

# SENEGAL

LAND OF IMPUNITY

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*cover photo:* Dominique Lopy, who died in detention in April 2007. He is believed to have died as a result of torture in police custody. © Private

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# INTRODUCTION

**“Impunity is the negation of justice, which is the foundation of any democratic society. Impunity is the bankruptcy of the state of law. It opens the door to violence. It prevents the truth from prevailing, passions from calming and evil from being eradicated.”**

Mr Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions, December, 1994.<sup>1</sup>

For around three decades, members of the Senegalese security forces have committed serious human rights violations against various groups and populations with almost total impunity. In order to ensure immunity from prosecution for Senegalese military personnel, gendarmes and police officers implicated in these serious abuses, the authorities have used various political and legal stratagems that have allowed those responsible for these crimes to avoid being made accountable for their acts.

In some cases, the Senegalese authorities have chosen to use a general amnesty, contrary to international law standards that ban amnesties for serious human rights violations until their perpetrators have been tried.<sup>2</sup> For example, in 2004, the Senegalese President, Abdoulaye Wade, promulgated an amnesty law for all offences committed by the parties to the conflict in Casamance, a region in the south of Senegal. For more than two decades, the Senegalese security forces fought an armed opposition movement that called for the region's independence. This amnesty prevented any criminal proceedings against the perpetrators of massive human rights violations and abuses, including extrajudicial executions, forced disappearances, torture, long term arbitrary detentions without trial and deliberate and arbitrary abductions and homicides, committed throughout the 1990s.<sup>3</sup> This general amnesty left thousands of people, victims or the families of victims, without any hope of finding out the truth about the fate of their relatives or receiving redress for the damages suffered.

Beyond this general amnesty adopted in the context of the Casamance conflict, President Abdoulaye Wade promulgated, in February 2005, an amnesty law “for all infractions, whether correctional or criminal” committed in Senegal or abroad, in relation with the general and local elections held between 1983 and 2004 or regarding infraction “having a political

motive, whether their perpetrators have been tried or not". This law called "Ezzan" (based on the name of the Member of Parliament from the ruling party, the Senegalese Democratic Party, who proposed it) was justified by the authorities as aiming to assuage the political debate in Senegal and avoid "the political exploitation of some affairs".

This law, which mentioned expressly infractions committed "in relation with the death of Babacar Sèye, magistrate in the Constitutional Council"<sup>4</sup> raised lots of protests from the press as well as in opposition parties and human rights organizations, notably the African Assembly for the Defence of Human Rights (RADDHO, *Rencontre africaine de défense des droits de l'homme*) and the International Federation for Human Rights (FIDH, *Fédération internationale des ligues des droits de l'homme*). This amnesty law, qualified by some as an "institutional Chernobyl",<sup>5</sup> was denounced in 2005 by the Luxembourg presidency of the European Union which declared that "no criminal act should benefit from impunity, no matter its motives".<sup>6</sup>

Beside this use of amnesties, the authorities have consistently ensured impunity for members of the security forces responsible for human rights de violations. They have often refused to investigate into these cases. Sometimes, however, often under pressure from lawyers, the press or human rights non-governmental organizations (NGOs), the authorities have finally agreed to investigate serious allegations of torture that led to the death of common law detainees. However, to Amnesty International's knowledge, hardly any of these investigations have brought the alleged perpetrators of these acts to justice or set sentences proportional to the gravity of their acts. The police force and gendarmerie have claimed that some deaths in custody were "suicides", despite overwhelming evidence of torture and other ill-treatment. Other investigations have never been completed, thus depriving the families of access to justice and redress.

Even when judges summon members of the security forces to account for human rights violations, they encounter a major obstacle. They must first obtain a prosecution order (*ordre de poursuites*) from the Ministry responsible for the state officials in question (the Ministry of the Interior in the case of police officers and the Ministry of Defence in the case of gendarmes and military personnel). This procedure, set out in article 60 of the Code of Military Justice, grants a *de facto* power of veto to the executive with regard to any judicial proceedings against members of the security forces. In practice, the issue of prosecution orders is refused or delayed by officials higher up the chain of command who are responsible of the security force officers implicated in human rights violations, which leaves the judiciary helpless and the victims and deprives their families of any hope of redress.

Moreover, in the rare cases in which members of the security forces are challenged about acts of torture, these agents are not usually suspended during the duration of the investigation but simply redeployed elsewhere, which is contrary to the recommendations made many times in different contexts by the United Nations Committee Against Torture (CAT)<sup>7</sup>.

The impunity enjoyed by the perpetrators of acts of torture and other serious human rights violations is deep-rooted in Senegal as public prosecutors have constantly refused to investigate allegations of torture in police custody or provisional detention, made by victims or their lawyers during trials. An even more serious issue is that judges often rely on

“confessions” extracted under torture to convict defendants, in violation of one of the basic provisions of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), ratified by Senegal in 1986. For example, this occurred in three trials in 2009 and 2010, during which men alleged to be homosexuals, others arrested in the region of Kédougou (approximately 700 km to the southeast of Dakar) and others arrested in the region of Vélingara (670 km to the south of Dakar), were sentenced to long prison terms on the basis of “confessions” extracted under torture.

It is in the context of this culture of impunity that the impasse in the case of Hissène Habré should be seen. Ten years after a complaint was lodged against the former Chadian president, who sought refuge in Senegal, no judicial proceedings have yet begun and the Senegalese government has consistently acted in a dilatory manner in order to avoid bringing him to justice. The Senegalese courts initially declared they were not competent to examine the case. President Abdoulaye Wade then asked Hissène Habré to leave the country. In response to the reaction of the international community, the Senegalese Head of State referred the case to the African Union, which reminded Senegal of its obligation to try the former Chadian president. No longer able to oppose legal arguments to Hissène Habré’s trial, the Senegalese authorities have for the last two years claimed financial obstacles and have conditioned any commitment to begin judicial proceedings against the former Chadian president on payment of exorbitant sums from donors.

However, Senegal has human rights legislation that could, if applied, ensure the right to justice and truth for the victims of human rights violations. Unfortunately, as shown by the cases described in this report, these laws are very rarely used to bring to justice members of the security forces or former Heads of State such as Hissène Habré.

United Nations human rights treaty bodies have, on several occasions, denounced Senegal’s non-observance of basic international human rights law, particularly with regard to the use of amnesties, and they have recommended measures to fight the culture of impunity that impregnates Senegal. The Senegalese authorities have always responded to this criticism and recommendations by making promises that they have never kept.

This document summarizes the conclusions presented in a number of documents published by Amnesty International since 1998 and presents information collected during several missions to Casamance and other regions of the country, notably Dakar and Kédougou in February 2009. It presents examples of the way in which the Senegalese authorities succeed in escaping from their duty to bring to justice state officials who perpetrate serious human rights violations. This document also makes recommendations to the Senegalese government, requesting it to apply the national and international standards that it is committed to observing and to bring to justice the perpetrators of human rights violations.

As long as the state officials responsible for human rights violations know that their status means they almost certainly will never have to account for their acts, every Senegalese citizen or individual on Senegalese territory or within Senegalese jurisdiction risks being subjected to acts of torture and other human rights violations that will put their life at risk. Similarly, as long as the wall of impunity is not broken down, the victims of violations and their families cannot hope to obtain justice and reparations. Ensuring justice represents not only the

condition *sine qua non* of full and complete physical and psychological rehabilitation of victims and their families, but also constitutes one of the foundations of the rule of law.

In its willingness to have a dialogue with the Senegalese authorities, Amnesty International sent this report to the Head of State and the minister of Justice on 7 June 2010 in the hope of getting their comments. At the time of printing this document (13 July 2010), the organization had not received any reply from the authorities despite having reiterated its request. Amnesty International regrets that the Senegalese government did not seize this opportunity to answer the serious concerns exposed in this report.



# CASAMANCE: AN AMNESTY TO ERASE CRIMES AND DENY JUSTICE

**“[The amnesty is] a veritable institutional amnesia that invites us to act as though the event never took place.”**

Paul Ricœur<sup>8</sup>

In July 2004, the Senegalese president, Abdoulaye Wade, promulgated an amnesty law for all offences committed during the internal conflict in Casamance since 1991, “whether the perpetrators have been definitively judged or not”. This decision followed the signature of two peace agreements that sought to end two decades of armed conflict between government forces and members of the Democratic Forces of Casamance Movement (MFDC, *Mouvement des forces démocratiques de la Casamance*), an armed opposition group fighting for independence for this region.

By declaring an amnesty before taking any legal proceedings against the soldiers of government forces and armed members of the MFDC responsible for serious human rights violations and abuses, President Abdoulaye Wade deprived hundreds of the victims of this terrible conflict and their families from their right to justice and redress.

