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A LEGAL ANALYSIS OF LGBTQI+ HUMAN RIGHTS VIOLATIONS IN SENEGAL



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SUMMARY OF THE FACTS:

Between 4 and 6 February 2026, the gendarmerie in Dakar arrested a group of twelve men on various charges, including “acts against nature”, alleged intentional transmission of HIV, paedophilia, human trafficking, and money laundering. These arrests appear to have followed an investigation initially opened in France into a suspected international paedophilia network which was later extended to Senegal. The twelve persons were brought before a prosecutor on 9 February and subsequently placed in pre-trial detention pending further judicial proceedings.

Following the initial arrests, law enforcement conducted additional waves of operations (arrests and searches) resulting in further individuals being taken into custody. As of the latest publicly available reports, approximately fifty-two (52) individuals are currently detained in connection with the investigations and charges, and with authorities suggesting that additional arrests may follow.

It needs to be noted that, from media reports and official communications, none of the arrests carried out so far have been made in flagrante delicto. It also further appears that while initial law enforcement action appears to have been driven by allegations relating to paedophilia, human trafficking, and money laundering, the nature and focus of these actions have transmogrified into dedicated efforts to expose a so-called homosexual network.

Reports also indicate that the mobile phones and devices of the detained individuals have been searched and that several, if not all, detainees have been subjected to compulsory HIV testing while in custody. The HIV status of many of these individuals have also been publicly disclosed in media reporting and on social media, often in connection with the allegation that the said individuals were “spreading HIV among the population.”



In addition to the foregoing, various reports indicate that condoms, lubricants, and HIV treatment medications have been relied upon by investigators as evidence suggestive of same-sex conduct. Concerns have therefore been raised regarding the nature of the arrests, the compulsory nature of HIV testing, the evidentiary use of preventive health materials as evidentiary indicators of criminal conduct, and the public disclosure of sensitive medical information relating to individuals in detention.

It is further notable that, notwithstanding the very serious and grave allegations of pae-dophilia and human trafficking referenced in connection with the investigation, nothing in reports from both media sources or official law enforcement sources has indicated the identification of alleged victims or provided details regarding complaints from victims or their family. The entire focus has been, instead on the sexual orientation and HIV status of those arrested. If anything, from the facts available, all individuals reportedly identified as having had sexual relations with the accused appear to have been consenting adults who have also been placed in detention.

Furthermore, it appears, from an earnest consideration of these facts, that the framing and narrowing of focus on sexuality and HIV status by state authorities and the media present an ulterior functionality. They appear to be part of a coordinated strategy to create the factual imperatives and moral panic necessary to justify the imposition of tougher penalties against an already vulnerable community, and the normalisation of mass raids, intrusive surveillance of private life, and violations of human dignity that the community has been constantly subjected to.

These incidents raise important legal questions and implicate human rights issues particularly as they relate to procedures for arrests, grounds for arrests, privacy rights and dignity of the human person, as well as fair hearing.



From these, the following issues are distilled for analysis:

ISSUES:

- 1. Whether the Arrests are Lawful Under Senegalese Law**
- 2. Whether the Compulsory HIV Tests of Detainees are Lawful under Senegalese Law**
- 3. Whether the Publication of HIV Test Results are Lawful under Senegalese Law**
- 4. Does the Access to the Mobile Phones and Devices of the Detainees Constitute a Breach of Privacy under Senegalese law.**
- 5. Whether the Public Dissemination of Allegations and Personal Information Concerning the Detainees Raises Concerns Relating to the Presumption of Innocence and Fair Hearing.**



ISSUE 1:

Whether the Arrests are lawful under Senegalese Law

Given the existence of allegations of acts which constitute crimes under Senegalese law, including “acts against nature”, intentional transmission of HIV, belonging to a paedophile ring, human trafficking, and money laundering, there is, as a matter of substantive law, a legal basis for investigation by law enforcement, including the taking of measures necessary to identifying suspects and collecting evidence.

However, and as in all criminal proceedings, the exercise of such investigative powers, including arrests for alleged crimes must comply with constitutional and procedural safeguards established under Senegalese law.



