

SENEGAL

Time to live up to promises

*Amnesty International
Submission to the UN Universal
Periodic Review,
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**AMNESTY
INTERNATIONAL**



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INTRODUCTION

In this submission, prepared for the Universal Periodic Review of Senegal in October-November 2013, Amnesty International notes that Senegal did not accept key recommendations made to it during its previous review in 2009, including concerning freedom of expression, association and assembly, and sexual orientation.

With regard to the human rights situation on the ground, Amnesty International raises concerns with regard to excessive use of force to repress freedom of expression and assembly; torture, ill-treatment and death in detention; and impunity for human rights violations, including in the context of the Casamance conflict.

FOLLOW UP TO THE PREVIOUS REVIEW

TORTURE, ILL-TREATMENT AND DEATH IN DETENTION

During the first review in 2008, Senegal supported a recommendation to finalize and submit reports to treaty bodies, including the UN Committee against Torture.¹ In 2011, Senegal finally submitted its third, fourth, fifth and sixth periodic reports combined in a single document 15 years after they presented the second periodic report. Amnesty International is concerned that during the 2008 review, Senegal did not accept a recommendation to extend invitations to the Special Rapporteurs on torture and on the independence of judges and lawyers.²

FREEDOM OF EXPRESSION AND ASSEMBLY UNDER ATTACK

Amnesty International is also concerned that none of the recommendations concerning freedom of opinion and expression or freedom of association and peaceful assembly were accepted during the first review.³ Senegal gave only a general response to the recommendation reminding the authorities of their commitments under the International Covenant on Civil and Political Rights, which Senegal ratified in 1978, and did not commit to ensuring effective freedom of expression and assembly.⁴

ARREST AND PERSECUTION BASED ON ACTUAL OR PERCEIVED ENGAGEMENT IN CONSENSUAL SAME-SEX SEXUAL ACTS

Similarly, no recommendations concerning sexual orientation were accepted by Senegal, including to adopt measures to promote tolerance towards homosexuality and to review national legislation that criminalizes sexual relations between consenting adults of the same sex resulting in the discrimination, prosecution and

punishment of people solely for their sexual orientation or gender identity.⁵

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Despite the fact that the national legislation provides safeguards against torture, these provisions are in many cases not respected, leading to a climate of impunity. It is worrying to note in this regard that Senegal has not invited the UN Special Rapporteur on torture, thereby avoiding external scrutiny on the issue of torture and other ill-treatment.

It is also of concern that Senegal has not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

HUMAN RIGHTS SITUATION ON THE GROUND

For several decades, members of the security forces have committed serious human rights violations with almost total impunity. These violations include repeated attacks on freedom of expression and peaceful assembly, imprisonment of political activists and human rights defenders for peacefully expressing a political opinion different to that of the ruling group, and the use of torture and other ill-treatment as an investigative technique by certain members of the police and gendarmerie.

In order to ensure immunity from prosecution for the security forces, the authorities have long used various political and legal stratagems, including the legal obligation that a judge 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 Defense in the case of gendarmes and military personnel). This procedure grants a *de facto* veto power to the executive with regard to any judicial proceedings against members of the security forces.

Freedom of expression was further undermined when protestors were arrested and tortured during the unrest which tainted the presidential election period in January-February 2012. However, despite the violence, Senegal was able to successfully hold the elections, and a new President, Macky Sall, was elected and the electoral results were not challenged.

Despite a new willingness to investigate human rights violations and to prosecute alleged perpetrators, to Amnesty International's knowledge, only few perpetrators have been tried. This leaves victims without redress.

The latent conflict in Casamance witnessed renewed tensions in November 2011 when civilians were arrested, injured and executed in reprisal actions by the army as

well as the Movement of the Democratic Forces of Casamance (*Mouvement des forces démocratiques de Casamance (MFDC)*), an armed opposition group.

EXCESSIVE USE OF FORCE TO REPRESS FREEDOM OF ASSEMBLY AND FREEDOM OF EXPRESSION

Amnesty International is concerned at reports of restrictions on the rights to freedom of expression, association and assembly in an attempt by the authorities to stifle critical voices during the last years of Abdoulaye Wade's presidency.

On 23 June 2011, Alioune Tine, the President of the African Assembly for the Defence of Human Rights (*Rencontre africaine pour la défense des droits de l'homme (RADDHO)*), was attacked by men carrying stones and batons during a demonstration. Alioune Tine was badly hurt and spent three days in hospital. Another RADDHO member, Oumar Diallo, was also injured. A few weeks later, RADDHO's lawyers lodged a complaint with the Public Prosecutor; however, to Amnesty International's knowledge, no progress had been made in the investigation.

In October 2011, Malick Noël Seck, the Secretary General of a movement affiliated with the Socialist Party, was sentenced to two years in prison for "death threats" and "contempt of court". He had deposited a letter addressed to the Constitutional Council asking its members not to accept the candidacy of President Wade for a third term. His sentence was reduced to four months after a court appeal and he was pardoned by President Wade shortly thereafter.

