



# SENEGAL: ALL TALK NO ACTION

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC  
REVIEW, 31<sup>ST</sup> SESSION OF THE UPR WORKING GROUP, NOVEMBER 2018

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# INTRODUCTION

In this submission prepared for the Universal Periodic Review (UPR) of Senegal in November 2018, Amnesty International evaluates the implementation of recommendations made to Senegal in its second UPR in 2013, assesses the national human rights framework and the human rights situation on the ground, and makes a number of recommendations to the government to strengthen the protection of human rights and address human rights violations.

While Senegal met its commitment to bring former Chadian President Hissène Habré to trial, Amnesty International regrets Senegal's failure to implement a number of recommendations it had accepted during the second review, including to respect and protect the right to freedom of expression, the rights of women and children, and to strengthen national human rights institutions. Amnesty International remains concerned about restrictions on the right to peaceful assembly, the use of unnecessary and excessive force against peaceful demonstrators, deaths in custody, and arbitrary arrests of and violence against lesbian, gay, bisexual, transgender and intersex (LGBTI) people.

As a member of the Human Rights Council, Senegal should be open and transparent about these shortcomings and take immediate action to address them.

# FOLLOW UP TO THE PREVIOUS REVIEW

Senegal successfully implemented the recommendation to bring former Chadian President Hissène Habré to trial. However, it failed to implement most of the other recommendations made during its second UPR in 2013, particularly with regard to strengthening national human rights institutions, abolishing the death penalty, guaranteeing freedom of expression and peaceful assembly, addressing torture and other ill-treatment, protecting the rights of children and of LGBTI persons, and tackling impunity for human rights violations.

## INTERNATIONAL JUSTICE

Senegal accepted recommendations to bring former Chadian President Hissène Habré to trial and successfully implemented these recommendations.<sup>1</sup> On 30 May 2016, he was sentenced to life imprisonment by the Extraordinary African Chambers in Senegal, a court established in 2013 under an agreement between the African Union and Senegal. He was found guilty of crimes

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<sup>1</sup>Report of the Working Group on the Universal Periodic Review - Senegal, A/HRC/25/4, 11 December 2013, recommendations 124.77 and 124.78 (Australia and Canada).

against humanity, war crimes and torture committed in Chad between 1982 and 1990. His lawyers lodged an appeal, but in April 2017 the Court upheld his conviction.

## **STRENGTHENING OF NATIONAL HUMAN RIGHTS INSTITUTIONS**

Senegal supported recommendations to strengthen the Senegalese Human Rights Committee and the National Observatory of Places of Deprivation of Liberty, including by ensuring their independence and providing them with the necessary resources to undertake their work.<sup>2</sup> However, the two institutions remain underfunded and Senegal has failed to adopt the necessary laws to guarantee their independence, including by modifying the way their members and leaders are selected and appointed. The President of the Senegalese Human Rights Committee and the National Observer continue to be nominated by presidential decree and the members of the Senegalese Human Rights Committee are nominated by the Minister of Justice. It retains status B which means it is only partially compliant with the Paris Principles.

## **THE DEATH PENALTY**

Senegal rejected recommendations to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.<sup>3</sup> The authorities justified their decision on the basis that Senegal had “demonstrated its deep and unequivocal commitment to opposing the death penalty”.<sup>4</sup> However, during a meeting in December 2013 with an Amnesty International delegation, Senegal had committed to ratify the Second Optional Protocol. Moreover, in response to other recommendations, Senegal stated that it had ratified the major international instruments and would pursue the remaining ratifications.<sup>5</sup> Despite these commitments, Senegal has yet to ratify the Second Optional Protocol. In recent years, there has been continued calls by religious groups to reinstate the death penalty in Senegal.<sup>6</sup>

## **FREEDOM OF EXPRESSION**

Senegal accepted recommendations to respect and protect the right to freedom of expression and in particular to decriminalize press offenses.<sup>7</sup> In its response to the recommendations, Senegal noted that “[t]he decriminalization of press offences is a key provision of the draft Code on the Press in Senegal”.<sup>8</sup> However, despite this clear commitment, the new Press Code, adopted in 2017, maintains the criminalization of press offences.<sup>9</sup> Senegal has also adopted other legal instruments which further undermine the right to freedom of expression, including the 2016 Law revising the Criminal Code. Several artists and journalists have been arrested and detained over several days solely for exercising their right to freedom of expression.

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<sup>2</sup>A/HRC/25/4, Recommendations 123.8 – 123.22 (Pakistan, Azerbaijan, Niger, South Africa, Austria, New Zealand, Tunisia, Australia, Sierra Leone, Benin, Burkina Faso, Congo, Costa Rica, France and Gabon)

<sup>3</sup>A/HRC/25/4, Recommendations 125.2 – 125.7 (Australia, Montenegro, Benin, France, Switzerland, Gabon, Rwanda).

