

# SENEGAL

## @Comments by Amnesty International on the Second Periodic Report Submitted to the United Nations Committee against Torture

At its fifteenth session to be held in Geneva in November 1995, the United Nations Committee against Torture will study the second periodic report presented by the Republic of Senegal concerning the application by that country of the *United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* [hereafter called the Convention against Torture or the Convention].

In this report, the Government of Senegal lists a large number of measures which have been put in place to combat the torture and ill-treatment of detainees. Nevertheless, the serious allegations of torture continually coming to the attention of Amnesty International and the reluctance of the Senegalese authorities to hold independent judicial enquiries into such allegations reveal that, in practice, many of the articles of the Convention against Torture are frequently violated.

As far as the law is concerned, acts of torture do not, as such, constitute an offence under Senegalese law, contrary to the provisions of Article 4 of the Convention against Torture.

With regard to the application of this Convention, the second periodic report of the Republic of Senegal describes in detail the measures taken to prevent torture as these affect the law and the areas of administration, justice, education and information, within the meaning of Article 2 of the Convention, but such measures appear to have been adopted merely to comply formally with the obligations of the Convention against Torture. Indeed, despite these apparent safeguards, Amnesty International is concerned by information it constantly receives about:

- \*Continuing allegations of torture and ill-treatment, particularly in the hours and days following arrest;
- \*The use as evidence of confessions extracted under torture (in violation of Article 15 of the Convention);
- \*The refusal of the Senegalese authorities to investigate any allegation of torture until a complaint has been lodged (in violation of Article 12 of the Convention, which obliges contracting States to hold an impartial enquiry immediately, whether or not a

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complaint has been made, wherever there are reasonable grounds to believe that an act of torture has been committed);

\*The refusal to guarantee the right of any person who is the victim of acts of torture to make a complaint, particularly in the case of Casamance prisoners, (in violation of Article 13 of the Convention, which expressly provides for this right and for protective measures for the complainant and any witnesses);

\*The slow progress of investigations into such allegations, even when a complaint has been lodged;

\*The great reluctance on the part of the Senegalese authorities to bring before the courts members of the security forces accused of acts of torture or ill-treatment.

This regular flow of information from a variety of reliable sources seems to indicate that the practice of torture is widespread in Senegal and that it is tolerated by the authorities, at least at a certain level in the hierarchy.

## **MULTIPLE COMPLAINTS OF TORTURE AND ILL-TREATMENT**

A large number of allegations of torture and ill-treatment have come to the attention of Amnesty International concerning cases where members of the security forces have deliberately used physical violence in the hours or days following arrest. Such brutality appears essentially aimed at extracting confessions from prisoners and is used without distinction against those accused of common law offences or political prisoners, and in particular those accused of threatening state security in the context of the Casamance conflict.

Amnesty International has publicly expressed its concern in connection with several cases of torture: the case of Mody Sy, an opposition member of parliament, arrested in May 1993, who allegedly received electric shocks to his fingers and genitals at the gendarmerie (para-military police station) in the capital, Dakar; the case of 20-year-old Ramata Guèye, a female mango-seller, who was tortured in July 1993 in the gendarmerie at Thiès; and the case of Lamine Samb, a teacher of Arabic who died in February 1994 in Dakar, after two days in detention.

As far as Amnesty International is aware, not one of these three cases has been the subject of an immediate and impartial enquiry. An enquiry was finally held after Mody Sy's lawyers lodged a complaint, but those carrying out the investigation limited themselves to recording the conflicting statements of the complainant and the gendarmes (members of the para-military police force) concerned, before concluding that there was insufficient evidence to commence a judicial investigation.

In the case of Ramata Guèye, it appears that the gendarmes involved have been transferred, but the lawyers have not been informed of the results of the investigation and no legal action has been taken.

As regards the death of Lamine Samb, a post mortem report appears to have been made but has never been made public in its entirety, despite the repeated requests of several human rights organisations, including Amnesty International.

Amnesty International has been informed of the death of another prisoner, in February 1994, namely Famara Diédhiou, a young Casamance farmer, who died probably after being tortured in the gendarmerie at Bignona, in the Casamance region. No enquiry has been held and no post mortem carried out, even though a doctor noted that death was due to a "cranio-cerebral traumatism probably caused by a blunt instrument".