Article 7 of the Constitution of Senegal declares that the human person is sacred and inviolable and imposes an obligation upon the state to respect and protect it. The African Charter on Human and People's Rights, which, pursuant to Article 98 of the Constitution, forms a part of Senegalese law and is superior to other laws except the Constitution, guarantees the rights of individuals to dignity, liberty, and non-discrimination in Articles 4, 6, and 2 respectively

Law Enforcement authorities are therefore under a duty to respect human rights and to abide strictly by the law in the fulfilment of their functions and responsibilities, including the conduct of arrests and detention of suspects. Within the framework of criminal procedure, arrests must therefore comply with the requirements of legality, necessity, and reasonable suspicion.

Under Senegalese law, arrests are to occur under two principal circumstances: where an individual is apprehended in flagrante delicto or where such arrest is carried out pursuant to a judicial warrant or investigative mandate issued in the context of a judicial investigation.

From the information presently available, none of the arrests conducted in connection with this investigation appear to have been carried out in flagrante delicto. Rather they appear to have taken place in the context of coordinated raids and then subsequent investigative operations. In this, the legality of the arrests depends on whether they were authorised by a competent judicial authority and supported by individualised and reasonable grounds linking each of the suspects to the alleged offences, rather than blanket determinations based on vague or generalised suspicions.

It is currently not clear from available reporting whether the arrests and detentions were conducted pursuant to judicial warrants or specific investigative mandates from a competent official.



If it were to be established that this is not the case, then there is every reason to consider that these arrests most likely constitute arbitrary deprivations of liberty and interference with physical integrity in violations of the Constitution of Senegal, the African Charter, and the Senegalese Criminal Procedure Code.

More to it, the Penal Code of Senegal criminalises arbitrary acts by public officials which affects individual liberty and provides for sanctions in such cases. The law therefore recognises that law enforcement authorities may themselves incur liability where they exercise their powers *ultra vires*.

In addition to the foregoing, the nature of the evidence reportedly relied upon to justify several of the arrests raises significant legal concerns. Public reporting suggests that investigators have relied on the possession of preventative health materials such as condoms, lubricants, and HIV treatment medication, as well as the HIV-positive status of certain detainees as indicia of criminal conduct. Beyond forcing a tortured and irrational association, such reasoning essentially amounts to administrative criminalisation and scapegoating of individuals for lawful possession of materials, the use of which are actively encouraged under Senegalese public health policy and legislation, including the national HIV legal and policy framework. Their mere presence cannot, without more, establish reasonable suspicion of criminal activity, nor can they provide *prima facie* evidence of the offences alleged. Indeed, reliance on such materials reveals a fundamental aporia in the investigations, especially insofar as they relate to the allegations of intentional transmission of HIV.

Thus, while the existence of allegations relating to criminal conduct may provide a legitimate basis for investigation, the manner in which the arrests appear to have been conducted-serious questions concerning legality, reasonableness, the presumption of innocence,



and compliance with due process under Senegal laws and applicable human rights standards.

Moreover, the absence of further information on the other alleged crimes initially cited, coupled with the sudden and disproportionate focus on the sexual orientation and HIV status of the detainees raises legitimate concerns as to whether the original allegations have only functioned primarily as investigative pretext for avoiding the legal requirement that arrests for “acts against nature” be only made in flagrante delicto. It would appear thus that criminal law and procedure has thus been instrumentalised to police sexuality rather than to investigate the grave offences initially invoked.



ISSUE 2:

Whether the Compulsory HIV Tests of Detainees are Lawful under Senegalese Law

Article 7 of the Constitution guarantees the corporeal integrity of every individual. This protection is also reinforced by Article 4 of the African Charter on Human and People’s rights which guarantees the inviolability of human beings and the respect for the integrity of the person. Law No 2010-03 on HIV/AIDS (hereinafter “HIV Law”) provides strict safeguards governing HIV testing and health dignity grounded in principles of autonomy, informed consent, confidentiality, and non-discrimination. Article 12 expressly declares that HIV testing is voluntary and must be subject to prior, free, and informed consent and Article 39 further provides penalties for compulsory testing and obstructing voluntary HIV testing.

However, Article 12 nevertheless also recognises an exception that compulsory testing may be authorised at the request of the judicial authorities.



But this exception is strictly restricted in that the order must be judiciaire and used only when relevant.

