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## SENEGAL

### Commentary on implementing legislation for the Rome Statute



October 2007

AI Index: AFR 49/002/2007

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# Senegal

## Commentary on implementing legislation for the Rome Statute

### Part 1. Complementarity:

#### 1. DEFINING CRIMES, PRINCIPLES OF CRIMINAL RESPONSIBILITY AND DEFENCES

*Legislation should provide that the crimes in the Rome Statute, including other crimes under international law, are crimes under national law*

##### Article 6 of the Rome Statute: genocide

Genocide is defined in Article 431-1 of the Penal Code. The word “quelconque” in Article 6 of the Rome Statute is missing in the definition in the Penal Code. Unless this omission broadens the scope of the definition, the language of Article 6 of the Rome Statute and Article II of the Convention for the Prevention and Punishment of the Crime of Genocide (Genocide Convention) should be used without change. Amnesty International notes the inclusion of the phrase “ou déterminé à partir de tout autre critère”. This inclusion is to be welcomed, to the extent that it broadens the scope of the prohibited conduct.

The phrase “meurtre de membres du group” in Article 6 (a) of the Rome Statute is substituted in Article 431-1.1 of the Penal Code by the phrase “l’homicide volontaire”. The reasons for the change are not known. Amnesty International would welcome clarification on the scope of the crime and, if not as broad as the definition in Article 6 of the Rome Statute and Article II (a) of the Genocide Convention, recommend its amendment according to the broadest international criminal law standards.

The word “mentale” in Article 6 (b) of the Rome Statute and Article II (b) of the Genocide Convention is replaced in Article 431-1.2 of the Penal Code by the word “morale”, which does not appear to cover all the implications of the conduct as in the Rome Statute. Amnesty International recommends its amendment according to Article 6 (b) of the Rome Statute, which reflects Article 2 (b) of the Convention pour la prevention et la repression du crime de genocide.

The word “members” in Article 6 (b) of the Rome Statute and Article II (b) of the Genocide Convention is missing in the corresponding provision of the Penal Code.

This omission appears to narrow the scope of the crime and radically changes its nature from an attack on the integrity of individual members of the protected group to an attack on the integrity of the group itself. Amnesty International recommends its inclusion in the definition of the conduct. The word “physique” in Article 6 (c) of the Rome Statute is missing in Article 431-1.3 of the Penal Code. Amnesty International welcomes this omission to the extent that it broadens the scope of the crime.

The word “mesures” in Article 6 (d) of the Rome Statute and Article II (d) of the Genocide Convention is replaced in Article 431-1.4 by “la mesure”. The reason for the change is not known. This change is to be welcomed to the extent that it broadens the scope of the crime. However, if it narrows the scope of protection, the wording of the Rome Statute and the Genocide Convention should be used.

#### Article 7 of the Rome Statute: crimes against humanity

Crimes against humanity are defined in Article 431-2 of the Penal Code. Regrettably, there are numerous changes and omissions in this article from the wording of the Rome Statute and other international law which weaken the scope of protection in the Penal Code, although a few of the changes may strengthen this protection. The word “quelconque” in Article 7 (1) of the Rome Statute is missing in the definition of the Penal Code. Unless this omission broadens the scope of the definition, the language of the Rome Statute should be used without change. The phrase “lorsque qu’il est commis dans le cadre d’une attaque” in the definition of the Rome Statute, is replaced in the definition of the Penal Code by “à l’occasion d’une attaque”. The reasons for the change are not known. Amnesty International would welcome clarification that the intent was to broaden, rather than narrow, the scope of the crimes. If not, the language of the Rome Statute should be followed. The phrase “et en connaissance de cette attaque” in the definition of the Rome Statute, is missing in the definition of the Penal Code. If this omission was intended to broaden the scope of the crimes against humanity subject to prosecution in Senegal, it is to be welcomed, but, if not, it would be advisable to ensure that all of the conduct constituting crimes against humanity under the Rome Statute are covered.

The word “meurtre” in Article 7 (1) (a) of the Rome Statute is replaced in the corresponding provision of the Penal Code, Article 431-2.2 by “homicide volontaire”. The reasons for the change are not known. Amnesty International would welcome clarification on the scope of the crime and, if it is not as broad as the definition of the Rome Statute, recommend its amendment according to the broadest international criminal law standards.

Article 431-2.6 of the Penal Code, corresponding to Article 7 (1) (c) of the Rome Statute, includes the “pratique massive et systématique d’exécutions sommaires, d’enlèvement de personnes suivi de leur disparition”. Although Amnesty International welcomes the inclusion of summary executions as a crime against humanity, it recommends that the requirements of “massive et systématique” do not be included in the definition, as this narrows the scope of both this crime and the crime of *disparition forcée*. Under the Rome Statute, acts constituting crimes against humanity need be only part of a widespread or systematic attack; they do not need themselves to be widespread or systematic. In addition, the final phrase of this provision of the Penal Code appears to intend to implement Article 7 (1) (i) of the Rome Statute concerning enforced disappearances. The omission of the definition of enforced disappearances in Article 7 (2) (i) of the Rome Statute is to be welcomed to the extent that this omission means that this crime under the Penal Code is to be defined by Article 2 of the *Convention internationale pour la protection de toutes les personnes contre les disparitions forcées*, which defines « *disparition forcée* » as

l'arrestation, la détention, l'enlèvement ou toute autre forme de privation de liberté par des agents de l'État ou par des personnes ou des groupes de personnes qui agissent avec l'autorisation, l'appui ou l'acquiescement de l'État, suivi du déni de la reconnaissance de la privation de liberté ou de la dissimulation du sort réservé à la personne disparue ou du lieu où elle se trouve, la soustrayant à la protection de la loi.

Article 431-2.4 of the Penal Code includes the crime against humanity of deportation across national boundaries in Article 7 (1) (d) of the Rome Statute. However, it is a matter of dismay that the crime against humanity, “*transfert force de population*” within national frontiers, a crime which has been committed on an almost unimaginable scale in Africa, Europe and elsewhere in the past decade and a half, in Article 7 (1) (d) of the Rome Statute has been omitted in the Penal Code. This gap is a very serious flaw in the Penal Code. Amnesty International recommends the amendment of this crime against humanity be included in the Penal Code.

Another astonishing and disturbing omission from the list of crimes against humanity in Article 431 -2.4 is the crime against humanity of imprisonment ou autre forme de privation grave liberté physique en violation des dispositions fondamentales du droit international included in Article 7 (1) (e) of the Rome Statute. For nearly half a century, Amnesty International has documented the commission of this crime against humanity on a huge scale in countries in all regions of the world. This crime against humanity should be included in the Penal Code.