The impunity that marked the countless atrocities committed by both parties to the conflict was therefore enshrined in law, denying the suffering of the victims and their families and leaving them in a state of total abandonment.

The suffering continues to haunt the families of the dozens of disappeared Casamance people arrested by government forces during the conflict. Although the uncertainty concerning the fate of the disappeared has given way to resignation as time has passed, many are still unable to grieve for their families as the bodies of the deceased has not been returned.

Causing such suffering to the families of disappeared people (an inevitable and sometimes deliberate result of forced disappearances) also constitutes a violation of human rights. On several occasions, international human rights treaty bodies, including the United Nations Human Rights Committee, have stated that the willingness of the authorities to let months and even years go by without granting the families of the disappeared the right to know what happened to their families is a violation of the prohibition of torture and other ill-treatment.<sup>9</sup>

The continuing silence regarding the fate of the disappeared continues to have serious economic and psychological consequences for their families. The wives of the disappeared are faced with economic difficulties that many of them have never really been able to overcome and children have grown up without knowing why their father was not at home.

To Amnesty International’s knowledge, no family, or almost no family of the disappeared has

received either compensation or material or psychological support. In some very rare cases, the authorities have recognized that the disappeared person was deceased but have given no details regarding the circumstances of their death and have not granted any material or symbolic reparation. For example, **Khady Bassène**, the wife of Jean Diandy, arrested in August 1999 and unaccounted for, finally received from the municipal authorities a death certificate that allowed her to claim her husband's pension. However, the document gave no details about the circumstances in which this man died.



Khady Bassène, whose husband Jean Diandy disappeared in 1999 © AI

The amnesty promulgated by President Wade also denied any right to reparation for the hundreds of Casamance civilians who were victims of torture, disappearances and long-term arbitrary detention without trial. Throughout the 1990s, the Senegalese security forces systematically used torture to extract “confessions” from men and women who were often arbitrarily arrested because they belonged to the Diola community (a Casamance ethnic group). During the four Amnesty International missions to Casamance between 1997 and 2003, the organization documented several methods of torture regularly used by the Senegalese security forces on people detained in police custody, which can legally be for eight days.

Detainees were beaten for hours whilst hanging by a rope from the ceiling; others had cigarettes stubbed out on their bodies and molten plastic poured on their bodies; others were made to ingest toxic substances, such as petrol and some received electric shocks.

#### **“The electrical current reached the heart “**

“I was stripped and thrown to the ground by six gendarmes, who soaked me with water. Then they attached electrical wire to my feet and ears and passed an alternating current through it, which they produced by turning a crank-handle. The electric current reached my heart; my ears hurt and I couldn't hear any more. It hurt so much that I tore the wires off, and then somebody punched me in the face.”

Statement by a young man from Casamance arrested in April 1995, quoted in the Amnesty International document, *Senegal. Climate of terror in Casamance*, January 1998.

More than ten years after their release, at the beginning of the 21<sup>st</sup> century, many of these former detainees still suffer the effects of the torture to which they were subjected and they have received no medical treatment or any kind of reparations. In April 2010, one former

detainee, who was a civil servant before his arrest, explained to Amnesty International that he has never been able to work again because of the health problems caused by the torture and the long years of detention. "I still suffer from my spine and chest because they beat me many times. During interrogations, the gendarmes forced detainees to hit each other. Since then, I have always suffered from dizziness. Nobody came to see me to apologize or to ask me if I needed anything."

The amnesty promulgated by the Senegalese Head of State also deprived of any hope of justice and redress the many victims of human rights abuses committed by the MFDC. Throughout the conflict, armed elements of the MFDC were responsible for the deliberate and arbitrary abduction and homicide of civilians suspected of collaborating with the Senegalese authorities. They also committed acts of torture and rape in order to force communities off land considered by the armed opposition movement to be its private property.

For example, on 1 July 1999, six women from the Mankagne ethnic group, who had gone to gather cashew nuts in an orchard in Saint-Louis Mankagne (around 10 km to the southeast of Ziguinchor, Casamance's main town), were attacked by armed elements claiming to represent the MFDC and speaking Diola. During the attack, some women, including **Anna Malack** and **Diminga Ndecky**, were assaulted and raped.

***"They spread my legs and put sand and a piece of wood up my genitals with their four fingers"***

"On seeing the men arrive, one of us shouted and they beat her hard, her skin was ripped to shreds, she needed a graft. They said they were MFDC rebels and they told us: 'We told you not to come into the bush any more. The bush belongs to the rebels and soldiers'. The rebels did not rape us because relations with women spoil their gris-gris. Because I was rather plump, they accused me of 'performing' sexual perversions with the soldiers. They took off my knickers with a knife, they spread my legs and put sand and a piece of wood up my genitals with their four fingers. I bled, I fainted, I thought I was going to die. I couldn't walk for five days."

Statement by Diminga Ndecky, quoted in the Amnesty International document, *Senegal. Casamance women speak out*, 4 December 2003.

Amnesty International interviewed Diminga Ndecky in April 2010. She had just been discharged from the hospital where she is being treated for the after-effects of the rape and ill-treatment she suffered at the hands of the MFDC. She said: "I am very weak. My whole body hurts and often swells up. My periods stopped. Nobody came to discuss my situation and I have received no help. Nobody talks about it, it is as though it never happened." Another of the young women who was sexually assaulted at the same time as her, Anna Malack, died in 2008. Diminga Ndecky told Amnesty International: "Anna stayed in bed all the time until, one day, she died."



Diminga Ndecky and Anna Malack, victims of sexual violence committed by MFDC members in 1999. © AI

Despite sporadic waves of violence, the intensity of the conflict in Casamance reduced noticeably during the last decade. However, the policy of generalized impunity, officially sanctioned by the amnesty of 2004, has left open wounds within the Casamance population. No political accord can be sustainable until it is recognized that both parties to the conflict committed serious human rights violations and abuses, until there is justice and reparations for the damages suffered and for as long as the spirit of the population remains oppressed by a feeling of injustice and neglect.

# DEATHS IN CUSTODY: INVESTIGATIONS THAT ARE ALMOST NEVER COMPLETED

**“Everybody knows the circumstances of my son’s death but nobody will throw any light on his disappearance. We think they buried the problem along with the body. The State does not want to talk about it.”**

Mother of Dominique Lopy, who died in custody from the effects of torture in 2007

During the last three decades, the Senegalese authorities have only very rarely investigated cases of deaths in custody apparently caused by torture or other ill-treatment. Moreover, when investigations have been made, they have very rarely been conducted in a prompt, independent and impartial manner, in contradiction of international standards on investigations into this type of crime.

International standards regulating investigations into such crimes are well established and, in particular, include articles 12 and 13 of the Convention Against Torture, the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Other Degrading Treatment or Punishment<sup>10</sup> and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.<sup>11</sup> The strict obligations set out in these international instruments, which are practically never observed by the Senegalese authorities, include the duty to keep families informed of the details of investigations.

The denial of justice and truth continues. Already in the 1990’s, Amnesty International had publicly denounced several cases of death in custody, notably the case of 20-year-old Ramata Guèye, a female mango-seller, who was tortured in July 1993 in the gendarmerie (para-military police station) at Thiès; and the case of Lamine Samb, a teacher of Arabic who died in February 1994 in Dakar, after two days in detention.<sup>12</sup> Only during the last three years, at least five people arrested for common-law crimes have died in custody, apparently from the effects of torture. In some cases, investigations have been opened following complaints by the families concerned or after human rights organizations have denounced the deaths. However, as far as the families of victims and Amnesty International are aware, in at least four of these five cases, investigations have not brought to justice the police officers and gendarmes implicated in acts of torture.

In April 2007, **Dominique Lopy**, a young Senegalese man, aged 25, died in custody at the Central Police Station of Kolda, 670 km to the southeast of Dakar. He was arrested after the President of Kolda Regional Council complained about the theft of a television.

In May 2010, his mother told Amnesty International: “On the morning of his arrest, the

police came to my house with Dominique. He was handcuffed and bare-chested. They searched the house and then left taking Dominique with them. As he left, one of the police officers said that Dominique would be beaten to death if he did not return the television set. When I went to see him at the police station, my son told me that he had been beaten while in detention and his body showed signs of a beating. The next morning, I went again to the police station but they refused to let me see my son. I later learned that his body had been taken to the mortuary.”



Dominique Lopy, who died in custody in April 2007 © Private

This death in custody provoked great public indignation and on the day of Dominique Lopy's funeral, the population of Kolda demonstrated in the streets, burned down several houses, including the home of the President of the Regional Council and attacked the police station. Dioutala Mané, a tailor who was leaving his workshop to cross the street, died after being shot in the back by a member of the security forces. There was no investigation either into his death or into the excessive use of force by enforcement officers during the demonstration.

