



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

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**Committee against Torture**

**Consideration of reports submitted by States  
parties under article 19 of the Convention**

**Third periodic report of States parties due in 1996**

**Senegal\*, \*\***

[9 February 2011]

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\* The second periodic report submitted by the Government of Senegal bears the document symbol CAT/C/17/Add.14. It was considered by the Committee at its 247th and 248th meetings (see CAT/C/SR.247 and 248), held on 1 May 1996. For the Committee's concluding observations, see document A/51/44, paragraphs 102 to 119.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## **Part one**

### **Introduction**

1. The Government of Senegal is pleased to submit its third, fourth, fifth and sixth periodic reports, which have been combined in a single document, under article 19 of the Convention. The Convention, which was adopted by the General Assembly of the United Nations on 10 December 1984, was ratified by Senegal on 26 August 1986.

## **I. General information and statistics**

### **A. Demographic, economic, social and cultural characteristics**

2. Senegal is situated at the westernmost edge of the African continent along the Atlantic Ocean, where Europe, Africa and the Americas converge, and at the crossroads of major air and shipping routes. Covering an area of approximately 196,722 square kilometres, it is bounded to the north by Mauritania, to the east by Mali, to the south by Guinea and Guinea Bissau, and to the west by the Gambia and the Atlantic Ocean, with a coastline of over 500 kilometres in length. Dakar, the capital, covers an area of 550 square kilometres and is located on a peninsula in the westernmost part of the country. It has a Sudano-Sahelian climate, with a dry season from November to May and a rainy season from June to October.

3. The latest estimates (based on the 2002 population census) put the Senegalese population at 11.4 million, with an average annual growth rate of 2.6 per cent and an average population density of 48 persons per square kilometre. This overall mean is the net result of a quite uneven distribution, however, with the eastern part of the country being very sparsely populated (with a density on the order of between 1 and 5 people per square kilometre) and a much greater concentration along the coast (the population density of the area around Dakar is over 4,000 people per square kilometre). Over 25 per cent of the country's population lives in the region of Dakar. The other densely populated area is the central basin in the regions of Fatick, Kaffrine and Kaolack, where groundnut production is concentrated. More than 35 per cent of the population lives in this area. The east of the country is very sparsely populated.

4. Women make up 52 per cent of the population, while foreign nationals constitute approximately 2 per cent and reside mainly in the capital, Dakar, where they are active in commerce, industry, services and international organizations. The main religions are Islam, Christianity and animism. Some 94 per cent of the population are Muslims, 5 per cent are Christians and 1 per cent practise traditional religions.

5. An analysis of the age structure shows that the country has a very young population: the average age is 22, and 42.7 per cent of the population are under 15. The working-age population (from 15 to 64 years) represents 53.8 per cent of the total, while the elderly (65 years and above) account for 3.6 per cent. The school-age population (from 7 to 12 years) represents 17 per cent of the total population, two thirds of which live in the countryside.

6. The Senegalese population is also very ethnically diverse. The country has about 20 ethnic groups, with the largest being the Wolof (43 per cent of the population), the Pulaar (24 per cent) and the Serer (15 per cent). Other groups are located in the southern areas of the country, particularly in the region of Casamance. They include the Diola, which is the largest of these communities, and the smaller communities of the Mandingue and Bambara, which are located in outlying regions close to Mali or Guinea. Other ethnic minorities live

in the mountains of the south-east, including the Bassari, who reside in the foothills of Fouta-Djalou.<sup>1</sup>

7. This ethnic diversity is accompanied by a range of vibrant cultures, each with its own age-old traditions. Ever since the country became a sovereign nation, the Government has sought to uphold and respect the country's authentic, highly valued traditional cultures and to promote the use of national languages on a par with the country's official language, French. Inter-ethnic marriages, the peaceful coexistence of religious communities and the cultural tradition of friendly banter all help to ensure the cohesion of the Senegalese nation.

8. Senegal is divided into 14 regions and 45 departments. In 2008, following the creation of the eleventh region (Matam), the former departments of Kédougou, Kaffrine and Sédhiou were converted into regions. The country's departments (the administrative districts within regions) are subdivided into arrondissements.

9. The Local Government Code (see Act No. 96-06 of 22 March 1996 for the basic text) has further strengthened the autonomy of local governments by transferring major areas of responsibility to them. Each regional government is now administered by a governor and regional councillors. These are elective posts. Large cities are subdivided into administrative districts made up of arrondissements (*communes d'arrondissements*) (43 in total, 19 of which are in Dakar). Smaller cities are also divided into municipalities (*communes*) (150 in total), which are administered by elected mayors and municipal councillors. Rural zones are divided into 340 decentralized rural administrative areas, which are governed by a chief councillor and rural councillors, all of whom are elected at the local level.<sup>2</sup>

10. As of 2004, according to independent sources, the country's gross national product (GNP) amounted to US\$ 7.2 billion, for an average per capita income of US\$ 700. Following the launch of an ambitious structural reform programme in 1994, the Senegalese economy entered into a period of rapid economic growth, marking up an average annual growth rate in its gross domestic product (GDP) of 5 per cent for the period 1995–2006, with the main engines of growth, from the year 2000 on, being construction, commerce, transport and telecommunications. While this programme succeeded in improving public finances and increasing the currency's stability, it did not result in any significant reduction in poverty (over half of all Senegalese are below the poverty line) or unemployment, which stands at between 40 and 50 per cent and is particularly high among young people.<sup>3</sup>

11. With economic policy being heavily reliant on agricultural production, in 2005 President Abdoulaye Wade called upon the population to join him in implementing a rapid-growth strategy aimed at turning the country into an emerging economy by modernizing the agricultural sector and developing the agri-food industry. The Back to Agriculture Plan (REVA), which encourages young people — and particularly out-migrants and people who have been caught up in clandestine forms of migration — to start up agricultural businesses, and the Food and Abundance Campaign (GOANA), which was started in 2008 in response to the food crisis, attest to the political will of the Senegalese Government to use agriculture to leverage the country's economic and social development. The Government's estimated budget for 2009 totals CFAF 1.8 trillion.

12. Considerable progress has been made in promoting the development of the tertiary sector (tourism, telecommunications, other services), the textile and clothing industry and

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<sup>1</sup> Source: Ministry of Economic Affairs and Finance, National Statistics and Demographics Agency (ANSD), *Situation économique et sociale du Sénégal*, 2006 edition.

<sup>2</sup> Ministry of the Interior.

<sup>3</sup> International Monetary Fund (IMF).

the marine products industry. Large-scale projects have also been undertaken to address the infrastructure shortages that have hampered the country's development. These projects have included the construction of modern roadways to Dakar and to inland portions of the country, a new international airport at Ndiass, a highway between Dakar and Thiès to relieve congestion in Dakar, a project for the construction of a port at Bargny that will be capable of handling ore shipments, the modernization of the railroads, iron mining in eastern Senegal, phosphate mining in Matam, etc.

13. Sectors that have been assigned a high priority in terms of sustainable human development have also made appreciable progress.

14. Funding allocations for education (from preschool to higher education) have been raised from 35 per cent in 2003 to 37 per cent in 2004 and to 40 per cent in 2005. According to the education indicators for 2000–2005 published by the Education Planning and Reform Directorate, the target figure of 33 per cent of the Government's operating budget (less debt service and common costs) for the education sector was not achieved in 2000–2004, but in 2005, when the target was 40 per cent of the budget, it was not only attained but greatly surpassed, thanks to the political will of the President of Senegal. Moreover, in 2004, around US\$ 52 million was spent on primary education in rural areas, with the State providing about 78 per cent of that amount, students' households (via their contributions to parents' associations) some 15 per cent, donors 6 per cent and local governments 2 per cent. The Government has made a considerable effort to expand the coverage of primary education in rural areas. In 2000–2004, it built 7,109 new primary-school classrooms and renovated a further 930. At the national level, there are 295,474 secondary-school students, of whom 42 per cent are girls.<sup>4</sup>

15. Priority has been placed on nationwide primary health care, and a proper distribution of health-care facilities has been achieved. Health-station coverage (approximately 1 health station for every 11,000 people) is close to the national target figure and has been strengthened by auxiliary measures adopted in line with the recommendations contained in the Bamako Initiative (cost reductions, improved management, involvement of the general public and the rationalization of prescription procedures).

16. These measures have made it possible to provide health-care services free of charge or at reduced rates under various programmes and action plans, including the following:

- Expanded Vaccination Plan (PEV)
- Prenatal Consultations Plan (CPN)
- Primary Medical Consultation Plan (CPC)
- Senior Citizen Plan (Sesame Plan)
- Integrated Childhood Illness Management Programme (PCIME)
- Epidemics Management Programme
- Nutrition Enhancement Programme (PRN)

17. Given the impact that malaria and HIV/AIDS have on human development, the Government places top priority on combating these diseases. The National Programme to Combat HIV/AIDS, which includes a component focusing on orphans and other children left in a vulnerable position by HIV/AIDS, has made good headway. The incidence of HIV was, as of 2005, estimated at 0.70 per cent among the general population (Population and

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<sup>4</sup> *Source:* Ministry of Education, data for 2004. See also the second periodic report submitted by Senegal in 2006 to the Committee on the Rights of the Child (CRC/C/SEN/2).

Health Survey, 2005) and at 1.5 per cent at sentinel sites. The National Plan of Action to Combat HIV/AIDS for 2002–2006 has been prepared, and another national action plan is in the drafting stage.

18. Following ratification of the International Labour Organization (ILO) Social Security (Minimum Standards) Convention, 1952 (No. 102), the Government of Senegal introduced a modern social security system for workers and their family members. The review of social security benefits which began in 2000 resulted in an increase in benefits of 55 per cent in nominal terms (50 per cent in real terms) and in the establishment of a system whereby retirement pensions are paid out twice per month. The family allowance has been raised from CFAF 750 per month to CFAF 2,400 per month for each dependent child of public-sector employees. In the private sector, the Government provides a family allowance of CFAF 6,750 per quarter for each child through the Social Security Fund. These allowances are paid for children attending school up to the age of 21, for children not attending school up to the age of 15 and for children serving in apprenticeships (including the crafts sector) up to the age of 18.<sup>5</sup>

19. The Health, Social and Family Department of the Social Security Fund provides other benefits to vulnerable groups as well, such as access to low-cost medicines and nutritional rehabilitation services. The present social security scheme operates on the basis of formal welfare mechanisms covering only those workers who are members of the Social Security Fund. Senegal has, however, recently designed a national social protection strategy with a view to extending coverage to people working in the informal sector and to vulnerable groups.

20. Persons with disabilities constitute between 6 and 10 per cent of the Senegalese population, with those disabilities being disaggregated as follows: 32.76 per cent are persons with motor disabilities; 16.6 per cent are visually impaired; and 50.64 per cent fall into other categories, including deaf mutes, albinos, the mentally ill and persons suffering from Hansen's disease (leprosy). The members of this segment of society (about 10 per cent of whom are children) are often in economically insecure positions and must depend on others. Programmes and services geared to persons with disabilities include: an educational programme that has enabled some disabled children to attend public primary schools and preschools (known as "Children's Huts") that have been outfitted with suitable facilities; the Talibou Dabo Centre, which promotes the social integration of persons with motor disabilities; a verbo-tonal centre for the social integration of deaf mutes; and a centre for visually impaired children in Thiès.

