

Law No. 2005-06 of 10 May 2005 on the fight against trafficking in persons and similar practices and the protection of victims

EXPLANATORY NOTE

In a context marked by armed conflicts and political, economic and social crises, we are increasingly witnessing a new form of trafficking: that of persons, in particular women and children.

For international organized crimes trafficking in persons is one of the most lucrative and important economic activities alongside the illicit trafficking of drugs and arms. This scourge is closely linked to other related criminal activities such as racketeering, money laundering, corruption, illicit drug trafficking, counterfeiting, falsification of administrative documents and visa fraud. The consequences of trafficking are disastrous for the internal security of States. Trafficking is also a serious violation of the inherent rights and dignity of the human beings.

Senegal, because of its geo-strategic position, risks becoming a country of origin, transit and destination for women and children victims of trafficking.

In order to curb this modern-day scourge with an international dimension, the State of Senegal ratified, on September 19, 2003 by virtue of law N° 2003-17 of 18 July 2003, on the one hand, the United Nations Convention against Transnational Organized Crime; on the other hand, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the Additional Protocol against the Smuggling of Migrants by Land, Sea and Air which were signed in Palermo, Italy, in December 2000.

Experts from ECOWAS Member States, meeting in Accra (Ghana) in 2001, drew up a Regional Plan of Action to combat trafficking in persons, which later became the ECOWAS Regional Action Plan against Trafficking in Persons, and which was validated in December 2002 by the Heads of State and Government meeting in Dakar.

This Action Plan essentially recommends the establishment of a legal framework and the development of a national policy to fight against trafficking in persons.

Today, the issue is about integrating into domestic law the rules set by these international legal instruments.

It is true that the Senegalese Penal Code contains a set of provisions that incriminate acts and conducts related to trafficking in persons.

However, there is no special law in our criminal system that provides for the criminal characterization of trafficking in persons and similar practices and having, as a single text, all the provisions relating to the prosecution of this practice and the protection of victims, in accordance with the recommendations of the Additional Protocol to the United Nations Convention mentioned above.

This law, inspired by the definition given to the concept of trafficking in persons by the aforementioned Protocol, incriminates the acts of trafficking in persons and similar practices by emphasizing on the various forms of exploitation of vulnerable persons and its transnational and organized nature (chapter I section I, articles 1 and 2) and the exploitation of the begging of others (section II article 3).

The offences of pimping, pedophilia, sexual violence, kidnapping and abduction of vulnerable persons are punishable under our Criminal Code. This law completes our repressive system by criminalizing organized illegal migration, trafficking in visas and other travel or identification documents (Articles 5, 6 and 7 of Chapter II). In order to effectively prosecute trafficking in persons, Chapter III provides for adapted investigative powers (Article 8) and the extension of the jurisdiction of Senegalese courts

(Articles 9 to 11). The rights and guarantees granted to victims of trafficking by the international legal instruments ratified by Senegal are covered in Chapter IV of the bill (Article 12 et seq.).

Such is the overall structure of the this bill.

The National Assembly adopted, in its session of Friday 29 April 2005; The President of the Republic enacts the following law:

Chapter I. - On trafficking in persons and exploitation of the begging of others

Section 1. - Trafficking in persons

Article I. - The recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of violence, abduction, fraud, deception, abuse of power or of a position of vulnerability or by the giving or receiving of payments to achieve the consent of a person having control over another person, for the purpose of sexual exploitation, forced labour or services, slavery or practices similar to slavery, or servitude shall be punishable by imprisonment for 5 to 10 years and a fine of 5 to 20 million francs.

The offence shall be constituted when the recruitment, transport, transfer, harbouring or reception concerns a minor, even if none of the means listed in the previous paragraph are used.

Imprisonment of 10 to 30 years shall be incurred when the offence is committed by resorting to acts of torture or barbarism or with a view to removing human organs or when it exposes the victim to an immediate risk of death or injury likely to cause permanent disability.

Art. 2 - The maximum penalty provided for in paragraph 1 of article 1 shall always be pronounced when the offence has been committed either:

- in a group ;
- against a minor or a person who is particularly vulnerable because of pregnancy, advanced age or state of health resulting in a physical or mental deficiency; or
- with the use of mass media;
- by an ascendant or by a person having authority over the victim.

