



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

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Committee against Torture

Concluding observations on the third periodic report of Senegal, adopted by the Committee at its forty-ninth session (29 October–23 November 2012)

1. The Committee against Torture considered the third periodic report of Senegal (CAT/C/SEN/3) at its 1106th and 1109th meetings (CAT/C/SR.1106 and SR.1109), held on 6 and 7 November 2012. At its 1125th meeting (CAT/C/SR.1125), held on 19 November 2012, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of the State party, which follows the guidelines on the form and content of periodic reports. It regrets, however, that the State party submitted the report 15 years late.

3. The Committee welcomes the opportunity to renew the dialogue with the State party and to examine the implementation of the Convention with the delegation. It notes that the State party submitted detailed written replies to the list of issues (CAT/C/SEN/Q/3 and Add.1) on the eve of the dialogue and that the delegation provided further information.

B. Positive aspects

4. The Committee welcomes the ratification by the State party, in October 2006, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and of other international instruments during the reporting period, including:

(a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (June 1999);

(b) The Rome Statute of the International Criminal Court (February 1999);

(c) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (May 2000);

* Reissued for technical reasons on 6 February 2013.

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (March 2004) and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (November 2003);

(e) The United Nations Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing that Convention (October 2003);

(f) The International Convention for the Protection of All Persons from Enforced Disappearance (December 2008);

(g) The Convention on the Rights of Persons with Disabilities (September 2010).

5. The Committee takes note with satisfaction of the State party's cooperation with the special procedures of the Human Rights Council during several visits by mandate holders during the reporting period, particularly the Working Group on Arbitrary Detention and the Special Rapporteur on the sale of children, child prostitution and child pornography.

6. The Committee congratulates the State party on the abolition of the death penalty under the law of 10 December 2004, and takes note of the legislation adopted in relation to the prohibition of torture, including:

(a) Act No. 2009-13 of 2 March 2009 establishing the National Observatory of Places of Detention as the national preventive mechanism provided for in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(b) Act No. 2005-06 of 10 April 2005 on combating human trafficking and related practices;

(c) Act No. 2000-38 and Act No. 2000-39 of 29 December 2000 establishing the post of a judge to supervise detention conditions, as well as Decree No. 2001-362 of 4 May 2001 on procedures for the execution and remission of criminal sanctions.

7. The Committee also welcomes:

(a) The adoption in 2009 of the national action plan (2008–2013) to combat human trafficking, especially trafficking in women and children, and the establishment in 2010 of a national anti-trafficking unit that brings together governmental and non-governmental institutions;

(b) The promotion of community justice, with a view to expanding and spreading across the country a network of legal advice centres offering mediation, information and legal counselling services;

(c) The second national action plan to hasten the end of the practice of excision (2010–2015), approved and launched in February 2010;

(d) The establishment of institutions like the Office of the High Commissioner for Human Rights and the Promotion of Peace (in 2004) and the Office of the Ombudsman, pursuant to Act No. 91-14 of 11 February 1991 and Act No. 99-04 of 29 January 1999.

C. Principal subjects of concern and recommendations

Definition of torture

8. While taking note of the amendment to the Criminal Code (Act No. 96-15 of 28 August 1996), article 295-1 of which defines torture as required by article 1 of the

Convention, the Committee regrets that the definition does not include certain key elements of article 1, notably the reference to “a third person” other than the victim (art. 1).

The State party should revise its Criminal Code, particularly article 295-1 on the definition of torture, to bring it fully into line with article 1 of the Convention. In particular, it should include in the definition acts aimed at obtaining information from, punishing, intimidating or coercing a third person.

Absolute prohibition of torture

9. The Committee is concerned about the State party’s justification of amnesty laws in relation to the situation in Casamance on the grounds that they are vital for the restoration of peace. The Committee reiterates its concern that the State party’s laws should not encourage impunity for acts of torture or violate article 2 of the Convention, which states that “internal political instability” may not be invoked as a justification of torture (art. 2).

In the light of its general comments Nos. 2 (CAT/C/GC/2) and 3 (CAT/C/GC/3), the Committee considers that amnesties or other impediments which preclude prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability of the prohibition of torture. They would constitute an intolerable obstacle for victims seeking redress, and would contribute to a climate of impunity. In view of this, the Committee urges the State party to repeal any amnesty for torture or ill-treatment and to provide it with detailed information on the redress granted to torture victims in Casamance.