<sup>4</sup> Report of the Working Group on the Universal Periodic Review - Senegal - Addendum - Views on conclusions and/or recommendations, commitments and replies by the State party under review, A/HRC/25/4/Add.1, para. 3.

<sup>5</sup> A/HRC/25/4/Add.1, para. 1

<sup>6</sup> Agence de Presse Africaine, Sénégal : deux ONG islamiques pour un référendum sur la restauration de la peine de mort, 21 November 2016.

<sup>7</sup>A/HRC/25/4, Recommendations 124.83 – 124.84 (Slovenia, Spain) and 125.16 – 125.18 (Democratic Republic of Congo, France and Greece).

<sup>8</sup> A/HRC/25/4/Add.1, para. 26.

<sup>9</sup> Press Code, Articles 224- 225.

## FREEDOM OF PEACEFUL ASSEMBLY AND EXCESSIVE USE OF FORCE

Senegal supported recommendations to ensure the right to peaceful assembly and to maintain public order without resorting to excessive use of force.<sup>10</sup> Yet Senegal continues to ban peaceful demonstrations, including several demonstrations organized by Amnesty International and other human rights groups, and to use unnecessary and excessive force against peaceful demonstrators.

## TORTURE AND OTHER ILL-TREATMENT

In the last review, Senegal committed to take concrete measures to combat torture and other ill-treatment, including to review legislation to prohibit the use as evidence of statements made under duress or as a result of torture, and to ensure the definition of torture provided in the Criminal Code is in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>11</sup> Senegal has failed to implement these measures.

## CHILDREN'S RIGHTS

Senegal accepted dozens of recommendations on children's rights, including to protect them from forced begging and trafficking.<sup>12</sup> Yet, *talibés*, children forced into begging by Qur'anic school teachers, continue to roam the streets. Between July 2016 and March 2017, the government took 1,500 children off the streets and provided them with temporary shelter. Some were taken to their families or to neighboring countries. However, by July 2017 over 1,000 of children had returned to their traditional Qur'anic boarding schools.<sup>13</sup> Official inspections were not conducted in most of these schools, and many children are forced to beg on the streets again. There have been few investigations into these abuses or prosecutions of those responsible for them.

## WOMEN'S AND GIRLS' RIGHTS

Senegal committed to taking measures to promote and protect women's rights, including to end female genital mutilation, early and forced marriage, and violence against women.<sup>14</sup> However, Senegal rejected a recommendation to revise its Family Code "to put an end to situations of legal discrimination against Senegalese women, especially in terms of their ability to be the head of household (art. 152)".<sup>15</sup> While there has been a decrease in reported cases of female genital mutilation, the Working Group on discrimination against women in law and in practice has stated that "25 per cent of women aged 15 to 49 reported having been a victim of excision — a rate that rose to 92 per cent in some localities".<sup>16</sup> According to UNICEF, 31% of girls in Senegal are married by the age of 18.<sup>17</sup> Senegal has also failed to remove discriminatory provisions from its

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<sup>10</sup>A/HRC/25/4, Recommendations 124.83 – 124.84 (Slovenia, Spain)

<sup>11</sup>A/HRC/25/4, Recommendations 124.28 – 124.33 (Spain, Uruguay, Azerbaijan, Ireland, Maldives).

<sup>12</sup>A/HRC/25/4, Recommendations 124.16, 124.54 – 124.63, 124.67, 124.69, 124.70, 124.104 (Turkey, United Kingdom, United States, Algeria, France, Germany, India, Singapore, South Sudan, State of Palestine, Sudan, Luxembourg, Paraguay, State of Palestine, Austria)

<sup>13</sup> Human Rights Watch, "I Still See the Talibés Begging" - Government Program to Protect Talibé Children in Senegal Falls Short, 11 July 2017, <https://www.hrw.org/report/2017/07/11/i-still-see-talibes-begging/government-program-protect-talibe-children-senegal>

<sup>14</sup>A/HRC/25/4, Recommendations 124.36 – 124.51 (United Kingdom, Australia, Canada, France, Luxembourg, Philippines, Russian Federation, Gabon, Cote d'Ivoire, Algeria, Angola, Argentina, Ecuador, Brazil, Paraguay, Burkina Faso).

<sup>15</sup>A/HRC/25/4, Recommendation 124.12 (Spain).

<sup>16</sup> Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to Senegal, A/HRC/32/44/Add.1, para. 79.

<sup>17</sup>UNICEF, Data on Child Marriage, November 2017, <https://data.unicef.org/topic/child-protection/child-marriage/>

Family Code and to revise its Criminal Code to decriminalize abortion, criminalize marital rape and prohibit early and forced marriage.