In cases of death in detention apparently following torture, internationally-recognised standards call for an in-depth and impartial enquiry each time reliable information indicates that in the circumstances the death was not due to natural causes (see principle 9 of the *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, adopted by the United Nations General Assembly on 15 December 1989).

In some cases, not only have allegations of torture not been investigated but, in violation of Article 15 of the Convention against Torture, confessions allegedly obtained under torture have been used to convict prisoners.

For example, following a violent demonstration in Dakar during which eight people, including six police officers, had died, presumed members of the Islamic group *Moustarchidina wal Moustarchidati* (Men and Woman of the Truth) were convicted in September 1994 on the basis of confessions apparently obtained under torture. During the trial, defence lawyers proposed to show the court signs of torture on one of the accused, a young woman aged 21 called Coumba Ba, but the court refused. In this context, Amnesty International has heard of many allegations of torture which apparently caused serious injuries such as lacerations to the mouth and ears. Furthermore, in a communiqué published on 27 February 1994, the Senegalese non-governmental organisation *Rencontre africaine pour la défense des droits de l'homme* (RADDHO) (African Conference for the Defence of Human Rights) denounced "the systematic use of torture to extract confessions".

This all tends to show that, despite the claims made by the Senegalese government in its second periodic report, education and information programmes concerning the prohibition of torture have not been effectively integrated into the training of the security forces, as provided for in Article 10 of the Convention against Torture, or at the very least

they have had no appreciable impact. Similarly, it appears that, contrary to the provisions of Article 11 of that Convention, the competent Senegalese authorities do not systematically review interrogation methods or arrangements for the custody and treatment of detainees.

## **REFUSAL TO OPEN JUDICIAL ENQUIRIES IN THE ABSENCE OF A COMPLAINT**

Despite the large number of allegations of torture, very few judicial enquiries have been opened by the competent Senegalese authorities, in violation of Articles 12 and 13 of the Convention against Torture which provide for the opening of an impartial enquiry each time there are reasonable grounds for believing that an act of torture has been committed even if the victim, who ought to be entitled to lodge a complaint, has been prevented from doing so.

In its second periodic report, the Republic of Senegal itself recognises that the application of this Article 12 "faces considerable obstacles in Senegal and this causes controversy between the authorities of this country, on the one hand, the human rights monitoring bodies of the United Nations, on the other hand, and certain non-governmental organisations".<sup>1</sup>

The Senegalese authorities explain this failure to investigate by the fact that the victims or their representatives have not lodged complaints as provided for under national legislation. The Republic of Senegal therefore gives preference to its own law over its international obligations, even though Article 79 of the Senegalese Constitution specifies that any international treaty ratified by Senegal has greater authority than national law. In October 1992, the Committee on Human Rights refused to subscribe to this position of the Senegalese Government by stating that, on the contrary "all efforts should be made to bring those conditions [in the country] into conformity with internationally agreed human rights standards." (See CCPR/C/79/Add.10)

Challenged at this same session by the Committee on Human Rights for the apparent impunity enjoyed by the perpetrators of acts of torture, the representative of Senegal undertook to urge his government to pursue investigations opened in the past and to order new ones, even where no complaint has been made in good and due form. Despite such promises, the Senegalese authorities continue to make any investigation dependent on a complaint being lodged.

This attitude is particularly disturbing in relation to the conflict in Casamance where, since 1983, widespread allegations of torture inflicted on presumed members of the

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<sup>1</sup>This has been translated by Amnesty International and may differ from the official United Nations translation

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*Mouvement des forces démocratiques de la Casamance* (MFDC) (Movement of Casamance Democratic Forces) have periodically come to the attention of Amnesty International. On many occasions the Republic of Senegal has cited as grounds for suspending these enquiries, the fact that an amnesty law prohibits the pursuit of judicial investigation of incidents in the Casamance region. In its second periodic report, the Senegalese government maintains that such investigations would be "likely to threaten the newly-restored peace, national cohesion and the stability of public institutions".<sup>2</sup>

Amnesty International denounces the Senegalese authorities' interpretation of these amnesty laws because, ultimately, they have the effect of granting impunity to the perpetrators of human rights violations. The Committee on Human Rights made this same comment in October 1992, when it said that the "amnesty should not be used as a means to ensure the impunity of State officials responsible for violations of human rights...". (See CCPR/C/79/Add.10)

Any amnesty law which has the effect of concealing the truth and preventing guilty persons from accounting for their acts in the courts is unacceptable. Furthermore, permitting previous human rights violations to pass without comment has not contributed to restoring lasting peace in Senegal, as demonstrated by the resumption of fighting in Casamance since January 1995. Since then, Amnesty International has become aware of new allegations of torture inflicted on prisoners suspected of being members of the MFDC. At the civil prison in Ziguinchor, the main town in the Casamance region, witnesses have seen prisoners bleeding and unable to move without difficulty. Under interrogation in Dakar prison Kéba Ndiaye, the mayor of a Casamance village, accused of collecting funds for the MFDC, complained of violent blows to his face and ears. Not one of these allegations of torture has been investigated.