Available reports state that the tests were conducted pursuant to a judicial order which provides a prima facie legal basis. But given that there is no indication that each individual was specifically tied by evidence to an allegation of HIV transmission the universal or blanket testing of the detainees, without individualized cause, is highly questionable, runs counter to the spirit of the law, and engages bodily integrity, dignity, and the protection against torture and degrading treatment.

In addition, a closer reading of the HIV law raises questions on the manner in which such testing may lawfully be carried out. Article 40 of the HIV law prescribes penalties for refusal to comply with an order for compulsory testing. The structure of this provision indicates that the law intends such an order to attach personally upon the person against whom it is issued. This is to say that compliance is secured through threat of legal sanction in the event of refusal. It does not envisage direct physical coercion or bodily intrusion by law enforcement officials.

There is a fundamental distinction between indirect compulsion on the possibility of sanction which the law clearly contemplates, and coercion involving physical restraint, forced blood extraction, and other invasive procedures which is not contemplated by the law. And it is not difficult to imagine why, the former engages individual autonomy which is the driving purpose of the HIV law, while the latter directly implicates constitutional and legal guarantees of human dignity and bodily integrity, and presents an image that must trigger discomfort in the heart of every human rights minded person – an image which implicates provisions and protections against torture under the anti-torture convention.



In addition, it is also unclear what the legal basis or reasoning for the judicial order is. Judicial power and discretion is to be exercised judicially and judiciously, and thus, an order for HIV testing is only legally permissible if HIV status is materially relevant to the alleged offence i.e. if there is an allegation of intentional transmission under Article 36 of the HIV law, or where serological Status is fundamental to resolving the dispute as in Article 20.

A blanket or presumptive order for compulsory HIV testing of all individuals detained, particularly without reasonable grounds for suspecting transmission would raise serious concerns of arbitrariness and discriminatory presumption. Presuming HIV status based on sexuality or ordering testing based solely on the nature of the charge does not seem to satisfy legal requirements, including requirements of necessity, proportionality, and legal relevance. When it is also considered that, according to reports, condoms and lubricants were also recovered from the detainees, the factual basis for these suspicions become even more hollow and lead to a strong suspicion that the compulsory testing order would hardly constitute a judicious exercise of judicial power.

In these circumstances, there is every reason to believe that the process in this regard has run roughshod over constitutional guarantees of corporeal integrity, protection against all physical mutilations, as well as legal safeguards provided under the HIV law. It has also certainly undermined national public health policy especially regarding efforts at addressing stigma and discrimination against persons living with HIV.

Moreover, where compulsory testing is ordered or implemented in a manner that disproportionately targets individuals based on their perceived sexual orientation, implicates the prohibition of discrimination under the African charter.



ISSUE 3:

Whether the Publication of HIV Test results are lawful under Senegalese Law

Article 20 of the Law No 2010-033 on HIV and AIDS binds everyone who, by reason of their profession or function have access to medical records, screening test results, or medical information relating in particular to the identity and HIV status of persons living with HIV to a strict obligation of confidentiality. It essentially a reproduction of Section 363 of the Penal Code under a more specific context.

Article 21 of the HIV law, also further restricts the persons to whom HIV test results may be disclosed. These include: the individual tested, their legal representative where the person is a minor or incapacitated, the competent authority that requested the test, or any other person expressly authorized by the tested individual. Article 38 prescribes penalties for breach of these confidentiality obligations and these in addition to penalties provided for in Article 363 of the Penal Code. In addition to this, Article 4 of the Data Protection Law of Senegal (Law No. 2008-12) classifies information related to health and sex life, amongst others, as sensitive personal data requiring strict protection.

The names and HIV status of detainees were leaked to the press and subsequently dis-seminated through media outlets and online platforms. This disclosure is manifestly in-compatible with the confidentiality regime set out above. The detainees did not consent to public disclosure, and the media are not authorised recipients under the law.

In addition to potential criminal liability under Article 363 of the penal Code and the HIV law, such conduct and amounts to unlawful



processing and dissemination of sensitive data under the Data Protection Law. Responsibility for such violations extend not only to the individual who initially disclosed the information, but also to any media organisation or platform that knowingly published confidential medical data obtained in violation of the law.

