

Distr.: General  
23 March 2010  
Arabic  
Original: French



## مجلس حقوق الإنسان

الدورة الثالثة عشرة

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

### تقرير الفريق العامل المعني بالاحتجاز التعسفي\*

الرئيس - المقرر: الحاج مالك سو

### الزيارة إلى جمهورية السنغال\*\*

موجز

قام الفريق العامل بزيارة إلى جمهورية السنغال في الفترة من ٥ إلى ١٥ أيلول/سبتمبر ٢٠٠٩ تلبيةً لدعوة من الحكومة. وقد اجتمع خلالها بالعديد من المسؤولين في السلطات التنفيذية والتشريعية والقضائية، واللجنة السنغالية لحقوق الإنسان ومجلس نقابة المحامين والجهات الفاعلة في منظمات المجتمع المدني ومثلي وكالات الأمم المتحدة.

وزار الفريق العامل الإصلاحيات ومخافر الشرطة في تيبس وسانت لويس ومركز الطب النفسي التابع لمستشفى فان الجامعي في داكار. كما أجرى مقابلات خاصة، دون شهود، مع محتجزين في سجن ريبوس المركزي "Rébeuss" وسجن Camp Pénal في داكار. كما زار الفريق سجن النساء "Liberté VI".

\* تأخر تقديم الوثيقة.

\*\* يعمم موجز هذا التقرير بجميع اللغات الرسمية. ويعمم التقرير، الوارد في مرفق الموجز، والتذييلات باللغة التي قُدِّمت بها وباللغة الإنكليزية.

ويتناول هذا التقرير الإطار المؤسسي والتشريعي المتعلق بالحرمان من الحرية وبحقوق الإنسان منذ استقلال السنغال في عام ١٩٦٠. ويشير إلى الإصلاحات الكبيرة التي تمت في المجالين المؤسسي والتشريعي، وذلك بصورة أساسية في الأعوام ١٩٨٤ و١٩٩٢ و٢٠٠٨.

وقد أنشئت مؤسسة وطنية لحقوق الإنسان في عام ١٩٨٧، كما أنشأت الحكومة في عام ٢٠٠٤ مكتب المفوضية السامية لحقوق الإنسان وتعزيز السلم التابع للأمانة العامة لرئاسة الجمهورية. ويشيد الفريق العامل أيضاً بالجهود التي تبذلها الدولة من أجل تحسين ظروف عمل القضاة والمحامين وتعزيز سلطاتهم وإصلاح نظام المساعدة القضائية. ويعرب عن تأييده التام لمشروع القانون المتعلق بتعويض الأشخاص الذين تعرضوا للاحتجاز رهن المحاكمة لفترات طويلة.

وبالرغم من أن الحكومة قد شرعت في إجراء إصلاحات قضائية واسعة النطاق، أدت إلى نتائج إيجابية للغاية، يلاحظ الفريق العامل وجود أوجه قصور في المجال التشريعي. وأعرب الفريق خلال الزيارة عن قلقه إزاء انتهاكات الحق في حرية التعبير والرأي التي تمثلت في احتجاز صحفيين والاحتجاز بسبب الميول الجنسية. ومن المأمول أيضاً بذل جهود في مجال قضاء الأحداث، ولا سيما فيما يتعلق بالدفاع عنهم.

ويعطي الفريق العامل الأولوية في التوصيات التي قدمها لتحسين وكفاءة الحق في الدفاع؛ وتقليص فترة الاحتجاز رهن المحاكمة والقضاء على الأوضاع السيئة في مرافق الاحتجاز.

ويدعو الفريق العامل المجتمع الدولي، ومجلس حقوق الإنسان على وجه الخصوص، إلى تقديم الدعم التقني والمالي اللازم لتعزيز القدرات الوطنية للسنغال في مجال حماية حقوق الإنسان، ولدعم عملية الإصلاحات التي شرعت الحكومة في تنفيذها.

## Annex

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## I. Introduction

1. The Working Group on Arbitrary Detention, established pursuant to the former Commission on Human Rights resolution 1991/42 and whose mandate was confirmed and extended by resolution 6/4 of the Human Rights Council, conducted a country mission to the Republic of Senegal from 5 to 15 September, at the invitation of the Government. The delegation comprised two of the Working Group's members: Professor Aslan Abashidze (of the Russian Federation) and Mr. Roberto Garreton (of Chile), accompanied by the Secretary of the Working Group, another official from the Office of the High Commissioner for Human Rights in Geneva and two interpreters.
2. The visit included the capital, Dakar, and the towns of Thiès and Saint-Louis. The Working Group regrets that, for logistical and security reasons, it was not able to visit the southern region of Casamance. The floods and consequent road blocks that occurred during the mission also prevented its planned visit to the town of Kaolack.
3. The Working Group would like to thank the Government for the invitation, which it feels attests to the Government's willingness to take part in an independent and objective evaluation of the conformity with the relevant international norms of Senegalese legislation and practice in relation to deprivation of liberty.
4. Throughout the mission, the Working Group enjoyed the full cooperation of the Government regarding access to prisons, detention centres and police stations. All the Senegalese authorities involved were given sufficient advance notice of visits. However, during the visit to the main police station in Dakar, the Superintendent who had been contacted and officially assigned to take care of the Working Group during its visit was urgently called away for reasons of national security. In the end, the Group was received by his closest-ranking colleague. At the psychiatric clinic of the Fann University Hospital, the Working Group realized that some doctors had not been informed in advance of its visit.
5. The Working Group thanks the Senegalese Human Rights Committee and all the non-governmental representatives that it met, particularly the detainees, for their valuable contributions. It also thanks the OHCHR West Africa Regional Office for its help and assistance.