## **RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX (LGBTI) PEOPLE**

Senegal rejected all recommendations to amend national legislation which currently permits discrimination against minorities<sup>18</sup> and to ensure respect for the human rights of LGBTI people.<sup>19</sup> The authorities have argued that “[b]eing homosexual was not an offence in Senegal and no legal proceedings had been brought against persons based solely on their homosexuality”.<sup>20</sup> Yet the Criminal Code continues to criminalize consensual sexual relations between adults of the same sex and individuals are still subjected to a range of human rights abuses on the basis of their real or perceived sexual orientation or gender identity, including arbitrary arrests, assault, threats and discrimination.

## **IMPUNITY FOR HUMAN RIGHTS VIOLATIONS, INCLUDING IN THE CONTEXT OF THE CASAMANCE CONFLICT**

Senegal rejected recommendations to investigate human violations committed by the security forces and to bring suspected perpetrators to justice, particularly in the context of the Casamance conflict and the 2012 election.<sup>21</sup> It justified its decision on the grounds that legal action is already “systematically taken”.<sup>22</sup> After protracted legal proceedings, there has been some breakthroughs in a dozen of cases of excessive use of force, torture and deaths in custody. However, light sentences were handed out in most of them and more than thirty cases are pending. The authorities have also argued that they were “unaware of any cases of enforced disappearance”. Amnesty International is alarmed by this denial and has repeatedly reported cases of enforced disappearance to the Senegalese authorities, in particular in the context of the Casamance conflict.<sup>23</sup>

# **THE NATIONAL HUMAN RIGHTS FRAMEWORK**

Since the 2013 review, Senegal has adopted a new Press Code and made amendments to the Criminal Code and Criminal Procedure Code which undermine the rights to freedom of expression, to fair trial and to freedom from torture.

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<sup>18</sup>A/HRC/25/4, Recommendation 126.1 (Uruguay).

<sup>19</sup>A/HRC/25/4, Recommendations 126.1 -126.14 (Uruguay, Argentina, Australia, Austria, Belgium, Brazil, Greece, Paraguay, Thailand, Germany, Ireland, Netherlands, Switzerland, Mexico).

<sup>20</sup>A/HRC/25/4, 11 December 2013, para. 60.

<sup>21</sup>A/HRC/25/4, Recommendations 124.14 and 124.15 (Mexico and Spain).

<sup>22</sup> A/HRC/25/4/Add.1, para. 24.

<sup>23</sup> In particular, see: Amnesty International, Senegal: Land of Impunity (Index: AFR 49/001/2010).

## FREEDOM OF EXPRESSION

The new Press Code, adopted by the National Assembly in June 2017, is vaguely worded and provides for custodial sentences for press offences. It allows the Ministers of Interior and of Communication to ban foreign newspapers and periodicals (Article 78) and provides for prison terms and fines for anyone defying the ban (Article 206). It also empowers administrative authorities to order the seizure of property used to publish or broadcast information, to suspend or stop a television or radio program, and to provisionally close a media outlet on national security or territorial integrity grounds (Article 192).

The Criminal Code provides for prison sentences for “offending” the head of state, defamation, insults, the transmission or distribution of images contrary to morality and spreading false news (Article 224-225). Article 227 allows for restriction of access to online content deemed to be “contrary to morality”, to “degrade honour”, or to be “patently unlawful”.

In October 2016, the National Assembly adopted amendments to the Criminal Code and the Code of Criminal Procedure which could be used to stifle dissent, arguing that it was a necessary measure to combat terrorism and cyber-criminality. The amendments to the Criminal Code provide vague and broad definitions of terrorism-related offences, which include “damage or destruction committed during gatherings” exposing protestors to severe criminal sanctions (Article 279). They also criminalize the production and dissemination of “immoral material” online (Article 431.60).

The law revising the Criminal Procedure Code also broadens the investigative powers of the security forces in relation to surveillance and access to computerized data and threatens the rights to freedom of opinion and expression and to privacy. For instance, Article 90.14 empowers the authorities to restrict access to “illicit content” online and Article 90.10 enables a judicial police officer, on the authorization of and under the control of the Public Prosecutor, to “use remote software and install it in the IT system in question in order to gather relevant evidence useful to the investigation or instruction”. The prosecution service reports to the Public Prosecutor’s Office and this provision therefore amounts to authorizing hacking, one of the most intrusive forms of surveillance, without any judicial oversight.<sup>24</sup>

## RIGHTS TO LIBERTY, FAIR TRIAL AND PROTECTION FROM TORTURE

Amendments to the Criminal Procedure Code violate the right to liberty by extending to 12 days the period that people can be detained before appearing before a judge in terrorism-related cases (Article 677.28). International standards require that anyone arrested is brought promptly before a judge, which in most cases should not exceed a period of more than 48 hours following arrest.<sup>25</sup>

The law revising the Criminal Procedure Code lifts the restriction that a person should only be informed of their right to access a lawyer after the end of their first period of detention, i.e. 24 or 48 hours for crimes and offences against national security or crimes and offences during a state of siege or state of emergency. While this is a positive development, the law still contains other restrictions on the right to access legal counsel which undermine the rights to fair trial and to be free from torture. For instance, Article 55 specifies that the first interview between the detainee and their lawyer is limited to a maximum of 30 minutes and that “the lawyer may not report on

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<sup>24</sup> Analysis of the laws amending the Criminal Code and the Code of Criminal Procedure (Index: AFR49/5287/2016).