21. Government initiatives aimed at reducing poverty and providing support for the most disadvantaged households have included the following:

- The Social Development Fund (from 2002 to 2005) provided CFAF 10.5 billion (CFAF 2 billion of which went for project activities for families) to support the implementation of 1,172 projects by 486 grass-roots organizations (300 of which were women's organizations). These projects benefited a total of 917,385 persons.
- The Poverty Reduction Programme (PAREP) supplied CFAF 1.3 billion between 2003 and 2005 in assistance to organizations run by marginalized and vulnerable groups (women, youth, children, persons with disabilities, the elderly, displaced persons and refugees).
- The Anti-Poverty Programme (PLCP) has provided CFAF 15 billion in microcredits to 75,236 beneficiaries, 80 per cent of whom are women.

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<sup>5</sup> Source: Ministry of the Civil Service, Employment and Professional Organizations.

- The National Solidarity Fund provided an estimated CFAF 650 million in 2004.<sup>6</sup>

## **B. Constitutional, political and legal structure**

22. After Senegal won its independence in 1960, the country had a single-party system (the Senegalese Progressive Union (UPS), which later became the Socialist Party) under the leadership of Léopold Sédar Senghor. The establishment of democratic institutions and a multiparty system between 1970 and 1980 has long been cited as an example to follow in a continent where authoritarian regimes predominate. In 1981, Abdou Diouf succeeded Léopold Senghor as the President of the Republic. Elected in 1983, in 1988 and in 1993 amidst charges of election fraud by the opposition, he was defeated in 2000 by an inveterate opponent of the Socialists, Mr. Abdoulaye Wade. After 40 years of Socialist rule, President Wade embodies the Senegalese people's hunger for change and stands as an example of one of the rare cases of a peaceful transfer of power in Africa. In a referendum held in January 2001, Senegalese voters (with a turnout of over 90 per cent) approved the new Constitution presented by President Wade. On 25 February 2007, President Wade was re-elected in the first round, by a majority of 55.9 per cent of voters, in elections that were overseen and validated by all the international observers who were present.

23. The consolidation of the democratic system through institutional reform has also been a major concern of the duly elected Government of President Wade.

24. Senegal has become a solid democracy governed by the Constitution of 22 January 2001, which establishes a semi-presidential system. Executive power is held by the president and the executive branch. The Head of State is elected by direct universal suffrage (by majority vote in two rounds) for a renewable seven-year term. The president names the prime minister, who is the Head of Government, and the cabinet ministers, who are nominated by the prime minister. The Government directs and coordinates the nation's policies.

25. These lasting advances in the formation of a State founded upon the rule of law have been coupled with institutional reforms designed to reinforce the country's participatory democracy and justice system.

26. The constitutional amendments of 2007 and 2008 led to the reinstatement of the Senate, which, together with the National Assembly, now makes up the country's bicameral legislature. Act No. 2008-32 of 7 August 2008 provided for the creation of the Economic and Social Council.

27. Legislation can be initiated by the president, the prime minister or members of the legislature. The president can dissolve the National Assembly. The Administration is accountable to the president and the National Assembly.

28. The judicial branch is independent from the legislative and executive branches. The country's justice system is patterned after the French system and includes the Constitutional Council, the Supreme Court and a number of lower courts. The Court of National Security, which was a legacy of the former regime, has been abolished.

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<sup>6</sup> *Source:* Ministry of the Family, Microfinance and Women's Entrepreneurship, poverty reduction strategy document (DSRP 2), Ministry of Finance.

## **II. The general framework for the protection of human rights**

### **A. Acceptance of international human rights norms at the national level**

29. Despite some changes in its political regime, the constitutional system of Senegal is marked by a high degree of continuity. The Constitution of 22 January 2001 enshrines and consolidates the fundamental principles that inform all the basic laws of Senegal. These principles are coupled with an abiding commitment to respect and promote human rights and to combat racial discrimination. This commitment is expressed both in the preamble to the Constitution and in the body of the text.

30. The preamble to the Constitution sets forth the following declarations and commitments, which are founded upon the inviolable principles that underlie the constitutional continuity of Senegal: “The people of the sovereign nation of Senegal ... affirm their adherence to the Declaration of the Rights of Man and of the Citizen of 1789 and to the international instruments adopted by the Organization of African Unity [now the African Union], including the Universal Declaration of Human Rights of 10 December 1948, the Convention on the Elimination of Discrimination against Women of 18 December 1978, the Convention on the Rights of the Child of 20 November 1989 and the African Charter on Human and Peoples’ Rights of 27 June 1981.” The use of the word “including” in this passage underscores that fact that the Constitution provides scope for the incorporation of any other human rights instruments to which Senegal becomes a party.

31. And, in fact, Senegal has also ratified the other main international legal instruments on human rights, including the following:

- Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951 (ratified on 9 May 1963) and the Protocol thereto, signed in New York on 31 January 1967 (ratified on 3 October 1967)
- International Covenant on Civil and Political Rights, adopted in New York on 16 December 1966 (ratified in 1978)
- International Covenant on Economic, Social and Cultural Rights, adopted in New York on 16 December 1966 (ratified on 13 February 1978)
- Optional Protocol to the International Covenant on Civil and Political Rights, adopted in New York on 16 December 1966 (ratified on 13 February 1978)
- International Convention on the Elimination of All Forms of Racial Discrimination, signed in New York on 7 March 1966 (ratified on 19 April 1972)
- Convention on the Elimination of Discrimination against Women, adopted in New York on 18 December 1979 (ratified on 5 February 1985)
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984 (ratified on 21 August 1986)
- Convention on the Rights of the Child, adopted in New York on 20 December 1989 (ratified on 31 July 1990)
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (ratified 31 October 2003)
- Rome Statute of the International Criminal Court, adopted on 17 July 1998 (ratified on 2 February 1999)

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly of the United Nations on 18 December 1990 in resolution 45/158, which entered into force on 1 July 2003
- United Nations Convention against Transnational Organized Crime, the supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the supplementary Protocol against the Smuggling of Migrants by Land, Sea and Air, signed in Palermo, Italy, in December 2000 and ratified on 19 September 2003 in accordance with Act No. 2003-17 of 18 July 2003

32. Senegal has also ratified a number of African legal instruments, such as the African Charter on Human and Peoples' Rights, signed in Nairobi, Kenya, on 21 June 1981 (ratified on 13 August 1982), the African Charter on the Rights and Welfare of the Child, adopted in July 1990 in Addis Ababa (ratified on 29 September 1996) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted in Maputo on 11 July 2003). The protocols concerning the creation of the African Court on Human and Peoples' Rights (adopted on 10 June 1998 and entered into force on 25 January 2004) and the African Court of Justice of the African Union (adopted on 11 July 2003) have also been ratified. Senegal is actively engaged in the effort to merge these courts into a single body (African Court of Justice and Human Rights).

33. The country's active engagement in legislative efforts in this field at the international and regional levels attests to the Senegalese Government's steadfast political will to protect and promote human rights.

## **B. Legal framework for the protection of human rights at the national level**

34. Article 98 of the Constitution states expressly that: "Treaties or agreements that have been duly ratified or approved shall, upon publication, take precedence over other laws, subject to their application, in the case of each agreement or treaty, by the other party." Consequently, every international legal instrument on human rights ratified by Senegal is incorporated into the domestic legal order and becomes part of the corpus of Senegalese law, which the agencies of the State are obligated to apply. Furthermore, Senegal has unreservedly recognized the competence of the main human rights treaty bodies.

35. Title II of the Constitution, on "Civil liberties and human freedoms, economic and social rights, and collective rights", guarantees the right to exercise civil and political liberties without being subject to racial discrimination of any kind, including freedom of opinion, freedom of expression, freedom of the press, freedom of association and the right to demonstrate. The following freedoms are expressly guaranteed: cultural freedoms, religious freedom, freedom of ideology, trade-union freedoms, freedom of expression and the right to demonstrate, freedom of enterprise, the right to an education, the right to know how to read and write, the right to own property, the right to work, the right to health, the right to a healthy environment and the right to have access to multiple sources of information.

36. Senegal is renowned for having established lasting mechanisms for combating human rights violations, including torture, quite early on in its history. The death penalty was abolished on the symbolic date of 10 December 2004.

37. The Senegalese authorities have continued to work to advance the institution-building process that began following independence. A great deal has been accomplished in this respect, with one example being the creation in 2004 of the Office of the High

Commissioner for Human Rights and the Promotion of Peace, whose mission is to protect and promote all human rights as an absolute priority.

38. The Office of the High Commissioner, which is attached to the Office of the President, includes:

- A human rights desk, which can receive complaints from any individual or body corporate and from organizations working in the field of human rights and international humanitarian law.
- A follow-up unit, which is also responsible for documentation and the promotion of human rights and international humanitarian law. It is tasked with the preparation of national reports on the human rights situation and of replies to communications and questions addressed to Senegal by regional and international bodies responsible for monitoring the situation with respect to human rights and international humanitarian law.
- A unit for coordinating efforts to combat human trafficking and related practices.

39. The Government has a number of other bodies that support the work of the Office of the High Commissioner, including the Senegalese Human Rights Committee and the Office of the Ombudsman. The Senegalese Human Rights Committee was created in 1970 to take the place of the National Human Rights Commission and has been strengthened since then. While it was originally governed by Decree No. 93-141 of 16 February 1993, a law was passed four years later, on 10 March 1997, which enhanced the Committee's status. The main tasks of this independent and pluralistic Committee are as follows:

- To disseminate information about human rights through advocacy activities
- To alert public authorities to human rights violations and to propose, as appropriate, measures for putting an end to such violations
- To issue opinions or recommendations regarding any matter relating to human rights
- To submit an annual report to the President on the human rights situation in Senegal

40. The Office of the Ombudsman is an independent administrative authority which was established under the terms of Act No. 91-14 of 11 February 1991; that law was later amended by Act No. 99-04 of 29 January 1999. The Office's areas of authority are defined by the 1991 law and are also set forth in Act No. 99-04. While the Office of the Ombudsman usually acts in response to individual complaints, it may also, since the passage of Act No. 99-04, take preventive action on its own initiative. It plays a highly important role as a liaison between the Administration and citizens who feel that their rights have not been upheld or that their interests have been harmed.

41. A human rights legislative committee has been set up in Parliament, and parliamentary networks for the promotion and protection of human rights are being created at the subregional level.

42. A number of different regulatory bodies has also been created to oversee, for example, the media and to supervise elections.

43. The National Media Regulatory Council (CNRA) was created under the terms of Act No. 2006-04 of 4 January 2006 to perform a coordinating role and to enforce the rules regarding pluralism, ethical and moral standards, and existing laws and regulations, as well as to monitor compliance with technical specifications and agreements. This new institution is updating and strengthening provisions governing the media in Senegal which have been in place since 1991. It has taken the place of the former High Council for Radio and Television (HCA).

44. The National Independent Electoral Commission (CENA), created in accordance with Act No. 2005-07 of 11 May 2005, works to make certain that electoral laws are observed by administrative authorities, political parties, candidates and the electorate in general. It has been granted powers that enable it to ensure that elections are free and independent. The digitization of national identity and voter cards and the posting of electoral rolls on the Internet also facilitate the supervision of elections.

45. Various types of initiatives focusing on human rights education and dissemination are carried out with the active involvement of human rights organizations.