The word “autre” in the phrase “toute autre forme de violence sexuelle” in Article 7 (1) (g) of the Rome Statute, is missing in the corresponding provision in the Penal Code, Article 431-2.1. If this omission was not a typographical error, Amnesty International would welcome clarification that the intent was to broaden, rather than narrow, the scope of the crime. If not, the wording of the Rome Statute should be used.

Article 7 (1) (k) (other inhumane acts) of the Rome Statute seems to be partially implemented in Article 431-2.7 of the Penal Code. However, the scope of the crime against humanity of other inhumane acts has been severely restricted by limiting this crime to acts committed on a narrowly limited list of discriminatory grounds. The wording of the crime against humanity of other inhumane acts should be same as in Article 7 (1) (k) of the Rome Statute.

An equally serious problem is that the crime of persecution listed in Article 7 (1) (h) and defined in Article 7 (2) (g) of the Rome Statute, a crime against humanity included in every international instrument defining crimes against humanity since the Nuremberg Charter, has been omitted. The crime against humanity of persecution should be included as defined in Article 7 (1) (h) and (2) (g) of the Rome Statute.

Article 7 (2) (a), (b), (c), (d), (e), (f), (g) and (h) of the Rome Statute has no corresponding provision in the Penal Code. These provisions provide invaluable definitions of the crimes in Article 7 (1) and should be included to avoid problems in interpretation by national courts. Amnesty International recommends that Senegal incorporate the definitions in these provisions of the Rome Statute in Article 431-2 of the Penal Code. However, as noted above, the omission of the definition in Article 7 (2) (i) of the Rome Statute of enforced disappearances is to be welcomed to the extent that it means that the Penal Code includes the broader definition of this crime against humanity in Article 2 of the Convention internationale pour la protection de toutes les personnes contre les disparitions forcées.

In addition, there is no provision in the draft corresponding to Article 7 (3) of the Rome Statute on the definition of gender. The definition of gender recognized by the United Nations refers to the socially constructed roles played by men and women that are attributed to them based on their sex. The term “sex” refers to physical and biological characteristics of men and women. The term “gender” refers to the explanations for observed differences between men and women based on socially assigned roles. For more information about these terms as recognized in the United Nations, see Implementation of the outcome of the 4<sup>th</sup> World Conference on Women, Report of the Secretary-General, U.N. Doc. A/51/322 (1996), para. 9 (citing the Report of the Fourth World Conference on Women, U.N. Doc. A/CONF.177/20



(1995)); for the leading commentary on all of the war crimes and crimes against humanity of sexual violence more information with regard to the crimes of sexual slavery, enforced prostitution, sexual violence and the definition of gender in the Rome Statute, see Machteld Boot, *Article 7*, in Otto Triffterer, ed., *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article* 142-145 and 171-172 (Baden-Baden: Nomos Verlagsgesellschaft 1999). Although the definition of "sexe" in Article 7 (3) is consistent with the UN definition, it would be better if the Penal Code were to state expressly that the definition of this term for the purposes of provisions implementing the Rome Statute is the one used by the United Nations.

#### Article 8 of the Rome Statute: war crimes

Article 8 (1) of the Rome Statute, which recommends priorities for the Prosecutor of the International Criminal Court and is not part of the definitions of the crimes, but only advice to the Prosecutor about the relative priority for prosecutions of war crimes that are within the Court's jurisdiction, does not appear to have any corresponding provision in the Penal Code. Amnesty International welcomes the decision to omit it as it would have led to impunity in national courts for war crimes that did not meet this high threshold.

The wording of Article 8 (2) of the Rome Statute is replaced in Article 431-3 of the Penal Code by "Constitue un crime de guerre l'un des actes ci-après lorsqu'il concerne des membres des forces armées, blessés, malades ou naufragés, des prisonniers de guerre ou des biens protégés par les dispositions des conventions de Genève du 12 août 1949". This list does not include civilians under enemy control, protected by the 4<sup>th</sup> Geneva Convention. Amnesty International recommends that civilians under enemy control be also considered as possible victims of war crimes in the legislation of Senegal.

The word "intentionnel" in Article 8 (2) (a) (i) of the Rome Statute is replaced in Article 431 (3) (1) of the Penal Code by "volontaire". . The decision is to be welcomed, if the intent was to broaden the scope of the crime. If not, the wording of the Rome Statute and the Geneva Conventions should be used.

The word "traitements" in Article 8 (2) (a) (ii) of the Rome Statute, is replaced in Article 431 (3) (2) of the Penal Code by "actes". The reason for the change is not known. Amnesty International welcomes clarification that the intent was to broaden rather than to narrow the scope of the crime. If not, the language of the Rome Statute and the Geneva Conventions should be used. Article 8 (2) (a) (iii) of the Rome Statute

has been included in the definition of Article 431 (3) (2) of the Penal Code. However, this provision severely restricts the scope of the grave breach by adding the phrase “porter gravement atteinte”. Amnesty International recommends that this provision be amended to use the definition of Article 8 (2) (iii) of the Rome Statute and the Geneva Conventions.

The word “une” in Article 8 (2) (a) (v) of the Rome Statute is replaced in Article 431 (3) (4) by “toute”. If the intention is not to expand the scope of the grave breach, the wording of the Rome Statute and the Geneva Conventions should be used. The phrase “forces d’une puissance ennemie” in the Rome Statute is substituted in the draft by “forces armées”. The reasons for the change are not known. Amnesty International welcomes it as long as it broadens the scope of the crime. If not, the language of the Rome Statute and the Geneva Conventions should be used.

The word “intentionnellement” in Article 8 (2) (a) (vi) of the Rome Statute is missing in Article 431 (3) (5) of the Penal Code. The reason for this omission is not known. Amnesty International welcomes it as long as it broadens the scope of the crime. If not, the language of the Rome Statute and the Geneva Conventions should be used.

The word “otages” in Article 8 (2) (a) (viii) of the Rome Statute is replaced in Article 431 (3) (7) of the Penal Code by “otage”. The reasons for the change are not known. Amnesty International welcomes it as long as it broadens the scope of the crime. If not, the language of the Rome Statute and the Geneva Conventions should be used.

