 669) provide for jurisdiction over individuals, either Senegalese nationals or aliens, who commit terrorist acts abroad. Under Article 665, any person who became an accessory to the commission of an offense, while in the territory of Senegal, can be prosecuted under Senegalese law as long as the act is an offense under both Senegalese law and the law of the foreign country. Under Article 668, if any part of an offense was performed in Senegal, then the offense will be deemed to be committed within the territory of Senegal.

Preventing Terrorists From Obtaining Weapons

Senegalese legislation criminalizes illegal possession of a firearms. “Under [provisions of Act No. 66-03], possession, bearing, transportation, importation and marketing of weapons and ammunition are subject to prior authorization by the Ministry of the Interior.” Act No. 66-03 establishes seven categories of weapons: (1) combat weapons, (2) defensive weapons, (3) hunting weapons, (4) guns for target practice and fairground use, (5) edged weapons, (6) weapons for sale, and (7) weapons for collectors. “The law strictly prohibits the manufacture, importation, exportation, transfer, marketing, storage, and bearing of combat or defensive weapons which are intended particularly for the law enforcement authorities.” Manufacture of weapons (of all classifications) by individuals is strictly prohibited. Anyone guilty of illegally manufacturing weapons is subject to imprisonment and a fine. Act No. 66-93 also provides for the seizure of illegally held or imported weapons.

In accordance with recommendations of ECOWAS, Senegal has established a national commission on light weapons to monitor arms trading carried out within the country or across its borders. ECOWAS has established new procedures governing the importation of weapons that require manufacturers or importers of weapons to receive authorization from the ECOWAS secretariat, in consultation with the other member states, prior to taking action. Other member states can object to the request, and an arbitration unit is appointed to oversee the matter.

Preventing, Suppressing and Criminalizing the Financing of Terrorism

At the regional level, the Government of Senegal has taken an active role in combating the financing of terrorism. Senegal is a member of the West African Economic and Monetary Union (WEAMU), and as such, must work to develop laws in harmony with the other members of the Union. An Intergovernmental Action Group Against Money-Laundering was established by WEAMU to help “organize and coordinate action to combat money laundering and to propose appropriate legislation for enactment.” Currently, a harmonized law on the combating of money laundering which will be applicable to all WEAMU States is being drafted to address the establishment of “financial intelligence units, mechanisms for reporting suspicions, and rules on the seizure and confiscation of assets emanating from money laundering.”

Senegal is in the process of establishing procedures for the freezing of accounts and assets of known and suspected terrorists and terrorist organizations. Article 42 of Act No. 90-06 (1990) requires banks and financial institutions to comply with information requests from the Central Bank relating to accounts opened “on behalf of suspected terrorists or suspected terrorist organizations.” Banks and financial institutions must also notify the Central Bank if such persons attempt to open an account. In October 2001, the government of Senegal sent letters to directors of banks requesting that they “list and freeze any account opened on behalf of terrorist or groups linked to them.” Courts can require the freezing of assets of any criminal group identified as a suspected terrorist organization under Article 87*bis* of the Code of Penal Procedure. Furthermore, assets can also be seized pending a judicial decision.

International Cooperation

Senegal is a party to both international and regional conventions aimed at preventing and controlling terrorism. Senegalese law provides that international treaties are supreme over domestic law. However, matters not expressly covered by international treaty are governed by domestic law. So far, Senegal has ratified 4 of the 12 UN Conventions on combating terrorism. These include the 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft (ratified 1972); 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (ratified 1972); 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and its 1984 Protocol (ratified 1973); 1979 International Convention Against the Taking of Hostages (ratified 1987). In addition, Senegal has initiated the ratification process for all other UN Conventions related to combating terrorism.

African States have no legal framework for combating terrorism, other than the 1999 Algiers Convention. Following the 11 September 2001 terrorist attacks in the United States, it became clear to Senegal and other nations belonging to the Algiers Convention, that the Convention did not go far enough. The African Union (AU) is working on preparing a draft protocol to correct the shortfalls of the Algiers Convention. Until an effective system of coordination can be developed in African, nations such as Senegal must rely on data available through Interpol, as well as information they collect on their own. “In the event of a terrorist attack, the States will look to their own competent authorities.” Acknowledging the lack of regional coordination, Senegal has worked with neighboring countries to address national and transnational organized crime.

Finally, Senegal is a party to several bilateral and multilateral treaties aimed at providing mutual assistance in criminal matters, and extradition of criminal. As a general rule, Senegal takes all necessary steps to comply with requests for judicial assistance. Act No. 71-77 of 29 December 1971 governs extradition, in cases where no bilateral or multilateral extradition treaty exists. “Extradition is not granted when the offense is of a political nature, when the perpetrator of an offense committed outside Senegal has been tried and a final judgment pronounced, and in the case of prescription of a public right to action prior to the request.”

BIBLIOGRAPHY OF SENAGALESE LEGISLATION

Criminal Provisions

1. Penal Code, Article 80.
2. Code of Criminal Procedure, Articles 665, 666, 667, 668, and 669 (jurisdiction over offences committed abroad).
3. Penal Code, Article 45 (accessories liable to same extent as perpetrators of offenses).

Suppressing Recruitment of Members of Terrorist Groups

1. Penal Code Article 238, 239, 240

Preventing Terrorists From Obtaining Weapons

1. Act No. 66-03 of 18 January 1966 (general rules governing weapons and ammunitions).
2. Economic Community of West African States (ECOWAS) moratorium on illicit traffic in light weapons.

Preventing, Suppressing and Criminalizing the Financing of Terrorism

1. West African Economic and Monetary Union (WEAMU), harmonization law on money laundering (draft).
2. Article 42 of Act No. 90-06 (1990) (banks must comply with information requests by Central Bank).
3. Article 87bis of the Code of Penal Procedure (court order to freeze assets).

International Cooperation

1. 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft (ratified 1972).
2. 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (ratified 1972).
3. 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and its 1984 Protocol (ratified 1973).
4. 1979 International Convention Against the Taking of Hostages (ratified 1987).
5. OAU Convention on the Prevention and Combating of Terrorism, 1999 (ratified 2001).
6. OAU Convention for the Elimination of Mercenarism in Africa, 1978 (ratified 1981).
7. Act No. 71-77 of 29 December 1971 (extradition).