<sup>25</sup> Concluding Observations of the Human Rights Committee, El Salvador, CCPR/SLV/CO/6, para. 14; Reports of the Special Rapporteur on Torture, E/CN.4/2003/68, para. 26(g); A/65/273, para. 75; Conclusions and Recommendations of the Committee against Torture on Venezuela, CAT/C/CR/29/2, para. 6(f); European Court: *Kandzhov v Bulgaria* (68294/01), 2008, para. 66-67

this interview to anyone during the period of police custody”, thus making the lawyer’s role in advising the accused and preventing torture and other ill-treatment particularly difficult.<sup>26</sup>

On 11 January 2018, the Minister of Justice issued a circular aimed at addressing some of these shortcomings.<sup>27</sup> The circular states that omitting to inform the suspect of their right to legal assistance would invalidate the procedure.<sup>28</sup> It provides that the police should determine the length of the interview between the lawyer and the detainee and that it may exceed 30 minutes when necessary.<sup>29</sup> However, it still arbitrarily restricts the rights to legal counsel, including by limiting the right to legal counsel to “suspects at the disposal of the judicial police officer for interrogation or investigation purposes.” According to international standards, a person arrested or detained should have access to a lawyer as soon as they are deprived of their liberty, whether or not they are suspects.<sup>30</sup>

# HUMAN RIGHTS SITUATION ON THE GROUND

## CLAMPDOWN ON PEACEFUL ASSEMBLY AND EXCESSIVE USE OF FORCE

Peaceful assemblies organized by political parties or human rights defenders are often arbitrarily banned and dispersed by the police and gendarmerie while using unnecessary and excessive force. Those who are perceived to be the organizers of such protests often face reprisals and arbitrary arrests.

- In May 2018, students protesting against delays in paying scholarships at Gaston Berger University Campus in Saint-Louis clashed with the gendarmerie. One of the students, Fallou Sène, died from gunshot wounds. To date, there is no evidence that the government is actively seeking to establish responsibilities for what appears to have been a clear-cut case of excessive use of force;
- In July 2017, the security forces used tear gas and batons to repress a peaceful demonstration organized by former President and opposition leader Abdoulaye Wade in

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<sup>26</sup> Amnesty International, Analysis of the laws amending the Criminal Code and the Code of Criminal Procedure (Index: AFR49/5287/2016).

<sup>27</sup> Minister of Justice, Circular No. 00179/MJ/DACG/MN of 11 January 2018.

<sup>28</sup> Circular No. 00179/MJ/DACG/MN of 11 January 2018, para. 2.1.1.

<sup>29</sup> Circular No. 00179/MJ/DACG/MN of 11 January 2018, para. 2.1.3.

<sup>30</sup> Human Rights Council resolution 13/19, UN Doc. A/HRC/RES/13/19 (2010), para. 6, HRC Concluding Observations: Georgia, UN Doc. CCPR/C/79/Add.75 (1997), para 27; Jordan, UN Doc. CCPR/C/JOR/CO/4 (2010), para 9; CAT Concluding Observations: Latvia, UN Doc. CAT/C/CR/31/3 (2004), paras 6(h), 7(c); Dayanan v Turkey (7377/03), European Court (2009), paras 30-33; CPT 12th General Report, CPT/Inf (2002) 15, paras 40-41.

The circular further limits the role of the lawyer. For instance; it provides that investigation proceedings may start even if the lawyer is not accessible for legitimate reasons. It reiterates that the consultation between the lawyer and his client is limited in time, clarifying that once that time has expired, the lawyer can only “observe the investigation proceedings” and cannot “respond instead of the suspect, suggest or provide an answer or plead before the judicial police officer”.

the context of legislative elections. The authorities stopped the protest under a 2011 decree banning all assemblies in city centre areas;

- In June 2017, the security forces shot and injured two women and beat several others during a protest in the city of Touba against the ill-treatment of a 14-year-old boy by members of a religious association, often described as the “religious police”. The police has denied opening fire on the protesters, but has opened an investigation into the incident;
- Throughout August 2014, there were frequent confrontations between students protesting against delays in paying out scholarships at Cheikh-Anta-Diop University in Dakar and the security forces. One of the students, Bassirou Faye, died after being shot in the head by the police during a demonstration.

