



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues to be considered during the examination of the third periodic report of Senegal (CAT/C/SEN/3), adopted by the Committee at its forty-eighth session, 7 May–1 June 2012

Articles 1 and 4

1. According to the State party's report (paras. 84 to 86), article 295-1 of the Criminal Code "closely follows the wording of the definition of torture set out in article 1 of the Convention". However, the definition in article 295-1 omits to mention that torture means "any act by which severe pain or suffering" is intentionally inflicted on a person in order to obtain information or intimidate "a third person". Please indicate the reasons for this omission and whether the State party has taken steps to amend the definition in article 295-1 to bring it into full conformity with the definition of torture set out in article 1 of the Convention.

2. With regard to paragraphs 178 to 186 of the State party's periodic report, please indicate whether there have been cases in which the Convention has been directly applied by the national courts. Please provide updated information on the legislative measures adopted by the State party to ensure that all legislation, in particular the Criminal Code and the Code of Criminal Procedure, conforms to the provisions of the Convention. Please also indicate whether acts of torture are imprescriptible.

Article 2¹

3. With reference to paragraphs 209 to 227 of the report, please provide more details on the measures adopted and the procedures in place to ensure that:

¹ The issues raised under article 2 could also imply other articles of the Convention, such as article 16. As general comment No. 2, paragraph 3, states: "the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture ... In practice, the definitional threshold between ill-treatment and torture is often not clear". See further Chapter V of general comment No. 2.

(a) All persons detained receive assistance from a legal counsel without delay and are able to notify their family and friends, or any other person of their choice of their detention;

(b) All persons accused of an offence are able to have the assistance of a legal counsel, in accordance with the recommendation made by the Working Group on Arbitrary Detention;²

(c) All detainees undergo a medical examination and medical records that indicate injuries compatible with torture and ill-treatment are systematically brought to the attention of the prosecutor. How are detainees provided with information on their right to request an independent medical examination, performed by a doctor of their choice, and to ensure the accuracy of medical reports, including the detainee's right to see the reports?

(d) All detainees are notified of their rights at the time of arrest and of the charges against them.³

4. Please provide information on the measures taken to avoid prolonged detention in police custody on the authority of the public prosecutor, without the individuals concerned having seen a lawyer or been brought before a judge who can decide on the legality of their detention.⁴ According to information received by the Committee, the time taken to bring a criminal case before a court is still very long and therefore violates the provisions of the Criminal Code of the State party. Please indicate the measures taken or envisaged to ensure that a person accused of a criminal offence is the subject of an objective investigation and is brought before a court as soon as possible if his or her responsibility is established.⁵ Please also indicate the measures taken to avoid recourse to the practice known as *retour de parquet*, which allows persons already brought before the government prosecutor's office but whose files the public prosecutor has not had time to see, due to the caseload before the courts, to be detained in police stations.⁶

5. According to information before the Committee, cases of torture persist in places of detention, particularly police stations. Please describe the measures taken by the State party to prevent cases of torture in places of detention and to send a clear message to law enforcement officials that violence and ill-treatment are unacceptable.⁷

6. Please indicate what legal or administrative measures have been adopted to ensure the right of access to justice for persons without economic resources. Please also indicate the measures taken or envisaged by the State party to encourage criminal lawyers to establish a presence in the most remote areas of the country and to increase the number of judges in departmental and regional courts.⁸

7. With regard to paragraph 141 of the periodic report, please provide more details on the mandate and functioning of the National Observatory of Places of Detention, established by Act No. 2009-13 of 2 March 2009. Please specify the measures taken to guarantee its full independence from the executive authorities, for example by ensuring that it has an adequate budget to discharge its mandate. In addition, please provide detailed, updated information on the activities and achievements of the National Observatory. Please

² A/HRC/13/30/Add.3, paras. 56 and 82 (b).