In Article 431 (3) (b) (1) and (2) of the Penal Code, corresponding to Articles 8 (2) (b) (i) and (iii) of the Rome Statute, the expression in the Rome Statute “diriger intentionnellement des attaques” is replaced in the Penal Code by “lancer des attaques délibérées”. The reasons for the change are unknown. If the scope of these provisions are not as broad as the definitions of these crimes under international humanitarian law, this provision should be amended. In addition, the phrase “population civile en tant que telle ou contre des civils qui ne participent pas directement part aux hostilités” in Article 8 (2) (b) (i) of the Rome Statute, is replaced in the corresponding provision of the Penal Code by “population civile en général ou contre des civils qui ne prennent pas directement part aux hostilités”. The decision is to be welcomed as long as it broadens the scope of the crime. If not, the language of the Rome Statute and the Geneva Conventions should be used.

Article 8 (2) (b) (ii) of the Rome Statute does not appear to have corresponding provision in the Penal Code. Amnesty International recommends its inclusion in the legislation of Senegal.

The word “maintien” in Article 8 (2) (b) (iii) of the Rome Statute is missing in Article 431 (b) (2) of the Penal Code. The reasons for this omission are not known. Amnesty International welcomes it as long as it broadens the scope of the crime. If not, the language of the Rome Statute and the Geneva Conventions should be used.

In Article 431 (3) (b) (3) of the Penal Code, corresponding to Article 8 (2) (b) (iv), the expression “diriger intentionnellement une attaque” in the Rome Statute is replaced in the Penal Code by “lancer une attaque délibérée”. The reasons for the change are unknown. If the scope of this provision is not as broad as the definition of this crime under international humanitarian law, this provision should be amended. The phrase “causera incidemment des pertes en vies humaines dans la population civile, des blessures aux personnes civiles” in the Rome Statute is replaced in the Penal Code by “causera des pertes en vies humaines ou des blessures parmi les populations civiles”. The wording is to be welcomed as long as it broadens the scope of the crime. If not, the language of the Rome Statute and the Geneva Conventions should be used. The phrase “par rapport à l’ensemble de l’avantage militaire concret et direct attendu” in the Rome Statute is substituted in the Penal Code by “par rapport à l’avantage concret et direct attendu”. The reasons for the change are not known. Amnesty International would welcome clarification if the scope of this provision broadens, rather than to narrow the scope of the crime. If it narrows the scope, the wording of the Rome Statute should be used.

The phrase “ainsi que les signes distinctifs prévus par les Conventions de Genève” in Article 8 (2) (b) (vii) of the Rome Statute is missing in Article 431 (3) (b) (6) of the Penal Code. Amnesty International recommends the inclusion of that phrase in the provision of the Penal Code.

The phrase “Le transfert, direct ou indirect, par une puissance occupante d’une partie de sa population civile” in Article 8 (2) (b) (viii) of the Rome Statute is replaced in Article 431 (3) (b) (7) of the Penal Code by “le fait de transférer directement ou indirectement une partie de la population civile d’une puissance occupante”. The reasons for the change are not known. Amnesty International would welcome clarification that it broadens, rather than to narrow, the scope of the crime. If it narrows the scope of the crimes, the language of the Rome Statute should be used.

In Article 431 (3) (b) (8) of the Penal Code, corresponding to Article 8 (2) (b) (ix) of the Rome Statute, the expression “diriger intentionnellement des attaques” in the Rome Statute is replaced in the Penal Code by “lancer des attaques délibérées” and the phrase “à condition qu’ils ne soient pas des objectifs militaires” of the Rome Statute is replaced in the Penal Code by “pour autant que ces bâtiments ne soient pas des

objectifs militaires”. The reason for the change is unknown. If the scope of this provision is not as broad as the definition of this crime under international humanitarian law, this provision should be amended.

The phrase “personnes d’une partie adverse” in Article 8 (2) (b) (x) of the Rome Statute is replaced in Article 431 (3) (b) (9) of the Penal Code by “personnes de la partie adverse”. . If this provision is not as broad as the corresponding provision in the Rome Statute, it should be amended according to international criminal law standards.

The phrase “biens de l’ennemi” in Article 8 (2) (b) (xiii) of the Rome Statute is replaced in Article 431 (3) (b) (12) of the Penal Code by “biens de la partie adverse”. The intent of the change appears to be to broaden the scope of this provision. If not, the language of the Rome Statute and the Geneva Conventions should be used.

The wording of Article 8 (2) (b) (xv) of the Rome Statute is replaced in Article 431 (3) (b) (13) by “le fait de (...) contraindre [des nationaux de la partie adverse] à prendre part aux opérations de guerre dirigées contre leur pays même si ces nationaux sont au service du belligérant avant le commencement des hostilités”. . Amnesty International would welcome clarification that it broadens the scope of the crime and, if not, recommends its amendment according to international criminal law standards.

The word “pillage” in Article 8 (2) (b) (xvi) of the Rome Statute is replaced in Article 431 (3) (b) (14) by “le fait de piller”. The reasons for the change are not known. If this change narrows the scope, it should be amended to use the language in the Rome Statute.

The word “employer” in Articles 8 (2) (b) (xvii) and 8 (2) (b) (xviii) of the Rome Statute, is replaced by the word “utiliser” in the corresponding provision of the Penal Code, Article 431 (3) (b) (15). Although the differences between the two words may be insubstantial (and the use of these words in the Rome Statute does not appear to be entirely consistent), it would be better to use the word in respective provisions of the Rome Statute unless the intent was to broaden the scope of protection. In that case, this intention should be made clear in an explanatory memorandum. In addition, the word “similaires” in Article 8 (2) (b) (xviii) of the Rome Statute, is replaced in the corresponding provision in the Penal Code by the word, “assimilés” and the phrase “ainsi que tous liquids, matières ou procédés analogues” in the Rome Statute is replaced in the Penal Code by “ou tous liquids, matières ou engins analogues”. This provision of the Penal Code should be changed in accordance with the Rome Statute unless the intent was to broaden the scope of protection. In that case, this intention should be made clear in an explanatory memorandum.

The word “s'épanouissent” in Article 8 (2) (b) (xix) of the Rome Statute is replaced in the corresponding provision of the Penal Code, Article 431 (3) (b) (16), by “se dilater”. . If the scope of this provision is not as broad as the definition of this crime under international humanitarian law, this provision should be amended.

In Article 431 (3) (b) (17) of the Penal Code, implementing Article 8 (2) (b) (xx) of the Rome Statute, the words “matières”, “guerre” and “frapper” were replaced in the Penal Code by “matériels”, “combat” and “agir”. . Amnesty International recommends that the definition be sufficiently broad to cover the corresponding prohibited conduct in customary and conventional international criminal law.

