



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

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## Committee against Torture

Forty-fourth session

26 April–14 May 2010

### List of issues prior to the submission of the third report of Senegal (CAT/C/SEN/3)\*

### Specific information on the implementation of articles 1 to 16 of the Convention, including action on the Committee's previous recommendations

#### Articles 1 and 4

1. In light of the Committee's previous concluding observations<sup>1</sup> (para. 114 (a)), please indicate whether the definition of torture adopted by the State party includes all the elements set forth in article 1 of the Convention. Please also indicate whether the State party has adopted provisions criminalizing acts of torture and appropriate penalties which take into account the grave nature of such acts. Finally, please specify the penalties prescribed.

2. Please indicate the status of the Convention in the national legal system. Please also specify whether the Convention is directly applicable and whether there have been cases in which it has been applied by national courts. If it has, please provide information on this, including the number of convictions and the sentences handed down.

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\* The present list of issues was adopted by the Committee at its forty-fourth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

<sup>1</sup> Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol A/51/44.

**Article 2<sup>2</sup>**

3. Please provide information on the measures introduced to ensure that persons arrested or held in police custody for up to 24 hours have the right of access to a lawyer and to an independent doctor of their choice, the right to be informed of the reasons for their arrest or detention, and the right to notify their families of their arrest or detention.
4. According to information received by the Committee, only persons accused of serious offences have the right to the mandatory assistance of a legal counsel. Please provide information on the steps being considered to ensure that anyone accused of an ordinary offence is able to have the assistance of a legal counsel, following the recommendation made by the Working Group on Arbitrary Detention.
5. Please provide information on the measures taken to avoid prolonged detention in police custody on the authority of the public prosecutor or his or her deputy, without the individuals concerned having seen a lawyer or been brought before a judge who can decide on the legality of their detention. According to information received by the Committee, the time taken to bring a criminal case before a court is still very long and in breach of the provisions of the Code of Criminal Procedure of the State party. Please indicate the measures taken or envisaged to ensure that a person accused of a criminal offence is the subject of an objective investigation and brought as soon as possible before a court if his or her responsibility is established. Please also indicate the measures taken to avoid recourse to the practice, known as "*retour de parquet*", that allows persons already brought before the government prosecutor's office but whose files the public prosecutor has not had time to see, due to the caseload before the courts, to be detained in police stations.
6. According to information received by the Committee, cases of torture persist in places of detention, particularly police stations. Please indicate the measures taken by the State party to prevent cases of torture in places of detention and to send a clear message to law enforcement officials that violence and ill-treatment are unacceptable.
7. Please indicate when the State party intends to enact the bill that will set up a national mechanism for the prevention of torture. Please also specify the contents of this bill, and the mandate and workings of this future mechanism.
8. According to information received by the Committee, the legislation on the status of judges and the law on the Judicial Service Commission restrict the independence of judges, in particular the principle of security of tenure of judges and the involvement of the government authorities in selecting members of the Judicial Service Commission. Please indicate the measures taken by the State party to ensure the independence of the judiciary.
9. Please indicate the measures taken by the State party to provide the Senegalese Human Rights Committee with sufficient human and financial resources for it to operate, in accordance with the Paris Principles, in particular to carry out investigations into human rights violations covered by its mandate.

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

10. Please indicate the measures taken or envisaged by the State party to encourage criminal lawyers to establish a presence in the most remote areas of the country and increase the number of judges in departmental and regional courts.

11. According to information before the Committee, female genital mutilation continues to be practised in the State party with impunity. Please indicate what steps have been taken by the State party to enforce Act No. 99.03 of January 1999 making female genital mutilation a crime. Please give details of specific cases, if any, where the Act has been applied. Please also indicate whether other measures, such as awareness-raising campaigns on prohibition of female genital mutilation, have been carried out by the State party to sensitize the population on the negative impact of female genital mutilation.

12. According to information before the Committee, violence against women, including rape, is widespread in the State party despite the legislation which criminalize it. Please indicate the measures taken to ensure the enforcement of the legislation, in particular to guarantee that victims can lodge complaints and those responsible be prosecuted, convicted and punished. Please also indicate the measures of protection, redress and rehabilitation offered to women who are victims of violence. Please also provide information on what other measures have been taken to raise awareness among the population on this issue. Please indicate whether those responsible for domestic violence are prosecuted, convicted and punished.

13. Please also provide information on the remedies available to women who suffer violence, the protection offered and the structures in place, the numbers of complaints, investigations, prosecutions and convictions, and the sentences handed down by the State party in this regard. Lastly, please indicate whether the State intends to launch any publicity campaigns on the issue of violence against women.

14. Please indicate the measures taken by the State party to give full effect to Act No. 2005-02 on action to combat violence against children, including sexual abuse and trafficking in persons, and specify the provisions in Criminal Code protecting young girls and boys against sexual exploitation. Please also indicate measures taken to protect children who are victims of violence, as well as to reintegrate children subject to trafficking. Please provide information on number of complaints lodged and prosecutions of perpetrators and their outcomes. Finally, please indicate whether the State intends to adopt additional prevention and protection measures.

