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## Implementation Review Group

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### Review of implementation of the United Nations Convention against Corruption

## Executive summary

## Note by the Secretariat

## Addendum

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\*\* CAC/COSP/IRG/2018/1.



## II. Executive summary

### Senegal

#### 1. Introduction: overview of the legal and institutional framework of Senegal in the context of implementation of the United Nations Convention against Corruption

Senegal signed the United Nations Convention against Corruption on 9 December 2003 and ratified it on 16 November 2005.

Senegal is a republic whose president is the Head of State and of the executive. He or she is elected directly by universal suffrage for a term of five years, renewable once only, and presides over the Council of Ministers. Legislative power is exercised by the National Assembly. Members of the National Assembly are also directly elected by universal suffrage for a term of five years. The judiciary is independent from the executive and legislative branches of government.

The legal system of Senegal is based on civil law. The Constitution ranks above all other laws. Duly ratified or approved treaties, once published, take precedence over national legislation, subject to reciprocity (art. 98 of the Constitution).

Senegal was reviewed in 2016, during the first cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption ([CAC/COSP/IRG/II/47/1/Add.50](#)).

The main national instruments implementing chapters II and V of the Convention include, in particular, the Constitution, the National Strategy for Good Governance and the Fight against Corruption, the Electoral Code, the General Civil Service Regulations, the Judges' Statute, Act No. 2014-17 of 21 March 2014 on declaration of assets, Decree No. 014-1212 of 22 September 2014 on the Public Procurement Code, Act No. 2012-22 of 27 December 2012 on the Code of Transparency in the Management of Public Finances, the Criminal Code, the Code of Criminal Procedure and Act No. 2004-09 of 6 February 2004 on combating money-laundering.

The main institutions responsible for preventing and combating offences under the Convention are the Ministry for the Promotion of Good Governance; the National Office for the Fight against Fraud and Corruption (OFNAC), established by Act No. 2012-30 of 19 December 2012; the National Financial Information Processing Unit (CENTIF), established by Decree No. 2004-1150 of 18 August 2004; the Public Procurement Regulatory Authority (ARMP); the Court of Auditors; and the Central Bank.

#### 2. Chapter II: preventive measures

##### 2.1. Observations on the implementation of the articles under review

*Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)*

In 2011, Senegal adopted a national strategy for good governance and the fight against corruption and developed a charter of transparency and ethics in public procurement. The strategy was integrated into the National Strategy for Economic and Social Development for the period 2013–2017, and is led by the Ministry for the Promotion of Good Governance. At the time of the country visit, a national committee for the monitoring of public transparency was in the process of being established. A study on the cost and perceptions of corruption had been conducted and risk mapping was also being carried out.

OFNAC and the Ministry for the Promotion of Good Governance carry out awareness-raising campaigns in various sectors, including the education sector.

In addition, Senegal is a member of the New Partnership for Africa's Development and, in that capacity, participates in the African Peer Review Mechanism.

Senegal is also a party to the African Union Convention on Preventing and Combating Corruption and the Economic Community of West African States (ECOWAS) Protocol on the Fight against Corruption. The Permanent Secretariat of the Network of National Anti-Corruption Institutions in West Africa (NACIWA) has its headquarters in Senegal.

OFNAC was established by Act No. 2012-30. Under article 1 of that Act, OFNAC is part of the Office of the President of the Republic. Members of OFNAC are appointed by decree for a term of three years, renewable once. However, article 5 does not specify the conditions for appointment or renewal. Article 1 enshrines the principle of financial autonomy. In accordance with article 19, the OFNAC budget comprises an allocation from the State and grants from international partners. Senegalese legislation does not establish a minimum annual allocation.

Senegal was reminded of its obligation to inform the Secretary-General of the United Nations of the name and address of its authorities that may assist other States parties in developing and implementing specific measures for the prevention of corruption.

*Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)*

The general conditions for the recruitment and promotion of public officials are established by the General Civil Service Regulations (arts. 20, 21 and 31 to 40 of Act No. 61-33 of 15 June 1961). Specific criteria are established by special regulations governing the different employment categories (art. 22 of the Act). Judges and certain State officials are recruited through a competitive recruitment procedure. Other public officials are recruited through the submission of an application to the relevant administration. The holding of oral and written tests for initial recruitment and promotion is planned. The establishment of a commission specifically responsible for reviewing applications is also under consideration.

Senegal has not set up a centralized online platform for the publication of all vacancies for public positions. However, such a platform has been established for the education sector (the platform is called “Mirador”). All available positions in that sector are published on that platform.

Senegal has established a system of rotation in respect of certain executive positions within OFNAC (art. 5 of Act No. 2012-30) and CENTIF (art. 5 of Decree No. 2004-1150). Members are appointed for a term of three years, renewable once. At OFNAC, half the members’ terms are renewed at a time. However, the maximum term of those functions remains relatively short.

Most of the initial training for public positions includes a component on awareness-raising with regard to ethics. In the area of public procurement, there are also programmes providing ongoing training. In addition, OFNAC conducts awareness-raising campaigns among officials.

The Electoral Code provides that sentenced persons are temporarily or permanently ineligible for election to the National Assembly (art. LO.154).

Senegal has not yet established strict criteria relating to regulation of the funding of political parties.

Failure to comply with the provisions establishing the incompatibility of certain public and private functions (art. 38 of the Constitution, arts. 9 to 11 of the General Civil Service Regulations and arts. LO.157 and LO.158 of the Electoral Code) constitutes the offence of unlawful acquisition of interests (arts. 157 and 158 of the Criminal Code).

Senegal has adopted sectoral codes of conduct particularly for customs and tax administration officials. Rules of conduct have been included in the General Civil Service Regulations and the special sets of regulations applicable to certain employment categories within public administration (including judges, the police and inspectors-general of the State).

At the time of the country visit, discussions were being held with a view to adopting a law on the prevention of conflicts of interest and expanding that concept. A general code of ethics for public officials was also being developed. However, the issue of penalties for any breach of that code remained to be clarified.

Article 32 of the Code of Criminal Procedure requires public officials to report to the State prosecutor any offences of which they become aware in the exercise of their functions. That obligation is also contained in article 7.3 of the Code of Transparency in the Management of Public Finances. Although the means of reporting offences to OFNAC and the hotline set up in relation to public procurement contracts are accessible to public officials, Senegal has not yet created specific reporting channels for those officials. In addition, the establishment of a system for encouraging persons to report offences and for protecting reporting persons is still under consideration.

Article 2 of Act No. 2014-17 establishes the obligation for certain public officials to declare their assets to OFNAC both when they enter and when they leave office. The Office has established a specific department dedicated to the receipt, control and storage of declarations, but the verification process has not yet started. Specific asset declaration systems have also been established for judges at the Court of Auditors (art. 28 of the Statute of Judges at the Court of Auditors) and for members of the Regulatory Board of the Public Procurement Regulatory Authority (art. 7, final paragraph, of Decree No. 2007-546 of 25 April 2007), who must declare their assets to the Court of Auditors. The directive of the West African Economic and Monetary Union (WAEMU) on ethics in public procurement and the outsourcing of public services establishes the obligation for public procurement officials to submit a declaration of interests. However, at the time of the country visit, that declaration system was not yet operational.

The legislation of Senegal establishes the principle of independence of the judiciary (art. 88 of the Constitution) and the principle of security of tenure of judges (art. 6 of the Judges' Statute). Prosecutors are under the authority of the Minister of Justice (art. 7 of the Judges' Statute).

Judges are recruited through competitive entrance examinations to the Judicial Training Centre. At the end of their training, and subject to the recommendation of the Higher Council of the Judiciary, they are appointed by decree (arts. 6 to 8 of Organic Law No. 2017-11 on the Higher Council of the Judiciary). The Higher Council of the Judiciary is also the disciplinary body for judges who have violated the rules of conduct established in the Judges' Statute (art. 22 of the Judges' Statute and arts. 9 to 20 of Organic Law No. 2017-11). Senegal has also established a system of annual appraisal (arts. 44 to 46 of the Judges' Statute).

