



# SENEGAL

## AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW

### 31ST SESSION OF THE UPR WORKING GROUP, OCTOBER- NOVEMBER 2018

#### FOLLOW-UP TO THE PREVIOUS REVIEW

##### **Freedom of expression**

Senegal accepted recommendations to respect and protect the right to freedom of expression and in particular to decriminalize press offenses.<sup>1</sup> In its response to the recommendations, Senegal noted: “The decriminalization of press offences is a key provision of the draft Code on the Press in Senegal, which was drawn up in conjunction with the relevant stakeholders”.<sup>2</sup> Despite this clear commitment, the new Press Code, adopted in 2017, maintains the criminalization of press offences.<sup>3</sup> Senegal has also adopted other legal instruments which further undermine the right to freedom of expression, including the 2016 Law revising the Criminal Code. Several artists and journalists have been arrested and detained over several days solely for exercising their right to freedom of expression.

##### **Freedom of peaceful assembly and excessive use of force**

Senegal supported recommendations to ensure the right to peaceful assembly and to maintain public order without resorting to excessive use of force.<sup>4</sup> Yet Senegal continues to ban peaceful demonstrations, including several demonstrations organized by Amnesty International and other human rights groups, and to use unnecessary and excessive force against peaceful demonstrators.

##### **Torture and other ill-treatment**

Senegal had committed to take concrete measures to combat torture and other ill-treatment, including to review legislation to prohibit the use of statements made under duress or as a result of torture as evidence, and to ensure the definition of torture provided in the Criminal Code is in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>5</sup> Senegal has failed to implement these measures.

##### **Children’s rights**

Senegal accepted dozens of recommendations on children’s rights, including to protect them from forced

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<sup>1</sup> A/HRC/25/4, Recommendations 124.83 – 124.84 (Slovenia, Spain) and 125.16 – 125.18 (Democratic Republic of Congo, France and Greece).

<sup>2</sup> A/HRC/25/4/Add.1, para. 26.

<sup>3</sup> Press Code, Articles 224- 225.

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

<sup>5</sup> A/HRC/25/4, Recommendations 124.28 – 124.33 (Spain, Uruguay, Azerbaijan, Ireland, Maldives).

begging and trafficking.<sup>6</sup> Yet, *talibés*, children forced into begging by Qur'anic school teachers, continue to roam the streets. Between July 2016 and March 2017, the government took 1,500 children off the streets and provided them with temporary shelter. Some were taken to their families or to neighboring countries. However, over 1,000 of children had returned to their traditional Qur'anic boarding schools by July 2017.<sup>7</sup> Official inspections were not conducted in most of these schools, and many children were forced to beg on the streets again. Few investigations into or prosecutions of those responsible for the abuses have been carried out.

### **Women and girls' rights**

Senegal committed to taking measures to promote and protect women's rights, including to end female genital mutilation, early and forced marriage and violence against women.<sup>8</sup> However, Senegal rejected a recommendation to revise its Family Code "in order to put an end to situations of legal discrimination against Senegalese women, especially in terms of their ability to be the head of household (art. 152)".<sup>9</sup> While there has been a decrease in reported cases of female genital mutilation, the Working Group on discrimination against women in law and in practice stated that "25 per cent of women aged 15 to 49 reported having been a victim of excision — a rate that rose to 92 per cent in some localities".<sup>10</sup> According to UNICEF, 31% of girls in Senegal are married by the age of 18.<sup>11</sup> Senegal has failed to remove discriminatory provisions from its Family Code and to revise its Criminal Code to decriminalize abortion, criminalize marital rape and prohibit early and forced marriage.

### **Rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people**

Senegal rejected all recommendations to amend national legislation which currently permits discrimination against minorities<sup>12</sup> and to ensure respect for the human rights of LGBTI people.<sup>13</sup> The authorities have argued that "[b]eing homosexual was not an offence in Senegal and no legal proceedings had been brought against persons based solely on their homosexuality".<sup>14</sup> Yet the Criminal Code continues to criminalize consensual sexual relations between adults of the same sex and people are still subjected to a range of human rights abuses on the basis of their real or perceived sexual orientation or gender identity, including arbitrary arrests, assault, threats and discrimination.