³ CAT/C/SEN/Q/3, para. 3. Report of the Working Group on Arbitrary Detention. Mission to Senegal, A/HRC/13/30/Add.3, paras. 37–38.

⁴ CCPR/C/79/Add.82, 1997, para. 14.

⁵ A/51/44, 1996, para. 116.

⁶ A/HRC/13/30/Add.3, paras. 59–62.

⁷ A/HRC/WG.6/4/SEN/3, para. 4.

⁸ A/HRC/13/30/Add.3, para. 82 (j) and (k).

also specify whether the institution has a mandate to receive and examine individual complaints. If so, please provide statistics on the number and types of complaints received since its establishment in 2009, as well as the action taken regarding complaints alleging acts of torture and ill-treatment.

8. According to information received by the Committee, the legislation on the status of judges and the law on the Judicial Service Commission restrict the independence of judges, in particular the principle of security of tenure of judges and the involvement of the government authorities in selecting members of the Judicial Service Commission. Please indicate the measures taken by the State party to ensure the independence of the judiciary.

9. Please indicate the measures taken by the State party to provide the Senegalese Human Rights Committee with sufficient human and financial resources for it to operate, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), and in particular for it to carry out investigations into human rights violations covered by its mandate.

10. According to information before the Committee, female genital mutilation continues to be practised in the State party with impunity. Please indicate what steps have been taken by the State party to enforce Act No. 99-03 of January 1999 making female genital mutilation a crime. Please provide detailed information and updated statistical data on complaints, investigations, prosecutions, convictions and sentences imposed on perpetrators of criminal conduct related to harmful traditional practices, including murder, as well as on assistance and compensation provided to victims. Please also indicate whether other measures, such as awareness-raising campaigns on the prohibition of female genital mutilation, have been carried out by the State party to inform the population of the negative impact of female genital mutilation.⁹

11. According to information before the Committee, violence against women, including rape, is widespread in the State party, despite the fact that it constitutes an offence. Please indicate whether the State intends to launch any public information campaigns on the issue of violence against women.¹⁰ Please also provide statistics on the number of complaints of violence against women, including rape, as well as details of investigations, prosecutions and convictions in such cases. What measures are taken to facilitate the submission of complaints regarding sexual violence, ensure that the complainant's identity is protected and avoid subjecting the complainant to further trauma? Please indicate the measures of protection, redress and rehabilitation offered to women who are victims of violence and on measures taken to raise awareness among the population. Please indicate whether domestic violence and marital rape are criminal offences and, if so, list the penalties incurred.¹¹ Please provide information on the law that prohibits the practice of early marriage.

12. With regard to paragraph 93 of the report, please indicate the measures taken by the State party to give full effect to Act No. 2005-02 on action to combat trafficking in persons.¹² Please provide information on the progress made on the National Action Plan to Combat Trafficking in Persons. Please also indicate the steps taken to ensure that victims of trafficking have access to an effective remedy. Please provide updated information, disaggregated by sex, age and ethnicity or nationality of the victim, on the number of complaints, investigations, prosecutions and convictions, as well as the sentences handed down, relating to cases of human trafficking recorded during the period covered by the report.

⁹ A/HRC/11/24, paras. 12, 33, 35, 88 and 97 (9); E/C.12/1/Add.62, para. 6.

¹⁰ A/HRC/11/24, paras. 12, 39, 44, 63, 78, 88 and 97 (8); E/C.12/1/Add.62, paras. 6 and 25.

¹¹ A/49/38, para. 725; E/C.12/1/Add.62, paras. 24–25; A/HRC/WG.6/4/SEN/2, paras. 18, 20 and 21.

¹² A/HRC/WG.6/4/SEN/2, para. 22; and A/HRC/11/24, para. 12.

13. The State party indicates in its periodic report (para. 229) that article 295-1 of the Criminal Code stipulates that an order from a superior officer or a public authority may not be invoked as a justification of torture. Please provide examples in which this principle has been applied by the Senegalese courts and relevant statistics, if any.

