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**UPR Submission
Senegal
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This submission highlights shortcomings in Senegal's human rights record related to its treatment of lesbian, gay, bisexual, and transgender (LGBT) people. It is based on research conducted by Human Rights Watch in Senegal in 2009 and 2010, and on follow-up telephone interviews conducted in 2012 and 2013.

Our 2010 report, "Fear for Life: Violence against Gay Men and Men Perceived as Gay in Senegal" documented numerous incidents of human rights abuses against gay men, including torture and ill-treatment at the hands of the Senegalese police, arbitrary arrest, and discrimination in access to justice.¹ Abuses against lesbians and other sexual and gender minorities have been less thoroughly documented, but lesbian activists have reported to Human Rights Watch that lesbian and bisexual women, too, suffer violence and discrimination.

In a number of cases, police arrest men who are perceived to be gay and charge them with "unnatural acts" under article 319.3 of the Penal Code. The article reads: "Whoever will have committed an improper or unnatural act with a person of the same sex will be punished by imprisonment of between one and five years and by a fine of 100,000 to 1,500,000 francs. If the act was committed with a person below the age of 21, the maximum penalty will always be applied."

On October 11, 2012, police arrested Jupiter Tamsir Ndiaye and Mactar Diop Diagne and charged them with "unnatural acts" – also charging Ndiaye with assault – after a fight between the two men, allegedly a dispute over payment for sex, attracted the attention of security guards. The Dakar Standing Court (*Tribunal des flagrants délits*) convicted both men and sentenced them to three years in prison for "unnatural acts," with Ndiaye receiving an additional year for assaulting Diop with a knife. They are both appealing their sentences.

Assault is a serious matter that should be punished by law. However, the case highlights one of the ironies of Senegal's justice system: had he not been caught, Diop, a victim, might not have pressed charges against Ndiaye for assault out of fear of being prosecuted himself. His conviction demonstrates that such fears would have been warranted. Thus, article 319.3 limits access to justice for LGBT crime victims.

Arrests also take place even in the absence of any evidence that a crime has been committed. During the February 2009 UPR, member states raised concerns about several such incidents. In one case, in December 2008, police arrested nine men in Mbao who were attending a training on HIV/AIDS prevention. The men later told Human Rights Watch that police tortured them.² The men were convicted in January and sentenced to eight years in prison, exceeding the maximum sentence of five years provided for by law. Previously, in February 2008, police arrested 19 men in Dakar based on allegations that they had attended a "gay marriage." One of the men told Human Rights Watch that police threatened to kill the men, and ill-treated them in custody before releasing them. Several fled into exile out of fear of retribution by both the authorities and citizens.³

During the 2009 UPR, Senegal gave no clear position in response to recommendations related to these incidents, including the recommendations that Senegal decriminalize homosexual conduct, that it release

people imprisoned on the basis of their sexual orientation, and that it investigate and punish abuses committed by law enforcement officials against sexual and gender minorities. Human Rights Watch recognizes that in both of the above cases, state actors played a role in ensuring relatively positive outcomes: by overturning the conviction, in the former case, and by ultimately releasing the men without charge, in the latter. However, we are unaware of any actions taken by the Senegalese authorities to hold the police or citizens engaged in acts of discrimination and abuse accountable for their conduct.

The Senegalese authorities have further failed to protect gays and lesbians in Senegal by failing to prevent or punish incitement to violence, including public remarks made by religious leaders and politicians who have called for the killing of homosexuals. For example, in 2009, the late Serigne Modou Bousso Dieng, one of Senegal's most prominent marabouts, told the media, speaking of homosexuality, "We must look for these criminals and kill them publicly and I will be at the forefront!"⁴ As far as Human Rights Watch is aware, no action was taken against him, nor against any other religious leaders implicated in incitement to violence.

The Senegalese health authorities have undertaken noteworthy efforts to ensure that prevention and treatment efforts reach men who have sex with men (MSM), including through the passage of the 2010 HIV/AIDS Law, which makes specific reference to MSM as a vulnerable group and calls for their protection, and through the establishment of a committee focused on MSM health issues. However, fear of arrest and prosecution has prevented gay men from accessing essential services, including HIV/AIDS prevention and treatment.

The Senegalese government has an obligation to protect the basic rights of all citizens, including lesbian, gay, bisexual and transgender people. To do so, it should undertake the following:

Recommendations:

- *Decriminalize consensual same-sex conduct by removing article 319.3 from the Penal Code.*
- *Pass anti-discrimination legislation that protects individuals from discrimination on the basis of sexual orientation.*
- *Through the National Human Rights Commission, monitor cases violence and incitement to violence on the basis of sexual orientation or gender identity.*
- *Investigate and prosecute state agents and civilians, including religious leaders, who have engaged in violence or incitement to violence against LGBT people.*
- *Publicly condemn incitement to violence against LGBT people.*
- *Order the police to cease all arbitrary arrests and violence against LGBT people.*
- *Fully implement the 2010 HIV/AIDS law by scaling up HIV/AIDS outreach programs for men who have sex with men (MSM) and ensuring that MSM can access health services in a safe environment, free from stigma, discrimination, or the threat of arrest.*

¹ Human Rights Watch, *Fear for Life: Violence against Gay Men and Men Perceived as Gay in Senegal*, November 2010, <http://www.hrw.org/reports/2010/11/30/fear-life-0>.

² *Ibid.*, pp. 25-31.

³ *Ibid.*, pp. 15-18.

⁴ *Ibid.*, p. 67.