### **Article 3**

15. Please indicate which countries, if any, have submitted requests to the State party for extradition under article 3 of the Convention and what action was taken on them.

16. Please also indicate the number of extradition requests, if any, submitted by the State party and the countries to which they were addressed.

17. Please provide information on the specific legal guarantees in the State party relating to the principle of non-refoulement and their application in practice. Please also provide examples, if any, of cases in which the State party has declined to extradite, return or remove a person for fear that he/she might be tortured in the country to which he/she was extradited, returned or removed. Please indicate which body takes the decision to extradite, return or remove a person, what means of recourse are available and the procedure whereby persons to be extradited, returned or removed may avail themselves of such recourse.

18. Please provide data, if any, by age, sex and nationality for the period since the consideration of the most recent report, namely, since 1996, on:

- (a) The number of asylum applications registered and accepted;

(b) The number of applicants whose asylum application has been accepted on the basis of torture they have suffered or because they could be subjected to torture if they were returned to their country of origin; or for other concurrent reasons;

(c) The number of persons removed, expelled, deported, returned or extradited, the countries of destination concerned and the means used by the State party to ensure that such persons are not at risk of being subjected to torture in the country of destination.

19. Please indicate whether the State party has asked for and received diplomatic assurances from States to which the person is extradited or otherwise delivered.

20. Please provide information on the situation of more than 20.000 undocumented Mauritians, who have been for a long time, refugees in Senegal and on their possible repatriation.

### **Articles 5, 6, 7, 8 and 9**

21. Please indicate whether the State party has rejected, for any reason any request for extradition by another State of an individual suspected of having committed an offence of torture and has started prosecution proceedings against him/her as a result. If it has, please inform the Committee of the current status and the result of this procedure.

22. Please indicate the measures taken by the State party to implement the provisions of article 6 of the Convention and state whether it has had occasion to implement any of these provisions. If so, please state whether the persons concerned enjoyed all the guarantees set out in article 6.

23. Please indicate whether, since its most recent report, the State party has had occasion to use the Convention against torture as a legal basis for the extradition of persons accused of having committed acts of torture. Please also indicate whether the State party has concluded other extradition treaties and with which other countries. Lastly, please quote cases in which extradition has been denied under article 3.

24. Please indicate the measures taken by the State party to establish its jurisdiction over offences of torture in cases where the alleged perpetrator is present in any territory under its jurisdiction and where it does not extradite him or her.

### **Article 10**

25. Please indicate whether education and information regarding the prohibition of torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, particularly at the Judicial Training Centre where judges are trained. If that is the case, please describe these training programmes, their content, the results achieved and the methods for evaluating the programmes.

26. Please specify whether such training is also given to medical personnel who are assigned to identify and document the physical and psychological signs of torture in persons deprived of liberty and responsible for their rehabilitation, in accordance with the Istanbul Protocol. If so, please state by whom such courses are given and the methodology for evaluating such training. Please also indicate whether such training is given to staff who treat victims of torture and their families.

27. Please indicate whether the State party includes the prohibition of torture in the regulations and instructions given in the context of the responsibilities and duties of the persons mentioned in article 10.

### **Article 11**

28. Please provide information on any new rules, instructions, interrogation methods and practices, and new measures introduced concerning the custody of persons detained, arrested or imprisoned since the consideration of the most recent periodic report. Please also indicate how often they are reviewed.

29. Please indicate the measures taken by the State party to address the problem of overcrowding in prisons, particularly in the Reubeus remand prison, the Liberté VI prison camp, the Liberté VI women's remand prison and the Thiès remand prison and detention centre. Please provide official statistics on the overall number of persons held in the remand prisons, prison camps, detention centres, police stations and all other places of detention, and for each place of detention.

30. Please also indicate the measures taken or envisaged to follow up the recommendations of the Working Group on Arbitrary Detention regarding the advisability of investing in prison infrastructure, including modernizing prisons, prison camps and remand prisons and building new facilities.

31. Please indicate the measures taken by the State party to improve the sanitary and hygienic conditions and the diet of persons detained in prisons and other places of detention, particularly with regard to the daily food ration and health care, and specifically detainees' access to a doctor. Please also indicate the measures taken by the State party to prevent torture and ill-treatment in prisons and other places of detention, and to ensure the enforcement of detainees' rights.

32. Please indicate the measures taken by the State party to ensure that untried prisoners are separated from convicted prisoners and adult females from juvenile females in all places of detention.

### **Articles 12 and 13**

33. Please provide complete official statistical data disaggregated by number of complaints lodged, investigations and prosecutions initiated, convictions and sentences handed down for acts of torture or ill-treatment that have taken place in the State party since the most recent report, in particular against members of the security forces and law enforcement officials..