## II. Programme of the visit

6. The Working Group met the Minister of Foreign Affairs; the Minister of the Interior; the Minister of Justice; the Minister of the Armed Forces; the Minister of Health, Prevention and Hygiene; the Commission on Human Rights of the National Assembly; the Defence and Security Commission of the Senate; the President of the Supreme Court of Justice, judges and prosecutors of the Supreme Court, the Dakar Court of Appeal and the regional courts; officials representing departments of the criminal investigation police, the State security service and the territorial security service; the director of the psychiatric clinic of the Fann University Hospital in Dakar; and representatives of the Prison Service Administration. Owing to time constraints, the Working Group was unable to meet with the Minister of State, the Minister of the Armed Forces and the parliamentary authorities.
7. The Working Group was also able to meet with the members of the Senegalese Human Rights Committee, the National Bar Association, and representatives from several civil society organizations and the African Assembly for the Defense of Human Rights (RADDHO), in all of the towns visited.

8. In Dakar, the Working Group visited the main prison, the *Camp Pénal* facility, the *Liberté VI* detention facility for women and the psychiatric clinic at the Fann University Hospital. In Thiès and Saint-Louis, the delegation visited the detention and correctional facilities and the police stations.

### **III. Institutional and legal framework**

#### **A. Institutional framework**

##### **1. The political system**

9. Senegal is a secular, democratic and social republic. It respects all beliefs and guarantees the equality of all citizens before the law, without distinction as to origin, race, sex or religion. The First Constitution dates from 1959. It was revised in 1960, following a referendum. Several revisions were to follow, notably that of 1963, which established the pluralist presidential regime. The latest version dates from 2001. According to articles 3, 26 and 27 of the 2001 Constitution, the President of the Republic is elected by universal suffrage for a seven-year period of office, renewable for one further term. The President is the guardian of the Constitution, holds executive power and presides over the Council of Ministers (arts. 42, 45 and 49).

10. Legislative power is vested in the Parliament, which is composed of two assemblies of representatives: the Senate and the National Assembly. The 150 deputies of the National Assembly are elected for five years by direct universal suffrage. The Senate represents the communes and departments and those Senegalese living outside the national territory. The number of senators is fixed at 100, of whom 35 are elected in the departments and 65 are appointed by the President of the Republic, four of whom represent Senegalese living abroad. Senators are elected for five years by indirect universal suffrage (arts. 59, 60 and 61). Article 88 of the Constitution establishes the principle of the independence of the judiciary from the legislative and executive branches of government.

##### **2. The judicial system**

11. Under article 91 of the Constitution, the judiciary is the guardian of the freedoms defined by the Constitution. The 1992 reform led to the splitting of the judiciary into several specialized courts, namely the Constitutional Council, responsible for ensuring respect for the Constitution; and the Court of Cassation and Council of State, responsible for monitoring and advising the administration. The Organization Act of 8 August 2008, the latest reform, created the Supreme Court of Senegal, which brought together the Court of Cassation and the Council of State.

12. The judicial system is organized as a pyramid structure with the courts of first instance at the base, the courts of second instance (courts of appeal, courts of assize, regional courts and departmental courts) in the middle and the Supreme Court at the top. In addition, there are specialized courts: labour courts, juvenile courts and courts of military justice. The High Court of Justice has the authority to try the President of the Republic for high treason and ministers in cases of treasonable conspiracy.

13. The Minister for Justice is the most senior official in charge of all sectors of the judicial system. This includes areas such as planning, recruiting judges, managing staff and

material resources, supervising court officials and overseeing the general inspectorates of the justice system. He is also directly involved in monitoring discipline within the judiciary.

14. The Minister for Justice is thus the official ultimately in charge of the administration of justice. Each court and prosecution service functions under a decentralized administration supervised by the President of the court and the prosecutor. At court level, there is no qualified official specifically responsible for supervising the administration of the court or the prosecution service. The task falls to the President of the court or the chief prosecutor, who combine their work as judges with administrative functions.

15. The independence of the judiciary is guaranteed in the Constitution and the law on the status of the judiciary (Organic Law No. 2005.21 of 5 August 2005). Article 88 of the Constitution establishes the judiciary as independent of the executive branch: article 90, paragraph 2, states that judges, in the exercise of their functions, are subject only to the authority of the law. The Higher Council of the Judiciary is the body responsible for guiding judges' careers and ensuring that discipline is maintained within the judiciary. However, for reasons of autonomy and in terms of its functioning, the Council is under the authority of the executive branch.