46. At the national level, as part of its efforts to implement General Assembly resolution 59/113 B on the plan of action for the first phase (2005–2007) of the World Programme for Human Rights Education in the country's primary and secondary education systems, the Ministry of Education of Senegal, in close cooperation with civil society organizations, has drawn up a basic human rights curriculum. Consultations concerning this document have been held at the national level with the assistance of development partners such as the United Nations Educational, Scientific and Cultural Organization (UNESCO).

47. The Human Rights and Peace Institute (IDHP) of the University of Dakar has developed masters programmes in human rights research and operations.

### **C. Role of the reporting process in the promotion of human rights at the national level**

48. As part of the Government's ongoing effort to provide the international community with consensus-based reports that provide an accurate picture of the situation on the ground, it has steadfastly upheld its long tradition of consensus-building with civil society as a basis for the preparation of credible, high-quality reports.

49. Consultations with non-State actors during the preparation of human rights reports are mandatory under the Senegalese Human Rights Committee Act of 10 March 1997. In keeping with the Principles relating to the Status of National Institutions (the Paris Principles), this Committee is independent and pluralistic. Its main role is to issue opinions or recommendations on matters relating to human rights, including reports prepared by the Government for human rights treaty bodies.

50. The preliminary drafts of such reports are prepared by a governmental task force that includes representatives of the High Commissioner for Human Rights and the Promotion of Peace and of the various ministerial departments. Their submission to the national human rights institution for consideration and comment is required (Senegalese Human Rights Committee Act of 10 March 1997).

51. This is followed by broad-based consultations with members of civil society, including non-governmental human rights organizations. These consultations bring this lengthy process to a conclusion and ensure that these reports will be widely distributed to the citizens of Senegal.

## **III. Implementation of substantive human rights provisions contained in all or several international instruments**

### **A. Non-discrimination and equality**

52. The Constitution contains specific provisions on the elimination and condemnation of any and all forms of discrimination. Article 1 of the Constitution states that: "The

Republic of Senegal is a secular, democratic and social State. Equality before the law for all its citizens, without distinction as to origin, race, sex or religion, is guaranteed. All beliefs are respected.”

53. No group of people or any individual may exercise sovereignty in their own right. Article 3 of the Constitution states that: “National sovereignty belongs to the people and is exercised by the people through their representatives or by referendum.”

54. Article 4 supplements this provision: “Political parties and coalitions of political parties shall assist in expressing the will of the electorate. It is their duty to respect the Constitution and the principles of national sovereignty and democracy. They are prohibited from identifying themselves with any particular race, ethnic group, sex, religion, sect, language or region.”

55. Under article 5 of the Constitution, any act of racial, ethnic or religious discrimination and any form of regionalist propaganda that is prejudicial to the internal security of the State or to the integrity of the territory of the Republic are punishable by law.

56. Article 7 of the Constitution proclaims that: “The Senegalese people recognize the existence of inviolable, inalienable human rights as the cornerstone of any human community, of peace and of justice in the world. All human beings are equal before the law. Men and women have equal rights. In Senegal, no disadvantage or privilege attaches to place of birth, identity or descent.”

57. A number of provisions in the new Constitution expressly set forth women’s right to equal treatment before the law. Article 15, subparagraph 1, and article 19 establish a woman’s right to:

- (a) Purchase and own land;
- (b) Own assets in her own right and manage her own property.

58. Article 25 prohibits “any form of discrimination between men and women in matters relating to employment, wages or taxation”.

59. Parity for men and women in access to elective and political posts has been guaranteed ever since article 7 of the Constitution was amended in November 2007.

60. These provisions were reinforced by the passage of a law on 28 May 2010 which establishes absolute gender parity in totally or partially elective bodies, including the National Assembly, the Senate, and regional and municipal councils.

## **B. Effective remedies and due process**

61. The development of human rights law in Senegal is primarily the responsibility of the Constitutional Court and the ordinary courts. Article 91 of the Constitution expressly states that: “The judiciary is the guardian of the rights and freedoms set forth in the Constitution and other laws.”

62. It may occur that when legislators, as administrative authorities, frame laws concerning rights and obligations, they may end up placing limitations on the application of legal provisions concerning human rights.

63. In such cases, it is possible to appeal to the Constitutional Council in order to have the law in question set aside through either of two procedures: referral by way of proceedings or referral by way of objection:

- Referral by way of proceedings: The Constitution of Senegal gives the president and groups of deputies of the National Assembly constituting one tenth of the membership of that body the power to appeal to the Constitutional Council to examine the constitutionality of a law prior to its promulgation. A law that runs counter to legal provisions concerning human rights can be brought before the Constitutional Council for a review of its constitutionality.
  - Referral by way of objection: This procedure was introduced in order to “democratize” the ability to bring a law before the Constitutional Council for a review of its constitutionality. This is a more open procedure in that, under the conditions set out by law, any defendant may bring an objection on the grounds of unconstitutionality if that person believes that a law that is applicable to that person’s case is not in accordance with the Constitution. The courts before which such an objection is lodged are required to refer the matter to the Constitutional Council and to order a stay of proceedings until the Council has issued its ruling.
64. In the ordinary courts, this issue primarily has to do with “first-generation” human rights. In addition to the rights granted to every person involved in legal proceedings, specific rights are recognized for persons on trial for a criminal offence.
65. The principles that guide criminal proceedings include:
- The principle of adversarial proceedings
  - The principle of disposition
  - The principle of respect for the right to a defence
66. Thus, a party to criminal indemnification proceedings or a defendant is entitled, in accordance with article 10 of the Universal Declaration of Human rights, “to a fair and public hearing by an independent and impartial tribunal”.
67. Defendants also have the right to physical integrity, which precludes any act of torture as a means of gathering evidence. This principle is set forth in article 5 of the Universal Declaration.
68. Defendants also have the right to confidentiality in their correspondence and communications by post, telegraph and telephone.
69. The right to privacy is also guaranteed.
70. In general, defendants have the benefit of all guarantees provided by the international human rights conventions to which Senegal is party and those set out in title II of the Constitution. In the specific case of persons being held in custody, such persons, who have the right to liberty and security, are entitled to have the legality of their detention reviewed without delay.
71. Defendants in criminal cases also have two other specific rights:
- The presumption of innocence: This right is set forth in article 7, paragraph 1b, of the African Charter on Human and Peoples’ Rights and in article 11, paragraph 1, of the Universal Declaration of Human Rights. In criminal trials, the defendant is presumed innocent until proven otherwise. If the prosecution, which bears the burden of proof, does not respect that right, then the defendant is acquitted or released.
  - The right to a defence: This is a generic term which covers a number of different rights, including the right to defend oneself or to be defended by a counsel of one’s choice, the right to have the last word, the right to be informed of the charges being brought and the right to examine witnesses or to have them examined.

72. These specific principles ensure the effective application of article 9 of the Constitution, which states that: “Any infringement of freedoms and any failure to uphold the exercise of a freedom are punishable by law. No one shall be convicted of an offence under a law that was not in force at the time that the act was committed. The right of defence is an absolute right at all stages of all legal proceedings.”

### **C. Participation in public life**

73. The right of all citizens to participate in public life, free of any form of discrimination, is guaranteed by the Constitution.

74. Article 3 of the Constitution expressly states that: “National sovereignty belongs to the Senegalese people and is exercised by the people through their representatives or by referendum. No sector of the population or individual may exercise sovereignty in their own right. Suffrage may be either direct or indirect. It shall in all cases be universal, equal and secret. All Senegalese nationals, both men and women, who have reached the age of 18 and are in possession of their civil and political rights have the right to vote under the conditions set forth by law.”

75. Therefore, political parties and coalitions of political parties may compete in elections. The country’s full multiparty system enables any group of citizens, so long as they respect the fundamental values of the republic, to form a political association simply by following the straightforward procedure established for that purpose. All citizens have the right to freely constitute associations, economic, cultural and social groups, and enterprises, provided that they do so in accordance with the procedures established for that purpose in the country’s laws and regulations.

76. The Constitution guarantees the right of all citizens to freely express and disseminate their opinions in oral, written and pictorial form and through peaceful demonstration so long as, in so doing, they do not defame another person or disrupt the public order (article 10 of the Constitution).

77. The creation of an organ of the press for the purpose of transmitting political, economic, cultural, sports, social, recreational or scientific information is not subject to limitations or to a requirement of prior authorization (article 11 of the Constitution).

78. At the community level, the local government constitutes the institutional framework for citizen participation in public affairs. Local governments are freely administered by elected assemblies (article 102 of the Constitution).

## **Part two Implementation of the Convention**

### **I. Information on new measures and new developments relating to the implementation of the Convention**

79. Since submitting its last report, Senegal has adopted important legislative measures in order to comply with the provisions of articles 1 to 16 of the Convention against Torture.

80. Furthermore, 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.

81. The report by the Working Group on Arbitrary Detention on its mission to Senegal, conducted from 5 to 15 September 2009, which was presented to the Council on Tuesday, 9 March 2010, was useful and very encouraging. A number of other visits were made by mandate holders in 2009, including the mission to Senegal conducted from 14 to 21 September 2009 by the Special Rapporteur on the human rights of migrants, the mission carried out from 20 to 30 October 2009 by the Special Rapporteur on the sale of children, child prostitution and child pornography and a mission conducted by the Commissioner responsible for the promotion and protection of human rights in Senegal of the African Commission on Human and Peoples' Rights.

82. Thanks to the spirit of openness of the Head of State and his personal commitment to the protection of human rights, our country had replied favourably to the visit requests made by these independent experts.

83. On 6 February 2009, Senegal successfully completed the universal periodic review of the Human Rights Council, one of the main innovations that was introduced when the Council was established in 2006. As part of its follow-up to this procedure, and within the framework of the adoption of the outcome document concerning the universal periodic review of Senegal, the Government of Senegal presented its replies to some of the recommendations made by the Working Group on 11 June 2009.

## **A. Measures relating to the implementation of articles 1 to 16 of the Convention**

### **Article 1 of the Convention**

84. Article 1 of the Convention provides a definition of torture, and it is recommended that States parties include that definition in their national legislation.

85. Act No. 96-15 of 28 August 1996, supplementing the provisions of the Criminal Code with the addition of article 295-1, closely follows the wording of the definition of torture set out in article 1 of the Convention.

86. Article 295-1 defines acts of torture as "injuries, blows, physical or mental violence or other forms of assault intentionally inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity either for the purpose of obtaining information or a confession, imposing punishment by way of a reprisal or making threats or for any discriminatory reason of any kind".

### **Article 2 of the Convention**

#### **Paragraph 1**

87. Under article 295-1, paragraph 3, of the Criminal Code, acts of torture are punishable by from 5 to 10 years' imprisonment and a fine of from CFAF 100,000 to CFAF 500,000.

#### **Paragraphs 2 and 3**

88. Senegalese law explicitly precludes any possibility of invoking exceptional circumstances to justify acts of torture. Thus, paragraph 4 of the same article stipulates that:

"No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture."

89. An order by a superior officer cannot be invoked as a justification for torture either. The final subparagraph of article 295-1 explicitly states that: “An order of a superior or public authority shall not be invoked as a justification of torture.”

90. Furthermore, the Senegalese Criminal Code contains other deterrent provisions for the severe punishment of any wilful attacks on the physical integrity of a person and, in particular, of vulnerable persons.