*Public procurement and management of public finances (art. 9)*

The Public Procurement Code establishes the conditions governing public procurement in Senegal. The procedure is decentralized and the Public Procurement Code contains a list of authorities that are authorized to enter into public procurement contracts (art. 2).

The Public Procurement Code (art. 56 (3)) and the Charter of Ethics and Transparency in Public Procurement establish that invitations to tender must be published on the public procurement portal and in at least one daily newspaper in wide circulation. In addition, Senegal has implemented an electronic public procurement management tool, known as SIGMAP, which can be accessed by all stakeholders in the selection process.

The open tendering procedure is the default procedure (art. 60 of the Public Procurement Code). Article 53 of the Code establishes the threshold values above which an open tendering procedure is mandatory.

The Public Procurement Code details the information required in a public procurement contract must contain (art. 13), the conditions to be met by tenderers (art. 43), and the documents that tender dossiers must contain (art. 58).

The Code also contains provisions on recourse and remedies in the event of disputes in relation to the award and performance of public procurement contracts. The parties must attempt to reach an amicable settlement as a first step (art. 138 of the Code). Accordingly, they must apply to the Dispute Settlement Committee of the Public Procurement Regulatory Authority (arts. 18 to 23 of Decree No. 2007-546), but such recourse does not have the effect of suspending performance of the contract (art. 138, para. 8, of the Code). If no amicable settlement is reached, judicial proceedings are possible, in accordance with the relevant procedure under ordinary law.

Public officials working in the area of public procurement are not subject to the obligation to declare their interests or assets. Tenderers must submit a statement confirming that they are familiar with the Charter of Ethics and Transparency in Public Procurement (art. 44 (f) of the Public Procurement Code), which establishes the obligation to disclose any conflicts of interest (art. 1.2 of the Charter).

Organic law No. 2011-15 on finance laws and the Code of Transparency in the Management of Public Finances govern the procedures for the adoption of the national budget and control of public finances. The budget is adopted by Parliament and information relating to that decision is available to the public. Senegal has established internal and external control procedures. Within each directorate-general, internal control directorates have been established, but their reports are available only to the relevant directorate-general and the Minister of Finance. The Court of Auditors is also responsible for carrying out a priori and a posteriori audits in respect of the adoption and implementation of the budget.

A “data centre”, with security certificates in order to prevent any falsification of files, is under development.

*Public reporting; participation of society (arts. 10 and 13)*

At the time of the country visit, a draft law on access to information was at the stage of being approved by the Ministry for the Promotion of Good Governance. Systems for accessing information and simplifying access to information had nevertheless already been established within some administrations. In particular, Senegal has set up a centre for documentation and information on institutions and governance as part of the Directorate for Relations with Institutions, accessible online, and an online system for requesting administrative documents, known as TeleDac.

Many institutions, including OFNAC, CENTIF, the Public Procurement Regulatory Authority, the Inspectorate-General of State and the Court of Auditors, publish their annual reports.

The Constitution of Senegal enshrines the principle of freedom of association (art. 8). Civil society is represented by some members of OFNAC (art. 4 of Act No. 2012-30) and is involved in the work of that Office, including as a community component for the diffusion of awareness-raising campaigns. However, civil society is not consulted with regard to the adoption of laws or the national budget.

At the time of the country visit, a draft law on the creation of a press code was being adopted.<sup>1</sup>

OFNAC has a bureau responsible for receiving complaints and reports by electronic and physical mail, telephone hotline and a mobile application.

*Private sector (art. 12)*

The Private-Sector Coalition against Corruption (CSPC) has forged partnerships with some administrations, including OFNAC, and has signed an integrity pact with the Directorate-General of Customs and the Directorate-General of Taxation and Land. Senegal is a party to the Uniform Act on General Commercial Law of the Organization

<sup>1</sup> Development after the country visit: the Press Code was adopted on 20 June 2017.

for the Harmonization of Business Law in Africa (OHADA) and to the West African accounting system, known as SYSCOA, which establishes accounting standards.