16. The main guarantee of the independence of the judiciary resides in the procedure for the appointment of judges. According to article 47 of the Statute of the Judiciary, judges are recruited either through direct competition or on the basis of qualifications. The direct competition is open to Senegalese citizens who hold a master's degree in jurisprudence, are no older than 40 years old, of good character, enjoy full civil rights and fulfil the physical requirements required for the exercise of the function. Admission on the basis of qualifications is open to lawyers who are members of the Bar Association, admitted under oath at least ten years previously; to chief registrars who have held a Master's in Law for ten years; and to professors of jurisprudence with over ten years of experience.

17. Judges are appointed by the President of the Republic on the advice of the Higher Council of the Judiciary. In principle, the involvement of the Council removes the appointment process from the competence of the executive branch and thus protects it from political influence. However, the President of the Republic is not bound by the Council's decision. When in session for the appointment of judges, the Council is chaired by the President of the Republic or, in the President's absence, by the Minister of State, Keeper of the Seals and the Minister for Justice.

## **B. Respect for human rights**

18. The Republic of Senegal has ratified the main international treaties, which, in accordance with article 98 of the Constitution, prevail over national law. In 1998, Senegal was one of the first States to ratify the Rome Statute of the International Criminal Court. It has ratified the International Covenant on Civil and Political Rights (signed 6 July 1970; ratified 13 February 1978); the International Covenant on Economic, Social and Cultural Rights (S-6 July 1970; R-13 February 1978); the Optional Protocol to the International Covenant on Civil and Political Rights (S-6 July 1970; R-13 February 1978); International Convention on the Elimination of All Forms of Racial Discrimination (S-12 July 1968; R-19 April 1972); the Convention on the Elimination of All Forms of Discrimination against Women (S-29 July 1980; R-February 1985); the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (S-10 October 1999; R-26 May 2000); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (S-4 February 2003; R-18 October 2006); the Convention on the Rights of the Child (S-26 January 1990; R-31 July 1990); the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (S-8 September

2000; R-3 March 2004); the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (S-8 September 2000; R-5 November 2003); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (R-9 June 1999).

19. Senegal is not party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; the Convention on the Rights of Persons with Disabilities (signature only, 2007); the Optional Protocol to the Convention on the Rights of Persons with Disabilities; or the International Convention for the Protection of All Persons from Enforced Disappearance (signature only, 2007).

### **C. Legal framework**

20. Article 7 of the Constitution guarantees the physical integrity of the individual. The State is obliged to honour and protect the human person, which is regarded as sacred. Article 8 grants all citizens fundamental individual freedoms and economic, social and collective rights. These freedoms and rights are, notably, civil and political freedoms (freedom of opinion, freedom of expression, freedom of the press, freedom of association, freedom of assembly, freedom of movement, freedom of protest); cultural freedoms, religious freedoms, philosophical freedoms, trade union freedoms, freedom of enterprise, the right to education, the right to literacy, the right to property, the right to work, the right to health, the right to a healthy environment and the right to multiple sources of information.

21. Article 9 provides that “Any infringement of freedoms and any failure to respect the exercise of a freedom are punishable by law. A person can be convicted of an offence only under a law that came into force before the act was committed.” Articles 10–14 guarantee freedoms of opinion and expression (art. 10), of the press (art. 11), of association (art. 12) and of movement (art. 14). Articles 20–23 concern the right to education. Finally, articles 24 and 25 guarantee freedom of religion and freedom to work.

22. In the preamble to the Constitution of 2001, numerous references are made to international norms such as the 1948 Universal Declaration of Human Rights and the 1981 African Charter on Human and Peoples’ Rights.

### **D. Criminal justice**

23. Recently, the Criminal Code and the Code of Criminal Procedure were amended with a view to ensuring broader protection of human rights.

24. The National Gendarmerie is a police force with military status. It comes under the Ministry of the Armed Forces and performs military and police functions. It is responsible for security in rural areas. The National Police comes under the Ministry of the Interior and is charged with maintaining public order in urban areas. Its main role is to aid the authorities in maintaining the general order. It is organized into two independent and complementary categories: the Administrative Police and the Criminal Police.

25. In accordance with article 12 of the Code of Criminal Procedure, the Criminal Police acts under the direction of the Public Prosecutor through the officers and agents of the Criminal Police.

26. The right to a fair trial is guaranteed in the official criminal justice system. One of the main guarantees of a fair trial in the judicial system is the separation of the functions of the prosecution and of the preparation of a case for trial. In other words, it is the investigating

judge, an independent judicial authority, who is responsible for all the actions aimed at investigating the facts in a criminal trial. He therefore gathers all of the evidence for the prosecution and the defence; places the defendants in pretrial detention or under judicial supervision; and rules on applications for release on bail. This principle prevents prosecution judges from being involved in the inquiry that leads to establishing the charges.

27. The right to be tried without undue delay is enshrined in law. Nevertheless, this right is undermined quite frequently by abnormally long delays before cases reach trial. A number of factors explain such long delays: the slow pace of preparation for trial in criminal cases, the excessive caseload of the criminal courts and the insufficient number of investigating judges.