91. Prior to the ratification of the Convention against Torture, article 294, subparagraph 1, of title 2, chapter 1, of the Senegalese Criminal Code of 21 June 1965, which deals with crimes and offences against individuals, provided for a sentence of from 1 to 5 years’ imprisonment and a fine of from CFAF 20,000 to CFAF 250,000 for any person who deliberately injures, strikes or otherwise attacks or assaults another person if that act results in infirmity or incapacity to work for a period exceeding 20 days. Subparagraph 2 of the same article stipulates that if the aforementioned acts of violence result in death, mutilation, amputation or loss of use of a limb, blindness or loss of an eye, or any other permanent disability, the perpetrator shall be punished by from 5 to 10 years’ imprisonment and a fine of from CFAF 20,000 to CFAF 200,000.

92. Articles 106, 296, 297, 298 and 299 of the Criminal Code set out the punishments for the same acts when they lead to disability of a lesser extent than that covered in the above-mentioned provision or are committed against an ascendant, descendant or a minor under the age of 15 years.

93. New legislative measures have been adopted to strengthen the law in this respect:

- Act No. 2007-01 of 12 February 2007 criminalizes acts of terrorism and Act No. 2007-04 of 12 February 2007 amends the provisions of the Code of Criminal Procedure dealing with investigations, prosecution and sentencing in cases involving acts of terrorism.
- Act No. 2007-02 of 12 February 2007 incorporated articles 431-1, 431-2, 431-3, 431-4 and 431-5 into the Criminal Code. These articles deal with the crime of genocide, crimes against humanity, war crimes and other crimes under international law, such as those covered by the Hague Conventions of 1954, 1976 and 1980, which had not previously been specified in the Code.
- Article 431-6 of the Criminal Code stipulates that perpetrators of the violations covered by articles 431-1 to 431-5, the provisions of article 4 of the Code notwithstanding, may be tried and sentenced for an act or an omission which, at the time and in the place of its commission, constituted a criminal offence according to the general principles of law recognized by the community of nations, regardless of whether or not it constituted a crime under the law in force at that time and place.
- Act No. 2005-02 of 25 April 2005, which deals with trafficking in persons and similar practices and with the protection of victims, criminalizes trafficking in human beings, exploitation amounting to servitude and criminal acts involving the removal of human organs.

### **Article 3 of the Convention**

94. To date, there have been no cases in Senegal of expulsion, refoulement or extradition of a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

95. Act No. 71-77 of 28 December 1971 covers the conditions, procedures and consequences of extradition in situations where no relevant treaty applies, as well as any other aspects not expressly regulated by any such treaty.

96. Thus, the legislation on extradition expressly gives primacy to international law and, in particular, to article 3 of the Convention, which is considered a self-executing provision.

97. Act No. 71-10 of 25 January 1971 on the conditions of admission and residence of foreigners and its implementing decree (Decree No. 71-860 of 28 July 1971) regulate all aspects of the established procedure for the expulsion of foreigners and provides for appropriate remedies before the Supreme Court.

98. An extradition order is rescinded if the Court of Appeal to which the matter has been referred rules against it on grounds of domestic law or applicable rules of international law.

99. An appeal for the cancellation of such an order has suspensive effect. Moreover, if a foreign national is to be expelled, he or she may freely choose the country of destination.

#### **Article 4 of the Convention**

##### **Paragraph 1**

100. In accordance with article 295-1, as mentioned above, all acts of torture constitute a violation of the Criminal Code and are punishable by from 5 to 10 years' imprisonment and a fine of from CFAF 100,000 to CFAF 500,000.

101. In accordance with paragraph 2 of the above-mentioned article, an attempt to commit the offence of torture carries the same penalties as the offence itself.

102. More generally, article 2 of the Senegalese Criminal Code stipulates that an attempted offence whose execution was initiated and was suspended or failed to achieve its effect only for reasons beyond the perpetrator's control shall be considered to be equivalent to the offence itself.

##### **Paragraph 2**

103. Complicity is covered by articles 45 and 46 of the Criminal Code. It is punishable in all cases other than when it relates to minor infractions. Consequently, an accomplice to torture is subject to the same penalties as the main perpetrator in accordance with the provisions of the Senegalese Criminal Code.

104. As mentioned above in the observations relating to article 2 of the Convention, article 295-1 of the Criminal Code sets out severe penalties for the crime of torture. In the presence of aggravating circumstances, some particularly severe acts of violence are punishable by life imprisonment or by imprisonment for a specified number of years.

105. The death penalty was abolished in Senegal on 10 December 2004.

#### **Article 5 of the Convention**

##### **Paragraph 1 (a)**

106. Senegalese criminal law incorporates the principle of territoriality. Article 668 of the Code of Criminal Procedure states that: "Any offence, whereof an act forming one of its constituent parts has been performed in Senegal, shall be deemed to have been committed in the territory of the Republic." By the same token, any offence committed in Senegalese territory is punishable, regardless of its gravity or of the nationality of the perpetrator or of the victim. In all such cases the Senegalese criminal courts retain jurisdiction.

107. The country's territorial jurisdiction encompasses the land area within its borders, the continental shelf, its territorial sea and air space.

108. In accordance with article 5 of the Convention, this jurisdiction also extends to offences committed on board a vessel flying the Senegalese flag and on board aircraft registered in Senegal.

**Paragraph 1 (b)**

109. The Senegalese Criminal Code enshrines the active personality principle referred to in article 5 of the Convention, whereby domestic courts are competent to try cases in which the alleged offender is a Senegalese national.

110. Article 664 of the Code of Criminal Procedure stipulates that: “Any citizen of Senegal who has committed an act outside of the national territory which is a crime under Senegalese law may be tried by Senegalese courts.

111. Any citizen of Senegal who has committed an act outside of the national territory which is an offence under Senegalese law may be tried by Senegalese courts if the act is punishable by law in the State in which it was committed.”

**Paragraph 1 (c)**

112. The recent adoption of Act No. 2008-23 of 25 July 2008, whereby article 664 bis was incorporated into the Code of Criminal Procedure, has made it possible to establish jurisdiction based on the passive personality principle.

113. This article stipulates that: “Any citizen of Senegal who has become the victim of a crime or an offence outside of Senegalese territory may appeal to the Senegalese courts if the acts have not led to a definitive judgement on the merits.”

**Paragraph 2**

114. By adopting Act No. 2007-05 of 12 February 2007, which amends the Code of Criminal Procedure, the State of Senegal has taken the necessary measures to establish the competency of the Senegalese criminal courts to try all acts of torture in cases where the alleged offenders are present in Senegalese territory if no order for their extradition has been issued.

115. In line with this law, any foreigner who has been accused of committing or aiding in the commission of any of the crimes mentioned in article 295-1 of the Criminal Code outside Senegalese territory may be tried under Senegalese law or laws applicable in Senegal if he or she is under Senegalese jurisdiction or if one of the victims resides in the territory of Senegal, or if the Government secures the alleged offender’s extradition.

**Article 6 of the Convention**

116. The four paragraphs of article 6 place an obligation of conduct upon any State in whose territory a person alleged to have committed the crime of torture is present.

117. Specific legislative or administrative measures can be taken in accordance with article 6 without necessarily requiring that its provisions be incorporated into domestic law. Under Senegalese law, Senegalese administrative and judicial authorities are required to act in compliance with article 6 whenever such cases arise.

118. The only case which has arisen in the State of Senegal that falls under article 6 is the case of Hissène Habré. This matter is being dealt with appropriately, in line with the Convention and international law.

119. In fact, the implementation of article 6 of the Convention does not present any difficulties.

## Article 7 of the Convention

### Paragraph 1

120. As mentioned above, the only known case concerning an alleged perpetrator of acts of torture residing in Senegalese territory is the case of Hissène Habré, former President of the Republic of Chad. In this case, the State of Senegal has undertaken, in conformity with the mandate entrusted to it by the African Union, to conduct a trial, to be heard by Senegalese judges, in compliance with the universally recognized fundamental legal principle of a just and fair trial. To make the trial possible, the State of Senegal has made important amendments to its constitutional and legal provisions, set up bodies to organize the trial, appointed an expert accounting and auditing body in order to draft the provisional budget, and included in its 2008 budget the amount of CFAF 1 billion for the purpose of beginning the investigation. Nevertheless, the organization of such a trial, which must be “flawless and exemplary”, requires the mobilization of exceptional resources. A contribution by the international community will be required. Further developments in the Habré case are detailed below.

121. As a general rule, extradition is regulated in Senegal by Act No. 71-77 of 28 December 1971. Article 5 of this law lists the cases in which extradition shall not be granted:

- (1) When the subject of the request is a Senegalese national and was recognized as such at the time of the commission of the offence for which extradition is requested;
- (2) When the crime or offence is of a political nature or if the circumstances indicate that the extradition request is politically motivated. Acts committed during a rebellion or civil war by one of the parties involved in order to further its cause are extraditable only if they constitute acts of extreme barbarity or destructiveness prohibited by the laws of war and only after the civil war has ended;
- (3) When the crime or offence was committed in Senegal;
- (4) When the crime or offence, even if committed outside Senegal, has been prosecuted in Senegal and a final decision rendered;
- (5) When, according to the laws of the requesting State or the requested State, the time limit for bringing an action has passed before the extradition request is served, or the time limit for the enforcement of the sentence has passed before the arrest of the individual whose extradition is requested and, generally, whenever the criminal proceedings have been completed.

### Paragraph 2

122. The provisions of the Senegalese Code of Criminal Procedure apply to all crimes and offences that fall under the jurisdiction of the ordinary courts, without any distinction based on the place where the offence was committed or the nationality of the perpetrator or the victim. Accordingly, the application of the standard of proof is equally stringent and court judgements are rendered under equal conditions.

### Paragraph 3

123. The Senegalese Code of Criminal Procedure includes all the safeguards provided for by the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, thereby guaranteeing fair treatment at all stages of the proceedings to any person against whom criminal charges are brought.

124. In addition, article 9, paragraph 2, of the Senegalese Constitution stipulates that: “The right of defence is an absolute right at all stages of all legal proceedings”.

125. The provisions of the Code of Criminal Procedure listed below attest to the effective fulfilment by the Senegalese authorities of their commitment to guarantee a fair trial to any person against whom proceedings are brought before the Senegalese courts:

126. “Article 298: At the hearing, the presence of counsel for the accused shall be obligatory. If the counsel chosen or designated in conformity with article 257 does not appear, the presiding judge shall assign another to the case.

127. “Article 384: The person brought before a court in accordance with article 381 is to be informed by the presiding judge that he or she has the right to request more time to prepare a defence; the notice given by the presiding judge and the response of the defendant shall be noted in the judgement. If the defendant makes use of the option mentioned in the previous sentence, the court shall grant the defendant a minimum of three days. Non-observance of the provisions of this article constitute grounds for rendering the judgement null and void.

128. “Article 404: Defendants are entitled to assistance of counsel. Counsel shall be chosen from among the lawyers on the roster or those performing internships ... . The assistance of counsel is compulsory when the defendant is suffering from a disability that may adversely affect his or her defence. In this case, if the defendant has not chosen counsel, the presiding judge shall appoint one.”

#### **Article 8 of the Convention**

129. Even though none of the treaties on mutual judicial assistance, in particular extradition, concluded by Senegal with third States contains a specific list of offences for which a person may be extradited, this in no way constitutes a barrier to the extradition of perpetrators of offences classified as torture upon the request of another State.