Article 3

14. With reference to paragraphs 94 to 99 of the State party's report, please indicate how Act No. 71-77 of 28 December 1971 on extradition applies to the situations covered by article 3 of the Convention and ensures that no person can be expelled, returned or extradited to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. What is the procedure followed when a person invokes this right? Please indicate which body takes the decision to extradite, return or remove a person, what means of recourse are available and by what procedure such recourse may be lodged. Are individuals awaiting expulsion, return or extradition notified of their right to seek asylum and to appeal a deportation decision?

15. Please indicate which countries, if any, have submitted requests to the State party for extradition under article 3 of the Convention and what action was taken on those requests. Please also indicate the number of extradition requests, if any, submitted by the State party and the countries to which they were addressed.

16. Please provide statistics, disaggregated by age, sex and nationality, for the period since the consideration of the most recent report, namely since 1996, on:

- (a) The number of asylum applications registered and accepted;
- (b) The number of applicants whose asylum application has been accepted on the basis of torture they have suffered or because they might be subjected to torture if returned to their country of origin, or for any other reason;
- (c) The number of persons removed, expelled, deported, returned or extradited, the countries of destination concerned and the means used by the State party to ensure that such persons are not at risk of being subjected to torture in the country of destination.

17. Please provide information on the number of cases of refoulement, extradition and expulsion carried out by the State party during the reporting period through the acceptance of diplomatic assurances or the equivalent thereof. Please give details of what the State party's requirements are for such assurances and which post-return monitoring mechanisms have been adopted. Please also provide details of instances in which the State party has offered diplomatic assurances or guarantees.

Articles 5, 6, 7, 8 and 9

18. With reference to paragraphs 114 and 115 of the report, please indicate whether, since the consideration of the second report in 1996, the State party has for any reason rejected any request by another State for the extradition of an individual suspected of having committed acts of torture, and whether the State party has consequently taken the necessary action to initiate criminal proceedings itself. If it has, please inform the Committee of the current status and outcome of such proceedings.

19. Please indicate whether, since its most recent report, the State party has had occasion to use the Convention against torture as a legal basis for the extradition of persons accused of having committed acts of torture. Please also indicate whether the State party has concluded other extradition treaties and if so with which countries. Please quote cases in

which extradition has been denied under article 3. In addition to the information in paragraphs 132 to 133, please indicate the agreements on mutual judicial assistance that apply to your country and whether the State party has returned persons on this basis.

Article 10

20. With reference to paragraphs 134 to 137 of the periodic report, please provide further information on the training provided for law enforcement officials and other public officials with respect to human rights, specifying the number and content of training programmes on the treatment of detainees, and the prohibition against torture and ill-treatment, and measures undertaken for the prevention of torture and ill-treatment. Please also provide information on the participation of civil society and the Senegalese Committee on Human Rights in the development and delivery of training programmes. Please indicate whether education and information regarding the prohibition of torture are fully included in the training for judges at the Dakar Judicial Training Centre. Please indicate whether the State party has developed a method of assessing how effectively training and educational programmes help to reduce the occurrence of torture and ill-treatment, and, if so, please provide information regarding that method.

21. Please provide details of information and training programmes for judges, prosecutors, forensic doctors, medical personnel and members of the Senegalese Committee on Human Rights dealing with detained persons, concerning the definition of torture and the detection and documentation of the physical and psychological sequelae of torture. Do such programmes include specific training on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)? What training do doctors receive on the treatment and rehabilitation of victims of torture and ill-treatment?

Article 11

22. Please provide information about the State party's efforts to establish an effective systematic review of all places of detention, including remand prisons, prison camps, detention centres, police stations and all other places of detention used by the State party, as well as a national system to respond to the findings of the systematic review.