The words “notamment les” in Article 8 (2) (b) (xxi) of the Rome Statute are substituted in Article 431 (3) (b) (18) of the Penal Code by “par des”, which appears to narrow the scope of the crime. If this provision is not as broad as the corresponding provision in the Rome Statute, Amnesty International recommends its amendment according to international criminal law standards.

The war crime of “grossesse force” in Article 8 (2) (b) (xxii) of the Rome Statute, which constitutes a grave violation of rights of women, is not included in Article 431 (3) (b) (19) of the Penal Code. This omission appears to be an oversight as Article 431 (2) (1) of the Penal Code includes the crime of “grossesse forcée”, as a crime against humanity. Article 431 (3) (b) (19) of the Penal Code should be amended in order to include the war crime of “grossesse forcée”, in accordance with the definition of Article 7 (2) (f) of the Rome Statute.

The word “autre” in Article 8 (2) (b) (xxiii) of the Rome Statute is missing in Article 431 (3) (b) (20) of the Rome Statute. This omission might inadvertently narrow the scope of the crime. The wording of the Rome Statute should be used.

In Article 431 (3) (b) (21) of the Penal Code, corresponding to Article 8 (2) (b) (xxiv) of the Rome Statute, the expression “diriger intentionnellement des attaques” in the Rome Statute is replaced in the Penal Code by “lancer des attaques délibérées”. The reason for the change is unknown. If the scope of this provision is not as broad as the definition of this crime under international humanitarian law, it should be amended.

Article 8 (2) (b) (xxv) of the Rome Statute does not appear to have corresponding provision in the Penal Code. Amnesty International recommends its inclusion in the legislation of Senegal.

The expression “enfants de moins de 15 ans” in Article 8 (2) (b) (xxvi) of the Rome Statute is replaced in Article 431 (3) (b) (22) of the Penal Code by “mineurs”. Amnesty International would welcome clarification of the “mineurs” age in the legislation of Senegal and, if not in accordance with the age definition of child according to Article 1 of the Convention on the Rights of the Child ratified by Senegal on 31 July 1990, defining as a child “every human being below the age of eighteen years”, recommends its amendment according to this provision of international law.

Article 8 (2) (c) (i) of the Rome Statute, defining as a war crime “Les atteintes à la vie et à l’intégrité corporelle, notamment le meurtre sous toutes ses formes, les mutilations, les traitements cruels et la torture”, is replaced in Article 431 (3) (c) (1) of the Penal Code by “l’homicide volontaire, l’atteinte à l’intégrité physique sous toutes ses formes, les mutilations, les traitements cruels et la torture”. Amnesty International would welcome clarification if this provision of the Penal Code is fully consistent with the corresponding provision in the Rome Statute and, if not, recommend its amendment according to international criminal law standards.

The words “notamment les” in Article 8 (2) (c) (ii) of the Rome Statute are replaced in Article 431 (3) (c) (2) of the Penal Code by “par les”, which appears to narrow the scope of the crime. If this provision is not as broad as the corresponding provision in the Rome Statute, Amnesty International recommends its amendment according to international criminal law standards.

The phrase “Les prises d’otages” in Article 8 (2) (c) (iii) of the Rome Statute is replaced in Article 431 (3) (c) (3) of the Penal Code by “la prise d’otage”. If this provision of the Penal Code is not as broad as the corresponding provision in the Rome Statute, Amnesty International recommends its amendment according to international criminal law standards.

The word “tribunal” in Article 8 (2) (c) (iv) of the Rome Statute is substituted in Article 431 (3) (c) (4) of the Penal Code by “juridiction”. This word appears to narrow the scope of application. If so, the wording of the Rome Statute and of Common Article 3 of the Geneva Conventions, which reflect “elementary considerations of humanity” applicable to all armed conflicts (Affaire des activités militaires et paramilitaires en Nicaragua et contre celui-ci (Nicaragua contre États-Unis d’Amérique), Fond, arrêt du 27 Juin 1986, Cour internationale de justice, para. 218), should be used.

The phrase “diriger intentionnellement des attaques” Articles 8 (2) (e) (i), (ii), (iii) and (iv) of the Rome Statute is replaced in Article 431 (3) (e) (1), (2) and (4) of the Penal

Code by “lancer des attaques délibérées” and in Article 431 (3) (e) (2) of the Penal Code by “lancer des attaques”. The reasons for the change are unknown. If the scope of these provisions are not as broad as the definitions of these crimes under international humanitarian law, this provision should be amended. In addition, the phrase “population civile en tant que telle ou contre des personnes civiles qui ne participent pas directement aux hostilités” in Article 8 (2) (e) (i) of the Rome Statute, is replaced in the corresponding provision of the Penal Code by “population civile en général ou contre des civils qui ne prennent pas directement part aux hostilités”. If this language does not broaden the scope of this provision, it should be amended to reflect the Rome Statute.

The definition of the war crime of “Le pillage d’une ville ou d’une localité même prise d’assaut” in Article 8 (2) (e) (v) of the Rome Statute is replaced in Article 431 (3) (e) (5) of the Penal Code by “le fait de piller un village, une localité même pris d’assaut”. If this language does not broaden the scope of this provision, it should be amended to reflect the Rome Statute.

Article 431 (3) (e) (6) of the Penal Code, implementing Article 8 (2) (e) (vi) of the Rome Statute, includes the phrase “le fait de soumettre”. If this language does not broaden the scope of this provision, it should be amended to reflect the Rome Statute. In addition, this provision of the Penal Code should clarify that the crime of “grossesse forcée” should be defined according to Article 7 (2) (f) of the Rome Statute. . The phrase “violation grave” in the Rome Statute is replaced by “infraction grave” in the Penal Code. If the intention is to broaden the scope of the crime, this intention should be made clear in a memorandum accompanying the Penal Code, otherwise there is a risk that this term could be interpreted restrictively. If not, it should be amended to reflect the Rome Statute.

The expression “enfants de moins de 15 ans” in Article 8 (2) (e) (vii) of the Rome Statute is replaced in Article 431 (3) (e) (7) of the Penal Code by “mineurs”. Amnesty International would welcome clarification of the “mineurs” age in the legislation of Senegal and, if not in accordance with the age definition of child according to Article 1 of the Convention on the Rights of the Child ratified by Senegal on 31 July 1990, defining as a child “every human being below the age of eighteen years”, recommends its amendment according to this provision of international law. In the Penal Code, the word “armés” in the expression “des groupes armés” of the Rome Statute is missing. Although this appears to be a typographical error, this provision should be amended in accordance to international law standards.