130. The Senegalese State does not make extradition conditional on the existence of a treaty. Act No. 71-77 of 28 December 1971 applies to all requests from States with which Senegal does not have a judicial assistance agreement.

131. With the exception of the cases mentioned above, extradition is possible if:

- (a) The acts in question are defined as an offence and carry criminal or correctional penalties of at least 2 years of imprisonment;
- (b) The acts in question are punishable offences under Senegalese law.

#### **Article 9 of the Convention**

132. Senegal provides extensive judicial assistance during all stages of proceedings related to torture in conformity with the treaties on mutual assistance to which it is party.

133. For example, with regard to law enforcement services, Senegal is a member of the International Criminal Police Organization (INTERPOL) and, as such, maintains a wide network of contacts with all countries in the world in the fields of information exchange, evidence in criminal proceedings and the arrest of offenders of all kinds. Mutual judicial assistance takes the form of:

- Responding to requests for judicial assistance
- Extraditing offenders
- Exchanging information on the civil status of persons being prosecuted

- Conducting proceedings to establish the authority to enforce judgements handed down abroad
- Conducting enforcement proceedings

#### **Article 10 of the Convention**

134. Education and information concerning the prohibition of torture features prominently in the curricula of training academies for police, the gendarmerie, customs officials, health officials, and members of the Armed Forces and the judiciary as well as in human rights institutions.

135. The Judicial Training Centre of Dakar (CFJ), a higher educational institution whose main mission is to provide initial and continuing education services for Senegalese judges and court clerks, is taking an active part in building the skills of judges, lawyers, police officers, gendarmes and other legal professionals of Senegal and of the West African subregion in the field of human rights.

136. Each year the Peace and Human Rights Institute of the Cheikh Anta Diop University in Dakar offers a master's degree programme on citizenship, human rights and humanitarian action. Students in this programme receive training in human rights, international humanitarian law and, particularly, specific methods for protecting the physical integrity of persons. A number of members of the country's security forces have received this training.

137. The High Commissioner for Human Rights and the Promotion of Peace and the Senegalese Human Rights Committee are conducting public education and training programmes.

#### **Article 11 of the Convention**

138. Senegal strictly monitors the application of procedures related to the custody and treatment of arrested, detained or incarcerated persons. Under articles 55 ff. of the Code of Criminal Procedure, judicial authorities are vested with the powers to ensure effective monitoring and to impose sanctions. In addition, the Standard Minimum Rules for the Treatment of Prisoners have played an influential role as guidelines for the Senegalese prison system (Decree No. 2001-362 of 4 May 2001 concerning the implementation and organization of penal sanctions).

139. Since, when torture is committed (which appears to occur most frequently during the initial stages of preliminary investigations), public officials are often to blame, Senegalese legislation provides victims of abuse at the hands of investigators while in custody with the possibility of bringing the matter directly before the Indictment Division of the Court of Appeal. This institution monitors the activities of all criminal investigation officers in order to detect such abuses and takes appropriate measures to punish them.

140. This mechanism also has a preventive effect in that the Indictment Division has the authority to strip such public agents of their investigative powers. Before this amendment was introduced, only the Prosecutor-General of the Court of Appeal could bring such abuses to the attention of the Indictment Division.

141. With a view to fulfilling its international obligations, in particular those set forth in the Optional Protocol to the Convention against Torture, which was ratified on 20 September 2006, the Senegalese National Assembly also passed Act No. 2009-13 of 2 March 2009, which established a centre for monitoring conditions in places of detention as a new mechanism for the prevention of torture. This law was drafted in close cooperation with civil society as part of the effort made to comply with the obligation of all States to establish national mechanisms for the prevention of torture. The mission of this fully

autonomous institution is to prevent acts of torture in places of detention and to ensure that those places conform to international standards.

142. Also with regard to mechanisms for the protection of the physical integrity of prisoners, an important step was made in 2000 with the introduction of standards for the enforcement of sentences. Under Act No. 2000-38, which amends the Criminal Code, and Act No. 2000-39, which amends the Code of Criminal Procedure, both of which were promulgated on 29 December 2000, a special post has been created for a judge in charge of supervising conditions of detention.

143. A mediation mechanism allowing for amicable settlement in cases of minor criminal offences, which was introduced into Senegalese law through this legislative reform, has the advantage of reducing the number of prison sentences and overcrowding in prisons.

144. These laws have led to the individualization of penalties for criminal offences and authorize members of civil society to visit places of detention, subject to security procedures.

145. As indicated above, the process of ensuring greater transparency in places of detention is approaching its completion with the planned adoption of a mechanism for the prevention of torture in accordance with the Optional Protocol to the Convention.

146. Nevertheless, real difficulties persist, including overcrowding in places of detention. The Government has made significant efforts to increase the daily inmate accommodation capacity. In order to find a long-term solution for this issue, the Government plans to build modern prison facilities under the Justice Sector Programme.

#### **Article 12 of the Convention**

147. Article 32 of the Senegalese Code of Criminal Procedure stipulates that the public prosecutor shall receive complaints and reports of offences and shall determine what action needs to be taken in each case. Any duly constituted authority or any public official or civil servant who, in the discharge of his or her duties, learns of a crime or offence must immediately report it to the public prosecutor and transmit all relevant information and records.

148. Judicial authorities proceed to the necessary investigation wherever there are reasonable grounds to believe that an act of torture has been committed in any territory under their jurisdiction.

#### **Article 13 of the Convention**

149. Every person has the right to report or to bring complaints concerning violations of criminal law before the public prosecutor in accordance with the provisions of article 32 of the Code of Criminal Procedure. If those reports or complaints are not followed up on, the person concerned may exercise the public right of action by bringing a criminal indemnity action before the investigating judge or requesting that the accused be summoned directly before the trial court.

150. Witnesses, under oath, tell what they have seen or heard in connection with a criminal offence or a dispute. They are provided with effective protection against any threat, intimidation or ill-treatment linked to their testimony.

151. Senegal fully recognizes the competence of the Committee against Torture to receive and examine complaints of torture submitted by individuals who are subject to the jurisdiction of its courts.

**Article 14 of the Convention**

152. Article 2 of the Code of Criminal Procedure explicitly states that: “A criminal indemnity action for loss or injury caused by any offence may be brought by anyone who has personally suffered loss or injury caused directly by the offence.” These provisions make it possible to rectify any injustice suffered as a result of acts of torture. In the event of the death of the victim, his or her rightful heirs are entitled to bring such an action.

153. If the loss or injury is the result of an act of a public servant or public official, article 145 of the Code of Obligations of Public Servants stipulates that the State is responsible for paying compensation.

154. Thus, the right of victims of torture to full and fair compensation is fully protected.

155. In order to further strengthen this protection, a bill on compensation for victims of prolonged detention or persons who have suffered from particularly serious injustices is currently being drafted. A special judicial commission to rule on claims for compensation has been created under the new law of 7 May 2008 concerning the establishment of the Supreme Court (art. 4).

**Article 15 of the Convention**

156. The Senegalese Code of Criminal Procedure does not contain a specific provision that expressly prohibits the admission as evidence of a statement which is found to have been made as a result of torture.

157. Senegalese criminal court judges have full authority to evaluate the validity and value of the evidence presented to them. They may choose not to attach any weight to a given piece of evidence and to dismiss any statement outright which is found to have been obtained illegally or dishonestly, particularly as a result of torture, or through the use of other forms of violence or inhumane or degrading treatment or threats.

158. Under Senegalese law, a confession can be retracted at any time and any doubts are to be interpreted in the defendant’s favour.

159. Article 57, subparagraph 2, of the Code of Criminal Procedure stipulates that if the records of interrogations of persons held in police custody are not signed by those persons, they shall be considered null and void.

**Article 16 of the Convention**

160. Several articles of the Criminal Code contain provisions which are sufficient as a basis for prosecuting and severely punishing perpetrators of acts of torture and any other attacks on a person’s physical integrity.

161. Accordingly, article 166 of the Criminal Code, which concerns abuse of authority, stipulates that: “Any civil servant or public official, administrator, government agent or police official, judicial marshal or police commandant or deputy commandant who, in the exercise of his or her functions, has, without legitimate reason, used or ordered the use of violence against other persons, shall be punished in a manner commensurate with the nature and extent of the violence used and shall be subject to the penalty stipulated in article 178.”

162. Article 106, on offences against liberty, stipulates that: “Any civil servant or agent, official or member of the Government who orders or commits an arbitrary act or an act which violates a person’s liberty or the civil rights of one or more citizens or the Constitution shall be penalized by the loss of his or her civil rights.”

163. In addition, threats, injuries, blows or other attacks or assaults on a person are punishable under Senegalese criminal law.

164. Thus, the criminal law provisions concerning abuse of authority, offences against personal liberty and assault and battery ensure the effective protection of individuals against any acts that, while not amounting to torture as such, do constitute cruel, inhuman or degrading treatment or punishment at the hands or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

## **B. Alleged cases of torture submitted to the judicial authorities**

165. In addition to the Hissène Habré case, which attracted the attention of the entire international community, two cases of alleged torture have been recorded, namely the case of Dominique Lopy and the case of Alioune Badara Diop. The quality of training and awareness-raising activities provided to the security forces and officers and agents in charge of judicial inquiries, as well as the proactive efforts of civil society stakeholders in fulfilling their preventive and oversight functions, have greatly contributed to improving the situation in Senegal.

166. The Hissène Habré case, which was the basis for the decision taken by the Committee at its meeting of 17 May 2006 concerning communication No. 181/2001, submitted by Chadian nationals, will be thoroughly addressed in the second part of this report, which deals with the implementation of the Committee's conclusions and recommendations.

### **1. The Dominique Lopy case**

167. *Facts:* On 10 April 2007, the president of the Kolda regional council filed a complaint against X with the Kolda police force concerning the theft of a television set, a mattress and some items of clothing. He claimed that he had been the victim of other thefts, all committed by Dominique Lopy, the younger brother of his watchman. As a result, Dominique Lopy was arrested and placed in police custody from 11 to 14 April 2007. He died in a police detention centre on 14 April 2007. The victim's parents, who claim that he was tortured, ransacked the police station, the courthouse and the home of a police constable with the help of young people from the district.

168. *Steps taken by the judicial authorities:* Following a judicial inquiry into the cause of the death of Dominique Lopy, Doctor Yoro Diallo of the Kolda hospital, who had initially been called, suggested that an autopsy be performed by a forensic expert. The autopsy was carried out on 18 April 2007 by Doctor Gisèle Woto Gaye of Aristide Le Dantec Hospital in Dakar.

169. This practitioner concluded that Dominique Lopy died of "cerebral oedema, which occurred in a subject with a pre-existing heart condition that deteriorated owing, on the one hand, to the stress linked to detention and, on the other hand, to the beatings received". A criminal investigation to determine whether X had committed violence which had inadvertently led to the death of Dominique Lopy was immediately ordered by the investigating judge of the first chamber. The judicial investigation is currently ongoing.

170. The handling of this case by the press and by certain human rights organizations has led to serious public disturbances. In fact, after the funeral on 21 April 2007, a group of demonstrators attacked the police. Two victims were registered during these clashes.