A number of major companies established in Senegal have begun to set up compliance programmes.

Article 31 of the General Tax Code establishes the documents that companies and organizations that use the SYSCOA accounting system are required to produce. The use of false documents is a criminal offence (art. 32 of the General Tax Code and arts. 132 and 135 of the Criminal Code). The establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the entry of liabilities with incorrect identification of their objects or the intentional destruction of bookkeeping documents earlier than foreseen by the law are not criminal offences per se, but are regarded as evidence of the commission of an offence.

Article 9 of the General Tax Code establishes a list of tax-deductible expenses. Expenses that constitute bribes are not specifically established as non-tax-deductible, but they are not included in the list.

*Measures to prevent money-laundering (art. 14)*

Senegal established a legislative framework for combating money-laundering through Act No. 2004-09 of 6 February 2004 (hereinafter the “Money-Laundering Act”). However, in order to comply with WAEMU legislation, Senegal must adopt a new act on money-laundering and the financing of terrorism, aimed at incorporating into its national law Directive No. 2/2015 of 2 July 2015 on the adoption of the draft uniform law on combating money-laundering and the financing of terrorism in States members of WAEMU.

A national assessment of risks relating to the combating of money-laundering and the financing of terrorism has begun but has not yet been completed.

Under article 1 (Terminology) of the Money-Laundering Act, any serious crime (*crime*) or ordinary offence (*délit*) within the meaning of the Act is a predicate offence to money-laundering. A list of entities and persons subject to the provisions of sections II and III of the Act is contained in article 5. The Act contains provisions on certain specific transactions in article 14 (Physical currency exchange) and article 15 (Casinos and gambling establishments).

Provisions governing verification of the identity of customers and beneficial owners are contained in articles 7, 8 and 9 of the Money-Laundering Act and article 43 of Regulation No. 15/2002/CM/UEMOA. An annex to the Money-Laundering Act contains “requirements for the identification of customers (natural persons) by financial institutions in the case of non-face-to-face financial operations”. Article 10 of the Act provides for the special monitoring of certain transactions, namely any payment in cash equal to or greater than 50 million CFA francs (approximately 100,000 euros) and any transaction involving an amount equal to or greater than 10 million CFA francs and made under unusual conditions.

Senegal has established a financial intelligence unit, known as the National Financial Information Processing Unit (CENTIF). The Unit is an administrative-type financial intelligence unit under the authority of the Minister of Economic Affairs, Finance and Planning. Its legal basis is the Money-Laundering Act (art. 16). Decree No. 2004-1150 of 18 August 2004 contains provisions regarding the organization and operation of the Unit. CENTIF has financial autonomy, independence with regard to all matters within its jurisdiction, and managerial autonomy.

The obligation to report suspicious transactions is established in article 26 of the Money-Laundering Act. The articles that follow article 26 relate to the transfer of suspicious transaction reports to CENTIF, the processing of such reports and the action to be taken.

Article 15 of Act No. 2009-16 on the financing of terrorism and Regulation No. 09/2010/CM/UEMOA on the financial relations of the States members of

WAEMU with other countries establish measures for reporting and monitoring the cross-border movement of cash and negotiable instruments. In particular, the physical cross-border transportation of cash and bearer instruments in an amount equal to or greater than 5 million CFA francs (approximately 10,000 euros) is subject, upon entry to and exit from Senegalese territory, to a written declaration made at border crossings by the carrier. Articles 7 and 8 of the Regulation cover funds transferred abroad and electronic funds transfers in a general manner. Informal money transfer services, such as hawala, are not regulated.