28. Article 67 of the Code of Criminal Procedure provides for the investigation procedure to begin, generally, with a preliminary inquiry or on-the-spot investigation carried out by the police under the direction and supervision of the prosecution service. Articles 68 and 69 of the Code establish the procedure for the preliminary inquiry. Once the inquiry is over, the investigation phase begins. The judicial investigation is carried out at first instance by an investigating judge. The investigation is mandatory in criminal cases and subject to appeal in all cases. In accordance with article 23 of the Code, the Public Prosecutor's Office opens criminal proceedings and sets the legal process in train. The Office is represented at each criminal court.

29. The Senegalese judicial system was structured according to the principle of unity of jurisdiction. In other words, it was the same courts and the same judges in a specific district that had jurisdiction over all types of dispute: civil, administrative, commercial and constitutional. This resulted in an extraordinarily complex system. Three major reforms have taken place: one in 1984 on the extent of the territorial and material jurisdiction of the lower courts; another in 1992, which introduced a process of specialization according to the nature of the litigation (Law 92-22 of 30 May 1992); and the latest in August 2008, which merged the Council of State with the Court of Cassation to form a single court, the Supreme Court of Senegal (Organization Act of 8 August 2008).

30. In order to guarantee the independence of the judiciary, Senegalese law distinguishes between prosecuting judges and trial judges. Trial judges apply the law and pass judgement. They can be neither dismissed nor moved against their will. Prosecuting judges, for their part, are far fewer in number than the trial judges and are the defenders of public order. Trial judges are under the direction and supervision of their hierarchical superior, under the overall authority of the Minister of Justice. A prosecuting judge's career, on the other hand, is basically the responsibility of the Higher Council of the Judiciary.

31. There are 11 regional courts and 32 departmental courts. Each court has criminal divisions that try criminal cases. There are four criminal divisions in Dakar, each composed of three judges. There is also a division for on-the-spot proceedings.

32. The departmental courts hear all cases dealing with offences classified as minor offences and those committed within the extent of their jurisdiction. They also jointly grant direct injunctions. The regional courts apply special provisions concerning the judgement of criminal offences committed by minors and, under specific legal provisions, of all offences other than those within the sole jurisdiction of the departmental courts.<sup>1</sup> The regional courts are located in the main towns of the administrative regions. Dakar possesses a special regional court.

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<sup>1</sup> Decree No. 84-1194 of 22 October 1984 establishing the composition and jurisdiction of the courts of appeal, the regional courts and the departmental courts.



33. In criminal cases, the Courts of Assize have jurisdiction. They sit in Dakar, Kaolack, Saint-Louis and Ziguinchor. The Courts of Assize constitute the court itself, which is composed of the president of the court and two judges.

34. Articles 25–32 of Decree No. 84-1194 of 22 October 1984 establish the procedure of the Court of Appeal. In all cases, judgements are delivered by a minimum of three judges. The Court of Appeal hears appeals against judgements delivered in first instance by the regional and departmental courts, not only in criminal cases but also in commercial, civil and administrative cases. The indictment division comprises a special section of the Court of Appeal (art. 185 of the Code of Criminal Procedure).

#### **1. Assistance of a lawyer**

35. During the trial stage, defendants are also afforded important guarantees. These include the application of the adversarial principle. In accordance with this principle, each party is entitled to dispute the statement of the facts and the arguments put forward by the opposing party. This enables each party to dispute the arguments, claims and evidence of its adversary and thus constitutes a form of defence available to the parties. In criminal cases, the court appoints a lawyer for defendants who do not have one (art. 298 of the Code of Criminal Procedure).

36. The assistance of a lawyer is mandatory only where offences that will be considered by the Courts of Assize are concerned, but it is not mandatory in the case of minor offences, which are the jurisdiction of the courts dealing with criminal cases.

#### **2. Police custody**

37. Article 55 of the Code of Criminal Procedure provides that, for the purposes of the inquiry, a criminal investigation officer may have to take into custody one or more persons suspected of having committed or attempted to commit an offence. The duration of police custody varies according to the seriousness of the charges. If it is simply a question of verifying identity or obtaining information (arts. 53 and 54 of the Code of Criminal Procedure), the duration shall be of no more than 24 hours. On the other hand, if there is serious and consistent evidence against the person sufficient to justify bringing charges, the maximum period of custody is 48 hours, extendable for a further 48 hours on the authorization of the public prosecutor, his deputy or the investigating judge (art. 55 of the Code of Criminal Procedure). If national security is under threat, the period may go up to 192 hours.