Section 2. - Exploitation of the begging of others

Art. 3 - Anyone who organizes the begging of others with a view to profiting from it shall be punished by imprisonment for 2 to 5 years and a fine of 500,000 francs to 2,000,000 francs if he or she hires, entices or kidnaps a person to beg or pressures him or her to beg or continue to beg. The penalty shall not be suspended when the offence is committed against a minor, a person who is particularly vulnerable because of his or her age or state of health resulting in a physical or mental deficiency, several persons, recourse to or use of coercion, violence or deceitful means on the person who begs.

Chapter II. - Smuggling of migrants

Art. 4 - Clandestine migration organized by land, sea or air shall be punishable by 5 to 10 years of imprisonment and a fine of 1,000,000 to 5,000,000, whether the national territory serves as an origin, a transit or a destination zone.

Art. 5 - Fraud or falsification of visas, documents or travel papers or any other documents attesting to the status of resident or national of Senegal or of a foreign country or granting the status of refugee, statelessness, displaced person or victim of smuggling shall be punished by the same penalties as those provided for in the previous article.

Art. 6 - For the offences specified in articles 3, paragraphs 1, 4, 5 of this law, the suspension of the execution of the sentence shall not be granted when the offender is a person who participates, by virtue of his or her function, in the issuing of identification travel documents and other certificates of establishment or in the maintenance of order or border control.

Art. 7 - Attempt to commit the offences specified in this law shall be punished as an offence. The judgment establishing that the offender is guilty shall order the confiscation of:

- the means of commission of the offence ;
- the proceeds of the offence;
- the destruction travel documents and identification papers that facilitated the commission of the offence;
- the permanent withdrawal of a license, approval or any other administrative authorization from any public entity, regardless of its legal form, which facilitated the commission of the offence.

Chapter III. - The procedure

Art. 8 - The investigation and establishment of the offences provided for by this law shall be governed by the Code of Criminal Procedure, subject to the following provisions.

The visits, searches and seizures may be carried out during the day and at night, inside premises supposedly housing victims or serving as a place of preparation for the commission of the offences referred to in this law.

The acts mentioned in the preceding paragraph may not have any other purpose than the investigation and establishment of the offences referred to in this law. The failure to comply with the entire procedure shall render it null and void.

Audio, video or electronic recordings may be admissible as evidence.

Art. 9 - Anyone who, on the territory of the Republic, is an accomplice to offences referred to in this law committed abroad may be prosecuted and tried by Senegalese courts even if the act was not punishable by foreign law.

Art. 10 - Any foreigner who, outside the territory of the Republic, is guilty either as a perpetrator or as an accomplice of offences covered by this law committed in whole or in part in Senegal may be prosecuted and tried according to the provisions of Senegalese law or law applicable in Senegal if he or she is arrested in Senegal or if the Government obtains his or her extradition.

Art. 11 - Any foreigner who, outside the territory of the Republic, is guilty as a perpetrator or an accomplice of the offences referred to in this law may be prosecuted and judged in accordance with the provisions of Senegalese law, when the victim of these offences is of Senegalese nationality.

Chapter IV. - Protection of victims and witnesses

Art. 12. – Unless provided otherwise, the victims of the offences provided for in this law shall not be prosecuted or convicted. The provisions of the preceding paragraph shall not apply to a person of full age who knowingly participates in the commission of the offence.

Art. 13. – Offenders who denounce to the competent authority the criminal acts referred to in this law before the offence is committed may benefit from the exculpatory excuse.

Art. 14. - In order to protect the identity and privacy of victims and witnesses, the trial court may order that the proceedings be held in camera. The trial court may exempt victims or witnesses from attending public hearing.

Art. 15. - Once the public prosecution for the offences referred to in this law has been initiated, no victim shall be removed from the national territory until a final decision has been taken on the public prosecution and the civil action.

Victims of the offences referred to in this law may apply to remain on national territory temporarily or permanently, with resident or refugee status, in accordance with relevant laws in force.

Art. 16. - Victims of the offences referred to in this law who are particularly vulnerable or minors shall be assisted before the investigating and trial courts by a lawyer of their choice or appointed by the court.

Art. 17 - In case of civil action, the public prosecutor may make a request that minor victims who do not have a known legal representative or who do not present guarantees for the protection of the rights and well-being of the child be placed under guardianship or legal administration.

The appointed guardian or administrator shall defend responsibly the interests of the victim. The associations or public services that provide assistance for victims may, at their request or *ex officio*, represent them in court. This law shall be executed as a law of the State.

Dakar, 10 May 2005