Senegal is a member of the Intergovernmental Action Group against Money Laundering in West Africa (GIABA), a regional body similar to the Financial Action Task Force (FATF). Its implementation, in that capacity, of the recommendations of the Financial Action Task Force was last assessed in 2007. The next assessment will take place in 2017. CENTIF has been a member of the Egmont Group of Financial Intelligence Units since 2009, and is also a member of the network of financial intelligence units of WAEMU and ECOWAS.

## 2.2. Successes and good practices

- Senegal has a vacancy publication system for the recruitment of public officials to the Ministry of Education (“Mirador”) (art. 7).
- Senegal has established a portal for the publication of all tenders (e-procurement) as well as a platform for the management of public procurement contracts, accessible to all stakeholders in the selection and award process (“SIGMAP”) (art. 9).
- Civil society is represented among the membership of the General Assembly of OFNAC, and participates in awareness-raising and information activities with communities (art. 13 (1) (d)).
- OFNAC has developed a mobile application to encourage and facilitate the reporting of acts of corruption (art. 13 (2)).

## 2.3. Challenges in implementation

It is recommended that Senegal:

- Enhance the coordination of anti-corruption policies (art. 5 (1))
- Strengthen the independence of its preventive anti-corruption body to enable it to fully carry out its functions free from any undue influence, and provide it with the financial stability and staff necessary for its successful operation (art. 6 (2))
- Endeavour to adopt the measures under consideration in order to extend the organization of tests for the initial recruitment and promotion of public officials, as well as the publication of all available positions, beyond the education sector (art. 7 (1) (a))
- Ensure the rotation of individuals in positions considered especially vulnerable to corruption (art. 7 (1) (b))
- Endeavour to extend the provision of ongoing specialized and appropriate training in order to enhance the awareness of all public officials of the risks of corruption inherent in the performance of their functions (art. 7 (1) (d))
- Consider prescribing more criteria concerning candidature for and election to public office that are aimed at preventing corruption (art. 7 (2))
- Consider taking measures to enhance transparency in the funding of candidatures for elected public office and, in particular, adopting legislation to regulate the funding of political parties (art. 7 (3))
- Endeavour to adopt the draft law on the prevention of conflicts of interest (art. 7 (4))

- Endeavour to adopt the draft general code of ethics for public officials, and consider taking disciplinary or other measures against officials who violate the provisions of that code (art. 8 (2) and (6))
- Consider establishing measures or systems to facilitate the reporting by public officials of acts of corruption of which they become aware in the exercise of their functions, and consider adopting the system, currently under consideration, for the protection and encouragement of reporting persons (art. 8 (4))
- Endeavour to extend the range of persons to whom the obligation to declare assets applies and establish the additional obligation to declare interests (arts. 8 (5), 9 (1) (e) and 11)
- Consider giving suspensive effect to amicable settlement in the context of the performance of procurement contracts (art. (9) (1) (d))
- Consider enhancing transparency in the adoption of the budget and the monitoring of public expenditure (arts 9 (2) and 10 (a))
- Complete the project to establish a data centre with security certificates (art. 9 (3))
- Continue efforts to prevent corruption involving the private sector, and ensure that the acts listed in paragraph 3 of article 12 are prohibited when those acts are carried out for the purpose of committing an offence established in accordance with the Convention (art. 12)
- Consider the more extensive consultation of civil society in relation to the adoption of laws, particularly those relating to the national budget (art. 13 (1))
- Consider adopting the draft law on freedom of the press (art. 13, para. 1 (d))<sup>2</sup>
- Incorporate Directive No. 2/2015/CM/UEMOA of 2 July 2015 into Senegalese legislation without delay, in order to fill existing gaps in the legislation on money-laundering and the financing of terrorism (art. 14 (1) (a))

#### **2.4. Technical assistance needs identified to improve implementation of the Convention**

- Senegal reported that no technical assistance was required in the implementation of chapter II of the Convention.

### **3. Chapter V: asset recovery**

#### **3.1. Observations on the implementation of the articles under review**

*General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)*

Senegal has a legislative and institutional framework for asset recovery. International cooperation is afforded on the basis of the relevant treaties, in particular the ECOWAS Convention on Mutual Assistance in Criminal Matters of 1992. In addition, under article 98 of the Constitution, duly ratified or approved treaties or agreements (including the Convention), once published, take precedence over domestic legislation and can be directly applied.