Fundamental legal safeguards

10. The Committee is concerned that detainees do not enjoy all their fundamental rights from the moment they are, de facto, deprived of liberty, especially since legislation provides for the assistance of a lawyer only as from the twenty-fifth hour of detention and the right to be examined by an independent doctor is not systematically observed. The Committee remains deeply concerned about the practice known as *retour de parquet*, which prolongs the custody of persons who have already been brought before the prosecutor and violates the right of detainees to be brought promptly before a judge. The Committee also notes that there is a shortage of lawyers in Senegal, especially in the more remote parts of the country (arts. 2, 11 and 12).

The State party should:

(a) **Take effective steps without delay to ensure that all detainees enjoy, de jure and de facto, all legal safeguards from the moment they are deprived of liberty, particularly the rights to be informed of the reasons for their arrest, including the charges against them; to have prompt access to a lawyer and, if necessary, to legal aid; to be examined by an independent doctor; to notify a relative, and to be brought promptly before a judge;**

(b) **Provide the judicial system with additional financial and human resources with a view to ending the practice known as *retour de parquet* and reducing the time taken to bring cases to court;**

(c) **Take the necessary steps to increase the resources allocated to the Bar Association, with a view to guaranteeing access to legal assistance for the most deprived. The Committee notes the delegation’s statement that discussions will be organized on the question of allowing a lawyer to intervene from the very start of deprivation of liberty, and requests the State party to include information on the immediate measures to be taken to this end.**

Investigations and impunity

11. The Committee is concerned about allegations that torture and ill-treatment by law-enforcement officers have not been investigated or prosecuted. The Committee is also concerned that, in cases where investigations have been initiated, they have not been undertaken promptly and the judicial procedures remain excessively long and drawn out, including in cases where torture has led to death, as in the cases of Mr. Dominique Lopy, Mr. Alioune Badara Diop, Mr. Abdoulaye Wade Yinghou, Mr. Mamadou Bakhoum and Mr. Fally Keïta. While noting that victims of ill-treatment or torture can take their case directly to the Indictments Chamber of the Court of Appeal, the Committee is concerned at the lack of an independent body to investigate allegations of torture or ill-treatment by law-enforcement officers. Moreover, the Committee remains concerned about allegations of murder in Casamance that have not yet led to convictions (arts. 2, 11, 12, 13 and 16).

The State party should:

(a) Take practical measures to speed up investigations and criminal prosecutions under way for alleged acts of torture and ill-treatment, which, if substantiated, should lead to sanctions and penalties that take into account their grave nature and do not class them as some other less serious offence;

(b) In order to ensure that thorough, prompt and impartial investigations are undertaken, set up an independent, impartial body to investigate allegations of torture and ill-treatment by members of the security forces;

(c) In addition to information on the individual cases mentioned above, provide information requested by the Committee on the number of complaints filed against public servants allegedly suspected of using torture or ill-treatment, as well as information on the outcomes of the ensuing investigations and on any criminal or disciplinary proceedings instigated as a result;

(d) Provide the Committee with updated information on the situation in Casamance regarding the implementation of the Convention, including the outcome of the investigations into acts of torture and murder.

The case of Mr. Hissène Habré, former President of Chad

12. The Committee notes the information provided by the delegation on the State party's wish to try Mr. Hissène Habré in Senegal, as well as the measures taken at regional and national levels to ensure that the trial can take place. While noting the State party's collaboration with the Committee during its official mission in 2009 under article 22 of the Convention, the Committee regrets the State party's delay in trying Mr. Habré in accordance with the Committee's decision of 17 May 2006, which was furthermore confirmed by the order of the International Court of Justice dated 20 July 2012 (*Belgium v. Senegal*) (arts. 5 and 7).

The Committee takes note of the State party delegation's statement that the trial of Mr. Hissène Habré is due to start in December 2012, and urges the State party to make every effort to get the trial under way by this date so as to put an end to impunity for anyone in its territory who is responsible for acts of torture and other international crimes, in accordance with its obligations under the Convention.

Extraction of confessions

13. The Committee takes note of the State party's assertion that judges, who have supreme authority to weigh the evidence, cannot attach any value in a trial to confessions obtained under torture or duress. However, the Committee regrets that the Senegalese Code of Criminal Procedure contains no explicit provision to this effect and that the State party

has provided no information on cases in which the courts have actually ruled as inadmissible confessions obtained under torture (arts. 2 and 15).

The State party should ensure that, whenever a persons claims to have confessed under torture, such confessions are not invoked as evidence in the judicial proceedings and a thorough investigation is conducted into the claim. The Committee encourages the State party to amend its law so as to explicitly prohibit the use as evidence of any statement made under duress or as a result of torture.

Violence against women

14. While noting the measures taken by the State party to combat all forms of violence against women, the Committee remains deeply concerned about the persistence in the State party of domestic violence, female genital mutilation, sexual abuse, rape and forced marriages. The Committee regrets that the State party has not provided information on the remedies and compensation, including rehabilitation, made available to women victims of violence (arts. 2, 12, 13 and 16).