The right to peaceful demonstration was further undermined in the months leading up to the 2012 presidential elections when the Minister of the Interior passed an order "temporarily prohibiting public demonstrations". Despite this order, demonstrations continued, but were violently repressed by the security forces in January and February 2012. The unrest resulted in several casualties and took a particularly dramatic turn when the security forces fired live bullets at protestors in Dakar and in other cities, killing several of the protesters.

TORTURE AND OTHER ILL-TREATMENT AND DEATH IN DETENTION

Senegal is a party to a number of human rights treaties which prohibit torture and cruel, inhuman or degrading treatment or punishment, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, its Optional Protocol, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.

However, since 2008 Amnesty International has recorded at least seven cases of death in detention as a result of torture. The use of torture and other ill-treatment appears to be an investigative technique favoured by certain members of the police force and gendarmerie to extort "confessions" quickly. During the 2012 pre-election period when protestors were arrested and tortured, the following methods were used: physical assault, simulated drowning, electric shocks and burns.

In March 2009, Senegal adopted a law creating a national preventative mechanism: the National Observer of Places of Deprivation of Liberty. Three years after this law came into force the government finally named, in January 2012, a National

Observer of Places of Deprivation of Liberty: Boubou Diouf.

During the presidency of Abdoulaye Wade, some of those responsible for acts of torture and other ill-treatment appear to have benefited from the protection of their superiors against the background of a code of silence, which in many cases tacitly condones the use of torture. In one case, the court did not recognize the acts of torture and other ill-treatment and the security forces accused of these acts were sentenced to very short, or even suspended, sentences. In a further seven cases, the investigation is still officially ongoing and no compensation has been awarded to the victims.

Confessions extracted under torture have also been used to convict people in unfair trials. This was the case when 19 students and young people detained in January 2009 after riots in the gold-mining town of Kédougou, 700km south-east of Dakar, were sentenced to prison terms on the basis of their “confessions”. However, in March 2009, they were pardoned by President Wade.

In July 2010, Abdoulaye Wade Yinghou, aged 29, was arrested as he walked past a demonstration in a Dakar suburb. Witnesses saw police beat him during his arrest and at the police station. The following day, the police told his family that he had died following a seizure. An autopsy revealed facial injuries and broken ribs. The family filed a complaint and an inquiry was opened; however, its findings have not been made public. To date, no one has been convicted in this case and Abdoulaye Wade Yinghou’s family has not received any compensation.

In April 2011, the naked and handcuffed body of Aladji Konaté, bearing signs of torture, was found by a river in Bakel town. It appears that he had been arrested by gendarmes for drug trafficking and security forces maintained that he had jumped in the river in an attempt to escape. The body was reportedly buried without an autopsy to identify the exact circumstances of death. To date, no one has been convicted and Aladji Konaté’s family has not received any compensation.

In February 2012, Ibrahima Fall was tortured and ill-treated by gendarmes when he was arrested in Tivaouane after a demonstration against President Wade’s candidacy. The same month, Ousseynou Seck died after being tortured in custody. The police officers implicated in this case have been arrested and are awaiting trial.

In August 2012, Kécouta Sidibé, who was deaf and mute, died as a result of torture in custody in Kédougou after he was arrested for consuming Indian hemp. In December 2012, the Kaolack Appeal Court found the deputy commander of the Kédougou gendarmerie guilty of this murder. He was arrested a few days later and an investigation into the involvement of five other gendarmes is underway.

IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

During the last three decades, the authorities have only rarely investigated cases of human rights violations committed by the security forces, particularly cases of deaths in custody, reportedly as a result of torture or other ill-treatment.

In 2012, soon after the election of Macky Sall as the new Head of State, investigations were opened into several cases of human rights violations during the pre-electoral unrest. The new government has showed willingness to put an end to

the practice of negating Senegal's human rights commitments (see previous section).

However, to Amnesty International's knowledge, even though some of the investigations have seen some progress, none of them have been completed and none of the alleged perpetrators have been tried. This is also the case for the 18 victims of torture and ill treatment since 2009 (including seven deaths in detention or soon after their release).⁶

A number of other cases involving excessive use of force by the security forces have been pending for several years. The killing of Sangoné Mbaye, a fish wholesaler, by a gendarme on 12 May 2009 in Joal, some 90km from Dakar, was due to be tried in the Assize court at the end of May 2012; however, the trial has been delayed on procedural grounds. Meanwhile the gendarme is detained at the Rebeuss Prison in Dakar.

THE CASAMANCE CONFLICT: 30 YEARS OF IMPUNITY

The Casamance conflict is between the Senegalese government and the Democratic Forces of Casamance Movement (*Mouvement des Forces Démocratiques de Casamance (MFDC)*) an armed opposition group seeking independence for their region in southern Senegal since 1982. Despite several peace agreements, there continues to be moments of high tension in the conflict marked by serious human rights violations committed by both parties.