23. With reference to paragraph 146 of the periodic report, please indicate the specific measures that have been taken to address the problem of overcrowding in prisons, particularly in the Reubeus remand prison, the Liberté VI prison camp, the Liberté VI women's remand prison and the Thiès remand prison and detention centre.¹³ Please provide official statistics on the overall number of persons held in the remand prisons, prison camps, detention centres, police stations and all other places of detention used by the State party, and indicate the rate of occupancy for each place of detention. Please also indicate the measures taken or envisaged to follow up the recommendations of the Working Group on Arbitrary Detention regarding the advisability of investing in prison infrastructure, by modernizing prisons, prison camps and remand prisons or by building new facilities.¹⁴ Please elaborate on the steps taken to encourage the application of alternative measures to imprisonment, both before and after delivery of the verdict.

¹³ A/HRC/13/30/Add.3, para. 74; CCPR/C/79/Add.82, para. 15.

¹⁴ A/HRC/13/30/Add.3, para. 82 (q).

24. Please indicate the measures taken by the State party to improve the sanitary and hygienic conditions and the diet of persons detained in prisons and other places of detention, particularly with regard to the daily food ration and health care, including detainees' access to a doctor.¹⁵

25. Please indicate the measures taken by the State party to ensure that untried prisoners are separated from convicted prisoners, and adult women from girls in all places of detention.¹⁶

26. Please clarify the status of minors in criminal law: whether it is lawful to arrest them or detain them, whether they can be deprived of their liberty as a punishment, whether legal safeguards for children in detention are respected, and how many minors are kept in detention. Please also provide information on the treatment minors receive in socio-educational centres. Please indicate what the State party intends to do to train judges for the juvenile court and establish a specific juvenile justice system in accordance with the principles and standards of the Convention on the Rights of the Child and other relevant international instruments.¹⁷ Please indicate whether the State party intends to establish the institution of children's ombudsman.

Articles 12 and 13

27. Please indicate what independent mechanisms, if any, are authorized to receive complaints from victims of police torture or ill-treatment, including detainees and human rights defenders, without fear of reprisal, and whether they can initiate the investigation, prosecution, trial and punishment of those responsible.

28. With reference to paragraph 139 of the State party's report, please indicate the measures taken by the State party to ensure effective judicial supervision of the judicial police by the Indictment Chamber of the Court of Appeal in the case of criminal offences linked to acts of torture or ill-treatment during a preliminary investigation. Please provide specific examples, if any.

29. Please provide information on mechanisms to monitor prisons and other places of detention and indicate whether such mechanisms are authorized to receive complaints from detainees concerning torture and ill-treatment or shortcomings in the prison regime. Please indicate the steps taken to ensure that all complaints of torture or ill-treatment are effectively and impartially investigated by an independent body without delay.

30. In the report, the State party states that, from 1996 to 2007, "two alleged cases of torture that were brought to the attention of the public authorities were referred to the courts for appropriate action to redress the alleged human rights violations" (para. 80).¹⁸ Please provide updated statistical data, disaggregated by sex, age, ethnicity and place of detention, on complaints of acts of torture and ill-treatment recorded during the period covered by the report. Please include information on resulting investigations, disciplinary and criminal proceedings, convictions and penal or disciplinary sanctions applied, particularly against members of the security forces and law enforcement officers.¹⁹ In particular, please report on the outcome of the investigations and on disciplinary and/or criminal proceedings initiated concerning:

¹⁵ CCPR/C/79/Add.82, 1997, para. 15.

¹⁶ A/HRC/13/30/Add.3, para. 82 (t); CRC/C/SEN/CO/2, 2006, para. 69 (c).

¹⁷ A/HRC/13/30/Add.3, para. 82 (r).

¹⁸ CAT/C/SEN/3, paras. 167–176.

¹⁹ A/HRC/13/30/Add.3, para. 82 (h); A/HRC/WG.6/4/SEN/3, para. 5.