The word “ces” in Article 8 (2) (e) (xii) of the Rome Statute is replaced in Article 431 (3) (e) (12) of the Penal Code by “les”. If this change is not intended to broaden the

scope of this provision, it should be changed to use the same language as the Rome Statute.

The word “armés” in the phrase “conflits armés ne présentant pas un caractère international” in Article 8 (2) (e) (f) of the Rome Statute is missing in Article 431 (3) (e) 13 of the Penal Code, which appears to be a typographical error. The phrase “sur le territoire d’un État les autorités du gouvernement de cet État et des groupes armés” is replaced in the Penal Code by “sur le territoire national les autorités gouvernementales et des groupes armés”.

Amnesty International welcomes Article 431 (5) of the Penal Code defining as crimes of international law, conduct prohibited by the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and Protocol I, the 1976 Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques and the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects and Protocols I, II and III.

***National courts should be able to exercise universal jurisdiction in all cases of crimes under international law***

The provision authorizing Senegalese courts to exercise universal jurisdiction over genocide, crimes against humanity and war crimes (Article 2, Loi N° 2007-05 du 12 février 2007) is to be welcomed. In particular, the decision to authorize universal jurisdiction not only when a suspect is found in Senegal, but also when Senegal has obtained extradition, will significantly enhance the effectiveness of this form of jurisdiction over genocide, crimes against humanity, war crimes and certain other crimes. It will make it possible for Senegal to accept cases from the International Criminal Tribunal for Rwanda, to share responsibility for investigating and prosecuting these crimes with other states and to open investigations when a suspect is not present, but might be expected to visit Senegal at some future date. However, Senegal should expand the list of crimes over which its courts may exercise universal jurisdiction under the Penal Code to include torture and enforced disappearances not amounting to a crime against humanity or a war crime.

***Principles of criminal responsibility in national legislation for crimes under international law should be consistent with customary international law***

The implementing legislation has no provisions on principles of criminal responsibility. Amnesty International would welcome clarification if principles of



criminal responsibility in the Senegalese legislation are as strict as in Part 3 of the Rome Statute. However, principles of superior responsibility with regard to civilians in Article 28 (b) of the Rome Statute are not as strict as required by customary and conventional international law. The Penal Code should hold civilian superiors to the same strict standards as military commanders.

***Defences in national law to crimes under international law should be consistent with customary international law***

The implementing legislation does not appear to have provisions on defences for crimes under the Rome Statute. We would welcome clarification if the Senegalese legislation contains provisions on defences as narrow as in customary international law. Defences in national law should not be any broader than those permitted in the Rome Statute and, in some cases, should be narrower to be consistent with customary international law. For example, Article 33 of the Rome Statute permits – solely in trials before the Court – a defence of superior orders for war crimes in certain limited situations not permitted under customary international law. We recommend that defences in national legislation are as narrow as in customary international law.

## **II. ELIMINATION OF BARS TO PROSECUTION**

***No statutes of limitations are permitted***

The non-applicability of statutes of limitations for genocide, crimes against humanity and war crimes (Article premier, Loi N° 2007-05 du 12 février 2007) is consistent with Article 29 of the Rome Statute. However, it is disappointing that this provision does not also apply to torture and enforced disappearances when they do not amount to crimes against humanity or war crimes.

***No amnesties, pardons or similar measures of impunity by any state should be recognized***

The implementing legislation does not appear to have any provisions prohibiting the application of amnesties, pardons or similar measures of impunity for crimes under international law. If Senegalese legislation does not prohibit such measures in Senegal for crimes under international law and does not prohibit recognition of such measures by foreign states, the Penal Code should be amended to do so.

***Immunity of officials from prosecution for crimes under international law should be eliminated***

The implementing legislation does not appear to have any provisions stating that state and official immunities, whether of Senegal and its officials or of other states and their officials, do not apply to crimes under international law. If these immunities do apply under Senegalese law to such crimes, the law should be amended to provide that they do not.

### **III. ENSURING FAIR TRIALS WITHOUT THE DEATH PENALTY**

#### *Trials must be fair*

The Loi no. 2007-05 does not contain any guarantees concerning the right to a fair trial at each stage of the proceedings, from the moment a person is suspected of committing a crime under international law until the completion of all proceedings. Amnesty International would welcome clarification whether fair trial guarantees in the Senegalese legislation are consistent at all stages of the proceedings with international fair trial standards, such as Articles 9, 14 and 15 of the International Covenant of Civil and Political Rights and Articles 55 and 62 to 68 of the Rome Statute. If any of these guarantees has been omitted or not fully guaranteed under Senegalese law, that law should be amended to include each of the omitted guarantees or to make such guarantees fully consistent with international law and standards.

#### **Part 2. Cooperation:**

##### **I. BASIC OBLIGATION TO COOPERATE**

###### *National courts and authorities must cooperate fully with Court orders and requests*

###### Article 86 of the Rome Statute: general obligation of cooperation

Article 86 of the Rome Statute provides that “Conformément aux dispositions du présent Statut, les États Parties coopèrent pleinement avec la Cour dans les enquêtes et poursuites qu’elle mène pour les crimes relevant de sa compétence”. This express general obligation to cooperate fully with the Court, which is in addition to the fundamental requirement to fulfill obligations in any treaty in good faith, applies to all

aspects and stages of investigations and prosecutions, including any appeal and review of a judgment. The obligation to cooperate applies to each organ of the Court, including the Office of the Prosecutor, the Registry, the Presidency and the Pre-Trial, Trial and Appeals Divisions.

Amnesty International recommends that the Senegalese legislation provides for the full cooperation with the Court, as in Part IX of the Rome Statute, as required by Article 88 of the Rome Statute stating that “Les États Parties veillent à prévoir dans leur législation nationale les procédures qui permettent la réalisation de toutes les formes de coopération visées dans le présent chapitre”.

Article 87 (3) of the Rome Statute requires that the requested state “respecte le caractère confidentiel des demandes de coopération et des pièces justificatives y afférentes, sauf dans la mesure où leur divulgation est nécessaire pour donner suite à la demande”. Amnesty International notes 2<sup>nd</sup> paragraph of Article 677-2 of Loi n° 2007-05, implementing Article 87 (3) of the Rome Statute. However, the word “sauf” is missing in the implementing legislation, which appears to be a typographical error. Amnesty International recommends its amendment according to Article 87 (3) of the Rome Statute.