There are plans to create a body for the recovery of seized and confiscated property, based on the model of the French Agency for the Management and Recovery of Seized and Confiscated Assets (AGRASC).

As a member of the Egmont Group, CENTIF may exchange information both upon request and without prior request, although the communication of information without prior request is not explicitly provided for in the current Money-Laundering Act (see, however, art. 78 of the uniform law of WAEMU).

<sup>2</sup> Developments after the country visit: the Press Code was adopted on 20 June 2017.



*Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)*

As indicated above, provisions governing verification of the identity of clients and beneficial owners are contained in articles 7, 8 and 9 of the Money-Laundering Act and article 43 of Regulation No. 15/2002/CM/UEMOA. However, apart from the special monitoring of certain transactions provided for by article 10 of the Money-Laundering Act, the Act does not contain a general obligation with regard to customer due diligence. That obligation will be introduced in the new act on money-laundering and the financing of terrorism (see art. 18 et seq. of the uniform law of WAEMU).

Politically exposed persons are not currently defined in the Money-Laundering Act, but are defined in article 1 (33) of the Act on the Financing of Terrorism. That definition does not include domestic politically exposed persons. Under article 13 of the Act on the Financing of Terrorism, politically exposed persons are subject to a special due diligence obligation. The authorities use computer-based filtering and search tools to identify foreign politically exposed persons. With regard to the Consolidated United Nations Security Council Sanctions List, the Ministry of Foreign Affairs transmits lists of the persons concerned to the supervisory authorities. Under article 10 of Instruction No. 01/2007/RB of 2 July 2007 on combating money-laundering in financial institutions, those institutions are required to pay particular attention to transactions with countries, territories and/or jurisdictions declared to be non-cooperative by the Financial Action Task Force and to transactions made by persons subject to asset-freezing measures.

The obligation to keep documents for a period of 10 years is established in article 11 of the Money-Laundering Act. Under article 13 of Act No. 2008-26 of 28 July 2008 on banking regulations, financial institutions are subject to approval by the Minister of Finance. Approval is not possible without physical presence.

Act No. 2014-17 of 2 April 2014 on asset declaration establishes a system for the disclosure by certain public officials of their financial information and appropriate penalties for non-compliance. The entire asset declaration procedure is confidential. The opening by a resident of an account abroad (outside the WAEMU region) requires prior authorization (art. 10 of Instruction No. 08/07/2011/RFE of 13 July 2011 on the terms governing the opening and operation of foreign accounts of non-residents, domestic currency accounts of residents and accounts of residents abroad).

CENTIF regularly receives reports of suspicious transactions made by persons subject to the reporting obligation. Those reports mainly originate from banks. Under article 29 of the Money-Laundering Act, when transactions point to facts that may constitute the offence of money-laundering, CENTIF sends a report to the State prosecutor, who immediately refers the case to the investigating judge. The Unit has the power to order administrative freezing for a period of 48 hours in order to block a transaction. After that time, only the investigating judge has the power to order freezing.

*Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)*

Under the Code of Civil Procedure, foreign States have the same status as any other legal person. As such, they may be a party to legal proceedings and are subject to the general internal rules of procedure, including with regard to the need to demonstrate a legitimate interest. *Cautio iudicatum solvi* is required and the foreign State must use a lawyer registered at the local bar. Currently, a foreign State may not file a civil action for damages in criminal proceedings. The capacity to act as a party to legal proceedings includes the capacity to initiate civil action before the national courts in order to establish title to or ownership of property or to claim compensation or damages. Senegal has not implemented article 53 (c) of the Convention.

