

Senegal

ACT No. 2005-06 of May 10, 2005 on the fight against human trafficking and similar practices and the protection of victims.

EXPLANATORY MEMORANDUM

In a context marked by armed conflicts and political crises, economic and social, there is more to developing a new form of trafficking, the people, especially women and children.

For international organized crime, trafficking in persons is one of the most lucrative economic activities and most important next to the smuggling of drugs and weapons. The scourge is closely linked to other related criminal activities such as racketeering, money laundering, corruption, illicit drug trafficking, counterfeiting, forgery of administrative documents and visa fraud. The consequences of trafficking are devastating to the internal security of States. Trafficking is also a serious violation of inherent rights and human dignity. Senegal, because of its geostrategic position, may become a country of origin, transit and destination for women and children victims of trafficking.

To stem this scourge of modern times, international scale, the state of Senegal has ratified 19 September 2003 under Law No. 2003-17 of July 18, 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 finally, the Protocol against the Smuggling of Migrants by Land, Sea and Air, signed in Palermo, Italy, in December 2000.

Experts representing the Member States of ECOWAS meeting in Accra (Ghana) in 2001, developed a Regional Action Plan to Fight against trafficking in persons, which later became the Regional Action Plan on Trafficking those of ECOWAS, which was approved in December 2002 by the Heads of State and Government meeting in Dakar.

This Action Plan recommends essentially the establishment of a legal

framework and developing a national policy against human trafficking. It is now integrated into domestic law the rules laid down by these international legal instruments.

While the Senegalese Penal Code contains a set of provisions that criminalize acts and behavior within the human trafficking.

However, it does not exist in our law enforcement system, a special law that defines the criminalization of trafficking in persons and similar practices and organizing, in a single text, all provisions relating to the suppression of this scourge and the protection of victims, as recommended by the Additional Protocol to the UN Convention cited above.

This law, inspired by the definition of the concept of trafficking in persons by the said Protocol, criminalizes acts of trafficking and related practices focusing on various forms of exploitation of vulnerable people that causes and its transnational and organized, Chapter I, Section I (Articles 1 and 2) and the exploitation of begging others to Section II (Article 3).

The offenses of pimping, pedophilia, sexual assault, unlawful confinement and kidnapping of vulnerable people are punished by our penal code. This Act complements our arsenal of repressive acts by criminalizing the organized illegal migration, trafficking in visas and other travel documents or identification (Sections 5, 6 and 7 of Chapter II). To conduct effective law enforcement against trafficking in persons, Chapter III provides for powers of investigation appropriate (Article 8) and extending the jurisdiction of the Senegalese courts (Article 9 to 11). The rights and guarantees granted to victims of trafficking by international legal instruments ratified by Senegal, are the subject of Chapter IV of the draft law (Article 12 et seq.)

Such is the economy of this bill.

The National Assembly adopted in its meeting on Friday, April 29, 2005;

The President of the Republic promulgates the law which reads as follows:

Chapter I. - From human trafficking and exploitation of begging others.

Section 1. - Of Human Trafficking

Art. 1. - The recruitment, transportation, transfer, harboring, receipt of persons by threat or use of violence, abduction, fraud, deception, abuse of authority or position of vulnerability or of the giving or acceptance of payment of benefits to achieve the consent of a person having authority over another, for sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude shall be punished by imprisonment of 5 to 10 years and a fine of 5 to 20 million francs.

The offense is made when the recruitment, transportation, transfer, harboring or receipt for a minor, even if none of the means listed in the preceding paragraph is used.

Criminal detention from 10 to 30 years is incurred when the offense is committed by the use of torture or barbarism or for harvesting human organs or she exposes the victim to an immediate risk of death or injuries likely to cause permanent disability.

Art. 2. - The maximum penalty under paragraph 1 of Article I is always pronounced when the offense was committed either:

- in meeting;
- in respect of a minor or a person particularly vulnerable because of her pregnancy, her advanced age or health status have led to a physical or mental disability;
- with use of means of mass dissemination;
- by a relative or a person having authority over the victim.