34. According to information received by the Committee, many cases of detainees dying in places of detention in the State party, particularly in Diourbel, Kolda, Mbour, Bignona and Kaolack, remain unpunished to this day. Please indicate the measures taken by the State party to investigate, prosecute and punish those responsible, and also the sentences handed down. Please also indicate the measures taken to investigate the murder allegations against the rebels of the Mouvement des forces démocratiques de Casamance (MFDC) in Casamance, and to prosecute and punish the perpetrators.

35. Please provide information on mechanisms to monitor prisons and other places of detention and indicate whether such mechanisms are authorized to receive complaints from detainees concerning torture and ill-treatment or failure to observe the prison regime. If so, please specify what the procedure is. Please also specify the number of complaints received concerning torture and ill-treatment and their outcomes.

36. Please also indicate the measures taken by the State party to ensure effective judicial supervision of police officers by the Indictments Chamber in the case of criminal offences linked to acts of torture or ill-treatment during a preliminary investigation.
37. Please indicate the measures taken by the State party to guarantee the protection of complainants and witnesses against any intimidation or ill-treatment when they are involved in proceedings in the State party.
38. In its previous concluding observations (para. 117), the Committee considered the amnesty laws in force in the State party to be inadequate for ensuring proper implementation of certain provisions of the Convention. Please indicate the measures taken by the State party to ensure that the development and application of the amnesty laws, particularly the Ezzan Act passed on 7 January 2005, do not prevent the prosecution, sentencing and punishment of individuals found guilty of acts of torture or ill-treatment, or the compensation of victims.
39. Please provide details of:
- (a) Measures taken to put an end to acts of torture and ill-treatment and to ensure that prompt, impartial and effective investigations are conducted into allegations of ill-treatment by law enforcement officials and that those responsible are prosecuted and punished with appropriate penalties. In cases where there are strong grounds for believing that the complaint of torture or ill-treatment is valid, please indicate whether the alleged perpetrator is subject to suspension or reassignment during the investigation;
  - (b) The application of these measures, their impact and their effectiveness in reducing the number of cases of violence and ill-treatment by law enforcement officials.
40. Please indicate what independent mechanisms, if any, are authorized to receive complaints from victims of police torture or ill-treatment, including detainees and human rights defenders, without fear of reprisal, and whether they can initiate the investigation, prosecution, trial and punishment of those responsible.
41. Please indicate what legal or administrative measures have been adopted to guarantee the right to access to justice for persons without economic resources.

## **Article 14**

42. Please provide information on the steps taken by the State party to conduct inquiries and to prosecute and punish security force officials and the perpetrators of torture and ill-treatment in the Casamance conflict. Please indicate what sentences were handed down and what compensation has been granted.
43. Please provide information on the procedures and mechanisms set up by the State party to enable victims of torture or cruel, inhuman or degrading treatment or punishment or their families, particularly those whose relatives have disappeared, to be paid compensation and provided with physical, psychological and social rehabilitation services. Please also specify whether such procedures and mechanisms are accessible to all. Please provide information on the number of cases in which compensation has been awarded and paid to victims and their families, particularly in cases of forced disappearances and the amounts involved.
44. Please indicate when the State party expects to pass the bill, currently being considered by the Ministry of Justice, establishing the redress and compensation due to persons who have spent years in pretrial detention and then been acquitted or sentenced to a prison term shorter than the time spent in pretrial detention.

## Article 15

45. In its previous concluding observations (para. 114(d)), the Committee recommended that the State party prohibit evidence from being obtained by torture and prohibit any statement shown to have been extracted in this way from being used as evidence in any proceedings. Please indicate the measures taken by the State party to give effect to this recommendation and bring its legislation into line with article 15 of the Convention. Please indicate whether there have been cases where evidence obtained by torture has been rejected.

## Article 16

46. According to information before the Committee, nine men arrested on 19 December 2008 were sentenced on 7 January to eight years of imprisonment on the basis of their homosexuality. Please indicate measures taken by the State party to fight against discrimination based on sexual orientation, as well as legal norms to decriminalize homosexuality.

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

48. According to information received by the Committee, many cases of child abuse go unpunished. Please indicate what the State party has done to prevent and punish all cases of child abuse. Please also indicate whether the State party has set up a mechanism to uphold children's rights under existing legislation.

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

## Other issues

50. Please provide information on how the decision of the Committee against torture in the case of *Suleymane Guengueng et al. v. Senegal*, of 17 May 2006 has been put into effect, particularly in relation to the issues raised in the note verbale sent by the Secretariat to the State party on 23 November, following the forty-third session of the Committee.

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

**General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention**

52. Please provide detailed information on any relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the last periodic report, including any relevant decisions by the courts, together with statistics.

53. Please provide detailed information on any new political, administrative and other measures taken to promote and protect human rights at the national level since the last periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

54. Please provide any other information on new measures and initiatives taken to implement the Convention and the Committee's recommendations since the consideration of the last periodic report in 1996, including the relevant statistical data, as well as on any events that have occurred in the State party that are relevant under the Convention.

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