A confiscation order issued by a foreign court may be enforced under articles 65 and 67 of the Money-Laundering Act, as well as under article 20 of the ECOWAS Convention on Mutual Assistance in Criminal Matters. Confiscation upon request for mutual legal assistance is possible on the basis of article 63 of the Money-Laundering Act and articles 18 and 19 of the ECOWAS Convention. For certain offences, including embezzlement (arts. 152 and 153 of the Criminal Code), but not corruption (art. 159 of the Code), the competent courts may order confiscation in accordance with article 30 of the Criminal Code. Confiscation without a criminal conviction is not provided for.

A freezing or seizure order issued by a foreign court may be enforced under article 65 of the Money-Laundering Act, as well as under article 20 of the ECOWAS Convention. A request for mutual assistance for the purposes of seizure may be executed on the basis of articles 62 and 64 of the Money-Laundering Act and articles 87 bis and 88 of the Code of Criminal Procedure. Provisional measures without prior request may be ordered on the basis of article 87 bis of the Code of Criminal Procedure.

The content of requests for mutual legal assistance is determined by the aforementioned provisions of the Money-Laundering Act, the Criminal Code, the Code of Criminal Procedure and the ECOWAS Convention. In addition, under article 98 of the Constitution, the Convention can be directly applied.

Senegal provided a copy of its relevant laws in the context of the review mechanism. Senegal does not make the adoption of confiscation and seizure measures conditional on the existence of a relevant treaty.

Although Senegalese legislation does not explicitly provide for the possibility, before lifting any provisional measure, of giving the requesting State party an opportunity to present its reasons in favour of continuing the measure, that obligation exists on the basis of direct application of the Convention. The rights of bona fide third parties are protected by articles 62, 63, paragraph 3, and 65, paragraph 3, of the Money-Laundering Act, article 466 of the Code of Criminal Procedure and article 20 (2) of the ECOWAS Convention.

#### *Return and disposal of assets (art. 57)*

Senegal can return confiscated property by direct application of the Convention. Under article 66 of the Money-Laundering Act, confiscated property is usually returned to Senegal. However, agreements concluded with the requesting Government may provide otherwise. With regard to seized property, the civil party or any person who claims to have a right over an item under judicial custody, including a foreign State, may apply to the investigating judge for the return of that item (art. 89 of the Code of Criminal Procedure).

The rights of bona fide third parties and the rights of legitimate owners are protected by articles 62, 63, paragraph 3, and 65, paragraph 3, of the Money-Laundering Act, article 466 of the Code of Criminal Procedure and article 20 (2) of the ECOWAS Convention. Cooperation requests are, in principle, executed free of charge. However, there is nothing to prevent Senegal from deducting reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property.

### **3.2. Successes and good practices**

- The establishment of a register of bank accounts maintained by the Central Bank of West African States (BCEAO), which holds an inventory of all the bank cards and current accounts of the customers of reporting institutions (art. 52)
- Under the Code of Civil Procedure, foreign States have the same status as any other legal person (art. 53).

### **3.3. Challenges in implementation**

It is recommended that Senegal:

- Incorporate Directive No. 2/2015/CM/UEMOA of 2 July 2015 into its legislation without delay, in order to fill existing gaps in the Money-Laundering Act (art. 52 (1) and art. 56)
- Include domestic politically exposed persons in the definition of politically exposed persons (art. 52 (1))
- Identify beneficial owners systematically and not only in case of doubt (art. 52 (1))
- Consider giving the prosecutor the power to freeze suspicious transactions (art. 51 (1) and art. 58)
- Take such measures as may be necessary to recognize another State party's claim as a legitimate owner (art. 53 (c))
- Include all offences established in accordance with the Convention, including bribery (art. 159 of the Criminal Code), in the list of offences for which the competent authorities may order confiscation under article 30 of the Criminal Code (art. 54 (1) (b))
- Consider allowing confiscation without a criminal conviction under certain circumstances (art. 54 (1) (c))
- Consider establishing a body for the recovery of seized and confiscated assets (art. 57)

### **3.4. Technical assistance needs identified to improve implementation of the Convention**

- Senegal reported that no technical assistance was required in the implementation of chapter V of the Convention.
-