## FREEDOM OF EXPRESSION

The authorities continue to curtail freedom of expression and to target artists, journalists, human rights defenders and political activists who express dissent.

- In 17 April 2018, Barthélémy Dias, opposition leader and mayor of Mermoz-Sacré-Cœur, a neighborhood of Dakar, was sentenced to six months in prison for “contempt of court” for criticizing the court’s decision to sentence the Mayor of Dakar;
- Singer Ami Collé Dieng was arrested in Dakar on 8 August 2017 and charged with “offending the head of state” and “spreading false news” after she shared an audio-recording criticizing the president on WhatsApp. She was released on bail on 14 August;
- On 30 June 2017, journalist Ouleye Mané and three others were arrested for “publishing pictures which offended morality” and “criminal conspiracy” after sharing photographs of the president on WhatsApp. They were released on bail on 11 August 2017;
- In June 2016, rapper Ramatoulaye Diallo, also known as Déesse Major, was detained for three days and charged with “indecentcy” and “offending moral principles” for her choice of clothing in videos posted on social media. All charges were subsequently dropped;
- Rapper Malal Talla, leader of the *Y'en a marre* (We have had enough) movement, was arrested and detained for four days in June 2014 for denouncing police racketeering at a public gathering. He was charged with insulting the police, but later released when the judge determined that the charges were unfounded.

## PRISON CONDITIONS AND DEATHS IN CUSTODY

Prisons in Senegal remain overcrowded. In 2016, some 2,090 people were held in the Rebeuss Prison in Dakar, which has a maximum capacity of 1,600.

Since 2013, Amnesty International has documented at least 13 deaths in custody, including a person shot dead by prison guards during a mutiny at the Rebeuss Prison in 2016, and two persons who died by hanging, according to medical reports.

## RIGHTS OF LGBTI PEOPLE

Men and women face arrest and unfair trials because of their suspected engagement in consensual same-sex sexual relationships. Since 2013, Amnesty International has recorded at least 36 arrests on the basis of perceived or real sexual orientation.

- On 8 June 2018, the police arrested two Gambian asylum seekers<sup>31</sup> in Keur Massar east of Dakar after raiding their house. The police justified the intervention and the arrest on

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<sup>31</sup>Names withheld for security reasons.

the basis that they had committed 'unnatural acts', and made comments about the appearance and clothing of the people in the house. On 9 June 2018, four other men (two Gambians and two Senegalese) who had gone to Diakhaye police station to inquire about their friends were also arrested. Two of the men were beaten during their interrogation. One of them told the police he was sick and needed to take medication; however, the police refused to provide him with medical treatment. On 10 June he lost consciousness and was taken to hospital. The other three were released without charge on 10 June. However, the following day they were transferred to Rebeuss Prison in Dakar and charged with possessing and using marijuana and committing 'unnatural acts'. They were brought to court on 12 June, without access to a lawyer, and acquitted of all charges due to lack of evidence against them. The magistrate warned them however, that if they were caught by the police again, they would be sent to jail;

- On 24 December 2016, the police arrested 11 men in Kaolack. They were detained for five days and subjected to ill-treatment, including insults and beatings, before being released;
- In August 2016, the Tribunal of Dakar convicted seven men of committing “acts against nature” and sentenced them to six months’ imprisonment and a further 18-month suspended sentence. They had been arrested in July when the police raided an apartment without a warrant. Several newspapers revealed the identity of the men and published homophobic and defamatory remarks. Six of them were transferred to a prison in Diourbel, far from their families and support networks. They were acquitted on appeal and released in January 2017.

Senegal has also failed to protect LGBTI persons against homophobic violence and to bring all those suspected of criminal responsibility to justice in fair trials.

- In 2016, a group of students chased and beat-up a young man from the University Cheikh Anta Diop in Dakar on the basis of his perceived sexual orientation. As he managed to escape, they proceeded to damage public property on the University campus;
- Two men were subjected to threats and violence, including beatings, in Pikine, a neighbourhood of Dakar, in December 2015. They went to the police station several times to file complaints with local human rights groups. However, the police did not take any action.

## UNFAIR TRIALS

Amnesty International has expressed concern about unfair trials in Senegal, particularly in cases of senior members of the political opposition or 'terrorism related suspects'. The President of the Republic continues to preside the Supreme Judicial Council and the Minister of Justice remains its vice president, which undermines the independence of the judiciary.