Dominique Lopy's family lodged a complaint and an investigation was opened but, three years later, the family of the deceased are still waiting for justice to be done. In May 2010, Dominique Lopy's mother told Amnesty International: "The family lodged a complaint, we have been heard by a judge one by one, but since that date, nothing else has happened. Everybody knows the circumstances of my son's death but nobody will throw any light on his disappearance. We think they buried the problem along with the body. The State does not want to talk about it."



Alioune Badara Diop, died in Ndong police station in Kaolack in 2007 © Private

In December 2007, another young man, **Alioune Badara Diop**, died while in custody, apparently after being tortured in Ndong police station in Kaolack (200 km to the southeast

of Dakar). He was arrested at his home around 7pm after a complaint was made about a breach of trust regarding the purchase of a motor bike for which he had allegedly not paid in full. Although he was not known to suffer from any illness, Alioune Badara Diop was found dead the next morning in his cell. The police told his family that he had committed suicide by hanging himself but his family did not believe the hypothesis of suicide and demanded an investigation. An autopsy was carried out at the Kaolack regional hospital but the family was not informed of the results and, to this day, the circumstances of his death have still not been explained.

In May 2010, one of Alioune Badara Diop's relatives told Amnesty International: "We lodged a complaint and the deceased's brother and wife were heard by the prosecutor and a judge. An autopsy was carried out but a copy of it wasn't given to us. We were told that the police officer who arrested Alioune had been tried and given a two-year suspended prison sentence, but we still do not know the circumstances in which Alioune died and we have received no reparation."

In November 2008, **Ndèye Oury 'Adja' Camara**, a woman aged 31, who was suspected of murder, was arrested along with her husband and brother. All three were taken to the Dakar central police station and, two days after her arrest, Adja Camara died in her cell.



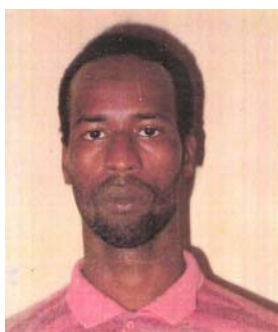
Adja Camara, died in Dakar police station in 2008 © Private

Adja Camara's autopsy certificate stated that she died from "death by mechanical asphyxia – probably hanging". In May 2010, a relative of hers, detained in the next cell, told Amnesty International that it would have been impossible for Adja Camara to hang herself on her own. He added: "[Two days after our arrest], a prisoner started to cry out to a police officer: 'a woman has hung herself!' I immediately climbed up to look through the bars of my cell so I could see the cell at the end of the corridor. The cell was already open before the prison officers arrived. I recognized Adja. I could see her head, with an orange scarf wrapped around it, with the scarf itself hanging from the bars in the upper part of the door, which was low. Her body was not hanging; her feet must have been on the ground because she was not hanging from very high up." The families requested a second autopsy. It seems that this autopsy took place, but the results have still not been communicated to the family.

**Modou Bakhoum** died at the gendarme brigade station at Karang (300 km to the south of Dakar) on the night of Thursday 22 to Friday 23 January 2009. Modou Bakhoum was arrested at home for dealing in cannabis and was allegedly ill treated there by gendarmes

who tied him up, beat him and then took him to the gendarmerie station. His family was informed of his death the following morning. The public prosecutor ordered an autopsy to be performed and opened an investigation.

In November 2009, **Aboubacry Dia** died at Matam police station (700 km to the east of Dakar), a few hours after being questioned by police officers. The police said he had committed suicide by hanging himself and issued a funeral certificate that said “the medico-legal examination established that the death was caused by mechanical asphyxia.” However, in May 2010, a close relative of the detainee told Amnesty International that he had seen Aboubacry Dia’s body in his cell a short time before his death: “he was lying on his back, he was only wearing his vest and there was no rope around his neck.” The victim’s family and lawyer challenged the hypothesis of suicide and complained to the public prosecutor, who ordered an autopsy and opened an investigation. This took place at Le Dantec Hospital in Dakar and concluded that death was “by strangulation”.



Aboubacry Dia, died in Matam police station in 2009 © Private

The judicial investigation into the death of Aboubacry Dia continues and the magistrate has implicated members of the security forces. However, he has been unable to interview them because the Minister of the Interior has still not issued a prosecution order, blocking any judicial procedure indefinitely. Moreover, as often in cases where members of the security forces are implicated in human rights violations, these members have not been suspended during the duration of the investigation but have simply been redeployed elsewhere. This practice is contrary to the recommendations issued many times in different contexts by the Committee Against Torture.



# THE USE OF TORTURE SANCTIONED BY THE JUSTICE SYSTEM

**“When the judge pointed out the contradictions in the evidence presented by one of the detainees, he replied that he had been tortured by the gendarmerie. The judge replied by saying: ‘That is not my problem, answer my question’.”**

Lawyer of a detainee convicted on the basis of a confession extracted under torture at Vélingara in May 2010

The impunity enjoyed by the perpetrators of acts of torture and other serious human rights violations is all the more deep-rooted in Senegal because judicial proceedings against members of the security forces can only take place with the authorization of the Minister of the Interior (in the case of police officers) and the Ministry of Defence (in the case of gendarmes and military personnel).

In addition, the public prosecutor generally refuses to open investigations when victims or lawyers allege torture during custody or preventive detention, which is contrary to article 12 of the Convention Against Torture, which states that:

“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

An even more worrying aspect is that judges regularly rely on “confessions” extracted under torture to sentence the accused to long prison sentences.

The use of “confessions” extracted under torture to convict the accused is normal practice in Senegal and violates one of the essential provisions of the Convention Against Torture, ratified by Senegal in 1986. Article 15 of the Convention states that:

“Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

## “CONFESSIONS” EXTRACTED UNDER TORTURE: ADMISSIBLE EVIDENCE FOR MANY SENEGALESE COURTS

On three occasions in 2009 and 2010, groups of people were convicted to long terms of imprisonment on the basis of “confessions” extracted under torture, even though there was overwhelming evidence showing that the confessions had been extracted under torture.

For example, in January 2009, the regional court of Tambacounda (500 km to the east of Dakar) ignored the statements made by some detainees who had been arrested some weeks previously in Kédougou. During their trial, these detainees claimed they were tortured and ill treated in custody.

***“Then they gave me electric shocks in my ears, I cried out a lot, they insulted my mother”***

**In December 2008, the security forces severely repressed demonstrations called to protest about the very difficult living conditions of people in the mining region of Kédougou; these demonstrations degenerated into violence and public property and buildings were damaged and burned. The security forces fired live ammunition, killing at least one person, Sidna Sidibé, and wounding several others. The next day, they questioned and tortured dozens of people. Many people went into hiding in order to escape the wave of arrests launched by the security forces.**

One of the tortured detainees told Amnesty International in February 2009:

“Three auxiliary gendarmes took me into another office, they tied my hands behind my back and handcuffed me. They beat me with their belts and truncheons, one of them used a metal bar and hit me on the head, the shins and the knees. They told me to confess that I had participated in the demonstration on the previous day. I told them I wasn't there. They told me to talk, I told them that I would only answer questions. One of them said to me: 'Don't act the little intellectual here, this is not a university'.

One of the auxiliaries unplugged a computer cable and hit me with it several times. My body still bears the marks. They showed me two lists of students and asked me if I knew them. When I told them that I did not know them, they hit me again and pointed a gun at me, they threatened to shoot. They insisted that I talk and told me to confess that I burned down the Kédougou gendarmerie. The next moment, a gendarme presented me with a written statement, I asked to read it, one of them hit me on the nape of the neck with his gun and told me to stop acting as though I was an intellectual. I then signed the statement.

Then they gave me electric shocks in my ears, I cried out a lot, they insulted my mother. Then they gave me another electric shock, I screamed, another gendarme came in and said they had tortured me enough. They took off the handcuffs and put me stark naked in the cell. I spent five days and five nights in jail. During the first two days, gendarmes made us do push-ups between midnight and 4am. When we were taken back to the cell, they threw cold water on our bodies if we even looked like dozing off.”

At the request of the lawyers, some of the individuals concerned showed the marks made by the torture to which they had been subjected, especially on their backs; some of the wounds had healed while others still had open wounds. Defence lawyers have insisted that judges take account of the use of torture and declare inadmissible “confessions” extracted in custody. In response to these requests, the judge replied to one lawyer: “Sir, stop acting like a film star”. The public prosecutor refused to open an investigation into these allegations of torture and, according to a defence lawyer, the prosecutor “ironically said that the detainees must have hurt themselves by dragging themselves on the ground.” The court sentenced 19 of these people to terms of imprisonment of between five and ten years for “plotting against the safety of the State”.