38. During the first 24 hours of detention, the suspect does not have the right to contact a lawyer.

39. If police custody is extended, the criminal investigation officer is required to inform the person concerned of the charges brought against him or her and of his or her right to appoint a lawyer from among the lawyers who have been admitted to the Bar Association or admitted as a trainee. A person held in custody has the right to a medical examination and any irregularities that arise during custody may render the proceedings invalid.<sup>2</sup>

#### **3. Pretrial detention**

40. Formerly known as “preventive detention”, this involves a detention order, generally imposed in exceptional circumstances, requiring a defendant to remain in detention until the

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<sup>2</sup> Law No. 99-06 of 29 January 1999 establishing article 1207 bis of the Code of Criminal Procedure.

end of the trial. The scope of application of pretrial detention has been defined more precisely. Law No. 99-06 of 29 January 1999 and articles 127 et seq., 139 and 140 of the Code of Criminal Procedure specify the cases where it is not authorized, its maximum duration and the exceptional cases where there is no limit to the duration. The duration of pretrial detention is also regulated by Law No. 99-06 and by articles 127 et seq., 139 and 140 of the Code of Criminal Procedure. In criminal proceedings, there is no limit to the duration of pretrial detention. A provision has been introduced to allow a defendant to apply for bail before a judge, in order to limit recourse to pretrial detention; in principle, defendants should not be incarcerated (art. 130 of the Code of Criminal Procedure).

41. In accordance with article 685 of the Code of Criminal Procedure, the enforcement of judicial decisions delivering a custodial sentence or ordering custody should be effected by the prison service. Articles 686–693 lay down the principles that must be respected during detention or imprisonment.

42. During its visit, the Working Group found that persons in pretrial detention were separated from convicted prisoners and that male minors were separated from adults. This was not the case for female minors, for whom there are no separate detention facilities. In practice, detention of female minors is exceptional. The children's judge places children in general and female minors at risk or in conflict with the law in AEMO centres or entrusts them to the care of their parents.

43. No person may be handed over to a foreign government unless he or she has been prosecuted or convicted for an offence under Law No. 71-77 of 28 December 1971. Articles 10 et seq. of this law defines the conditions for the detention of persons during the stage of judicial proceedings.

44. In this regard, Senegal's governmental authorities have presented the progress report for the case relating to the trial in Senegal of the former President of Chad, Mr. Hissène Habré, and have reminded the international community of its responsibility to provide sufficient resources to cover the costs of a particularly complex trial that Senegal has to hold in accordance with the African Union mandate. Hissène Habré should stand trial at the Dakar Court of Assizes for acts of torture and other crimes committed in Chad during his presidency (1982–1990). The Working Group was informed that the start of the trial was imminent and that a great deal of progress had been made at the legislative and institutional levels and also in terms of implementation. Examining judges have been appointed and a monitoring unit set up with a designated coordinator. The trial will take place at the Law Courts in Cap-Manuel.

#### **4. Juvenile justice**

45. Book IV of the Code of Criminal Procedure addresses special procedures and particularly those relating to juvenile justice. According to article 565 of the Code, no measure may be taken concerning a delinquent under 18, or a minor who is under 21 at risk, unless it complies with the required procedures. Special guarantees for children who have been arrested are also specified. The procedure addresses measures regarding protection, assistance, supervision and education, amongst others (art. 567 of the Code of Criminal Procedure). Articles 572–576 of the Code address matters of procedure.

46. The juvenile court is presided over by a trial judge appointed by the President of the regional court. Each case is judged separately with no other defendants being present. Also, chapter 2 defines special guarantees for children at risk. Article 594 provides that minors under 21, whose health, safety or education are endangered, can be the subject of preventive measures.

## 5. The Prison Service

47. The Prison Service Administration comes under the Ministry of Justice. The prison system is governed by Decree No. 66-1081 of 31 December 1966 regarding the organization and regulation of prison facilities,<sup>3</sup> and the provisions of the Criminal Code and the Code of Criminal Procedure. Articles 2–7 of the latter Code list the different detention and correctional facilities. Articles 13–65 of the same Code establish the procedures for the execution of pretrial detention orders and custodial sentences.

48. At the time of the Working Group’s visit, Senegal had 38 prison facilities, of which 32 were detention and correctional facilities. There was one prison for women, one prison for minors and three camp facilities for prisoners serving sentences of over one year. On 13 November 2009, Decree No. 2009-1273 came into force, with the aim of closing the Kédougou camp facility created in 1963. This brought the number of prison facilities down to 37. The Prison Service receives only 500 CFA francs (1.14 American dollars) per prisoner.

49. The current prison population numbers 7,086: 6,692 men, 250 women and 144 minors. Of these, 4,149 have been convicted and 2,937 are in pretrial detention. Ten per cent are foreigners.

## 6. Mechanisms for the protection of human rights

50. By the Decree of 22 April 1970, the Government of Senegal expressed its commitment to the ideals of the United Nations<sup>4</sup> by creating the Senegalese Human Rights Committee. The National Human Rights Organization was also established in Dakar on 7 March 1987<sup>5</sup> as a non-governmental organization and not as a national human rights institution. Besides the study of legal, political, economic, and cultural issues related to the promotion and protection of human rights, the Senegalese Human Rights Committee seeks to ensure, whenever necessary, the defence of isolated individuals who are the victims of a violation of their rights. In 2004, the Senegalese set up a service reporting to the General Secretariat of the Presidency of the Republic, in accordance with Decree No. 2009-459 of 7 May 2009 concerning the division of State services and supervision of public institutions, national companies and semi-public companies among the Presidency of the Republic, the Office of the Prime Minister and the ministries.