171. The first victim, Ousmane Diao (15 years of age) allegedly had two of his fingers severed by a grenade. According to the attending doctor, his life is no longer in danger. Sadly, the second victim, Diatoula Mane (about 25 years of age) died as a result of his wounds one hour after having been taken to hospital.

172. While awaiting the findings of the judicial inquiry, precautionary disciplinary measures have been taken against the police officers involved.

## 2. The Alioune Badara Diop case

173. *Facts:* Following a complaint filed by an individual with the Ndorong police force in the Kaolack region, Alioune Badara Diop was arrested on 12 December 2007. The following day, he died in police custody. The victim's family and several human rights organizations claimed that the death of Alioune Badara Diop was caused by the torture to which he was subjected during the night of his stay at the police station. Police sources believe that he committed suicide in his cell by strangling himself with his shirt.

174. *Steps taken by the judicial authorities:* A judicial inquiry has been initiated. The results of the autopsy and the conclusions presented in the forensic report were communicated to the judicial authority in charge of the case.

175. In each of these cases of alleged torture, the Justice Department has instructed all the prosecutor's offices concerned to take the necessary measures to bring all persons allegedly involved in these cases to trial.

176. In due course, the Government of Senegal will make the action taken in these cases of alleged torture known to the national and international public.

## II. Implementation of the conclusions and recommendations of the Committee

177. This section refers to the concerns and recommendations set out by the Committee against Torture following its consideration of the previous report of Senegal and its decision of 17 May 2006 concerning the complaint against the State of Senegal (see communication No. 181/2001) submitted by Chadian nationals.

### A. Compliance with the Committee's conclusions and recommendations

178. **The Committee had identified the following factors and difficulties impeding the application of the provisions of the Convention:**

- **At the normative level, the Committee notes the absence of regulations to ensure the effective implementation of the Convention**

179. Article 98 of the Constitution of Senegal enshrines the supremacy of treaties in the national legal system. According to this text, "Treaties or agreements that have been duly ratified or approved shall, upon publication, take precedence over other laws, subject to their application, in the case of each agreement or treaty, by the other party."

180. This provision demonstrates the firm commitment of the State of Senegal to respect and enforce international legal norms within its territory and, in particular, those aimed at safeguarding human rights.

181. Article 98 of the Constitution of Senegal thus establishes the precedence of the provisions of the Convention over domestic law. Consequently, the self-executing provisions of the Convention are immediately applicable in Senegalese domestic law.

182. However, there are some provisions of the Convention that, despite their immediate applicability, require the State party to adopt prior legislative or regulatory measures. Indeed, these provisions cannot be effectively implemented in the absence of measures to enforce them under domestic law. This was what led the Senegalese Court of Cassation to

rule that no procedural text confers universal jurisdiction upon Senegalese courts to try presumed perpetrators of or accomplices to acts of torture who are found on Senegalese territory when those acts have been committed by foreigners outside Senegal.

183. Senegal has found a fitting solution to this problem by amending its legislation and incorporating certain provisions into the Code of Criminal Procedure. The universal jurisdiction of Senegalese courts regarding acts of torture is now recognized. (The aforementioned legislative reforms have been set out in extenso in the first part of this report.)

184. As to the reservation entered on the condition of reciprocity, it should be made clear that its sole aim is to enable the State, if necessary, to suspend the implementation of a treaty should the co-contracting State fail to comply therewith.

185. Therefore, the reservation remains inoperative in respect of the implementation of the Convention. Indeed, international human rights norms in general do not constitute reciprocal obligations and must be observed regardless of the actions of other States parties, as they are norms prescribed for the protection of the individual rather than of States.

186. In the light of the above, it is clear that Senegalese law guarantees the effective implementation of the Convention.

- **The Committee notes that the conflict in Casamance sometimes impedes effective implementation of the Convention**

187. The comprehensive peace agreement of 30 December 2004 concluded between the Government of Senegal and the Movement of Democratic Forces of Casamance has dramatically improved the situation, despite the sporadic but regrettable acts of violence committed by isolated armed gangs and the number of anti-personnel landmine victims.

188. The State of Senegal has embarked on a wide-ranging reconstruction programme in the Casamance region which is based first and foremost on respect for universal human rights, notably economic, social and cultural rights.

189. The first article of the Constitution of Senegal, adopted by referendum in 2001, guarantees “equality before the law for all ... citizens, without distinction as to origin, race, sex or religion”. Title II of the Constitution, on “Civil liberties and human freedoms, economic and social rights, and collective rights”, also reflects this concern.

190. It is in this connection that Senegal first introduced and has since pursued the implementation of its poverty reduction strategy paper. The consensual approach taken by all stakeholders, including members of civil society, to this paper’s preparation has been lauded. Currently, the poverty reduction strategy paper is in its second phase, with the Paris Club undertaking to provide funding in October 2007. The strategy focuses on reducing poverty by building the capacity of vulnerable populations, particularly women and rural dwellers.

191. It should be noted that the Casamance region of Senegal is in no way at a disadvantage in the area of economic, social and cultural rights. On the contrary, it is well off in that respect. The Casamance region has benefited from a targeted development programme designed in line with its specific geographical position and post-conflict situation, as provided for under the aforementioned comprehensive peace agreement.

192. This development programme is referred to in the preamble to the peace agreement and is explicitly mentioned in article 4, entitled “Economic and social recovery”, which reads as follows: “The State urges the national agency responsible for social and economic recovery in Casamance to mobilize NGOs and specialized mine-clearance agencies, in partnership with the Armed Forces and the former combatants of the Movement of

Democratic Forces of Casamance, to begin the humanitarian demining of the Casamance region without delay in order to facilitate the resumption of economic activities.”

193. Having undertaken to rebuild the region of Casamance, the State of Senegal made a commitment to make every effort to expedite the return of refugees and displaced persons to their homes and to provide them with the necessary support to facilitate their reintegration into Senegalese society.

194. In the context of these developments, which are underpinned by a steadfast political commitment to combat acts of torture and impunity, Senegal fully endorses the Committee’s statement that: “A democracy must, whatever the circumstances, ensure that only legitimate means are used to protect the security of the State, peace and stability.”

**The Committee is disturbed by the numerous cases of torture that have been brought to its attention by non-governmental organizations of established credibility and [that] are also referred to in the State party’s report, notably in paragraphs 12, 37 and 103.**

195. In the interest of clarity, it is useful to recall the paragraphs referred to by the Committee, which are mentioned in the State party’s second report, submitted in 1996:

“12. Several cases of torture (to which we will refer below in this report) have thus been brought to the attention of the authorities, which have taken the appropriate action.

“37. Members of the police force or gendarmerie who have carried out torture which has been brought to the attention of the competent judicial authorities by means of a complaint are automatically prosecuted. The list of cases is very long and can be supplied to the Committee in due course.”

“103. There is a long list of cases in which victims of torture in police or gendarmerie stations have filed complaints and won their cases in Senegalese courts.”

196. Because of the absence of specific information on the alleged cases of torture, it has proved impossible to conduct the research that would be needed in order to provide the Committee with the data it would need in order to form an opinion about the true situation, its nature and severity, as well as about the procedural response of the public authorities.

197. However, paragraphs 85 and 98 of the second periodic report would seem to suggest that the Committee is referring to the cases of torture mentioned in the report, which occurred in connection with the conflict in the Casamance region and with the political violence perpetrated against the political opposition of the time, in particular against the Senegalese Democratic Party, led by His Excellency Mr. Abdoulaye Wade, the democratically elected President of the Republic of Senegal since 19 March 2000.

198. The aforementioned paragraphs are worded as follows:

“85. As far as the facts at issue are concerned, it will be remembered that the 1980s were a time of serious instability in the Casamance region in the south of Senegal and that this resulted in the intervention of the armed forces to restore and maintain order. This conflict between the central Government and the separatist movement in the region (MFDC) took the form of armed confrontations leading to deaths and injuries on both sides.”

“98. The human rights monitoring bodies are also demanding that the Dakar Government Prosecutor should prosecute the persons responsible for the cases of torture committed during the investigations into the case of Babacar Seye and the events of 16 February 1994, in accordance with article 12 of the Convention.”

199. The Government of Senegal hopes that the information furnished in the following section will allay the Committee’s concerns in this respect.

**The Committee is concerned that, in its report, the State party invokes a discrepancy between international and internal law to justify granting impunity for acts of torture on the basis of the amnesty laws.**

200. In the 1990s, as part of the search for possible solutions to the crisis in Casamance, Parliament was obliged to pass an amnesty law specifically targeting the combatants of the Movement of Democratic Forces of Casamance in order to ease tensions and to establish a framework conducive to cooperation and dialogue that would bring about lasting peace.

201. The improvement in the situation that this brought allowed the Government of Senegal to open a dialogue with the leaders of the Movement and, on 30 December 2004, to conclude peace agreements that were welcomed by all. The restoration of peace went hand in hand with a project in which the State is investing tens of thousands of CFA francs to rebuild the devastated region. The plan is intended to stimulate economic recovery and to facilitate the integration of former combatants into the workforce.

202. War and armed conflict are closely associated with the denial of fundamental human rights. Their prolongation is tantamount to creating a climate conducive to the perpetration of acts of torture and other violations of the physical integrity of human beings.

203. However, the Declaration on the Right of Peoples to Peace, adopted by the General Assembly in its resolution 39/11 of 12 November 1984, clearly provides that: "The peoples of our planet have a sacred right to peace" and that "the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each State".

204. Senegal fully subscribes to the view expressed by the Human Rights Committee in its general comment No. 20 of 10 April 1992 on the prohibition of torture or cruel, inhuman or degrading treatment or punishment when it states that: "Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future."

205. Nevertheless, Senegal would like the Committee to take into account the fact that the sole aim of the aforementioned amnesties was to restore peace and to put an end to a situation that was conducive to massive violations of fundamental human rights.

206. The amnesty laws adopted in order to bring peace to the Casamance region were born out of the necessity to respond to "a pressing social need" and Senegal, in good faith, maintains that it acted to safeguard the general interest without undermining the basic rights of the individual in any fundamental way.

207. Indeed, under the Senegalese legal system, although an amnesty law does bar criminal prosecution and remits any sentences that have been handed down, it does not eradicate material facts or their civil consequences. It is always possible for victims to refer their case to the civil courts in order to obtain a settlement that will grant them just satisfaction.

208. It is in the same spirit of peace and social cohesion that, following the political unrest that occurred in Senegal in March 2000, Parliament passed an amnesty law covering the political violence that had followed the previous general election, even though the victims of acts of torture during that period had all been active members of the main opposition party of the time, the Senegalese Democratic Party, led by His Excellency Mr. Abdoulaye Wade, who was later voted into office through transparent, democratic elections.

**The Committee is doubtful whether the provisions in force in Senegal can effectively ensure full respect for the fundamental rights of persons in police custody.**

209. Senegalese criminal procedure relating to police custody has undergone significant changes during the period between 1996, when Senegal drafted its second report for submission to the Committee against Torture, and the present day. These changes have strengthened the measures in place for protecting the fundamental rights of the accused and guaranteeing full respect for those rights.

210. The custody provisions currently in force have been reproduced below to allow the Committee to appreciate the impact of these legislative changes:

211. “Article 55: Act No. 99-06 of 29 January 1999

If, for the purposes of the inquiry, the criminal investigation officer is obliged to detain one or more of the individuals referred to in articles 53 and 54, the duration of custody shall not exceed 24 hours.