If a state party identifies problems which may impede or prevent the execution of a request for assistance from the Court under Part IX, Article 97 of the Rome Statute requires that the state “consult la Cour sans tarder en vue de régler la question”. Amnesty International welcomes Article 677-4 of Loi n° 2007-05 implementing Article 97 of the Rome Statute. However, Senegal should carefully review all existing legislation and treaty provisions to ensure that there is no provision that might impede or prevent the execution of a request for assistance by the Court and, if so, eliminate it as soon as possible.

If immediate execution of a Court request would interfere with an ongoing investigation or prosecution of a crime different from the one which is the subject of the request, Article 94 (1) of the Rome Statute provides that a state must not postpone execution of the request beyond the period of time which is necessary to complete the investigation or prosecution as agreed by the Court. During that period, it must cooperate with the Prosecutor in preserving evidence in accordance with Articles 93 (1) (j) and 94 (1) of the Rome Statute. Article 95 provides that states may also not postpone execution of a request by the Court under Part IX while an admissibility challenge under Article 18 or 19 is pending if the Court has ordered that the Prosecutor may pursue the collection of evidence under one of those two articles. Amnesty International notes Article 677-5 of Loi n° 2007-05 stating that “L’entraide

ne peut être refusée que pour des motifs prévus par les stipulations du statut de Rome”. Amnesty International would welcome clarification if this provision fully implements Articles 94 (1), 93 (1) (j) and 95 of the Rome Statute.

## **II. STATUS OF THE COURT IN NATIONAL LAW**

### ***The Court must be authorized to sit in the state***

#### Article 3 (3) of the Rome Statute

The legislation does not appear to have any corresponding provision to Article 3 (3) of the Rome Statute, providing that “la Cour peut siéger ailleurs selon les dispositions du present Statut”. Amnesty International recommends the inclusion of a provision corresponding to Article 3 (3) of the Rome Statute.

### ***The legal personality of the court must be recognized***

#### Article 4 of the Rome Statute

The legislation does not have any provision implementing Article 4 (2) of the Rome Statute, which provides that “La Cour peut exercer ses fonctions et ses pouvoirs, comme prévu dans le présent Statut, sur le territoire de tout État parti”. Amnesty International recommends the inclusion of a provision corresponding to Article 4 (2) of the Rome Statute.

### ***The privileges and immunities of the Court, its personnel, counsel, experts, witnesses and other persons whose presence is required at the seat of the Court must be fully respected***

Amnesty International welcomes the provision on privileges and immunities of the Court and its personnel (Article 677-2, Loi N° 2007-05 du 12 février 2007). However, Amnesty International recommends that counsel, experts, witnesses and other persons who are required to be present at the seat of the Court be accorded such treatment as is necessary for the proper functioning of the Court in accordance with the Agreement on the Privileges and Immunities of the International Criminal Court (APIC), which Senegal signed on 19 September 2002, but not yet ratified, and Article 48 (4) of the Rome Statute. Senegal should also promptly ratify and implement APIC.

### **III. NOMINATION OF CANDIDATES TO BE JUDGES OR PROSECUTOR**

*States should ensure that they nominate candidates to be Judges and Prosecutor in an open process with the broadest possible consultation*

The implementing legislation has no provisions on nomination of candidates to be judges or prosecutor of the Court. Amnesty International recommends that states ensure that their national selection process for candidates to be judges or prosecutor of the Court are consistent with Articles 36 (3) (a) and (b) and 42 (3) and (4) of the Rome Statute and in an open process with the broadest possible consultation with civil society at all stages. These recommendations are spelled out in more detail in the organization's paper, *International Criminal Court: Amnesty International calls for all states to nominate candidates to be International Criminal Court judges*, AI Index: IOR 51/002/2005, September 2005.

### **IV. FACILITATING AND ASSISTING COURT INVESTIGATIONS**

*When the Prosecutor has deferred an investigation, states shall comply without delay to requests for information*

The implementing legislation does not have any provision expressly implementing Article 18 (5) of the Rome Statute. That provision states that when the Prosecutor has deferred an investigation at the request of a state pursuant to Article 18 (2) on the ground that it is investigating or has investigated its nationals or others within its jurisdiction with respect to crimes within the Court's jurisdiction, which the Prosecutor has informed states he or she is investigating, the state shall respond to requests by the Prosecutor to be informed of the progress of its investigations and any subsequent provisions and to do so without undue delay. Senegal should enact a provision stating that national authorities must respond to such requests fully and promptly.

*States shall give effect to acts of the Prosecutor or warrants issued by the Court prior to an Article 19 challenge to jurisdiction or admissibility and to actions by the*

***Prosecutor to preserve evidence or prevent an accused person absconding pursuant to Articles 18 (6) and 19 (8)***

The implementing legislation does not have any provision expressly stating that national authorities shall give effects to acts of the prosecutor or warrants issued by the Court prior to an Article 19 challenge to jurisdiction or admissibility and to actions by the prosecutor to preserve evidence or prevent an accused person absconding pursuant to Articles 18 (6) and 19 (8) of the Rome Statute. Senegal should enact such a provision.

***States should facilitate the ability of the Office of the Prosecutor and the defence to conduct investigations in the state without any hindrance***

Article 677-18 of Loi N° 2007-05 du 12 février 2007, refers to Article 99 (4) of the Rome Statute, which authorises the prosecutor of the Court to take certain investigative measures in the territory of a state party after consultation with the state, even if the state fails to consent. However, Article 677-18 does not expressly require that the procureur général authorize the Prosecutor to take such steps in all cases and appears to leave the that the procureur général some discretion whether to grant the Prosecutor's request or not. In addition, this provision does not make it clear the Prosecutor may take such steps on his or her own without using the local authorities if the Prosecutor determines that it would be more effective to do it himself or herself.. This provision should be amended to clarify that the procureur général will, in all cases, grant the Prosecutor's request and that, when the Prosecutor determines that it would be more effective to take these measures directly, without using local authorities, that this request will be granted.

***National authorities should provide a broad range of assistance to the Court***

Article 677-1, which seeks to implement cooperation with the Court under Article 93 appears to implement most of the obligations listed in that article, but it is difficult to determine whether Article 677-1 fully implements each of those obligations because the order in which these obligations are addressed in the legislation is very different (the reasons for this reordering are not known) and some of these provisions use different wording.