Even when a complaint is made against members of the security forces, the Senegalese authorities still seem reluctant to initiate an investigation.

This is demonstrated by the following two cases, which finally resulted in the recent arrest of a number of gendarmes and police officers:

In June 1993, Babacar Thior, a young man accused of theft, had his body doused with inflammable liquid at the gendarmerie in the Foire district of Dakar. He was hospitalised for almost a year and a medical certificate records first- and second-degree burns to his buttocks, thighs and elbow. On his discharge from hospital in July 1994, Babacar

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Thior lodged a complaint, but it was not until July 1995, a year later, that two gendarmes were finally arrested.

In this case, it appears that the Ministry for the Armed Forces, which has responsibility for the gendarmerie, put up considerable resistance to an investigation. This Ministry has significant power in this respect because it alone can give a "directive to commence a judicial investigation", without which no action can be taken against military personnel.

Marème Ndiaye, arrested in September 1994 for handling stolen goods, was tortured at a police station in Dakar. She was released the same day, but returned the following day to make a complaint. She was then re-arrested, taken to the beach and raped by several members of the security forces. The police officers then poured inflammable liquid on her genitals. A complaint was lodged in September 1994 and the lawyers had to write several times to the Minister of Justice before an investigation was initiated. It was not until July 1995, almost a year after the complaint was made, that five people - a police superintendent and four officers - were arrested.

Despite the delays and internal resistance, Amnesty International welcomes these signs of a new will to bring the perpetrators of acts of torture to justice. The organisation believes that there is a pressing need to put an end to the sense of impunity apparently enjoyed by the Senegalese security forces and hopes that in future the authorities will no longer be satisfied with the former practice of merely transferring the police officers or gendarmes involved.

#### **THE RECOMMENDATIONS OF AMNESTY INTERNATIONAL**

Amnesty International is seriously concerned that certain current provisions in Senegalese legislation appear to facilitate the use of torture and ill-treatment. In October 1992, the Committee on Human Rights had already expressed the same concerns, considering that certain provisions of Senegal criminal law, in particular those permitting prisoners to be held *incommunicado* for up to eight days without access to their families or lawyers, were contrary to Article 9 of the International Covenant on Civil and Political Rights (See CCPR/C/79/Add.10)

Amnesty International urges the Senegalese authorities to comply with the obligations entered into by ratification of the Convention against Torture and to take all necessary steps to ensure that:

\*All acts of torture constitute *per se* an offence under Senegalese law;

- \*Changes are made without delay to Senegalese law so that, from the moment of their arrest, prisoners can be assured of their right to defence;
- \*All allegations of torture are the subject of an immediate, exhaustive and impartial investigation;
- \*The results of such investigations are published and all perpetrators of acts of torture are brought to trial;
- \*The competent authorities keep under systematic review interrogation rules and methods as well as arrangements for the treatment of imprisoned persons with a view to preventing any cases of torture;
- \*At the interrogation stage, prisoners are quickly informed of the charges against them and have speedy access to their families, and to a lawyer and doctor of their choice;
- \*Victims of torture are entitled to make a complaint and measures are taken to guarantee the protection of the complainant and any witnesses from intimidation or ill-treatment;
- \*Confessions obtained under torture can never be used as evidence in a trial except against the person accused of torture to establish that a confession has been made;
- \*Victims of torture and their dependents are entitled to claim damages and adequate compensation.

Finally, Amnesty International requests the Senegalese authorities to ensure that:

- \*Education and information on the prohibition of torture and other cruel, inhuman or degrading treatment is effectively introduced into all training programmes for the Senegalese security forces and that they receive clear instructions that torture is prohibited and that such crimes constitute a punishable offence. These training programmes must be effective and must be prepared in cooperation with international and non-governmental organisations with experience in this field.