In March 2009, the Senegalese president, Abdoulaye Wade, reprieved the 19 convicted prisoners, who had asked for a pardon. A communiqué issued by the Senegalese Minister of Justice said that the Head of State had decided to erase all legal consequences of the events in Kédougou by declaring an amnesty, with a view “to allowing people to forget forever, in their hearts and minds.”<sup>13</sup> As in the case of Casamance, the authorities chose the solution of an amnesty in order to definitively shield from justice the perpetrators of the acts of torture committed on detainees in Kédougou and prevent anyone from ever bringing to light the circumstances in which one of the demonstrators, Sidna Sidibé was killed.

One and a half years after these events, the victims of Kédougou are still waiting for justice and reparations. In May 2010, one of them told Amnesty International: “I ask the Senegalese authorities to clarify the circumstances of the death of our friend, Sidna Sidibé, killed by bullets fired by the security forces and to punish those who tortured us while we were in custody in Kédougou.”

In another case around the same time, in January 2009, involving the trial of nine men charged because of their alleged sexual relations with other men, the court also ignored denunciations of acts of torture made by the detainees and their lawyers. It is important to highlight that, in this particular case, the police officers continued to ill treat the detainees after they had "confessed" under torture, by subjecting them to xenophobic attacks and insults.

***“While they hit us, they insulted us and called us queers”***

**Nine men were arrested in Dakar, on 19 December 2008, after anonymous accusations about their sexual behaviour. Police officers raided the house of Diadji Diouf, the Secretary General of AIDES Senegal, an organization providing HIV/AIDS prevention services to men who have sex with other men.**

In March 2009, Amnesty International interviewed these nine men at Rebeuss prison, in Dakar. Most of them said they had been tortured and subjected to homophobic attacks and remarks by the police officers that questioned them and by the prison officers where they were imprisoned.

One of them told Amnesty International:

“The torture began in the flat where we were arrested. A police officer asked us if we were 'goordjiguen' (a Wolof expression meaning gay men and that literally means 'man-woman'). We said no, but the police officers accused us of lying and then took it in turns to slap me. They also hit me on the head and back with their truncheons. Then they told us to kneel down and fold our arms. We were in a circle, with two police officers inside the circle and the other three outside. For at least two hours, until 11 pm, they punched us, hit us with their truncheons and kicked us. Blows rained down on our bodies. While they hit us, they insulted us and called us queers and goordjiguen: ‘You have no shame, men like you, we are going to take you away. You are going to regret being goordjiguen before you even get to court.’ The interrogations were punctuated by blows to the head and body. The police officers who questioned us told us to confess we were gay. Then they handcuffed us together in pairs and took us to the police station. As we left the building, there was a crowd of bystanders, who insulted us and threw stones at us.

Once we arrived at the police station, the interrogations began again. After we were again repeatedly

beaten, we confessed that we were gay but they continued to torture us even after we had "confessed".

On the evening we were taken to the police station, police officers from neighbouring police stations came to see us. Those who had just arrived said: 'We heard you have arrested some queers, we have come here to teach them a lesson'. That evening, five police officers beat us, they punched and kicked us, they also used their truncheons. Another police officer told us we ought to pray we would be brought before a judge quickly because, at the police station, they would hit us ten times with their truncheons every morning and every evening.

On our last day at the police station, I was asked to sign a statement. I asked to read it but they refused to let me. They forced me to sign it."

During the trial, this detainee described the physical abuse he suffered during his detention but the public prosecutor did not open an investigation. The court concluded that AIDES Senegal was a "cover to recruit or organize meetings for homosexuals, under the pretext of providing HIV/AIDS prevention programmes".

The judge sentenced the nine men to eight years in prison for "indecent conduct and unnatural acts and conspiracy." The judge based his ruling on article 319 of the Penal Code, which criminalizes "improper or unnatural acts with a person of the same sex." The sentences were more severe than those required by the public prosecutor and they even exceeded those provided for in the Penal Code (a maximum of five years imprisonment). The verdict was announced only a few minutes after the end of the deliberations, which would seem to indicate that the court did not take into account the evidence presented by the defence.

After many protests by national and international human rights organizations, including Amnesty International<sup>14</sup>, the nine men were released in April 2009 after the Dakar Court of Appeal overturned their convictions. However, no investigation was made into the serious allegations of torture and most of the men had to enter into semi-clandestinity or leave the country in order to escape hostility and harassment from the general public.

These arrests and convictions occurred in a context of growing hostility towards homosexuals in Senegal, a hostility that has resulted in arbitrary arrests and homophobic measures of harassment and discrimination.<sup>15</sup>

The refusal to declare "confessions" extracted under torture inadmissible has sometimes been publicly recognized by judges during criminal trials. For example, in the case of a group of supporters and directors of a football club in Vélingara, who in May 2010 were sentenced to terms of imprisonment by a Kolda court, despite the physical signs of torture displayed by the detainees.

These people were charged with several offences, including damage to buildings. During the trial, the judge clearly indicated that he had no jurisdiction over the use of torture. One of the defence lawyers told Amnesty International that, during the trial, "when the judge pointed out the contradictions in the evidence of one of the detainees, the latter replied that he had been tortured by the gendarmes. The judge responded by saying: 'That's not my problem,

answer the question’.” During his trial, one of the detainees described how, on his birthday, while he was waiting for a cake from his family, the gendarmes forced him to eat faeces. Another detainee took his shirt off in order to show the still visible traces of ill-treatment that he had suffered. Despite this evidence of torture, the public prosecutor did not investigate. The judges used the “confessions” made by detainees to sentence them to prison sentences of between one and three years.

## PROSECUTION ORDERS: GUARANTEED IMPUNITY FOR MEMBERS OF THE SECURITY FORCES

Even when judges want to hold members of the security forces to account for human rights violations, they are often obstructed by the failure of the political authorities to issue prosecution orders, which are required before any state agent can appear before a judge.

Article 60 of the Code of Military Justice states that judges must first obtain a prosecution order from the Minister of the Interior (in the case of police officers) or from the Minister of Defence (in the case of gendarmes and military personnel) before interviewing members of the security forces suspected of human rights violation. Such authorizations are often refused or delayed with no justification, blocking any attempt to prosecute state agents.

This obstruction was especially evident following attacks by police officers on **Karamoko Thioune** and **Boubacar Kambel Dieng**, journalists of *West Africa Democracy Radio* and *Radio Futurs Médias* respectively, on 21 June 2008. These two journalists were interviewing players at the end of a football match in the Senghor Stadium in Dakar, when police officers in civilian clothing attacked them. In May 2010, Kambel Dieng told Amnesty International: “I was simply interviewing the players in the area allocated for such interviews, when police officers in civilian clothing asked me to leave. I refused and they began to beat me up with electric truncheons. They handcuffed me and took me to another room where they hit me all over my body for between 15 and 20 minutes. My recorder started while they were beating me up and recorded the whole scene. I was in hospital for 21 days”. The other journalist, Karamoko Thioune, who tried to intervene, was subjected to the same physical abuse and also had to be taken to hospital because he was spitting and urinating blood.

Despite these acts of gratuitous brutality, the then Minister of the Interior issued a press release exonerating the police officers who perpetrated these acts and said Kambel Dieng had displayed a “characteristically rebellious attitude”. He described the reaction of the police officers as “the use of force, but using the methods and techniques appropriate in this type of intervention”.

The attack on two journalists provoked a public outcry, but for almost two years, the Minister of the Interior refused to issue a prosecution order, thereby blocking proceedings. It was only in March 2010, after several requests from the Minister of Justice that the new Minister of the Interior finally issued the necessary authorization. It was then possible for three of the officers who attacked the journalists to be summoned by an examining magistrate, who charged them and provisionally released them.

# THE TRIAL OF HISSÈNE HABRÉ: WHAT PRICE FOR JUSTICE?

**"It is a question that haunts me every night. Senegal says it will not prosecute Habré until the money for the trial is being raised. Pain cannot be quantified in terms of money. Since we lodged our complaint in 2000, two of our colleagues have already died and others are very ill. During this period, Habré has continued to live peacefully in Dakar. To make money a prerequisite for the prosecution of Habré is like subjecting us to another form of torture."**

Clément Abaifouta, detained in Chad from 12 July 1985 to 7 March 1990 under the Habré administration (May 2010)

After more than ten years, the victims of Hissène Habré are still waiting for the Senegalese authorities to try the former Chadian president, who fled to Senegal after being forced from power in 1990. The continuous postponement of this trial once again shows the reticence of the Senegalese authorities to break the taboo of impunity, despite the repeated injunctions of the Committee against Torture, a decision by the African Union calling on Senegal to try Hissène Habré and the formal commitments made by President Abdoulaye Wade to bring to justice in Africa the former Head of State accused of serious and massive human rights violations.