The impunity that marks these atrocities continues to deny justice for the victims and their families and has left them in a state of abandonment. As far as Amnesty International is aware the families of the dozens of disappeared Casamance people, at the hands of government forces, have not received compensation or material or psychological support.

Amnesty International is also concerned that the 2004 amnesty law,⁷ promulgated by the President Abdoulaye Wade, grants amnesty for offences committed during the internal conflict in Casamance and has deprived the victims and their families of their right to justice and redress, in violation of international standards.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Senegal:

Freedom of expression, association and assembly

- To guarantee that the rights to freedom of expression, association and assembly are protected in accordance with national and international law.

Excessive use of force

- To ensure that law enforcement officials are fully trained and equipped to maintain public order without resort to excessive force, with any breaches vigorously and independently investigated;
- To carry out investigations into all cases where security forces may have resorted to excessive use of force.

Torture and other ill-treatment

- To give clear instructions to the police and the gendarmerie to ensure that they always act in respect of international human rights laws, as well as to remind judges of their obligations pursuant to the Convention against Torture, which provides that any statement which is established to be obtained by torture cannot be invoked as evidence in proceedings;
- To ensure that trials, in which it has been established that statements have been extracted under torture, are reviewed in order that those convicted can be retried in accordance with international standards of fair trial;
- To ensure that the National Observer of Places of Deprivation of Liberty has the human and material resources necessary to accomplish its mission independently.

Impunity for human rights violations

- To carry out investigations into all cases where people have died in custody and all cases of alleged torture or other ill-treatment during detention in accordance with the Convention against Torture;
- To remove from office any person suspected of having committed, or participated in, serious human rights violations, while the allegations against them are subject to a prompt, in-depth, independent and impartial investigation, in accordance with international human rights standards;
- To immediately take legal action, whenever there is sufficient admissible evidence, against all persons suspected of committing serious human rights violations, including death, torture and other ill-treatment of persons held in police custody or in preventive detention, as well as in cases where excessive use of force during demonstrations is alleged;
- To remove obstacles to the proper administration of justice in cases where security forces are implicated in human rights violations;
- To ensure that all victims of human rights violations and abuses, committed by all parties to the Casamance conflict, can benefit from redress and guarantees of non-repetition.

Compensation for victims of human rights violations

- To ensure that all victims of human rights violations can benefit from redress, including measures of restitution, compensation, rehabilitation, satisfaction and guarantees that such violations will not be repeated. The redress should include an explanation of the events so that families can know what happened to their family member;
- To conduct investigations so that the families of those who disappeared in the Casamance conflict may be informed of the fate of their relatives, in

order to mourn the disappeared person, and to provide them with psychological, medical and financial support, in accordance with international human rights standards;

- To ensure that the families of disappeared persons and those who died in detention receive the social benefits they are entitled to following the death of a family member, particularly retirement benefits.

Discrimination and harassment on the grounds of sexual orientation

- To respect, protect, and fulfil the human rights of all persons, without discrimination of any kind;
- To review national legislation that may lead to discrimination, prosecution or punishment of persons solely on the basis of their sexual orientation or gender identity. This should include reviewing the law explicitly criminalizing consensual sexual conduct between people of the same sex.

ENDNOTES

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Senegal*, A/HRC/11/24,

3 March 2009, recommendation 97.5 (Mexico).

² *Idem*, recommendation 98.2 (Mexico).

³ *Idem*, recommendation 98.7 (Switzerland, Sweden, France, Canada), 98.8 (Ireland, United Kingdom, the Netherlands, Belgium, Holy See), 98.9 (France, Slovenia).

⁴ *Idem*, recommendation 98.7 (Canada), 98.9 (France).

⁵ *Idem*, recommendation 98.6 (United Kingdom, Belgium, Canada, the Netherlands, Slovenia, Czech Republic, Ireland).

⁶ For a list of these cases, see the Annexes 2 and 3 of the Amnesty International's report, *Senegal: An agenda for human rights. An opportunity not to be missed by the authorities elected in the March 2012 presidential election* (AFR 49/004/2012, June 2012).

⁷ Law 2004-20 of 21 July 2004 providing an amnesty for all offences committed during the internal conflict in Casamance since 1991.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Senegal: Call for immediate release of nine men sentenced on the basis of their alleged sexual conduct (AFR 49/001/2009)

Senegal: Land of impunity (AFR 49/001/2010)

Senegal: The sentence of a political opponent must be quashed (AFR 49/002/2011)

Senegal: The human rights situation: Brief overview in the run-up to the presidential election (AFR 49/001/2012)

Senegal: An agenda for human rights. An opportunity not to be missed by the authorities elected in the March 2012 presidential election (AFR 49/004/2012)

Senegal: ICJ: Ex-Chad leader Habré's victims' long wait for justice (PRE01/356/2012)

¹ All of these documents are available on Amnesty International's website:
<http://www.amnesty.org/en/region/senegal>