# IV. Remarks

## A. Positive aspects

51. The Working Group welcomes the measures taken by the Government, National Assembly and Senate to update the national legislation that establishes criminal procedure and to bring it into line with international norms. In this regard, a noteworthy example is the legislative amendment that allows the investigating judge to send the defendant directly

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<sup>3</sup> Amended and supplemented by Decrees No. 68-583 of 28 May 1968 and No. 86-1466 of 28 November 1986.

<sup>4</sup> Resolution No. 9 of 21 June 1946 of the United Nations Economic and Social Council, on the recommendation of the Human Rights Commission.

<sup>5</sup> Law No. 68-08 of 26 March 1968 and also articles 812-814 of the Code of Civil and Commercial Obligations and the provisions of Decree No. 76-040 of 16 January 1976.

before a court of assizes in the case of serious offences, or before the local criminal court in the case of misdemeanours, with the aim of speeding up the procedure.

52. Mention should also be made of the creation of new courts of appeal (Saint-Louis, Ziguinchor and Thiès) and the holding, by each court, of three assizes per year.

53. The Working Group was able to verify that the prison staff were properly trained and treated the prisoners correctly. Despite the economic difficulties, the atmosphere in the detention and correctional facilities and the prisons in general is better than in other countries thanks to the respect and calm that prevail in these institutions. The Working Group found that relations between the prison staff and the prisoners were imbued with mutual respect.

54. This finding is corroborated by the fact that there have been no suicides in Senegalese prisons for several years, nor have there been any riots that have disturbed public order.

## **B. Shortage of criminal lawyers**

55. The Working Group is deeply concerned by the shortage of criminal lawyers in relation to the total population of the country of 11,344,000. The Working Group was informed that the total number of lawyers in Senegal, a country that has provided the international community with some eminent legal experts, is just 350, and that 300 of them are based in Dakar and the surrounding areas.

56. Moreover, Senegalese legislation only specifies the mandatory presence of a lawyer in criminal cases, which fall within the jurisdiction of the courts of assizes, and not in cases of misdemeanours, which fall within the jurisdiction of the local criminal courts. During its interviews with a number of detainees, the Working Group noted that the vast majority of persons accused of misdemeanours were not assisted by a lawyer.

57. Defendants do not have the right to contact a lawyer during the first 24 hours of police custody, which may not last longer than 48 hours. The absence of a lawyer leaves the defendant alone to face a powerful prosecution, represented by the Public Prosecutor, assisted by the Criminal Police, Criminal Investigation Department and related technical services (ballistic and forensic laboratories etc.). This means that the principle of balance between the defence and the prosecution, a prerequisite vital to the proper administration of justice and to a just and fair trial, is not being respected.

58. Aware of the seriousness of this situation, the Government has set up a State-funded legal aid system, which, unfortunately, seems not to be operating efficiently yet. Several non-governmental organizations have complained that they are left out of receiving this funding (300 million CFA francs), despite the hard work they do in providing legal assistance in prisons and detention centres.

## **C. The practice of “return by the prosecution”**

59. The practice of the so-called “return by the prosecution”, meaning an extension of custody, is another matter that concerns the Working Group. According to the Code of Criminal Procedure, any person suspected of having committed a misdemeanour who is arrested by an officer of the Criminal Police can be held in custody for a period not exceeding 48 hours. On the authority of the prosecution, the duration of police custody can be extended to aid the inquiry. The maximum duration of police custody is 96 hours; once this expires, the arrested individual must be brought before the Public Prosecutor. The

Prosecutor must quickly decide to: (a) release the individual; (b) issue a detention order and refer the case to the court dealing with *flagrante delicto* cases, for decision at its next hearing; or (c) refer the case to the competent judge.

60. During its visit, the Working Group was, repeatedly, informed that the rules were not respected and that the detainee was sent back to the police station by the prosecution, sometimes several times in succession, pending Prosecutor's decision. This practice of the so-called "return by the prosecution" means there is an extension of the period of police custody beyond the specified limits, without legal basis, as confirmed by several governmental authorities that the Working Group met with during its visit.

61. The Working Group was informed that this practice is used by the judge responsible for the case, in order to gain enough time to study the case before the preliminary hearing or the hearing at the court dealing with *flagrante delicto* cases. It is also used to allow for an out-of-court settlement between the defendant and the victim or to establish the agreement of the parties to criminal mediation.

62. The Working Group feels that measures are required in order to allow for a competent authority to hear and decide cases within the time limits specified by law. Otherwise, there is no legal basis for detention. This situation is particularly serious in a country where there exists no writ of habeas corpus and where the law specifies no other recourse to contest the legality of this practice, which is contrary to article 9, paragraph 4, of the International Covenant on Civil and Political Rights, to which Senegal is party. Also, this practice is used in order to pressure the defendant into an out-of-court settlement, in violation of the principle of presumption of innocence. The Working Group feels that this practice should cease. The Government informed the Working Group that the authorities intend to deal with criminal cases as they arise by having a prosecution service that is permanently in session, at both the investigation and the trial stages.