Since 1992, Amnesty International has publicly expressed concern "that the Senegalese authorities have not made moves to ensure that the former [Chadian] president is brought to justice." The organization went on to state that "this apparent failure is a violation of its obligations under the United Nations Convention Against Torture."<sup>16</sup>

On 3 February 2000, Dakar regional court finally charged Hissène Habré with having "knowingly aided and assisted in the committing of crimes against humanity, acts of torture and acts of barbarism". This charge followed a complaint lodged by seven victims of the Habré government and a collective complaint lodged by the *Association des victimes de crimes et répressions politiques au Tchad* (AVCRP), Association of Victims of Crime and Political Repression in Chad.



Clément Abaifouta, detained for 5 years in Chad under the Habré administration © Victor Affaro

***“After some of the detainees died, we rushed over to put our heads on the body of the victim because we had noticed that after they died their body was cool”***

After Hissène Habré was forced from power, the Chadian authorities created, in 1992, a commission to investigate allegations of serious and massive violations committed under his presidency between 1982 and 1990, including disappearances, torture and extrajudicial executions. The commission calculated that the final figure could reach 40,000 deaths. Many prisoners died as a result of torture, the inhuman conditions of detention or lack of food or medical care. Most of the atrocities were committed by the *Direction de la Documentation et de la Sécurité* (DDS), an intelligence service and instrument of repression created by and under the direct responsibility of Hissène Habré.

On 9 September 1989, **Souleymane Abdoulaye Tahir**, a 14-year-old schoolboy, was arrested by the security forces while he was at school. He was imprisoned because of his family links with several people belonging to the Zaghawa ethnic group who were accused of planning a coup against President Hissène Habré. He was held at the "Piscine", an old swimming pool that had been covered with a concrete screed and the basement divided into cells.

“The cell where I was held was nine square metres; I was the youngest and the smallest; we were all crammed together standing up and the taller ones put me on their shoulders so that I could breathe better. It was extremely hot in the 'Piscine' and we were crushed one against the other. After some of the detainees died, we rushed over to put our heads on the body of the victim because we had noticed that after they died their body was cool; that didn't last longer than three hours. Members of the DDS sometimes came in the evening to call some of the detainees; they made a selection on the basis of first names; I remember that on Friday, 22 September [1989] all the 'Hassanes' were called one by one; we never saw them again afterwards.”

Statement quoted in the Amnesty International report, *Chad. We don't want to die before Hissène Habré is brought to trial*, AI Index: AFR 20/002/2006, May 2006.

After the complaint was lodged, in 2000, the Senegalese judicial and political authorities used every means possible to avoid bringing Hissène Habré to justice. First, the Dakar Court of Appeal ruled that the case of Hissène Habré was outside Senegalese jurisdiction and that it could not try a foreign national for crimes of torture committed abroad. On 20 March 2001, the Court of Cassation confirmed this decision, thereby ending proceedings in Senegal.

President Abdoulaye Wade has never hidden his reluctance to bring Hissène Habré to trial. In 2001, shortly after his election and investiture as Head of State, he said that Hissène Habré would never be prosecuted in Senegal while he was president. In April 2001, after the Senegalese judiciary declared the case was outside its jurisdiction, the Head of State publicly requested Hissène Habré to leave the country. This decision prompted the victims of the former Chadian president to address the Committee against Torture, claiming that Senegal had violated its obligations under articles 5 (2) and 7 of the Convention against Torture. In response, the CAT stated that it had officially requested the Senegalese government “not to expel Hissène Habré and to take all necessary measures to prevent him from leaving Senegalese territory other than under an extradition procedure.” Five months later, on 27 September 2001, in an interview with the Swiss daily *Le Temps*, President Abdoulaye Wade

said he had decided not to allow Hissène Habré to leave Senegal unless and until a request for extradition was made against him.<sup>17</sup>

In another attempt to avoid bringing Hissène Habré to justice, the Senegalese authorities asked the African Union to rule on who was competent to judge Hissène Habré. On 2 July 2006, the African Union requested Senegal to try the former Chadian president “*in the name of Africa*”, which President Abdoulaye Wade officially accepted.

In 2007, the Senegalese authorities began to draft amendments to legislation with a view to allowing the retrospective application of criminal laws on the most serious crimes, in accordance with article 15 (2) of the International Covenant on Civil and Political Rights, ratified by Senegal in 1978. In January 2007, the National Assembly passed a law allowing proceedings on the basis of accusations of genocide, crimes against humanity, war crimes and acts of torture, even if they had been committed outside the national territory.<sup>18</sup> Following on from this, in July 2008, Congress adopted a constitutional amendment confirming the jurisdiction of Senegalese courts over crimes against humanity committed in the past.

However, in October 2008, Hissène Habré lodged a complaint against these reforms at the High Court of Justice of the Economic Community of West African States (ECOWAS), on the grounds that they constituted a violation of the former Chadian president's rights under the African Charter on Human and People's Rights, in particular, the right to the non-retrospective application of criminal laws. On 14 May 2010, this Court declared Hissène Habré's complaint against the Senegalese State admissible and will now consider the substance of the complaint.

#### **The obligation to try or extradite and the action taken by the Belgian judiciary**

In November 2000, some months after a complaint was lodged against Hissène Habré in Dakar, three victims of Belgian nationality but Chadian origin lodged a complaint in Brussels against the former Chadian president for crimes against humanity, the crime of torture, the crime of arbitrary arrest and kidnapping. Another approximately 20 victims later added their names to this complaint. In September 2005, after a four-year investigation conducted by a Belgian examining magistrate, an international warrant for the arrest of Hissène Habré was issued for crimes against humanity, war crimes and crimes of torture. Following this decision, Belgium asked Senegal to extradite Hissène Habré on the grounds that he had violated article 8-2 of the Convention against Torture.

In November 2005, the Senegalese authorities arrested Hissène Habré but the Dakar Court of Appeal declared that the request for extradition was outside its jurisdiction and the former Chadian president was released. However, the CAT continued to consider the affair after submissions by Chadian victims and, in May 2006, concluded that Senegal had violated the Convention against Torture by ignoring its obligations to either prosecute or extradite Hissène Habré. The Committee then told the Senegalese authorities that they were “obliged to submit the present case to the competent authorities for the purpose of prosecution or, failing that, since Belgium has made an extradition request, to comply with that request, or, should the case arise, with any other extradition request made by another State, in accordance with the



Convention."<sup>19</sup>

The Committee's decision was based on the principle of extradite or try (*aut dedere aut judicare*) under the terms of which a State may not provide a safe haven for a person on its territory or under its jurisdiction when that person is suspected of having committed a crime against international law. In effect, the State is required to exercise its jurisdiction (which necessarily includes, in certain cases, universal jurisdiction) over any person suspected of having committed such crimes, or extradite that person to a State able and willing to do so, or surrender the person to an international criminal court with jurisdiction over the suspect and the crime.

The CAT also recalled that, in 2006, it requested Senegal to adopt the necessary measures, including legislative measures, to establish its jurisdiction over the Hissène Habré case, in order to conform to its obligations under the Convention against Torture.<sup>20</sup>

The Senegalese authorities have always opposed the extradition of Hissène Habré to Belgium for trial. At an African union summit in Banjul, Gambia, in July 2006, President Abdoulaye Wade expressed the position of the Senegalese authorities in the following terms: "We think that Senegal is the country best placed to try him and I think we must not avoid our responsibility. Africans should be tried in Africa, that is why I refused Belgian's request to extradite Hissène Habré." Despite this promise, Senegal has undertaken no judicial proceedings against the former Chadian president.

In view of Senegal's continuing inertia, Belgium asked the International Court of Justice (ICJ) in February 2009 to call on Senegal to either try or extradite Hissène Habré. Belgium also asked the ICJ to order preventive measures to ensure that Hissène Habré did not leave Senegalese territory while awaiting the Court's decision.

In April 2009, at the ICJ, Senegal solemnly promised to keep Hissène Habré on its territory until the Court reached a decision. The ICJ then decided, in May 2009, to not require Senegal to keep Hissène Habré on its territory and did not therefore order preventive measures. The Court has still not ruled on Senegal's obligation to either try or extradite Hissène Habré.

After the African Union's decision in 2006 and the legislative amendments adopted by Senegal in order to give its judicial system jurisdiction to try the former Chadian president, the country's authorities were no longer able to advance legal arguments against bringing Hissène Habré to justice. They then raised financial problems to justify the *sine die* postponement of judicial proceedings. The Senegalese government stated that no proceedings could be undertaken against Hissène Habré until the international community donated the entire cost of the trial, estimated by the authorities at 18 billion CFA (approximately €27 million). International donors (European Union, the African Union, Chad, France, Belgium, Switzerland and the Netherlands) judged this sum to be excessive.