(a) The acts of torture which 12 officers of the General Intervention Brigade (BIP) allegedly committed against journalists Boubacar Kambel Dieng and Karamokho Thioune on 21 June 2008;

(b) The death of Abdoulaye Wade Yinghou on 14 July 2010, who died in detention, reportedly following ill-treatment;

(c) The alleged death of Fally Keïta during his detention in the Môle 8 gendarme station in Dakar on 24 December 2010;

(d) The murder, in Bakel in March 2011, of Aladji Konaté, whose body was reportedly found on the banks of the Senegal River handcuffed bearing signs of torture;

(e) The brutality to which the gendarmes allegedly subjected three young people at the time of their arrest in the Thiaroye neighbourhood of Dakar in September 2011.

31. According to information received by the Committee, there have been many cases of deaths in detention in the State party, notably in Diourbel, Kolda, Mbour, Bignona and Kaolack.²⁰ Please provide statistics regarding deaths in custody during the period covered by the report, disaggregated by place of detention, sex, age, ethnicity of the deceased and cause of death. Please give details of the results of the investigations into those deaths and indicate the measures taken to prosecute and punish those responsible, as well as the sentences handed down.

32. Please indicate whether the allegations of serious human rights violations and the excessive use of force by the police, notably in response to the violence of certain demonstrators during the 2012 elections,²¹ have been investigated and prosecuted. Please give details of the results of enquiries into the death of Malick Bâ, who was reportedly shot dead by the security forces during a demonstration on 30 May 2011.

33. According to information received by the Committee, the situation in Casamance deteriorated rapidly in November 2011.²² Please provide updated information in that regard.²³ Please provide details of the steps taken by the State party to conduct enquiries, and to prosecute and punish security force officials and the perpetrators of torture and ill-treatment in the Casamance conflict. Please indicate what sentences were handed down and what compensation has been granted.²⁴ Please also indicate the measures taken to investigate the allegations of murder by the rebels of the Mouvement des forces démocratiques de Casamance (MFDC) and to prosecute and punish the perpetrators. Please provide information concerning the process of removal and destruction of anti-personnel mines in Casamance.

34. The Committee notes the State party's response (paras. 200–208) to the recommendation in the Committee's previous concluding observations (A/51/44, para. 117), whereby the Committee considered the amnesty laws in force in the State party were likely to impede the proper implementation of certain provisions of the Convention. Please, nonetheless, give more details of measures taken by the State party to ensure that the development and application of the amnesty laws, particularly the Ezzan Act passed on 7 January 2005, do not prevent the prosecution, sentencing and punishment of the perpetrators of acts of torture or ill-treatment, or the compensation of victims.

²⁰ A/HRC/WG.6/4/SEN/3, para. 4.

²¹ Resolution on the human rights situation in Senegal, ACHPR/RES.208 (EXT.OS/X1) 2012, African Commission on Human and Peoples' Rights.

²² A/HRC/WG.6/4/SEN/3, paras. 2–3.

²³ CAT/C/SEN/3, paras. 187–194 and 232–234.

²⁴ CCPR/C/79/Add.79, 1997, para. 11.

35. Please indicate the measures taken by the State party to guarantee the protection of complainants and witnesses against any intimidation or ill-treatment when they are involved in judicial proceedings.

Article 14

36. With reference to paragraphs 152 to 155 of the State party's periodic report, please provide more details on redress and compensation measures, including the means of rehabilitation ordered by the courts and actually provided to victims of torture or their families, since the examination of the State party's second periodic report. Please include the number of requests for compensation made, the number granted, the amounts awarded and those actually paid in each case. Please indicate when the State party envisages adopting the bill on compensation for victims of prolonged detention or persons who have suffered from particularly serious injustices.²⁵

Article 15

37. Concerning the information in the report on article 15 (paras. 156–159 and 231), please provide details of what has been done explicitly to prohibit obtaining evidence by means of torture and to ensure actual observance of the principle of inadmissibility of evidence obtained through torture.²⁶ Please provide examples of any cases that have been dismissed by courts because of the use of evidence or testimony obtained by means of torture or ill-treatment.