The State party should:

(a) Continue to publicize Act No. 99-05 of 29 January 1999 on the penalization of the crimes of rape, excision, assault and battery, and incest, and to provide more information on the project to set up a national observatory on violence against women;

(b) Step up efforts to prevent, combat and punish all forms of violence against women and children, by applying domestic laws and international conventions, and to run awareness and information campaigns for the general public and law-enforcement officers. The State party should investigate all allegations of such violence, prosecute and punish the perpetrators and offer victims effective protection and immediate redress;

(c) Ensure that the programme to combat gender violence and to promote human rights, and the related national action plan, include access to shelter, medical and psychological assistance, and reintegration programmes. The State party should provide further information on this programme and on the implementation of the second national action plan to hasten the end of the practice of excision (2010–2015).

Violence against children

15. The Committee remains concerned about the lack of information and statistics on the measures taken by the State party to combat practices such as the sale, prostitution and trafficking of minors. While noting the adoption of the strategic plan for the education and protection of children in Koranic schools (*daaras*), the Committee remains deeply concerned about the living conditions of young students (*talibés*), who suffer from ill-treatment and economic exploitation and are often made to beg on behalf of their masters. The Committee also remains concerned about the reported persistence of corporal punishment in Senegal (arts. 11 and 16).

The State party should:

(a) Monitor very closely the situation of *talibés* in order to protect them from ill-treatment and exploitation by punishing those responsible and setting up mechanisms to monitor and help such children, as well as a complaints mechanism to allow them to inform the authorities of cases of abuse;

(b) Set up a support system to give *talibés* access to physical and mental health services. It should provide the Committee with information on other specific

measures, including the number of cases identified, the investigations and prosecutions conducted, the sentences handed down to the perpetrators and the return of *talibés* to their families;

(c) Amend the Family Code, particularly article 285, to explicitly ban corporal punishment anywhere at all, including in the home, and punish offenders in accordance with the law, while offering legal protection and psychological help to child victims.

Trafficking in persons

16. Despite the legislative and administrative efforts made, the Committee is concerned that the State party remains a country of origin, transit and destination for trafficking in persons, particularly for forced labour and sexual exploitation (arts. 2, 12, 13, 14 and 16).

The State party should take effective measures to eliminate trafficking in persons and afford greater protection to victims. It should also devote more resources to prosecuting and punishing the perpetrators and providing legal, medical and psychological assistance to the victims.

Conditions of detention

17. The Committee is concerned about reports of overcrowding in some prisons, including those in Dakar, Kaolack and Tambacounda (art. 11).

The State party should redouble its efforts to reduce prison overcrowding, by, among other things, giving preference to alternatives to imprisonment where feasible in light of the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules).

Administration of justice

18. The Committee notes the efforts made by the State party to facilitate community justice by establishing legal advice centres. However, it is concerned by the lack of independence of the courts. The Committee notes the limited number of jurists working as lawyers. It is concerned that having fewer than 400 lawyers in a country with a population of over 11 million impedes access to justice (arts. 2, 11, 12, 13 and 16).

The State party should continue to study ways to reform the High Council of the Judiciary and should strengthen the independence of judges by upholding the principle of security of tenure for judges.

The State party should take practical steps to increase the number of people working in the justice system, including lawyers.

Juvenile justice

19. Despite the existing juvenile justice mechanisms, the Committee is concerned that there are not enough specialized judges and courts to meet all the challenges related to the promotion and protection of children's rights in the State party (arts. 2, 11, 12, 13 and 16).

The Committee recommends that the State party hasten the adoption of the bill to establish the position of Children's Ombudsman and that it train more judges for juvenile courts. The Committee recommends that the State party set up a juvenile justice system in line with the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, General Assembly resolution 40/33) and the United Nations Guidelines for the

Prevention of Juvenile Delinquency (Riyadh Guidelines, General Assembly resolution 40/112).

Situation of journalists and human rights defenders

20. The Committee regrets the lack of information on allegations of intimidation, threats, physical attacks and arbitrary detention of human rights defenders and journalists. While taking note of the information supplied on the steps taken to prosecute officers who allegedly used excessive force during the pre-election demonstrations in 2012, the Committee regrets in particular the lack of information on the outcome of investigations concerning members of Rencontre africaine pour la défense des droits de l'homme and the journalists Mr. Boubacar Kambel Dieng and Mr. Karamokho Thioune (arts. 2, 12, 13 and 16).

The State party should provide information on specific measures taken in the above-mentioned cases and the penalties handed down. The State party should take all necessary steps to protect human rights defenders and journalists and punish severely the perpetrators of violence, torture or intimidation directed at them.