Section 2. - From exploitation of begging others

Art. 3. - Whoever organizes begging others to benefit from hiring, entices or leads away a person in order to engage in begging or exert

pressure on her to beg or continues to do so is punished imprisonment for 2 to 5 years and a fine of 500,000 francs to 2,000,000 francs. It will not stay the execution of the sentence when the crime is committed against a minor, a person particularly vulnerable due to age or health status that resulted in physical or psychic , several people, use or employment of coercion, violence or fraudulent actions on the person who is engaged in begging.

Chapter II. - From Smuggling

Art. 4. - Is punishable by 5 to 10 years imprisonment and a fine of 1 000 000 to 5 million illegal migration, organized by land, sea or air, that serves the national territory of area of origin, transit or destination.

Art. 5. - Is subject to the same penalties provided in the preceding Article fraud or forgery counterfeit visas, travel documents or records or other documents certifying the status of resident or national of Senegal or any foreign country or giving the benefit of refugee, stateless, displaced persons or victims of human trafficking.

Art. 6. - For the offenses specified in Article 3, paragraph 1, 4, 5 of this Act, the stay of execution of sentence may be granted when the offense was committed by a person called to participate in its function , the issuance of travel documents and identification certificates other institution or law enforcement or border control.

Art. 7. - The attempt of the crimes specified in this Act shall be punished as the crime. The conviction or sentence conviction confiscation orders:

- means to commit the offense;
- products of the offense;
- destruction of securities, travel documents and identification documents that facilitated the commission of the offense;

- The final withdrawal of license, accreditation or other official authorization to any person or government entity regardless of its legal form whose activity has encouraged the commission of the offense.

Chapter III. - Procedure

Art. 8. - The search and detection of crime under this Law shall be governed by the Code of Criminal Procedure subject to the following provisions.

Visits, searches and seizures can be made day and night, indoor supposed shelter for victims or place of preparation for the commission of crimes covered by this Act.

The acts mentioned in the preceding paragraph may not, on pain of nullity of the whole procedure, have a purpose other than research and detection of crime covered by this law.

Audio recordings, video or any electronic means of conservation can be admissible as evidence.

Art. 9. - Anyone who was in the territory of the Republic, been complicit in the crimes covered by this law committed abroad can be prosecuted and tried by the Senegalese courts even if the act is not punishable by law foreign.

Art. 10. - Any alien who, outside the territory of the Republic, was guilty either as author or as an accomplice to a crime or offense under this Act committed in whole or in part in Senegal may be prosecuted and judged provisions of applicable laws or Senegalese in Senegal in Senegal if he is arrested or if the Government obtains his extradition.

Art. 11. - Any alien who, outside the territory of the Republic, was guilty either as author or as an accomplice of crimes covered by this Act may be prosecuted under the provisions of the laws of Senegal, where the victim of these offenses is a Senegalese national.

Chapter IV. - Protection of victims and witnesses

Art. 12. - Notwithstanding anything to the contrary, victims of crimes under this Act may be subject to prosecution and conviction. The provisions of the preceding paragraph shall not apply to the adult who knowingly contributes to the achievement of the offense.

Art. 13. - People who report to the competent authority the criminal acts covered by this Act, before consummation of the offense, are eligible for freeing them.

Art. 14. - To protect the identity and privacy of victims and witnesses, the trial courts can order the camera. The trial court may relieve the victims or witnesses of an appearance at the hearing.

Art. 15. - After moving to action for public, offenses covered by this Act, no victim can be a removal of the country until the intervention of a final on public action and civil action.

Victims of crimes covered by this Act may apply for keeping them in the country temporarily or permanently, with the resident or a refugee in accordance with applicable laws.

Art. 16. - Victims of crimes covered by this Act if the person has a particular vulnerability or are minor courts are assisted instruction and trial counsel of their choice or established automatically.

Art. 17. - To exercise the civil action, the Crown may seek legal guardianship or legal guardianship of minor victims had no known legal representative or having no guarantees for the protection of the rights and well-being the child.

Guardian or designated administrator is responsible for defending the interests of the victim in a good family man. Associations or public

services that provide care for victims, respectively, may, upon request or ex officio, to represent them in court. This Act will be enforced as State law.

Done in Dakar, May 10, 2005.