Although the Senegalese authorities explained how this sum would be allocated (one third to refurbish the law courts where the trial was to take place, one third to pay the salary of the judges and one third to cover the costs of the Chadian victims), they never explained why the

trial would cost so much more than other criminal and civil trials based on universal jurisdiction conducted across the world, for example, the trials held in Austria, Canada, Belgium, Finland, Germany, the Netherlands, Norway, Spain, United Kingdom and Sweden. Neither were they able to explain why the trial would cost much more than other trials for crimes against international law held in Africa, for example, the trial of the former president Moussa Traoré in Mali in 1993 and the trials in Ethiopia of several thousand individuals responsible for serious atrocities committed during the government of the Derg (former Ethiopian military junta that governed the country between 1974 and 1987). In the absence of any such explanation, the demand for €27 million for Hissène Habré's trial seemed to lack any credibility.

In an interview granted to the Spanish newspaper *Público* in October 2008, President Abdoulaye Wade stressed this financial issue. He said that if it proved impossible to obtain this sum, he would make sure that Hissène Habré “abandons Senegal”.<sup>21</sup> For two more years, there were unending negotiations about the financial aspects of the case. There were constant talks and adjournments regarding the organization of a roundtable of Senegalese authorities and donors.<sup>22</sup> In early July 2010, following a joint mission of the African Union and the European Union, it was officially announced that the roundtable would finally be held in October 2010 in order to finalize the financial terms of Hissène Habré's trial, which should start « in a reasonable time » after this roundtable, according to a European Union expert.<sup>23</sup>

In view of the various attempts made by the Senegalese authorities to avoid trying the former Chadian president since the first complaint against Hissène Habré was lodged more than ten years ago, Amnesty International believes that although the question of funding the trial is important, it cannot justify freezing all proceedings.

In addition, some Chadian victims feel that the decision to make the commencement of legal proceedings conditional on payment of the entire sum demanded by the Senegalese authorities is an additional form of torture. For example, Clément Abaifouta, detained in N'djamena between 1985 and 1990 under the Habré administration, told Amnesty International in May 2010: “It is a question that haunts me every night. Senegal says it will not prosecute Habré until the money for the trial is being raised. Pain cannot be quantified in terms of money. Since we lodged our complaint in 2000, two of our colleagues have already died and others are very ill. During this period, Habré has continued to live peacefully in Dakar. To make money a prerequisite for the prosecution of Habré is like subjecting us to another form of torture.”

Amnesty International believes that the financial argument put forward during the last two years by Senegal is another delaying tactic aimed at denying Hissène Habré's victims the right to truth and justice and reinforcing the impunity enjoyed by the perpetrators of human rights violations in Senegal at all levels.

# UNENFORCED LEGISLATION

**“The Working Group [on arbitrary detention] recommends that the Senegalese government (...) investigates all abuses by police officers and military personnel as well as cases of torture and ill-treatment practised against detainees in the past and punish them severely.”**

Human Rights Council, Report of the Working Group on Arbitrary Detention: Visit to the Republic of Senegal, 5 February 2010, A/HRC/13/30/Add.3, paragraph 82 (h)

There are serious gaps in Senegal's enforcement of national and international human rights standards. Senegal does not fully respect its obligations under international human rights treaties - as the Hissène Habré case fully demonstrates - and it does not apply the guarantees set out in its own national legislation that are essential to protect human rights.

## NATIONAL LAWS ON TORTURE

Article 7 of the Senegalese Constitution, as amended in January 2001, upholds “the right to life, to freedom, to security [...] to corporal integrity, and especially protection against physical mutilation”. However, the Constitution does not explicitly ban torture and other forms of ill-treatment nor does it offer protection against arbitrary detention.

It was only in 1996 that the Senegalese Penal Code incorporated a ban on torture, ten years after Senegal's ratification of the Convention against Torture and following a recommendation made by the Committee against Torture (see below) and pressure from human rights NGOs, including Amnesty International.<sup>24</sup>

Following this pressure and recommendations, Senegal finally amended its Penal Code and introduced article 295 – 1, which states that:

“The voluntary application of torture, injuries, blows, physical and mental violence and other forms by state agents or any person acting in an official capacity or at their instigation or with their express or tacit consent, whether with the objective of obtaining information or confessions, inflicting reprisals, acts of intimidation or any kind of discrimination.”

This same article provides that any person guilty of torture shall be punished with a prison sentence of between five and ten years. However, this article generally appears to be a dead letter when such cases involve proceedings against state agents suspected of acts of torture or other serious human rights violations.

Moreover, Senegal's delay in implementing the Optional Protocol to the Convention against Torture shows the authority's reticence to effectively combat this phenomenon. This Protocol, which Senegal was the first country in the world to sign in 2002<sup>25</sup> and which it ratified in

2006, provides for the establishment by State parties of independent mechanisms to prevent torture, within one year of ratification (articles 3 and 17). Four years after ratification of this instrument, Senegal has yet to introduce such provisions. After years of difficult negotiations between the government and the legislature, in March 2009, the Senegalese National Assembly and Senate finally passed a law creating a National Observer for Places of Deprivation of Liberty. However, this law remains unenforced and nobody has been appointed to the position of National Observer.

## SENEGAL AND THE UNITED NATIONS HUMAN RIGHTS TREATY BODIES

United Nations human rights treaty bodies have on several occasions denounced Senegal's failure to observe essential international human rights standards.

In its Concluding Observations in 1996, the Committee against Torture protested against Senegal's use of amnesties resulting in the impunity of the perpetrators of acts of torture. The Committee said it was concerned "that, in its report, the State party invokes a discrepancy between international and internal law to justify granting impunity for acts of torture on the basis of the amnesty laws" and considered "the amnesty laws in force in Senegal to be inadequate to ensure proper implementation of certain provisions of the Convention."<sup>26</sup>

Senegal's argument, according to which internal law could justify non-observance of its international obligations, contravenes one of the basic principles of the Vienna Convention on the Law of Treaties of 1969, to which Senegal acceded in 1986. This document provides that: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty" (article 27). This provision means that implementation of treaties by the parties cannot depend on their respective internal laws and that internal laws cannot be invoked by a State party to avoid non-observance of its obligations under the Convention.<sup>27</sup> The Vienna Convention of 1969 also states that "Every treaty in force is binding upon the parties to it and must be performed by them in good faith" (article 26).

In the same Concluding Observations of 1996, the CAT said it was disturbed "by the numerous cases of torture that have been brought to its attention by non-governmental organizations of established credibility" and went on to recommend Senegal to introduce into national legislation "the definition of torture set forth in article 1 of the Convention and the classification of torture as a general offence, in accordance with article 4 of the Convention, which would, inter alia, permit the State party to exercise universal jurisdiction as provided in articles 5 et seq. of the Convention [against Torture]."<sup>28</sup>

Moreover, with regard to the serious human rights violations committed in Casamance, the Human Rights Committee recommended to Senegal in 1997 that "consideration be given to establishing an independent mechanism to monitor and investigate human rights abuses in Casamance, and that persons found responsible for violations of rights be brought to justice and the victims compensated."<sup>29</sup>

In this regard, it is regrettable that the Senegalese authorities have not presented periodic

reports to CAT or the Human Rights Committee for approximately 15 years.

State parties to the Convention against Torture are obliged to present a periodic report every four years on measures taken to combat torture<sup>30</sup> but the last report presented by Senegal to this United Nations body was in 1995.<sup>31</sup>

Senegal presented its fourth periodic report to the Human Rights Committee in 1996. The Committee pointed out, in 1998, that “the fifth periodic report of Senegal would be due on 4 April 2000.”<sup>32</sup> A decade later, Senegal had still not presented this report to the United Nations Committee.

Senegal's non-observance of its obligations regarding the submission of reports to UN bodies was recently highlighted during the Universal Periodic Review (UPR) of Senegal in February 2009.<sup>33</sup> During the interactive dialogue with the UPR Working Group, Senegal was recommended to “finalise and submit a report to the Committee on the Protection of the Rights of All Migrant Workers and Their Families, the Committee on the Elimination of Racial Discrimination and the Committee against Torture.”<sup>34</sup> Amnesty International notes that Senegal supported this recommendation and hopes that it will promptly submit to the Committee against Torture the report that has been due for more than ten years.