#### **D. The long duration of pretrial detention**

63. The shortage of lawyers is one of the factors that explains the large numbers of suspects held in preventive detention for long periods. The Working Group was informed that the average length of time between the Public Prosecutor bringing charges and the verdict was three years. However, the Working Group met some individuals who had been detained for over three years, and sometimes as much as seven years, without ever going to court.

64. The maximum duration set by article 127 bis of the Code of Criminal Procedure is six months for cases of misdemeanours, whereas for criminal cases such as threats to national security, murder or misappropriation of public funds the detention order is valid for an indefinite duration. In criminal proceedings, once the maximum duration has elapsed, if the investigating judge does not order the release of the defendant, the prison governor is required to release him or her.

#### **E. Use of article 80 of the Criminal Code**

65. Article 80 of the Criminal Code regarding threats to national security, which lacks some precision in its wording, can be used against human rights activists, supporters of opposition parties and journalists to restrict the exercise of freedom of association, freedom of opinion and freedom of expression, which is a matter of deep concern to the Working Group. However, at the time of the Group's visit, there was no one in detention under this article of the Criminal Code.

## **F. Juvenile justice**

66. The Working Group met some minors who had been convicted without having had the assistance of a lawyer, in contravention not only of international norms but also of Senegalese law. The Working Group urges the Government to replace deprivation of liberty with other penalties specified for minors.

67. Also, the Working Group noted that, in detention facilities the boys are separated from the adults, though this is not the case for the girls.

## **G. Administrative detention**

68. In police stations, the administrative detention of foreigners who have served their sentence and who should be deported can be extended indefinitely. Administrative or logistical problems frequently complicate such deportations. The Working Group was informed of the presence of a Colombian citizen at Dakar's main police station, who has served a sentence and has been held in administrative detention for over five years, awaiting deportation.

69. The Working Group points out that police premises are intended for police custody, that is, for detentions of a very short duration. These premises should not be used to detain foreigners who cannot be immediately repatriated.

70. The Working Group is concerned that the normal budget provides no special allowance for providing meals for persons held in administrative detention at police stations. The police authorities have to use their own funds to provide food and drink for detainees. It should be remembered that the State is obliged to provide sufficient financial resources in order to meet the basic needs of persons placed in administrative detention.

## **H. Detention of journalists**

71. The Working Group was informed that, in the recent past, several journalists had been placed in detention for criticizing the Government. Some journalists have been prosecuted for defamation or dissemination of false information. The Working Group is particularly concerned about the possible application of article 80 of the Criminal Code to journalists. However, there were no journalists in detention at the time of the Working Group's visit.

## **I. Detentions on grounds of sexual orientation**

72. The Working Group received information according to which officers of the National Police had detained persons on allegations of committing "unnatural sexual acts". This was the case of four men arrested in the town of Darou Mousty, in the Louga region, on 19 June 2009. In another case in 2008, the Dakar Court of Appeal had set aside a judgement sentencing nine persons to eight years in prison.

73. No one was being detained for reasons of sexual orientation at the time of the Working Group's visit.

## **J. Overcrowding in prisons**

74. The Working Group noted that of 37 prison facilities, four are overcrowded. Those concerned are Reubeus Detention Centre, the *Camp pénal Liberté VI* facility, the *Liberté VI* Detention Centre for Women and Thiès Detention and Correctional Facility. Saint-Louis Detention and Correctional Facility has capacity to accommodate 250 persons and, at the time of the Working Group's visit, 252 prisoners were being held there. Thiès Detention and Correctional Facility, set in a former powder magazine turned prison facility, has capacity of 600 prisoners; however, it is currently housing 661 persons, of whom 542 are in pretrial detention and 119 are serving sentences.

75. Despite the rise in the national population (from 3 to around 12 million), the capacity of the prisons has not risen since independence. The construction of new prison facilities or the enlargement of existing prisons does not seem to be a priority. The well-being of the prison population is, however, as important as education, health, food security or the construction of new infrastructure. The Government informed the Working Group that transfers of detainees are organized on a regular basis with the aim of directing the surpluses noted in Dakar towards prison facilities in the regions.

## **K. Monitoring mechanisms**

76. The Working Group recommends the publication of the last three reports of the Senegalese Human Rights Committee.

## **L. New initiatives**

77. The Working Group welcomes the preparation of draft law, currently being examined at the Ministry of Justice, establishing a form of compensation for persons who have spent long periods in pretrial detention.

## **M. Illegal detention**

78. During its visit to Saint-Louis, the Working Group received allegations of the detention of taxi drivers with licences to work issued in another town. These drivers were picking up passengers in the town that had granted them work permits, to take them to Saint-Louis. The drivers of Saint-Louis reported their presence to the Police, leading to their detention, which could last, illegally, up to eight days. They were then released without charge. The police are therefore getting involved in conflicts between taxi drivers' associations. These detentions are entirely arbitrary given that they have no legal basis.