### **Impunity for human rights violations, including in the context of the Casamance conflict**

Senegal rejected recommendations to investigate human violations committed by the security forces and to bring suspected perpetrators to justice, particularly in the context of the Casamance conflict and the 2012 election violence.<sup>15</sup> It justified its decision on the grounds that legal action is already "systematically taken".<sup>16</sup> After protracted legal proceedings, there has been some breakthroughs in a dozen of cases of excessive use of force,

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<sup>6</sup> A/HRC/25/4, Recommendations 124.16, 124.54 – 124.63, 124.67, 124.69, 124.70, 124.104 (Turkey, United Kingdom, United States, Algeria, France, Germany, India, Singapore, South Sudan, State of Palestine, Sudan, Luxembourg, Paraguay, State of Palestine, Austria)

<sup>7</sup> Human Rights Watch, "I Still See the Talibés Begging" - Government Program to Protect Talibé Children in Senegal Falls Short, 11 July 2017, <https://www.hrw.org/report/2017/07/11/i-still-see-talibes-begging/government-program-protect-talibe-children-senegal>

<sup>8</sup> A/HRC/25/4, Recommendations 124.36 – 124.51 (United Kingdom, Australia, Canada, France, Luxembourg, Philippines, Russian Federation, Gabon, Cote d'Ivoire, Algeria, Angola, Argentina, Ecuador, Brazil, Paraguay, Burkina Faso).

<sup>9</sup> A/HRC/25/4, Recommendation 124.12 (Spain).

<sup>10</sup> Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to Senegal, A/HRC/32/44/Add.1, para. 79.

<sup>11</sup> UNICEF, Data on Child Marriage, November 2017, <https://data.unicef.org/topic/child-protection/child-marriage/>

<sup>12</sup> A/HRC/25/4, Recommendation 126.1 (Uruguay).

<sup>13</sup> A/HRC/25/4, Recommendations 126.1 -126.14 (Uruguay, Argentina, Australia, Austria, Belgium, Brazil, Greece, Paraguay, Thailand, Germany, Ireland, Netherlands, Switzerland, Mexico).

<sup>14</sup> A/HRC/25/4, 11 December 2013, para. 60.

<sup>15</sup> A/HRC/25/4, Recommendations 124.14 and 124.15 (Mexico and Spain).

<sup>16</sup> A/HRC/25/4/Add.1, para. 24.

torture and deaths in custody. However, light sentences were handed out most of the time and more than thirty other cases are pending. The authorities have also argued that they were “unaware of any cases of enforced disappearance”. Amnesty International is alarmed by this denial when it has repeatedly reported cases of enforced disappearance to the Senegalese authorities, particularly in the context of the Casamance conflict.<sup>17</sup>

## THE NATIONAL HUMAN RIGHTS FRAMEWORK

### **Freedom of expression**

The new Press Code, adopted by the National Assembly in June 2017, is vaguely worded and provides for custodial sentences for press offences. It allows the Ministers of Interior and of Communication to ban foreign newspapers and periodicals (Article 78), and provides for prison terms and fines for anyone defying the ban (Article 206). It also empowers administrative authorities to order the seizure of property used to publish or broadcast information, to suspend or stop a television or radio program, and to provisionally close a media outlet on national security or territorial integrity grounds (Article 192). Referring to the Criminal Code, it provides for prison sentences for “offending” the head of state, defamation, insults, the transmission or distribution of images contrary to morality and spreading false news (Article 224-225). Article 227 allows for restriction of access to online content deemed to be “contrary to morality”, to “degrade honour” or to be “patently unlawful”.

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

The law revising the Criminal Procedure Code also broadens the investigative powers of the security forces in relation to surveillance and access to computerized data and threatens the right to freedom of opinion and expression, and the right to privacy.

### **Rights to liberty, fair trial and protection from torture**

Amendments to the Criminal Procedure Code violate the right to liberty by extending to 12 days the period that people can be detained before appearing before a judge in terrorism-related cases (Article 677.28). International standards require that anyone arrested is brought promptly before a judge, which in most cases should not exceed a period of more than 48 hours following arrest.<sup>18</sup>

The law revising the Criminal Procedure Code lifts the restriction that a person should only be informed of their right to access a lawyer after the end of their first period of detention, i.e. 24 or 48 hours for crimes and offences against national security or crimes and offences during a state of siege or state of emergency. While this is a positive development, the law still contains other restrictions on the right to access legal counsel which undermine the right to fair trial and the right to be free from torture.

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<sup>17</sup> In particular, see: Amnesty International, Senegal: Land of Impunity (Index: AFR 49/001/2010).