Article 16

38. Please comment on reports that human rights defenders, journalists and opposition politicians continue to be subjected to acts of intimidation and harassment, including, inter alia, arbitrary detention and threats. Please provide detailed information on physical attacks and death threats against human rights defenders, journalists and opposition politicians, and the outcome of criminal investigations and prosecutions, including the sentences handed down. In particular, please provide details of the outcome of the investigations and any disciplinary and/or criminal proceedings related to the physical aggression experienced by Alioune Tine, president of the Rencontre Africaine pour la Défense des Droits de l'Homme (Raddho, African Assembly for the Defence of Human Rights), and Oumar Diallo, another member of Raddho, during a demonstration protesting against the constitutional reform allowing a candidate to win in the first round of the presidential election with not more than 25 per cent of the vote. Please also indicate the current status of proceedings regarding Malick Noël Seck.²⁷

39. According to information before the Committee, in the last few years, men have faced harassment, arbitrary arrest, torture and unfair trial due to suspected engagement in consensual same-sex sexual relationships. Please comment on the information that these arrests and convictions occurred in a context of growing hostility towards homosexuals in Senegal, which has resulted in arbitrary arrests and acts of homophobic harassment and discrimination. Please indicate the measures taken to date to decriminalize consensual sexual relations between adults of the same sex. Please also provide information on the

²⁵ A/HRC/13/30/Add.3, para. 82 (e).

²⁶ A/51/44, para. 114 (d); A/HRC/WG.6/4/SEN/3, para. 4.

²⁷ A/HRC/WG.6/4/SEN/3, para. 4.

measures taken to increase public awareness of the prohibition of discrimination, particularly based on a person's sexual orientation or gender identity, in order to protect vulnerable groups from violence and other ill-treatment.

40. Please indicate what the State party has done to prohibit corporal punishment within the family, in schools and in residential care facilities.²⁸

41. According to information received by the Committee, many cases of child abuse go unpunished. Please indicate what the State party has done to prevent and punish all cases of child abuse. Please also indicate whether the State party has set up a mechanism to uphold children's rights under existing legislation. Please provide updated information concerning the measures taken to prevent and to appropriately outlaw the sale of children, child prostitution and child pornography.

Other issues

42. Please provide information on how the decision of the Committee against Torture in the case of *Suleymane Guengueng et al. v. Senegal* of 17 May 2006²⁹ has been put into effect, particularly in relation to the issues raised in the note verbale sent by the Rapporteur on follow-up to communications to the State party on 24 November 2011, following the Committee's forty-seventh session.³⁰

43. Please provide information on the legislative, administrative and other measures taken by the State party to respond to the threat of terrorist acts and describe whether, and how, these antiterrorism measures have affected human rights safeguards, in law and practice, and how the State party has ensured that the measures comply with all its obligations under international law. In that respect, the Committee would recall Security Council resolutions 1456 (2003), 1535 (2004), 1566 (2004) and 1624 (2005), which reiterate that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, in particular international human rights law, refugee law and humanitarian law. Please describe the training given to law enforcement officers in that respect, the number and types of convictions handed down under the relevant legislation, and the legal remedies available to persons affected by antiterrorism measures. Please specify whether there have been complaints about non-observance of international standards, and give details of the outcome of such complaints.³¹

²⁸ A/HRC/WG.6/4/SEN/2, para. 19; CRC/C/SEN/CO/2, paras. 36–37.

²⁹ *Guengueng et al. v. Senegal*, communication No. 181/2001, decision adopted on 17 May 2006.

³⁰ CAT/C/SEN/3, paras. 165–166 and 235–284.

³¹ S/2002/51, S/2002/1212 and S/2003/1104.