During the UPR, a Member State of the Working Group also expressed concern “about the criminalization of homosexuality, as well as the harassment and discrimination of which homosexuals are victim.”<sup>35</sup> Another State recommended Senegal review national legislation “which results in the discrimination, prosecution and punishment of people solely for their sexual orientation or gender identity” and requested that Senegal's Criminal Code be amended to decriminalize homosexual relations between consenting adults. Senegal responded to these recommendations, but did not indicate its intention to act on them.<sup>36</sup>

With regard to the case of Hissène Habré, another Member State of the UPR Working Group noted that “more than two years have passed since the African Union mandated Senegal to prosecute Mr Habré [and] urged Senegal to fulfil that mandate as soon as possible and bring Mr Habré to justice.”<sup>37</sup>

In addition, this State and other States recommended Senegal to “contribute towards combating impunity internationally, in particular, by implementing as soon as possible the mandate bestowed on it by the African Union and to bring the former Head of State of Chad, Mr Hissène Habré to justice.”<sup>38</sup>

In response to this recommendation, the Senegalese government stated that “Now that the necessary constitutional, legal and regulatory measures are in place, Senegal is ready to hold the trial of Hissène Habré” and recalled that the African Union “called on the international community to pay its contributions directly to the African Union Commission.”<sup>39</sup>

Amnesty International hopes that this time, Senegal will keep the promises it made during the course of this UPR. For that to happen, it must find the political will necessary to tackle the problem of impunity that has tormented the country for decades.

# CONCLUSION AND RECOMMENDATIONS

**“In cases deemed to be torture, RADDHO strongly condemns the political and judicial authorities' support for impunity with regard to the frequency of inadmissible and unacceptable 'suicides' and deaths of people in custody at police or gendarmerie stations.”**

Press release of the African Assembly for the Defence of Human Rights (RADDHO) following the death of Modou Bakhoum, January 2009

Many official Senegalese texts state that: *“Senegal is a State of law where the Constitution guarantees that all citizens are equal before the law.”*<sup>40</sup>

However, the cases described in this report indicate that, on the contrary, members of the security forces who commit human rights violations enjoy *de jure* or *de facto* impunity that protects them from being brought to justice.

In this respect, the fact that a magistrate must obtain a prosecution order from the Minister of Interior or the Minister of Defence before he can hear a member of the security forces appears to be a discretionary power to obstruct and even prevent the smooth operation of the justice system.

This impunity, constantly denounced by United Nations treaty bodies and many national and international human rights NGOs, undermines the foundations of the rule of law in Senegal. In Senegal, everyone knows that if they are arrested, there is a risk they will be tortured or ill treated in order to extract a “confession” from them. This information may then be used in court to convict individuals in the absence of any reliable evidence, while their lawyers look on, powerless, at this parody of justice.

Members of the security forces and the judges who close their eyes to such practices seem to think that the systematic use of torture is a perfectly admissible way of conducting an investigation and identifying and convicting the guilty parties.

The Senegalese authorities constantly deny that this is true and claim they have conducted an impartial investigation into all allegations of torture or other serious violation of human rights brought to their attention and that the perpetrators of these acts have been brought to justice and punished. All the cases described in this document prove the contrary. In the cases of hundreds of Casamance victims, common law detainees, groups of people arrested because of their alleged political opinions or sexual behaviour and the victims of Hissène Habré, the victims and their families always find their way blocked by a wall of impunity. Until that wall is broken down the people of Senegal can have no confidence in the country's police and judiciary.

It is incumbent on the Senegalese authorities to immediately combat this culture of impunity. They must respond to the anguish of the victims of human rights violations and the families who are still waiting for justice and reparations. It is a question of restoring the

confidence of all Senegalese people in their security forces and judiciary, so that Senegal ceases to be a land of impunity and becomes a land of justice where the rule of law is truly observed.

## RECOMMENDATIONS

Amnesty International urges the Senegalese authorities to take the following measures:

### **Impunity**

Investigate all deaths in custody and all allegations of torture or other ill-treatment during detention, in accordance with the Convention against Torture.

Suspend any person reasonably suspected of having committed or participated in serious human rights violations and conduct a prompt, thorough, independent and impartial investigation into the allegations, in accordance with international instruments, in particular with the Principles on the Effective Investigation and Documentation of Torture and of Other Cruel, Inhuman or Degrading Treatment or Punishment and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

Where there is sufficient admissible evidence, promptly commence proceedings against any persons suspected of committing serious violations of human rights, in particular, acts of torture and other ill-treatment of persons in custody or provisional detention.

Promptly commence proceedings against any persons suspected of being responsible for deaths in custody following acts of torture in police or gendarmerie stations, in particular, in the cases described in the present report.

Immediately commence the trial of Hissène Habré in Senegalese courts or, if Senegal is neither willing nor able to try Hissène Habré, agree to his extradition to a third country willing and able to try him in accordance with international fair trial standards and without the death penalty.

### **Reparation to the victims of human rights violations**

Ensure that all victims of human rights violations benefit from all forms of reparation, including measures of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Reparations must also include explanations that will allow families of victims to know what happened to their relatives.

Conduct investigations so that the families of the people who disappeared during the conflict in Casamance are informed of the fate of their relatives, so that they can grieve for the disappeared person, and provide them with psychological, medical and financial support if needed.

Ensure that the families of people who disappeared or died in detention receive the social welfare benefits, especially pensions, to which they are entitled following the death of a member of their family.

### **Torture and other ill-treatment**

Give clear instructions to police and gendarmerie forces to constantly observe international human rights law; in particular, they must observe the right to life and the absolute ban on torture and other ill-treatment, in accordance with international instruments.

Give clear instructions to judges, reminding them of their obligations with regard to the Convention against Torture, which provides that all statements extracted by torture cannot be used as evidence in court, unless against the person accused of having committed the acts of torture. This means that judges have the duty to determine whether statements have been extracted under torture and to open a prompt, thorough, independent and impartial investigation into whether there are reasonable grounds to believe that they were obtained under torture. The burden of proof rests with the prosecutor, who must demonstrate beyond any reasonable doubt that statements are not extracted under torture.

Review trials in which it has been established that statements were extracted under torture, so that those convicted can enjoy their right to a fair trial, in accordance with the provisions of international law.

Promptly pass a decree implementing the law establishing a National Observer for Places of Deprivation of Liberty and immediately appoint an individual with the necessary experience, competence and impartiality.

### **Arbitrary detentions and prisoners of conscience**

End arbitrary detentions and unconditionally and promptly release all prisoners of conscience who have only been detained for having peacefully exercised their right to the freedom of expression, demonstration or assembly.

Charge individuals detained for recognized criminal offences or release them. All detainees must have access to a lawyer and doctor of their choice and be able to contact their families. They must also be promptly brought before independent judicial authorities capable of judging the legality of their detention.

### **Discrimination on the grounds of sexual orientation**

Repeal the law criminalizing consensual same-sex sexual acts or practices.

Ban all incitement to homophobic discrimination, hostility or violence against individuals on the basis of their sexual identity or perceived engagement in consensual same-sex sexual acts or practices.



## Cooperation with human rights treaty bodies

Submit promptly all reports that Senegal is due to present to international and regional treaty bodies, in particular, to the Human Rights Committee and the Committee against Torture.

# ENDNOTES

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1 Commission on Human Rights, Question of the violation of human rights and fundamental freedoms, in any part of the world, with particular reference to colonial and other dependent territories: extrajudicial, summary or arbitrary executions, Report by the Special Rapporteur, Mr Bacre Waly Ndiaye, 14 December 1994, E/CN.4/1995/61, page 138.

2 The Committee Against Torture stated that amnesties in the case of torture and forced disappearances are banned under international law: "*Paragraph 2 of article 2 [of the Convention Against Torture] provides that the prohibition against torture is absolute and non-derogable. It emphasizes that no exceptional circumstances whatsoever may be invoked by a State Party to justify acts of torture in any territory under its jurisdiction. [...] It considers that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability.*" See Committee Against Torture, General Comment No.2, 24 January 2008, CAT/C/GC/2, paragraph 5. See also: Concluding Observations of the Committee against Torture: Spain, 9 December 2009, CAT/C/ESP/CO/5, paragraph 21 ("*The State party should ensure that acts of torture, which also include enforced disappearances, are not offences subject to amnesty*"). See also the Amnesty International report on Sierra Leone: *Sierra Leone: Special Court for Sierra Leone: denial of right to appeal and prohibition of amnesties for crimes under international law*, 1 November 2003, Index AI: AFR 51/012/2003.

3 In a document released in 1998, Amnesty International published a list of 52 civilians arrested by the Senegalese security forces and who « disappeared » since as well as a list of 27 civilians unlawfully killed by members of the MFDC.

4 On 15 May 1993, as the Constitutional Council was about to give the results of the legislative elections, its vice-president Babacra Seye, he was shot dead by armed men in the centre of Dakar.

5 See the article by French newspaper *Libération* on 22 January 2005, <http://www.liberation.fr/monde/0101516334-loi-d-amnistie-controversee-au-senegal> (last accessed 31 June 2010).