But beyond legal liability, the public disclosure of the HIV status of detainees raise serious concerns regarding human dignity, privacy, the presumption of innocence, and non-discrimination, particularly where such disclosure has occurred prior to judicial determination of guilt. It is difficult to imagine that in the context of the heavy stigma engendered by the toxic discourse and disinformation surrounding this investigation, that there can be any guarantees of the detainees or accused persons having a fair trial in Senegal, especially considering that the presumption of innocence seems to have been eroded.

ISSUE 4:

Does the access to the mobile phones and devices of the detainees constitute a breach of privacy under Senegalese Law.

Article 13 of the Constitution declares that the secrecy of correspondence, and of postal, telegraphic, telephonic, and electronic communications is inviolable subject to applicable laws. In addition to this, Law No. 2008-12 on the Protection of Personal Data establishes a comprehensive framework governing access to and processing of personal information. Article 4 of the law classifies information relating to health status and sexual life as sensitive personal data, requiring heightened safeguards and strict conditions for lawful access and processing.



Modern mobile phones constitute repositories of extensive personal information, including private communications, personal correspondence, photographs, social networks, and other forms of digital data. Access to the contents of such devices therefore constitutes a deep and significant intrusion into the private life of individuals and necessarily implicates the constitutional guarantees of privacy and confidentiality of communications.

According to available reports, law enforcement officers accessed the mobile phones of detainees and relied on information gotten therefrom to pursue further arrests and searches. It remains unclear whether such access were carried out pursuant to search warrants or orders issued by competent authority or through intimidation and force. Even with a warrant, deep inspection of personal devices must be strictly limited and justified by necessity and law. The absence of clarity in this regard raises serious concerns regarding what investigative measures were employed as well as their arbitrariness, legality and proportionality. Clarity in this is also essential to ascertain whether the said measures also implicate the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Given the strict protections afforded to private communications and sensitive personal data under Senegalese law, the presumption of illegality must lie against such investigative actions until the contrary is shown and proven.



ISSUE 5:

Whether the public dissemination of allegations and personal information concerning the detainees raises concerns relating to the presumption of innocence and fair hearing.

The presumption of innocence constitutes a fundamental principle of criminal justice and a cornerstone of fair trial guarantees. Under Article 9 of the Constitution of Senegal, every person accused of a criminal offence is presumed innocent until their guilt has been established by a competent court of law. This principle is further reinforced under Article 7(1)(b) of the African Charter on Human and Peoples' Rights, which guarantees the right of every individual to be presumed innocent until proven guilty by a competent court or tribunal. This presumption of innocence imposes obligations not only on judicial authorities but also on public officials and law enforcement agencies, requiring them to refrain from public statements or actions that present accused persons as guilty prior to the determination of the case by a court.

According to available reports, the investigation has been accompanied by the public dissemination of allegations concerning the detainees, including assertions that they belong to a "homosexual network", a "paedophile ring", or other criminal enterprises. In addition, the names and personal information of several detainees have reportedly been circulated in media outlets and online platforms, sometimes accompanied by references to their HIV status.

Such public dissemination of allegations raises serious concerns regarding the protection of the presumption of innocence.



When individuals who have merely been arrested or placed under investigation are publicly portrayed as participants in criminal networks before any judicial determination of guilt, there is a risk that public authorities may contribute to the creation of a presumption of guilt in the public sphere. This concern is particularly significant in contexts where the alleged offences carry strong social stigma, including allegations relating to sexual orientation, HIV status, or offences involving sexual morality. Public exposure of detainees under such circumstances may generate significant public hostility and prejudice, thereby undermining the conditions necessary for an impartial and fair adjudication of the case.

The publication of identifying information relating to detainees also raises broader concerns regarding the integrity of ongoing criminal proceedings. Public dissemination of investigative allegations prior to trial may influence witnesses, affect the testimony of potential victims, and exert indirect pressure on judicial actors responsible for determining the case. Furthermore, where the dissemination of such information appears to originate from investigative authorities or individuals with access to the investigation, it raises questions as to whether confidential investigative information has been improperly disclosed, thereby compromising both the rights of the accused and the proper administration of justice.

In light of these considerations, the public dissemination of allegations and personal information relating to the detainees raises substantial concerns regarding compliance with the constitutional guarantee of the presumption of innocence and the broader fair hearing guarantees protected under Article 7 of the African Charter on Human and Peoples' Rights.