- Opposition leader and Mayor of Dakar Khalifa Sall was detained in March 2017, on charges including criminal conspiracy, forgery and falsification of records, misappropriation of public funds, fraud and money laundering. He was denied bail on several occasions. In July 2017, while in detention, he was elected to Parliament. In November 2017, the National Assembly lifted his parliamentary immunity at the request of the Public Prosecutor. In March 2018, Khalifa Sall was sentenced to five years in prison and a fine of 5 million CFA (7,600 Euros) on charges of fraud of public funds. In June 2018, the ECOWAS Community Court of Justice ruled that the detention of Khalifa

Sall was arbitrary and argued that his rights to presumption of innocence, to parliamentary immunity and to be assisted by his lawyers had been violated;<sup>32</sup>

- As of July 2018, at least 30 people were in detention for 'terrorism-related offences' and several of them have been held for more than 48 hours prior being taken before a judge. This includes Imam Ndao, who was arrested on 27 October 2015 at his home in Kaolack and brought before an investigating judge 11 days later and charged with an “act of terrorism” and justifying terrorism. The security forces refused to let him speak with his lawyers during the first four days of his detention. On 19 July 2018, Imam Ndao was acquitted of the 'terrorism charges' but sentenced to one month suspended sentence for illegal possession of weapons. He was released after being in prison for almost three years.
- In March 2015, the Court for the Repression of Illicit Acquisition of Wealth sentenced Karim Wade, a former minister and son of former President Abdoulaye Wade, to six years imprisonment and a fine of CFA 138,239,086,396 (approximately EUR 210,744,000) for illicit acquisition of wealth. The Court also found seven other co-defendants guilty of complicity of illicit acquisition of wealth and handed down sentences ranging from five to ten years imprisonment and fines. The Court does not meet international and regional fair trial standards, particularly as it does not allow for appeals of the verdict. The African Commission considers the “entitlement to an appeal to a higher judicial body” as an “essential element of a fair trial”.<sup>33</sup>In April 2016, the UN Working Group on Arbitrary Detention found the pre-trial detention of Karim Wade to be arbitrary, including because of delays in court proceedings and differential treatment. Karim Wade was released after being granted a presidential pardon in June 2016.

## IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

After protracted legal proceedings, there has been some breakthrough in a dozen of cases of excessive use of force, torture and deaths in custody. However, only light sentences that do not reflect the severity of the crime were handed down in most cases and no commanding officers have been held to account for failing to prevent the violations.

- In July 2016, four police officers were convicted of the killing of Ibrahima Samb in 2013 and sentenced to 10 years of hard labour. Ibrahima Samb suffocated after the officers locked him in the trunk of a car for more than 16 hours;
- In June 2016, the police officer who shot Bassirou Faye during a peaceful demonstration at the University Cheikh Anta Diop in Dakar in August 2014 was found guilty of murder and sentenced to 20 years of hard labour and ordered to pay damages to the family;
- In June 2016, a police officer was sentenced to two years' imprisonment for assault and battery resulting in death in connection with the killing of Ndiaga Ndiaye, also known as Matar Ndiaye. Ndiaga Ndiaye died after being shot in the leg during a police operation in 2015;
- In January 2016, the driver of the police vehicle that killed student Mamadou Diop during a peaceful pre-election demonstration in 2012 was sentenced to two years' imprisonment and fined for “assault causing death” and “intentional assault and battery”. The co-driver was sentenced to three months' imprisonment for “failure to prevent a crime against physical integrity”. The court also ordered the two policemen to pay damages to Mamadou Diop's relatives.

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<sup>32</sup>Khalifa Ababacar Sall and Others v. Senegal, ECW/CCJ/JUD/17/18, 29 June 2018.

<sup>33</sup>Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003

However, Amnesty International has also recorded dozens more cases of excessive use of force, deaths in custody and torture, over more than a decade, including of children, in which the suspected perpetrators were not brought to justice.

- On 30 January 2012, in Podor north of Dakar, gendarmes shot live bullets at peaceful demonstrators, killing Mamadou Sy, a young man, and Bana Ndiaye, an elderly woman who was not part of the protest. On 19 February, two other protestors, Mamadou Ndiaye and 13 year-old El Hadj Thiam, were shot dead in Rufisque southeast of Dakar.<sup>34</sup>
- On 7 February 2015, the Dakar Assize Court sentenced two men to twenty years of forced labour in relation to the death of a young auxiliary police officer, Fodé Ndiaye, despite their statements being obtained under torture, including beatings and simulated drowning. The two men were acquitted on appeal and released on 29 July 2016.

Amnesty International is concerned that the 2004 amnesty law,<sup>35</sup> which grants amnesty for offences committed during the internal conflict in Casamance, has deprived the victims and their families of their right to truth, justice and reparation, in violation of international law and standards.

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<sup>34</sup> Amnesty International, Senegal: An agenda for human rights: An opportunity not to be missed by the authorities elected in the March 2012 presidential (Index: AFR 49/004/2012), pp. 13-14.

<sup>35</sup> Loi n° 2004-20 en date du 21 juillet 2004 portant loi d'Amnistie.

# RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

## AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF SENEGAL TO:

### STRENGTHENING OF NATIONAL HUMAN RIGHTS INSTITUTIONS

- Adopt measures to guarantee appropriate financial resources and full independence of the Senegalese Human Rights Committee and the National Observatory of Places of Deprivation of Liberty, as Senegal committed to do during its 2013 UPR,<sup>36</sup> including by amending the laws to ensure that the nomination process for their members is transparent and subject to independent oversight.

### THE DEATH PENALTY

- Strengthen its commitment in favor of the abolition of the death penalty by ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights.

### FREEDOM OF EXPRESSION

- Amend legislation unduly restricting freedom of expression in line with international and regional human rights law, as Senegal had accepted to do during the 2013 UPR,<sup>37</sup> including in the Criminal Code, the Criminal Procedure Code, the Press Code and the Law on Cyber-criminality;
- Adopt a law on the protection of human rights defenders and establish a national protection mechanism in consultation with civil society and provide it with adequate resources;
- Ensure that journalists, opposition leaders, government critics and human rights defenders are able to freely exercise their rights to freedom of expression, association and peaceful assembly without fear of reprisals, arrest, detention, intimidation or harassment.

### FREEDOM OF PEACEFUL ASSEMBLY AND EXCESSIVE USE OF FORCE

- Repeal legal instruments providing for blanket bans on peaceful demonstrations, including the 2011 Decree banning all demonstrations in parts of the city center of Dakar;
- Amend the legal framework on the use of force and legislation on assemblies, including the Criminal Code and the 1978 Law on assemblies, to bring them in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the ACHPR Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa;

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<sup>36</sup>A/HRC/25/4, Recommendations 123.8 – 123.22 (Pakistan, Azerbaijan, Niger, South Africa, Austria, New Zealand, Tunisia, Australia, Sierra Leone, Benin, Burkina Faso, Congo, Costa Rica, France and Gabon).

<sup>37</sup>A/HRC/25/4, Recommendations 124.83 – 124.84 (Slovenia, Spain) and 125.16 – 125.18 (Democratic Republic of Congo, France and Greece).

- Provide the security forces with sufficient resources and adequate equipment to police large-scale demonstrations and counter-demonstrations, and effective training in the appropriate and differentiated use of force and weapons, including anti-riot equipment;
- Carry out independent and impartial investigations into all cases where the security forces have injured or caused death by the use of force and impose disciplinary and criminal sanctions, as appropriate, against all those responsible, including superior officers.

#### TORTURE AND OTHER ILL-TREATMENT

- Revise the Criminal Code, in particular Article 295-1 on the definition of torture, as Senegal had accepted to do in the 2013 UPR,<sup>38</sup> to bring it fully into line with Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Revise the Criminal Procedure Code to bring it in line with international and regional law and standards, including by clarifying that any statement established to be obtained under torture or other ill-treatment cannot be invoked as evidence, as Senegal committed to do in 2013 UPR;<sup>39</sup>
- Ensure that trials in which it has been established that statements have been extracted under torture or other ill-treatment are reviewed in order that those convicted can be retried in accordance with international standards of fair trial;
- Carry out prompt, thorough, independent and impartial investigations into allegations of torture and other ill-treatment during detention and take immediate legal action, whenever there is sufficient admissible evidence, against all persons suspected of committing torture and other ill-treatment, as Senegal committed to do in the 2013 UPR.<sup>40</sup>

#### CHILDREN'S RIGHTS

- Enforce domestic laws criminalizing forced begging, trafficking of children and child abuse, including by systematically investigating cases of children being exploited into forced begging and bringing the suspected perpetrators to justice in accordance with fair trial standards, as Senegal had accepted to do in the 2013 UPR.<sup>41</sup>

#### WOMEN'S AND GIRLS' RIGHTS

- Revise the Family Code to eliminate provisions which discriminate against women, including Article 152 which assigns marital authority to the husband, and Article 277 which assigns paternal authority to the father;
- Revise the Criminal Code to bring it in line with regional and international law and standards, particularly the Convention on the Elimination of All Forms of Discrimination against Women and the Maputo Protocol on the Rights of Women in Africa, including by criminalising marital rape, prohibiting early and forced marriage and decriminalising abortion;
- Ensure that the perpetrators of gender-based violence are brought to justice in fair trials, including those responsible for female genital mutilation, and that victims have access to

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<sup>38</sup>A/HRC/25/4, Recommendation 124.33 (Maldives).

<sup>39</sup>A/HRC/25/4, Recommendations 124.28 – 124.33 (Spain, Uruguay, Azerbaijan, Ireland, Maldives).

<sup>40</sup>A/HRC/25/4, Recommendations 124.28, 124.30 (Spain, Uruguay).