<sup>18</sup> Concluding Observations of the Human Rights Committee, El Salvador, CCPR/SLV/CO/6, para. 14; Reports of the Special Rapporteur on Torture, E/CN.4/2003/68, para. 26(g); A/65/273, para. 75; Conclusions and Recommendations of the Committee against Torture on Venezuela, CAT/C/CR/29/2, para. 6(f); European Court: *Kandzhov v Bulgaria* (68294/01), 2008, para. 66-67

# PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

## **Clampdown on peaceful assembly and excessive use of force**

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

- In July 2017, the security forces used tear gas and batons to repress a peaceful demonstration organized by former President and opposition leader Abdoulaye Wade in the context of legislative elections. The authorities stopped the protest under a 2011 decree banning all assemblies in city centre areas.
- Throughout August 2014, students protested against delays in paying out scholarships at Cheikh-Anta-Diop University in Dakar and there were repeated confrontations with the security forces. One of the students, Bassirou Faye, died after being shot in the head by the police during a demonstration.

## **Freedom of expression**

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

- Ami Collé Dieng, a singer, was arrested in Dakar on 8 August 2017 and charged with "offending the head of state" and "spreading false news" after she shared an audio-recording criticizing the President on WhatsApp. She was released on bail on 14 August.
- On 30 June 2017, journalist Ouleye Mané and three others were arrested for "publishing pictures which offended morality" and "criminal conspiracy" after sharing photographs of the President on WhatsApp. They were released on bail on 11 August 2017.

## **Prison conditions and deaths in custody**

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

Since 2013, Amnesty International has documented at least 11 deaths in custody, including one person who was shot by prison guards during a mutiny at the Rebeuss Prison in 2016, and two persons who died by hanging, according to medical reports.

## **Rights of LGBTI people**

Men and women face arrest and unfair trials because of their suspected engagement in consensual same-sex sexual relationships. Since 2013, Amnesty International has recorded at least 30 arrests on the basis of perceived or real sexual orientation. Senegal has failed to protect LGBTI persons against homophobic violence and to bring the perpetrators to justice.

- In August 2016, the Tribunal of Dakar convicted seven men of committing "acts against nature" and sentenced them to six months' imprisonment and a further 18-month suspended sentence. They had been arrested in July after the police raided an apartment without a warrant. Several newspapers revealed the men's identities and published homophobic and defamatory remarks. Six of them were transferred to a prison in Diourbel, far from their families and support networks who provided them with food and medicine. They were acquitted on appeal and released in January 2017.

## **Impunity for human rights violations**

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

- In June 2016, the police officer who shot Bassirou Faye during a peaceful demonstration at the University Cheikh Anta Diop in Dakar in August 2014 was found guilty of murder and sentenced to 20 years' hard labour and ordered to pay damages to his family;
- In January 2016, the driver of the police vehicle that killed student Mamadou Diop during a peaceful pre-election demonstration in 2012 was sentenced to two years' imprisonment and fined for "assault causing death" and "intentional assault and battery". The co-driver was sentenced to three months' imprisonment for "failure to prevent a crime against physical integrity". The court also ordered the two policemen to pay damages to Mamadou Diop's relatives.

However, Amnesty International also recorded dozens more cases of excessive use of force, deaths in custody and torture in over a decade, including of children, which never resulted in the suspected perpetrators being brought to justice.

Amnesty International is concerned that the 2004 amnesty law<sup>19</sup> grants amnesty for offences committed during the internal conflict in Casamance which has deprived the victims and their families of their right to truth, justice and reparation, in violation of international law and standards.

## RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

### **Amnesty International calls on the government of Senegal to:**

#### *Freedom of expression*

- Amend legislation unduly restricting freedom of expression in line with international and regional human rights law, as Senegal had accepted to do in the 2013 UPR,<sup>20</sup> including in the Criminal Code, the Criminal Procedure Code, the Press Code and the Law on Cyber-criminality;
- Ensure that journalists, opposition leaders, government critics and human rights defenders are able to freely exercise their rights to freedom of expression, association and peaceful assembly without fear of reprisals, arrest, detention, intimidation or harassment.