Where there is sufficient reliable and consistent evidence to justify pressing charges, the officer must bring the person before the public prosecutor or a representative and may not detain the person for more than 48 hours. In the event of material difficulties affecting the person’s transfer, the public prosecutor must be informed immediately of the situation and delay.

In both cases, the criminal investigation officer must immediately inform the public prosecutor, his or her representative or, failing that, the presiding judge of the departmental court who is invested with the powers of the public prosecutor to explain to the arrested person why he or she has been placed in custody.

When the person in custody is a minor between the ages of 13 and 18 years, the criminal investigation officer must hold the minor in special quarters separate from adult prisoners.

Persons held in police custody are under the effective control of the public prosecutor, his or her representative or, failing that, the presiding judge of the departmental court invested with the powers of the public prosecutor.

In all places where persons are held in custody, criminal investigation officers are required to keep a custody record, which is to be numbered and initialled by the public prosecutor, who must appear before any magistrate responsible for monitoring persons in police custody whenever he or she is summoned.

The time limit established in paragraph 2 may be extended for a further 48 hours with the written consent of the public prosecutor, his or her representative or an investigating judge.

The time limits established in the present article may be doubled in the case of crimes committed against national security, as well as crimes committed during a state of siege, a state of emergency or under the conditions set out in article 47 of the Constitution. However, the two grounds for doubling the time limit are not cumulative.

If police custody is extended, the criminal investigation officer is required to inform the person in custody of the reasons for the extension and of the provisions of article 56. The officer is also required to inform the person in custody of his or her right to appoint a lawyer from among those on the roster or performing internships. Mention of these formalities shall be made in the custody record on pain of nullity.

## 212. Article 55 bis: Act No. 99-6 of 29 January 1999

The appointed counsel may be contacted by the person in custody or any other person designated by him or her or, failing that, by the criminal investigation officer. Counsel may engage in fully confidential communication with the detainee by telephone or any other means, if counsel cannot visit the detainee in person within a reasonable period of time.

If the appointed counsel cannot be contacted, the criminal investigation officer is required to make mention of this fact in the custody records.

The criminal investigation officer or an officer under his or her command must inform counsel of the nature of the charges.

Following an interview lasting no longer than 30 minutes, counsel may present written observations that shall be appended to the case file.

Counsel may not disclose the details of the interview to anyone while the person remains in custody.

The criminal investigation officer is required to inform the public prosecutor of the steps taken to give effect to the present article without delay.

## 213. Article 55 ter: Act No. 99-06 of 29 January 1999

The criminal investigation officer shall make mention in the custody records of any information or requests submitted under article 55 bis, as well as the follow-up given thereto. Such annotations must be signed by the person concerned; refusals to sign shall also be recorded.

The above information shall be included in the custody records on pain of nullity.

## 214. Article 56: Act No. 85-25 of 27 February 1985

If the public prosecutor or his or her representative deems it necessary, arrangements can be made for the person in custody to be examined by a doctor at any time within the period set out in the preceding article. The person in custody, through the criminal investigation officer, his or her counsel or any other person, may request that the public prosecutor arrange for such a medical examination within the same period. On receiving such a request, the public prosecutor must order the medical examination.

This examination shall be conducted at the location where the person in custody is being held. If it is not requested by the public prosecutor, the cost of the examination is incurred by the requesting party.

In that case, mention is made of the fact that the requesting party is liable to incur the cost of the examination at the time that a doctor is appointed.

## 215. Article 57: Act No. 85-25 of 27 February 1985

The custody records prepared by the criminal investigation officer in accordance with articles 46 and 54 shall be drafted on the spot and each page shall bear the officer's signature.

The custody record must indicate the date and the time when a person was first placed in custody, the reasons why this was done, the duration of any questioning, the duration of any rest periods, as well as the date and time when the person was released or brought before the competent judge.

This annotation must be signed by the person concerned; refusals to sign shall also be indicated in the custody record on pain of nullity.

## 216. Article 58

In agencies and services where criminal investigation officers are required to keep a record book, the annotations and signatures provided for under the previous article must be recorded therein. Only the annotations shall be reproduced in the procedural record transmitted to the judicial authority.

## 217. Article 59: Act No. 85-25 of 27 February 1985

The provisions of articles 46 to 58 shall apply to offences for which the perpetrator is apprehended in flagrante delicto and to all cases for which the law prescribes a prison sentence.

If criminal investigation officers commit acts of abuse in connection with the application of custodial measures, the public prosecutor or his or her representative shall inform the Prosecutor-General, who, in turn, shall refer the matter to the Indictment Division.

Under Act No. 99-06 of 29 January 1999, the victim of such abuse can also request the matter to be referred to the Indictment Division.

If the Indictment Division deems that a criminal offence has been committed, in accordance with its powers under articles 213, 216 and 217 of the present Code, it can either temporarily or permanently strip the perpetrator of the abuse of the title of criminal investigation officer or refer the case to the Prosecutor-General for the opening of legal proceedings.”

218. These provisions should be read in conjunction with article 213 ff. relating to the Indictment Division’s oversight of the activities of criminal investigation officers.

## 219. Article 213

The Indictment Division shall monitor the activity of civilian and military officials and of criminal investigation officers acting in that capacity.

## 220. Article 214

Cases are referred to the Indictment Division by the Prosecutor-General or by its president. It may also raise issues on its own initiative when examining a case that has been referred to it.

## 221. Article 215

Once a case has been referred to it, the Indictment Division arranges for an inquiry to be carried out and interviews both the Prosecutor-General and the criminal investigation officer concerned.

The criminal investigation officer should have prior knowledge of his or her case file, which is kept by the Office of the Public Prosecutor of the Appeal Court. The criminal investigation officer may be assisted by counsel.

## 222. Article 216

The Indictment Division may, without prejudice to any disciplinary sanctions that may be imposed on the criminal investigation officer by his or her superiors, address its own comments to the officer or decide that the officer may no longer discharge, either temporarily or permanently, the functions of a criminal investigation officer or the representative of an investigating judge anywhere in Senegalese territory.

If the Indictment Division deems that the criminal investigation officer has committed a criminal offence, it refers the case to the Prosecutor-General for appropriate action.

At the request of the Prosecutor-General, the competent authorities are to be notified of any legal decisions taken by the Indictment Division with respect to criminal investigation officers.

223. By means of a series of legislative measures, in particular Acts Nos. 85-25 of 27 February 1985 and 99-06 of 29 January 1999, the Senegalese legislature has established effective mechanisms to ensure that all persons held in police custody during a preliminary inquiry are able to report any violation of their individual rights or fundamental freedoms.

224. A suspect in police custody may convey a request to the public prosecutor, either through the criminal investigation officer, through counsel or through any other person, for a medical examination at any time during the period of custody. Article 56, paragraph 2, of the Code of Criminal Procedure requires the public prosecutor to order such an examination upon request.

225. If police custody is extended, the detainee may also request the assistance of a lawyer from among those on the roster or performing internships. Counsel may engage in fully confidential communication with the detainee by telephone or any other means, if counsel cannot visit the detainee in person within a reasonable period of time.

226. When abuse, particularly an act of torture, is reported, the circumstances are brought to the attention of the Prosecutor-General, who brings charges before the Indictment Division against the members of the police or gendarmerie who have allegedly committed the abuse.

227. The Government of Senegal sincerely hopes that the additional information it has provided to the Committee will serve to dispel any doubt as to the effectiveness of Senegalese legislation in ensuring full respect for fundamental rights of persons in police custody.

**The State party should, during its current legislative reform, consider introducing explicitly in national legislation the following provisions:**

(a) The definition of torture set forth in article 1 of the Convention and the classification of torture as a general offence, in accordance with article 4 of the Convention, which would, inter alia, permit the State party to exercise universal jurisdiction as provided in articles 5 et seq. of the Convention;

(b) A blanket prohibition of any act of torture, with the stipulation that no exceptional circumstance may be invoked to justify torture, in accordance with article 2, paragraph 2, of the Convention;

(c) An express provision stipulating that an order from a superior officer or from a public authority may not be invoked to justify torture, in accordance with article 2, paragraph 3, of the Convention;

(d) Provisions explicitly prohibiting evidence from being obtained by torture and prohibiting any statement shown to have been extracted in this way from being used as evidence in any proceedings, in accordance with article 15 of the Convention.

228. Points (a), (b) and (c) of this recommendation have been fully implemented. The full text of article 295-1 of the Criminal Code provides evidence of this:

229. "Acts of torture are injuries, blows, physical or mental violence or other forms of assault intentionally inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity either for the purpose of obtaining information or a confession, imposing punishment by way of a reprisal or making threats or for any reason based on discrimination of any kind.

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

An order from a superior officer or a public authority may not be invoked as a justification of torture.”

230. With regard to point (d), it should be pointed out that torture is classified as a crime in Senegalese legislation. As set out above, if, during the course of a judicial inquiry, criminal investigation officers, be they members of the police force or the gendarmerie, are suspected of having committed acts of torture, they are liable to criminal prosecution, in addition to any administrative sanctions that may be imposed.

231. While the Senegalese Code of Criminal Procedure does not expressly prohibit the admission of statements obtained by means of torture, if an act of torture is found to have taken place, the judge, who is endowed with the full authority to examine the evidence submitted, would dismiss such a statement out of hand.

**In summing up its previous recommendations, the Committee recommended that a judicial inquiry be conducted into the allegations of torture made by NGOs, the amnesty laws in force in Senegal notwithstanding, pursuant to article 79 of the Constitution of Senegal (now article 98), which establishes the precedence of international treaty law ratified by Senegal over internal law.**

232. The State of Senegal respectfully requests the members of the Committee to refer to the information provided under points 2 and 3 for replies to the last point.

233. It should be noted that, even if the amnesty law blocks criminal prosecution, it does not infringe the victim’s right to redress for the damages arising from the offence.

234. Indeed, despite the adoption of an amnesty law, victims still have access to an effective remedy before a civil judge whereby they may seek redress and equitable and adequate compensation.

## **B. Compliance with the Committee’s decision concerning communication No. 181/2001**

235. On 18 April 2001, victims of alleged acts of torture committed by the former President of Chad, Mr. Hissène Habré, submitted communication No. 181/2001 concerning alleged violations by the State of Senegal to the Committee against Torture. Under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee, considered the merits of the communication at its meeting of 17 May 2006 and requested the State of Senegal to comply with a number of recommendations.

236. In order to supplement the information transmitted to the Committee by the Office of the United Nations High Commissioner for Human Rights, the State of Senegal would like to take this opportunity to inform the international community about the main developments in the case.

### **Recapitulation of facts and procedures**

237. Mr. Hissène Habré, who was the President of the Republic of Chad from 1982 until 1990, was ousted on 1 December 1990. Following a stay in Cameroon, he moved to Senegal, where he has been ever since.

238. In January 2000, Souleymane Guengueng and others submitted a complaint together with an application for indemnification to the senior examining judge of the Dakar special regional court on the following grounds:

- Crimes against humanity
- Acts of barbarity and discrimination
- Violation of the Convention against Torture and articles 288 and 295 of the Criminal Code
- Torture and murder
- Enforced disappearances (Statute of the International Criminal Court, article 7-(2), (1))

239. On 3 February 2000, the senior examining judge indicted Mr. Hissène Habré on these charges and then granted his provisional release subject to the supervision of the court.