## **V. Conclusions**

79. **The Working Group noted that Senegal has a solid legal system, maintained by authorities interested in the preservation and development of the rule of law and monitored by an organized and vigorous civil society. Since its independence, Senegal has made significant advances in the construction of democracy and the development of its legal system. However, the Working Group has received accounts that indicate there has been a slowdown in this development during recent years. The fundamental need to continue to advance in the protection of human rights and fundamental**

freedoms should not be disregarded in the face of new priorities in the sphere of economic and social development.

80. During its visit to Senegal, the Working Group identified some practices that could act as a model for other countries. On this point, mention could be made of the professionalism and the sound training of jurists, judges and lawyers, and also that of prison staff. During its visit to detention facilities, the Group noted that there is an atmosphere of calm and mutual respect between the detainees and the prison staff despite the shortage of funds. An example of good practice in Senegal that the Group could highlight is having the prison system come under the authority of the Ministry of Justice.

81. However, the country has to confront a series of challenges, such as the shortage of criminal lawyers; the excessive proportion of detainees in pretrial detention; the long duration of pretrial detention in the majority of cases; the administrative detention of foreigners in police station cells after having served their sentence; the possible application of article 80 of the Criminal Code to journalists; the practice of the so-called “return by the prosecution”; or the detention of persons of different sexual orientation on the grounds of offending public decency. To these can be added the problem posed by prison overcrowding, though this is not excessive compared to other countries and the problem does not apply to Saint-Louis.

## VI. Recommendations

82. In the light of these conclusions, the Working Group recommends the Senegalese Government to:

- (a) Consider the possibility of establishing *habeas corpus* as a means of combating arbitrary detentions;
- (b) Consider making legal assistance mandatory in misdemeanour cases;
- (c) Authorize the presence of a lawyer during the first 24 hours of police custody;
- (d) Proscribe the use of criminal proceedings and detention to resolve problems of a civil nature, particularly detention for debt (“civil imprisonment”);
- (e) Give due attention to the draft law currently under examination by the Ministry of Justice that would establish damages and indemnities for persons who have spent several years in pretrial detention and who have been subsequently acquitted or given sentences shorter than the duration of their pretrial detention;
- (f) Pay serious attention to the problem of the imprisonment of women accused of infanticide who terminated their pregnancy in order to avoid social censure. These women find themselves rejected not only by members of their family and social circle but also by their fellow detainees;
- (g) Pay particular attention to detentions on the grounds of offending decency or public morality, with a view to avoiding any possible discrimination against persons of a different sexual orientation;
- (h) Investigate all instances of police and military abuse and torture or ill-treatment of detainees in the past, ensuring that such offences are severely punished;
- (i) Set the target of increasing the number of lawyers, particularly criminal lawyers, whilst maintaining the current academic quality of legal training. To this end, a dialogue could begin with the authorities of the law faculty and the bar association;



- (j) Promote the presence of defence lawyers in the remoter regions of the country. The legal assistance fund could be used to this effect;
- (k) Study the possibility of increasing the number of judges, particularly for the departmental and regional courts;
- (l) Maintain the current good practice of separating persons in pretrial detention and those who have been sentenced;
- (m) Establish measures leading to the reduction of the proportion of pretrial detainees and the reduction, as far as reasonable, of the duration of this detention;
- (n) Establish a single register for each detention centre, correctional facility and camp facility. In accordance with the Standard Minimum Rules for the Treatment of Prisoners, paragraph 7 (1), this register should contain information on the admission, transfer and release of each prisoner, and include the prisoner's signature at each of these stages. The register should also include the authority responsible for the transfer; the maximum duration specified for the detention or imprisonment and the date on which the prisoners can apply for release on parole. In accordance with article 694 et seq. of the Code of Criminal Procedure, a prison register should be opened at each correctional facility;
- (o) Increase the frequency of prison visits by judges responsible for the execution of sentences. This system of visiting judges is considered good practice by the Working Group;
- (p) Establish a budget allowance for prison catering based on the actual number of inmates rather than the prison's theoretical capacity. This will avoid the allowance for each prisoner being reduced in cases of overcrowding;
- (q) Consider the expediency of investing in prison infrastructure by modernizing facilities in prisons, camps and detention and correctional centres and building new facilities;
- (r) Consider the possibility of establishing a special system of justice for minors in accordance with the principles and norms of the Convention on the Rights of the Child and other relevant international instruments;
- (s) Examine the advisability of constructing special detention centres for minors, thus avoiding the detention of minors in centres for adults;
- (t) Establish a strict separation between minors and adults among female detainees;
- (u) Proscribe the detention, in police station cells, of foreigners awaiting deportation from the national territory. Police station cells are intended for police custody, which, by definition, should be of short duration. The "double sentence", which keeps foreigners who have served their sentences detained for an indefinite duration whilst awaiting their deportation, must be avoided;
- (v) Give due attention to persons detained in psychiatric facilities, particularly in relation to their right to communicate with other patients and persons outside the facility;
- (w) Establish the national preventive mechanism referred to in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (x) Ensure sufficient dissemination of the latest reports of the National Human Rights Council.