#### *Freedom of peaceful assembly and excessive use of force*

- Repeal legal instruments providing for blanket bans on peaceful demonstrations, including the 2011 decree banning all demonstrations in parts of the city center of Dakar;
- Amend the legal framework on the use of force and the legislation on assemblies, including the Criminal Code and the 1978 Law on assemblies, to bring them in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the ACHPR Guidelines on Policing Assemblies;
- Provide the security forces with sufficient resources and adequate equipment to police large-scale demonstrations and counter-demonstrations, and effective training in the appropriate and differentiated use of force and weapons, including anti-riot equipment.

#### *Torture and other ill-treatment*

- Revise the Criminal Code, particularly article 295-1 on the definition of torture, as Senegal had accepted to do in the 2013 UPR,<sup>21</sup> to bring it fully into line with article 1 of the Convention against Torture. In particular, include in the definition of acts aimed at obtaining information from, punishing, intimidating or coercing a third person;

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<sup>19</sup> Loi n° 2004-20 en date du 21 juillet 2004 portant loi d'Amnistie.

<sup>20</sup> A/HRC/25/4, Recommendations 124.83 – 124.84 (Slovenia, Spain) and 125.16 – 125.18 (Democratic Republic of Congo, France and Greece).

<sup>21</sup> A/HRC/25/4, Recommendation 124.33 (Maldives).

- Revise the Criminal Procedure Code to bring it in line with international and regional law and standards, including by clarifying that any statement established to be obtained under torture or other ill-treatment cannot be invoked as evidence, as Senegal committed to do in 2013 UPR,<sup>22</sup> and by removing any restrictions to detainees accessing a lawyer of their choice as soon as they are deprived of liberty;
- Ensure that trials in which it has been established that statements have been extracted under torture or other ill-treatment are reviewed in order that those convicted can be retried in accordance with international standards of fair trial;
- Carry out prompt, thorough, independent and impartial investigations into allegations of torture and other ill-treatment during detention and take immediate legal action, whenever there is sufficient admissible evidence, against all persons suspected of committing torture and other ill-treatment, as Senegal committed to do in 2013 UPR.<sup>23</sup>

#### *Children's rights*

- Enforce domestic laws criminalizing forced begging, trafficking of children and child abuse by systematically investigating cases of children being exploited into forced begging and bringing the suspected perpetrators to justice in accordance with fair trial standards, as Senegal had accepted to do in the 2013 UPR.<sup>24</sup>

#### *Women and girls' rights*

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

#### *Rights of lesbian, gay, bisexual, transgender and intersex people*

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

#### *Prison conditions and deaths in custody*

- Develop and implement a strategy to reduce prison overcrowding, as Senegal had accepted to do in the 2013 UPR,<sup>25</sup> particularly by substituting detention with non-custodial measures;

<sup>22</sup> A/HRC/25/4, Recommendations 124.28 – 124.33 (Spain, Uruguay, Azerbaijan, Ireland, Maldives).

<sup>23</sup> A/HRC/25/4, Recommendations 124.28, 124.30 (Spain, Uruguay).

<sup>24</sup> A/HRC/25/4, Recommendations 124.16, 124.54 – 124.63, 124.67, 124.69, 124.70, 124.104 (Turkey, United Kingdom, United States, Algeria, France, Germany, India, Singapore, South Sudan, State of Palestine, Sudan, Luxembourg, Paraguay, State of Palestine, Austria)

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

- Ensure that all persons deprived of liberty are held in humane conditions, including in line with the UN Basic Principles for the Treatment of Prisoners, the Standard Minimum Rules for the Treatment of Prisoners, and the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, as Senegal had accepted to do in the 2013 UPR,<sup>26</sup> particularly by ensuring that all detainees have access to sufficient food and drinkable water, adequate sanitary facilities and medical treatment;
- Promptly, thoroughly, independently and impartially investigate all deaths in custody and bring those suspected to be responsible for the deaths, including by negligence, to justice in a fair trial.

*Impunity for human rights violations*

- Make enforced disappearance a crime under national law and ensure the definition of enforced disappearance is in line with Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance;
- Ensure that amnesties, pardons and similar measures of impunity do not bar the investigation and prosecution of crimes under international law and take steps to ensure that victims have access to truth justice and adequate reparations. In particular, amend the 2004 amnesty law to that effect;
- Carry out prompt, thorough independent and impartial investigations into all cases of human rights violations, including in the context of the Casamance conflict, and bring those responsible to justice in a fair trial.

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<sup>26</sup> A/HRC/25/4, Recommendations 124.35 (France).