6 See the declaration of 11 March 2005 on the Luxembourg presidency website, available on <http://www.eu2005.lu/fr/actualites/pesc/2005/03/11senegal/index.html> (last accessed 31 June 2010).

7 In a report published in 2001, the United Nations Committee Against Torture made the following recommendation regarding complaints of torture or other ill-treatment: "*During such inquiries, the officers concerned should be suspended from their duties.*" See General Assembly, Report of the Committee Against Torture, 25th session (13-24 November 2000) and 26th session (30 April-18 May 2001), 18 June 2001, A/56/44, paragraphs 97 (d) and 120 (b).

8 Quote from the work of the French philosopher, Paul Ricœur, *Le Juste*, l'Herne, Paris, 2006, page 205.

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9 See the case law of the Human Rights Committee, referred to by the European and Inter-American Human Rights Courts, notably *Quinteros v. Uruguay* (Communication No. 107/1981: Uruguay, 21 July 1983, CCPR/C/19/D/107/1981, paragraph 14).

10 These principles are available at <http://www2.ohchr.org/english/law/investigation.htm>.

11 These principles are available at <http://www2.ohchr.org/english/law/executions.htm>.

12 Amnesty International raised these cases and others to the Committee Against Torture in a document published in November 1995 entitled *Senegal: Comments by Amnesty International on the Second Periodic Report Submitted to the United Nations Committee against Torture*, AI Index: AFR 49/001/1995.

13 The text of the Minister of Justice, dated 17 March 2009, explained the decision to adopt an amnesty in this case in the following terms: "*The head of state, expressing his resolute commitment to the dignity of human beings and national peace, has decided to go further and grant an amnesty that will have the effect of removing all legal consequences regarding the above events, with a view to allowing people to forget forever, in their hearts and minds; to the benefit of a prosperous Kédougou in an emerging Senegal.*" However, the debate on the amnesty law has been delayed and it had still not been voted on in May 2010.

14 See the Public Statement by Amnesty International, *Senegal. Call for immediate release of nine men sentenced on the basis of their alleged sexual conduct*, 9 January 2009, AI Index: AFR 49/001/2009.

15 In December 2008, a few days before these nine men were arrested. The media attacked lesbian, gay, bisexual and transgender people on the occasion of the 15th International Conference on AIDS and Sexually Transmitted Infections in Africa (ICASA).

16 Amnesty International, *Senegal. Summary of Amnesty International concerns since January 1991*, 7 October 1992, AI Index: AFR 49/01/92.

17 For the text of the interview, see [http://www.letemps.ch/Page/Uuid/7050aa7c-b182-11dd-b87c-1c3ffea55dc/Le\\_pr%C3%A9sident\\_s%C3%A9n%C3%A9galais\\_veut\\_mettre\\_sur\\_pied\\_un\\_pacte\\_africain\\_antiterroriste](http://www.letemps.ch/Page/Uuid/7050aa7c-b182-11dd-b87c-1c3ffea55dc/Le_pr%C3%A9sident_s%C3%A9n%C3%A9galais_veut_mettre_sur_pied_un_pacte_africain_antiterroriste) (last accessed 31 June 2010).

18 Law No.2007-02 of 12 February 2007 amending the Penal Code and Law No.2007-05 of 12 February 2007 amending the Code of Penal Procedure regarding implementation of the Treaty of Rome instituting the International Criminal Court.

19 Committee Against Torture, Communication No. 181/2001: Senegal, 19 May 2006, CAT/C/36/D/181/2001, paragraph 10.

20 See Committee Against Torture, Communication No. 181/2001: Senegal, 19 May 2006, CAT/C/36/D/181/2001.

21 For the text of the interview, see [http://www.lequotidien.sn/index.php?option=com\\_content&task=view&id=2151&Itemid=8](http://www.lequotidien.sn/index.php?option=com_content&task=view&id=2151&Itemid=8) (last accessed 31 June 2010).

22 According to some sources, an agreement was finally reached in May 2010 between Senegal, the African Union and the European Union to reduce the budget from 18 billion to 12 billion Francs CFA (approximately €18 million). Chad and Senegal promised to contribute 2 billion and 1 billion Francs CFA respectively, with the international community contributing the remaining part of the budget.

23 See the dispatch by the Senegalese Press Agency (APS) of 1 July 2010 entitled « *L'instruction du procès de Habré devrait pouvoir débiter à partir d'octobre (experts).* »

24 See *Comments by Amnesty International on the Second Periodic Report Submitted to the Committee Against Torture*, 1<sup>er</sup> November 1995, AI Index: AFR 49/001/1995.

25 Similarly, Senegal was the first country in the world to ratify, in February 1999, the Treaty of Rome instituting the International Criminal Court.

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- 26 Concluding Observations of the Committee Against Torture: Senegal, 9 July 1996, A/51/44, paragraphs 112 and 117.
- 27 A. SCHAUS, *Convention de Vienne sur le droit des traités, Commentaire article par article, Article 27*, Bruylant, Brussels, 2006, page 1120.
- 28 Concluding Observations of the Committee Against Torture: Senegal, 9 July 1996, A/51/44, paragraph 114.
- 29 Concluding Observations of the Human Rights Committee: Senegal, 19 November 1997, CCPR/C/79/Add.82, paragraph 11.
- 30 Article 19 of the Convention against Torture and Other Cruel, Inhuman and Degrading Punishment or Treatment states that: "*The States Parties shall submit to the Committee, through the Secretary General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.*"
- 31 Committee Against Torture, Second periodic reports of State parties due in 1992 : Senegal, 11 July 1995, CAT/C/17/Add.14, 11 July 1995.
- 32 Human Rights Committee. Summary record of the 1619<sup>th</sup> session: Senegal, 27 October 1998, CCPR/C/SR.1619, paragraph 74.
- 33 The United Nations High Commissioner on Human Rights defines the Universal Periodic Review (UPR) as a process that "*involves a review of the human rights records of all 192 UN Member States once every four years. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situation in their countries and to fulfil their human rights obligations.*" See Amnesty international's Submission to the Universal Periodic Review on Senegal (February 2009) at <http://www.amnesty.org/fr/library/info/AFR49/004/2008/en> (last accessed 31 June 2010).
- 34 Human Rights Council, Universal Periodic Review, Report of the Working Group on the Universal Periodic Review: Senegal, 5 October 2009, A/HRC/11/24, paragraph 97-5.
- 35 *Ibid*, paragraph 37.
- 36 In its response to this recommendation, the Senegalese government stated that: "*There is no law against homosexuality in Senegal. It is not an offence to be a homosexual in Senegal and no one can be prosecuted on those grounds, in accordance with the constitutional principle of the legality of offences. The Senegalese Criminal Code does, however, define unnatural acts on a person of the same sex as an offence (art. 319).*  
*No one is currently imprisoned in Senegal for homosexuality. The prison sentences imposed on a number of young Senegalese for unnatural acts have been appealed and the competent court has declared the proceedings null and void on the procedural grounds of violation of the rules governing house searches.*" See Human Rights Council, Universal Periodic Review, Report of the Working Group on the Universal Periodic Review: Senegal, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, 8 June 2009, A/HRC/11/24/Add.1, paragraph 6.
- 37 Human Rights Council, Universal Periodic Review, Report of the Working Group on the Universal Periodic Review: Senegal, 5 October 2009, A/HRC/11/24, paragraph 79.
- 38 *Ibid*, paragraph 98-5.
- 39 Human Rights Council, Universal Periodic Review, Report of the Working Group on the Universal Periodic Review: Senegal, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, 8 June 2009, A/HRC/11/24/Add.1,

paragraph 5.

40 Decree n° 2008-1047 of 15 September 2008 establishing and regulating the operation of the National Observatory on the Rights of Women.



# WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

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## SENEGAL LAND OF IMPUNITY

The security forces in Senegal have committed serious human rights violations with virtual impunity for almost three decades, targeting particular ethnic groups, individuals and groups. The authorities have used a variety of stratagems to ensure that those responsible for these crimes are never held accountable.

At times the authorities have passed general amnesty laws, in violation of international human rights law. In other cases, the authorities have failed to investigate deaths in custody, despite well-founded allegations of torture. Prosecutors have refused to order investigations into allegations of torture raised during trials, and judges have allowed statements extracted under duress to be admitted as evidence.

Former Chadian President Hissène Habré, who lives in Senegal, is one prominent beneficiary of this culture of impunity. Ten years after victims lodged a complaint against him, no judicial proceedings have started.

This report examines how the Senegalese authorities have evaded their international obligations to bring to justice those responsible for serious human rights violations. It calls on the government to fulfill its international obligations by bringing to justice those responsible for human rights violations and by providing reparation to the victims.

Amnesty International  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom

[www.amnesty.org](http://www.amnesty.org)

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