Article 677-1 (2) implements Article 93 (1) (a); Article 677-1 (4) implements Article 93 (1) (b); Article 677-1 (5) implements Article 93 (1) (c), but is possibly broader since it replaces "poursuites" with "procedure". However, Article 677-1 does not expressly implement Article 93 (1) (d). It should do so.

Article 677-1.3 appears to implement both Article 93 (1) (e) and (f), concerning the voluntary transfer of witnesses and detained persons. However, it is not clear whether this provision would ensure that Senegal will comply with a Court request pursuant to Article 64 (6) (b) of the Rome Statute to order the appearance of a witness unwilling to appear voluntarily before the Court.

In Article 677-1.6, corresponding to Article 93 (1) (g) of the Rome Statute, the word "site" is missing. This omission should be rectified and this provision amended according to the Rome Statute.

Article 677-1.7 implements Article 93 (1) (h) concerning searches and seizures, but does not expressly provide that the Prosecutor may conduct searches and seizures himself or herself, when this would be more effective than relying on local police do this.

Article 677-1.8 appears to cover all the assistance required by Article 93 (1) (i), although the different wording leaves unclear whether it covers all such assistance.

In Article 677-1.9, corresponding to Article 93 (1) (j) of the Rome Statute, the word "témoins" is missing. We recommend its amendment according to the Rome Statute.

Article 677-1.10 implements Article 93 (1) (k) of the Rome Statute.

Article 677-1.11 corresponds with Article 93 (1) (j) of the Rome Statute, but it differs considerably by replacing the ground for refusal that forms of assistance are forbidden by national legislation to the vaguer term "incompatible avec l'ordre public national", leaving it unclear what assistance would be refused. In any event, Senegal should conduct a thorough review of its legislation with a view to eliminating any such legal obstacles to cooperation with the Court.

## **V. ARREST AND SURRENDER OF ACCUSED PERSONS**

### ***States parties should ensure that there are no obstacles to arrest and surrender***

States should ensure that there are no substantive grounds for courts to refuse to surrender persons to the Court and that they have a simple and speedy procedure for surrendering persons to the Court which is less burdensome than exists for extradition.

Article 667-7, 1 of Loi n° 2007-05, refers the requirements necessary for a request for arrest and surrender “d’une personne faisant l’objet d’un mandat d’arrêt délivré par la chambre préliminaire de la Cour pénale internationale en vertu de l’article 8 du statut de Rome”. Article 667-7, 2°) of Loi n° 2007-05, refers the requirements necessary for a request for arrest and surrender “si la demande concerne l’assistance et la remise d’une personne déjà reconnue coupable”. The wording of these provisions seems to indicate that there are no procedures under the Senegalese legislation for the arrest and surrender of persons suspected of having committed genocide or crimes against humanity. Amnesty International recommends that the legislation of Senegal includes procedures for the prompt arrest and surrender to the Court of people suspected or accused of all crimes under the Rome Statute.

***National courts and authorities must arrest accused persons as soon as possible after a request by the Court***

States parties must ensure that their legislation provides for the arrest of accused persons as soon as possible after receiving a request by the Court, according to Articles 89 (1), 92 and 59 (1) of the Rome Statute.

***National courts and authorities must fully respect the rights of those arrested at the request or order of the Court***

According to Article 677-10 of Loi n° 2007-05:

“La chambre d’accusation de la Cour d’appel de Dakar vérifie que le mandat d’arrêt vise la personne arrêtée, que celle-ci a été arrêtée selon la procédure régulière et que ses droits ont été respectés, faute de quoi la personne arrêtée est remise en liberté”.

Amnesty International would welcome clarification if the legislation of Senegal provides for the rights of persons suspected or accused during investigations and prosecutions, as stated in Articles 55 and 67 (1) (a) of the Rome Statute, and, if not, recommends their implementation.

In addition, according to Article 59 (2) of the Rome Statute, a person who has been arrested by a state party on request of the Court shall be “déférée aussitôt à l’autorité judiciaire compétente de l’État de détention qui vérifie (...): a) Que le mandat vise bien cette personne; b) Que celle-ci a été arrêtée selon la procédure régulière, et c) Que ses droits ont été respectés”.



Amnesty International notes Article 677-7 and 8 of Loi n° 2007-05. However these provisions do not appear to fully implement the requirements of Article 59 (2) of the Rome Statute. Amnesty International recommends their implementation in the Senegalese legislation.

If the person exercises the right under Article 59 (3) of the Rome Statute “de demander à l’autorité compétente de l’État de détention sa mise en liberté provisoire en attendant sa remise”, the competent authority must consider the criteria for deciding the application listed in Article 59 (4), but “ne peut pas examiner si le mandat d’arrêt a été régulièrement délivré”. Article 59 (5) provides that the Pre-Trial Chamber must be “avisée de toute demande de mise en liberté provisoire et fait des recommandations à l’autorité compétente de l’État de détention. Avant de rendre sa décision, celle-ci prend pleinement en considération ces recommandations, y compris éventuellement celles qui portent sur les mesures propres à empêcher l’évasion de la personne”. If interim release is granted, Article 59 (6) authorizes the Pre-Trial Chamber to “demander des rapports périodiques sur le régime de la liberté provisoire”.

Amnesty International notes Article 677-11, 12 and 13 of Loi n° 2007-05, on the procedure of interim release. However, it does not appear to fully implement Article 59 (3), (4), (5) and (6) of the Rome Statute. We recommend its implementation in the Senegalese legislation.

If the person sought for surrender brings a challenge in a national court on the basis of *ne bis in idem* under Article 20, Article 89 (2) provides that the requested state “consulte immédiatement la Cour pour savoir s’il y a eu en l’espèce une décision sur la recevabilité. S’il a été décidé que l’affaire est recevable, l’État requis donne suite à la demande. Si la décision sur la recevabilité est pendante, l’État requis peut différer l’exécution de la demande jusqu’à ce que la Cour ait statué”.

The implementing legislation does not appear to have corresponding provision to Article 89 (2) of the Rome Statute. Amnesty International recommends its implementation in the Senegalese legislation.

### ***National courts and authorities must surrender arrested persons promptly to the Court***

Article 59 (7) of the Rome Statute provides that “Une fois ordonnée la remise par l’État de détention, la personne est livrée à la Cour aussitôt que possible”. If a person who has been provisionally arrested consents to surrender before the expiration of the time limits for the arrival of the request for surrender and supporting documents, Article 92

(3) of the Rome Statute requires that “l’État requis procède aussitôt que possible à sa remise à la Cour”.