240. On 18 February 2000, Mr. Hissène Habré applied to the Indictment Division of the Dakar Court of Appeal for the proceedings against him to be dismissed, citing article 27 of the Convention against Torture, article 6 of the Constitution of Senegal, articles 7 and 669 of the Code of Criminal Procedure and article 4 of the Criminal Code, on the grounds that the charges had no basis in law and that the alleged offences were time-barred.

241. On 4 July 2001, the Indictment Division dismissed the charges, thereby putting an end to the legal proceedings against him, on the grounds that the judge dealing with the case lacked jurisdiction.

242. On 20 November 2001, the Court of Cassation rejected the appeal lodged by the complainants on 7 July 2001 against the Indictment Division's ruling of 4 July 2001, thus reaffirming that decision.

243. The Court of Cassation advanced the following reasoning for its decision:

Article 5, paragraph 2, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, provides that each State party shall take such measures as may be necessary to establish its jurisdiction over the offences set out in article 4 in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him or her;

Consequently, article 79 of the Constitution cannot be applied since the implementation of the Convention requires Senegal to adopt prior legislative measures;

No procedural text confers universal jurisdiction upon Senegalese courts to try presumed perpetrators of or accomplices to acts covered by the legislation of 28 August 1996, which aligned Senegalese law with article 4 of the Convention, in cases where such persons are found on Senegalese territory if the acts in question were committed outside Senegal.

244. Subsequently, the victims brought the same case before the Belgian courts. On 19 September 2005, the Belgian examining judge, after an investigation that lasted for years, issued an arrest warrant for Mr. Habré. On the same day, Belgium sent an extradition request to Senegal.

245. On 25 November 2005, the Indictment Division of the Dakar Court of Appeal, in response to the request to extradite Mr. Hissène Habré to Belgium, concluded that it was not competent to do so for the following reasons.

246. “Article 101 of the Constitution of Senegal and the High Court of Justice Organization Act of 14 February 2002 instituted exceptional legal proceedings in respect of any proceedings against the President of the Republic.

247. The Indictment Division, as an ordinary court, cannot extend its jurisdiction to investigating and prosecuting a Head of State for acts allegedly committed during his or her time in office.

248. Therefore, the lack of jurisdiction must also exist in respect of the extradition request, since legal proceedings can only be instituted after basic inquiries have been made, which include having the accused appear in court and be questioned. Moreover, given that the extradition itself would be the result of legal proceedings and enforcement measures delegated by the requesting State to the State receiving that request, it must, at every stage of the judicial process, comply with the rules governing the competence and structure of criminal courts, which are a bastion of national sovereignty. Mr. Hissène Habré’s immunity does not exempt him from criminal responsibility, however, but is merely procedural in nature, as in the case of the arrest warrant issued for Yoro Abdoulaye Ndongbassi on 14 February 2002 by the International Court of Justice in the case involving the Democratic Republic of the Congo and Belgium.

249. This immunity remains in place even after a president ceases to hold office, regardless of his or her nationality or of the existence of any mutual assistance treaty.

250. It may be inferred from these comments that the Indictment Division lacks jurisdiction over cases concerning the legality of proceedings against a Head of State or the validity of an arrest warrant issued for a Head of State.”

251. In the light of that decision, Senegal referred the case to the African Union, which, on 2 July 2006, pursuant to the recommendations of a committee of eminent African jurists appointed in January 2006, requested Senegal to try Mr. Hissène Habré on behalf of Africa.

252. The request of the African Union was set forth in its decision 127(VII) (Doc.Assembly/AU/3), which states that it:

- “Consider[ed] the Hissène Habré case as falling within the competence of the African Union
- Mandates the Republic of Senegal to prosecute and ensure that Mr. Hissène Habré is tried, on behalf of Africa, by a competent Senegalese court with guarantees for [a] fair trial
- Further mandates the Chairperson of the Union, in consultation with the Chairperson of the Commission, to provide Senegal with the necessary assistance for the effective conduct of the trial
- Requests all the Member States to cooperate with the Government of Senegal on this matter
- Calls upon the international community to avail its support to the Government of Senegal”

253. Prior to the African Union’s adoption of this position, the complainants who had referred the case to the senior examining judge of the Dakar special regional court had, on 18 April 2001, also submitted a complaint to the Committee against Torture under article 22, paragraph 7, of the Convention against Torture. The Committee submitted its recommendations to the Government of Senegal on 17 May 2006.

254. The Committee, drawing on all of the aforementioned legal decisions, recalled that, in accordance with article 5, paragraph 2, of the Convention, “each State Party shall [...] take such measures as may be necessary to establish its jurisdiction over such offences in

cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him [...]”.

255. The Committee noted that: “... in its observations on the merits, the State party has not contested the fact that it had not taken ‘such measures as may be necessary’ in keeping with article 5, paragraph 2, of the Convention, and observes that the Court of Cassation itself considered that the State party had not taken such measures. It also considers that the reasonable time frame within which the State party should have complied with this obligation has been considerably exceeded.”

256. The Committee also recalled that: “under article 7 of the Convention, ‘the State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution’”.

257. “It notes that the obligation to prosecute the alleged perpetrator of acts of torture does not depend on the prior existence of a request for his extradition. The alternative available to the State party under article 7 of the Convention exists only when a request for extradition has been made. The State party has the power to choose between proceeding with extradition and submitting the case to its own judicial authorities for the institution of criminal proceedings, the objective of the provision being to prevent any act of torture from going unpunished.”

258. The Committee concluded that: “... the State party cannot invoke the complexity of its judicial proceedings or other reasons stemming from domestic law to justify its failure to comply with these obligations under the Convention.”

259. In addition, the Committee, acting under article 22, paragraph 7, of the Convention, found that “the State party has violated article 5, paragraph 2, and article 7 of the Convention”.

260. It also noted that: “In accordance with article 5, paragraph 2, of the Convention, the State party is obliged to adopt the necessary measures, including legislative measures, to establish its jurisdiction over the acts referred to in the present communication.”

261. It went on to say that: “Moreover, under article 7 of the Convention, the State party is obliged to submit the present case to its competent authorities for the purpose of prosecution or, failing that, to comply with [an extradition] request, or, should the case arise, with any other extradition request made by another State, in accordance with the Convention.”

262. It also stated that: “This decision in no way influences the possibility of the complainants’ obtaining compensation through the domestic courts for the State party’s failure to comply with its obligations under the Convention.”

263. “Bearing in mind that, in making the declaration under article 22 of the Convention, the State party recognized the competence of the Committee to decide whether or not there has been a violation of the Convention, the Committee wishes to receive information from the State party within 90 days on the measures it has taken to give effect to its recommendations.”

264. The State of Senegal has taken note of the decision.

265. Following the decision of the African Union, President Abdoulaye Wade made a solemn vow before his peers to have Mr. Hissène Habré prosecuted in Senegal.

266. This strong political commitment reaffirms the legal obligations entailed by the Convention against Torture, which Senegal ratified on 21 August 1987 and which is the legal basis for the proceedings against Mr. Hissène Habré.

267. On 23 November 2006, the Minister of Justice set up a committee to examine the matter and to propose the necessary legislative and institutional reforms.

268. Furthermore, the President of the Republic reiterated this undertaking at the official inauguration of the new judicial year on 10 January 2007.

269. All the necessary substantive and procedural legislative amendments have now been made to give full effect to the provisions of the Convention and to ensure that Mr. Hissène Habré can have a just, fair and speedy trial in Senegalese courts presided over by Senegalese judges.

#### **Legislative reforms (see the first part of the present report for details)**

270. Various pieces of legislation have been passed which amend, introduce and repeal certain provisions of the Criminal Code and the Code of Criminal Procedure.

271. Act No. 2007-02 of 12 February 2007 incorporated articles 431-1, 431-2, 431-3, 431-4 and 431-5 into our Criminal Code. These articles deal with genocide, crimes against humanity, war crimes and other crimes under international law, such as those mentioned in the Hague Conventions of 1954, 1976 and 1980, which had not previously been specified in the Code.

272. Article 4 of the present Code notwithstanding, article 431-6 of the Criminal Code provides that perpetrators of the offences covered in articles 431-1 to 431-5 may be tried and sentenced for an act or omission which, at the time and place that it was committed, constituted a criminal offence according to the general principles of law recognized by the community of nations, regardless of whether or not it constituted a crime under the law in force at that time and place.

273. Article 669 of the Code of Criminal Procedure has been amended to read as follows: “Any foreign national who, outside the territory of the Senegal, is accused of perpetrating or acting as an accomplice to one of the crimes mentioned in articles 431-1 to 431-5 or a crime or offence mentioned in articles 279-1 to 279-3 or 295 of the Criminal Code may be tried under Senegalese law or laws applying in Senegal, or if the Government secures that person’s extradition.”

274. Article 664 bis was added to title 12 of the fourth book of the Code of Criminal Procedure and is worded as follows: “The domestic courts are competent to try any crime or offence punishable under Senegalese law that was committed outside the territory of the Republic, whether by a Senegalese or a foreign national, if the victim was a Senegalese national at the time that the crime or offence in question was committed.”

275. No amendment was introduced to criminalize torture, as article 295-1 of Act No. 96-15 of 28 August 1996 already defines that offence and prescribes the corresponding penalties.

#### **Jurisdiction to try Mr. Hissène Habré**

276. The assize court is the competent criminal court to try Mr. Hissène Habré. In an effort to expedite the proceedings, the court will be permitted to dispense with a jury, and simplified rules of procedure designed to reduce delays and procedural costs is currently in the process of being adopted by Parliament.

277. Following the recommendations of the European Union, which is working in partnership with Senegal on this case, the Minister of Justice appointed a high-ranking

Senegalese judge to coordinate all aspects of the trial. He also granted the request of non-governmental human rights organizations that they be allowed to play an active part in the process.

#### **Funding for the trial of Mr. Hissène Habré**

278. The African Union has requested the African and international communities to support Senegal in sharing the financial burden of Mr. Hissène Habré's trial.

279. Since ensuring that the trial of Mr. Hissène Habré takes place under the proper conditions will require significant financial resources, the Senegalese authorities took steps early on to identify all foreseeable financial requirements.

280. To that end, an accounting and auditing firm, the Compagnie Internationale de Conseil et d'Expertise (CICE), which was tasked with drawing up a provisional budget, estimated the required operating budget at CFAF 11.5 billion and the capital budget at CFAF 6.4 billion, based on the assumption of a 60-day trial.

281. In the light of the recommendations contained in the report of the European Union experts who were on mission in Dakar from 20 to 25 January 2008, the Department of Justice requested the firm to adjust certain time and cost parameters.

282. Lastly, it should be noted that the Senegalese authorities are fully aware of the need for Senegal to contribute financially to the trial, especially since its investigative stage is about to begin, and have earmarked CFAF 1 billion of the 2008 budget for that cause.

283. The Government of Senegal notes with satisfaction that it has acted in a timely manner upon the decision taken by the Committee against Torture on 17 May 2006 following its consideration of communication No. 181/2001, as submitted by Chadian nationals, and that it has responded to the concerns expressed and the recommendations made by the Committee during its consideration of the previous periodic report of Senegal in 1996.

284. The Government of Senegal hereby reiterates its solemn undertaking to do everything in its power to promote a society built on justice and to contribute to the international effort to combat torture in all its forms.

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