<sup>41</sup>A/HRC/25/4, Recommendations 124.16, 124.54 – 124.63, 124.67, 124.69, 124.70, 124.104 (Turkey, United Kingdom, United States, Algeria, France, Germany, India, Singapore, South Sudan, State of Palestine, Sudan, Luxembourg, Paraguay, State of Palestine, Austria).

effective remedy and reparation.

#### **RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE**

- Publically reiterate Senegal's commitment to respect, protect and fulfil the human rights of all people without discrimination, including on the basis of sexual orientation or gender identity;
- Instruct the police to put an end to arbitrary arrest and detention of people on the basis of their real or perceived sexual orientation or gender identity;
- Repeal the provisions of the Criminal Code which criminalize consensual same-sex sexual conduct and incitement to consensual same-sex sexual conduct;
- Promptly, thoroughly, independently and impartially investigate all allegations of attacks, arbitrary arrest and detention of persons on the basis of their real or perceived sexual orientation or gender identity and expression and bring anyone suspected to be responsible to justice in fair trials.

#### **PRISON CONDITIONS AND DEATHS IN CUSTODY**

- Develop and implement a strategy to reduce prison overcrowding, as Senegal had accepted to do in the 2013 UPR,<sup>42</sup> including by substituting detention with non-custodial measures;
- Ensure that all persons deprived of liberty are held in humane conditions, including in line with the UN Basic Principles for the Treatment of Prisoners, the Standard Minimum Rules for the Treatment of Prisoners, and the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, as Senegal had accepted to do in the 2013 UPR,<sup>43</sup> and in particular ensure that all detainees have access to sufficient food and drinkable water, adequate sanitary facilities and medical treatment;
- Promptly, thoroughly, independently and impartially investigate all deaths in custody and bring those suspected to be responsible for the deaths, including by negligence, to justice in a fair trial.

#### **UNFAIR TRIALS**

- Take measures to guarantee the independence of the judiciary and ensure that judicial officials are able to carry out their functions independently and without interference, including by amending laws relating to the Supreme Judicial Council and the statute of magistrates, in order to remove the President of the Republic and Minister of Justice from the Council;
- Amend Law 81-54 of 10 July 1981 creating the Court for the Repression Illicit Acquisition of Wealth to bring it in line with international and regional fair trial law and standards, including by ensuring the Court allow for appeal after the verdict;
- Revise the Criminal Procedure Code to bring it in line with international and regional law and standards, including by removing any restrictions to detainees accessing a lawyer of their choice as soon as they are deprived of liberty.

#### **IMPUNITY FOR HUMAN RIGHTS VIOLATIONS**

- Make enforced disappearance a crime under national law and ensure the definition of enforced disappearance is in line with Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance;
- Ensure that amnesties, pardons and other measures of impunity do not bar the

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<sup>42</sup>A/HRC/25/4, Recommendation 124.34 (Austria).

<sup>43</sup>A/HRC/25/4, Recommendations 124.35 (France).

investigation and prosecution of crimes under international law and take steps to ensure that victims have access to truth, justice and adequate reparations. In particular, amend the 2004 amnesty law to that effect;

- Carry out prompt, thorough independent and impartial investigations into all cases of human rights violations, including in the context of the Casamance conflict, and bring those responsible to justice in fair trials.

# ANNEX

## AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE<sup>44</sup>

*Senegal: Right to peaceful protest and freedom of expression must be respected amid crackdown on dissent* (Press Release, 18 April 2018)

*Amnesty International Report 2017/2018: The state of the World's Human Rights* (Index: POL10/6700/2018)

*Senegal: Analysis of the laws amending the Criminal Code and the Code of Criminal Procedure* (Index: AFR49/5287/2016)

*Amnesty International Report 2016/2017: The state of the World's Human Rights* (Index: POL1048002017)

*Amnesty International Report 2015/16: The state of the World's Human Rights* (Index: POL10/2552/2016)

*Senegal: Failing to Live up to its Promises: Recommendations on the eve of the African Commission on Human and People's Rights' review of Senegal* (Index: AFR 49/1464/2015)

*Amnesty International Report 2014/15: The state of the World's Human Rights* (Index: POL10/0001/2015)

*Senegal: Mining and human rights in Senegal: Closing the gaps in protection* (Index: AFR49/002/2014)

*Amnesty International assessment of states' implementation of recommendations from the previous UPR: 17th Session of the UPR Working Group* (Index: IOR41/011/2013)

*Amnesty International Report 2013: The state of the World's Human Rights* (Index: POL10/001/2013)

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<sup>44</sup>All these documents are available on Amnesty International's website:  
<https://www.amnesty.org/en/countries/africa/senegal/>

**AMNESTY INTERNATIONAL  
IS A GLOBAL MOVEMENT  
FOR HUMAN RIGHTS.  
WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
MATTERS TO US ALL.**

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