According to Article 677-14 of Loi n° 2007-05:

“Le procureur général près de la Cour d’appel de Dakar procède à la remise de la personne poursuivie ainsi qu’à la transmission des objets et valeurs saisies. Le procureur général près la Cour d’appel de Dakar prend les mesures nécessaires en vue de la remise après entente avec la Cour pénale internationale”,

and, to Article 677-8:

“Si lors de son arrestation provisoire, l’intéressé consent à être remis à la Cour pénale internationale, il y est procédé avant que la demande de remise et les pièces justificatives visées à l’article 667-7 du présent code soient reçus”.

Amnesty International would welcome clarification that the Senegalese legislation ensures that once the person has been ordered to be surrendered by the Court, or consents to surrender, is delivered to the Court as soon as possible and that the proceedings from the moment of arrest to the issuance of the order of surrender be as speedy as possible, consistent in all stages with the rights of the person concerned and, if not, recommend its implementation.

Article 101 (1) of the Rome Statute provides that the Court will not proceed against, punish or detain a surrendered person for conduct committed prior to surrender, other than that which forms the basis of the request, but paragraph (2) of that article authorizes states parties to provide a waiver and states that they should “s’efforcer de le faire”. The implementing legislation does not appear to have corresponding provision to Article 101 of the Rome Statute. Amnesty International recommends its implementation in the Senegalese legislation.

***States should give priority to requests for surrender by the Court over competing requests by other states***

Article 90 of the Rome Statute spells out the obligations of states parties when they receive competing requests for surrender and reflects the principle of complementarity that it is the primary duty of states to bring persons suspected of genocide, crimes against humanity and war crimes to justice. However, when they are unwilling or unable to do so, the Court should be able to exercise jurisdiction.

The implementing legislation does not appear to have corresponding provision to Article 90 of the Rome Statute. Amnesty International recommends that the Senegalese legislation ensures that to the maximum extent possible, it gives priority to requests from the Court over competing requests from states, particularly when the Court has made a determination that the case is admissible because no state is willing and able genuinely to carry out an investigation or prosecution.

***States must permit transfers of accused persons through their territory to the seat of the Court***

Amnesty International welcomes Article 677-15 of Loi n° 2007-05 on the transit through Senegalese territory of persons to be transferred to the Court, according to Article 89 of the Rome Statute.

***States must not retry persons acquitted or convicted by the Court for the same conduct***

The implementing legislation does not appear to have corresponding provision to Article 20 (29) of the Rome Statute, stating that persons acquitted or convicted by the Court shall not be retried for the same conduct. Amnesty International would welcome clarification if the Senegalese legislation provides for such a guarantee for crimes under international law and, if not, recommend its implementation.

## **VI. ENSURING EFFECTIVE REPARATIONS TO VICTIMS**

***National courts and authorities must enforce judgments and decisions of the Court concerning reparations for victims and should provide for reparations in national law for all victims of crimes under international law in accordance with international standards, including the general principles established by the Court relating to reparations***

Article 75 (1) of the Rome Statute provides that the Court “établit des principes applicables aux formes de réparation (...) à accorder aux victimes ou à leurs ayants droit. Sur cette base, la Cour peut (...) déterminer dans sa décision l’ampleur du dommage, de la perte ou du préjudice causé aux victimes ou à leurs ayants droit”. Paragraph (2) authorizes the Court to “rendre contre une personne condamnée une ordonnance indiquant la réparation qu’il convient d’accorder (...). Le cas échéant, la

Cour peut décider que l'indemnité accordée à titre de réparation est versé par l'intermédiaire du Fonds visé à l'article 79".

The implementing legislation does not have corresponding provision to Article 75 of the Rome Statute. Amnesty International recommends its implementation in the Senegalese legislation.

## **VII. TRYING CASES OF OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE**

### *Legislation must provide for punishment of offences against the administration of justice by the Court*

#### Article 70 of the Rome Statute: offences against the administration of justice

Amnesty International notes Article 1 of Law No. 2007-02, on offences against the administration of justice. However, there are a number of discrepancies between the Senegalese legislation and the Rome Statute. First, the maximum penalty is only three years' imprisonment, instead of the more severe penalty of five years' imprisonment in Article 70 (3). The fine should be consistent with Rule 166 of the Rules of Procedure and Evidence, which imposes a maximum of 50% of the value of a convicted person's identifiable assets, liquid or realisable, and property, after deletion of an appropriate amount that would satisfy the financial needs of the convicted person and his or her dependants.

The phrase "rétribution illégale par un member ou un agent de la Cour" in Article 70 (1) (f) of the Rome Statute is replaced in Article 1 (6) of Law No. 2007-02 by "rétribution en faveur d'un member ou agent de la juridiction". The reasons for the change in Article 1 (6) are not known. Amnesty International welcomes this provision, as long as it broadens the scope of the crime.

## **VIII. ENFORCEMENT OF JUDGMENTS AND SENTENCES**

### *Legislation must provide for enforcement of fines and forfeiture measures*

The implementing legislation has no corresponding provision to Article 103 of the Rome Statute on the role of states in enforcement of sentences of imprisonment. Amnesty International urges Senegal to share the responsibility for enforcing sentences by indicating to the Court that it is willing to enforce sentences. Senegal

should make sure that its law and procedure provides for the serving of Court sentences, that its courts and other authorities cannot modify such sentences and that convicted persons can make applications for appeal or revision without any hindrance, according to Article 103 of the Rome Statute.

***Legislation should provide for the enforcement of sentences by the Court, in accordance with the requirements set forth below***

- a. Conditions of detention must fully satisfy the requirements of the Statute and other international standards
- b. Legislation should provide for release of the convicted person on completion of sentence or on order of the Court
- c. Legislation should provide for the transfer of persons on completion of sentence
- d. Legislation should limit prosecutions and punishment for other offences
- e. Legislation should address the question of escape.

All requirements set forth above do not appear to have corresponding provisions in the implementing legislation. We recommend that the Senegalese legislation fully implements those requirements, according to Articles 106, 107, 108 and 111 of the Rome Statute.

## **IX. PUBLIC EDUCATION AND TRAINING OF OFFICIALS**

***States parties should develop and implement effective programs of public education and training for officials on the implementation of the Statute***

The implementing legislation does not seem to provide for training on Court issues. Amnesty International recommends that states parties develop and implement programmes to train judges, prosecutors, defence lawyers, police, army and court officials and foreign affairs officials concerning their respective obligations under the Rome Statute, and to proceed with the updating of military codes, as many states have already done.