While the investigation of alleged criminal offences is a legitimate function of the State, such investigations must be conducted in a manner that respects the dignity of persons under investigation and



preserves the integrity of judicial proceedings, ensuring that guilt or innocence is determined solely by a competent court of law and not by public opinion or media exposure.

CALL TO ACTION:

In the light of the foregoing, the conduct of the investigation and treatment of detainees in the present case raise serious concerns regarding compliance with constitutional guarantees, statutory protections under Senegalese law, and Senegal's obligations at international law, particularly under the African Charter on Human and People's Rights.

Human rights protections exist to provide normative restrictions upon the exercise of the powers and functions of the state by officials, indeed, even in the legitimate exercise of said powers.

Considering the real risks of disrespect and disregard for human rights that have attended the current case, we issue the following calls:

1. Law enforcement and judicial authorities must comply with the Law in arrests and detentions

Law enforcement authorities should ensure that all arrests and detentions comply strictly with the requirements of the laws in Senegal, including but not limited to the Constitution of the Republic of Senegal, the African Charter on Human and People's Rights, the Senegal Code of Criminal Procedure, and the Penal Code of Senegal.

The constitutional guarantees of personal liberty and the African Charter's prohibition on arbitrary arrest require individualised probable cause.



Mass raids without specific warrants or evidence violate these protections. All current detentions should be reviewed, and any found unlawful must be lifted immediately and appropriate compensation and apology provided.

2. Judicial and Law enforcement authorities must conduct an immediate review of the use of compulsory HIV Testing in investigations and cases:

Judicial and law enforcement authorities should review the circumstances under which HIV testing was ordered and conducted, and re-evaluate any orders given in that regard to ensure full compliance with Law No. 2010-03 on HIV/AIDS, particularly the provisions protecting voluntary testing, informed consent, and the integrity of the person.

Where testing has been conducted through coercive means or without a demonstrable legal necessity, corrective measures should be taken to ensure that investigative practices remain consistent with the constitutional guarantee of corporeal integrity and the protections established under Senegalese public health law.

Such corrective measures should include, where appropriate, disciplinary or legal sanctions against responsible officials, remedies for affected detainees, as well as the establishment of clear procedural safeguards to prevent similar violations in future.

3. Authorities must investigate the disclosure of confidential medical information

The leak and publication of detainees' HIV status and other medical



information should be the subject of an immediate and independent investigation. Where such disclosure is confirmed, appropriate sanctions should be applied as required under the Law against any official or media outlet involved.

We also call on the relevant authorities, including the Commission de Protection des Données Personnelles, to examine whether the processing and dissemination of such sensitive personal data occurred in violation of national data protection law and to recommend appropriate remedial and preventative measures. This is essential to respect human dignity and the presumption of innocence.

4. Respect and protect the presumption of innocence and the integrity of judicial proceedings

Public officials and investigative authorities should refrain from statements or disclosures that may portray suspects as guilty prior to a judicial determination. Where information relating to ongoing investigations is communicated to the public, such communication should respect the constitutional and legal presumption of innocence and avoid the disclosure of personal information capable of prejudicing their fair hearing guarantee, or stimulating prejudice and social stigmatisation against persons in detention.

5. The State must ensure respect for Human Dignity and protection against discrimination

All investigative and prosecutorial actions should and must be conducted in a manner that respects the dignity of persons under investigation and avoids practices that may result in stigmatisation or



discriminatory treatment, particularly in relation to socially sensitive characteristics such as health status and sexual orientation.

As a State Party to the African Charter on Human and People's Rights, Senegal has an obligation to ensure that the rights to dignity, liberty, equality before the law, and fair trial are respected in the administration of criminal justice.

6. Senegalese authorities must strengthen training and oversight of Law enforcement and Judicial Authorities

Judicial and police personnel must be held to the highest standards of neutrality and fairness. There needs to be mandatory sensitivity training for judicial and law enforcement officials, as well as mandatory oversight mechanisms for them, particularly with respect to:

- the confidentiality of medical information;
- the legal framework governing HIV testing and HIV-related stigma;
- engaging Persons Living With HIV with dignity and respect for their human rights;

Such measures would help ensure that criminal investigations are conducted in accordance with both the rule of law and Senegal's human rights obligations.