Situation of refugees and asylum seekers

21. The Committee notes that further efforts need to be made to complete the issuance of identity cards to refugees and that the law on the status of refugees has not yet been revised (arts. 3 and 16).

The State party should hasten the adoption of the revised law on the status of refugees to consolidate safeguards for protecting refugees, asylum seekers, internally displaced persons and stateless persons, including by setting up a body to rule on applications for refugee status and on a range of issues such as family reunification and the protection of unaccompanied minors. The Committee encourages the State party to continue with its efforts to facilitate the integration of refugees, including by issuing identity cards, in collaboration with the Office of the United Nations High Commissioner for Refugees.

Redress, including rehabilitation

22. The Committee regrets the lack of information on compensation awarded by the courts of the State party to the victims of violations of the Convention, including individuals denied their fundamental rights or tortured or ill-treated in custody. The Committee also regrets the lack of information on any treatment or social rehabilitation services for torture victims (art. 14).

The State party should provide information on additional measures to ensure that the victims of torture or ill-treatment obtain full and fair compensation and the fullest possible rehabilitation. It should speed up the adoption and implementation of the bill on compensation for victims held in detention for a long time who have suffered particularly serious harm, as well as of the rehabilitation programmes to be set up.

The Committee draws the attention of the State party to its recent general comment on article 14 (CAT/C/GC/3) which explains the content and scope of the obligations of States parties to provide full compensation to victims of torture.

National preventive mechanism and national human rights institutions

23. While noting that the National Observatory of Places of Detention has been designated as the national preventive mechanism, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment, the Committee remains concerned about the reported cut in the mechanism's funding. It is also concerned that the Senegalese Human Rights Committee is reportedly underfunded and that its procedures for selecting and appointing members appear not to be in line with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles) (annex to General Assembly resolution 48/134) (arts. 2 and 12).

The State party should:

(a) Provide the National Observatory of Places of Detention with the resources it needs to effectively fulfil its mandate as the Senegalese national preventive mechanism, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the guidelines on national preventive mechanisms drawn up by the Subcommittee on Prevention of Torture. The State party should ensure that the police, prosecutors, military personnel, prison staff and medical personnel cooperate with the Observatory, and that its recommendations to the authorities are followed up with practical measures to improve the situation in prisons and prevent torture. The Committee also recommends that the State party publish the report produced by the Subcommittee on Prevention of Torture following its visit to Senegal in December 2012.

(b) Take into account the comments made by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to ensure that the Senegalese Human Rights Committee operates in accordance with the Paris Principles.

Confidential complaints mechanism

24. The Committee regrets that no confidential complaints mechanism has been set up to enable detainees to lodge a complaint for torture or ill-treatment (arts. 2 and 16).

The State party should establish a confidential mechanism to receive and consider complaints of torture or ill-treatment, and should ensure that such a mechanism is set up in all places of detention, especially prisons. In fact, this mechanism would make an important contribution to the work of the National Observatory of Places of Detention.

Training

25. The Committee notes that the State party has organized human rights training courses for police officers and members of the National Gendarmerie. However, it regrets the lack of information on the evaluation of these courses and their impact on reducing the number of cases of torture and ill-treatment. The Committee is also concerned that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) is not followed (art. 10).

The State party should organize training courses for the State agents listed in article 10 of the Convention, especially civil or military law-enforcement personnel and medical personnel. In order to enable these individuals to better detect and document the signs of torture and ill-treatment, the Istanbul Protocol should be an integral part of these courses. The State party should also evaluate the courses' effectiveness and impact on the implementation of the Convention.

Data collection

26. The Committee regrets the lack of comprehensive, disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment committed by law-enforcement personnel, military officers, prison staff and psychiatric personnel, and of statistics on the various forms of violence against girls and women in Senegal.

The State party should compile the above-mentioned data for the whole country to allow the implementation of the Convention to be effectively evaluated and to facilitate the identification of targeted action to prevent and combat effectively torture, ill-treatment and all forms of violence against girls and women. The State party should also provide statistics on redress, including compensation, and means of rehabilitation for victims.

27. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in the appropriate languages, through official websites, the media and non-governmental organizations.

28. The Committee requests the State party to provide, by 23 November 2013, information on the follow-up to the Committee's recommendations on: (a) the introduction or strengthening of legal safeguards for detainees (see paragraph 10 (a) above); (b) the prompt instigation of effective and impartial investigations (see paragraph 11 (a) above); and (c) the proceedings initiated against suspects and the penalties handed down to the perpetrators of acts of torture or ill-treatment (see paragraph 12 above).

29. The State party is invited to submit its fourth periodic report by 23 November 2016. The Committee invites the State party to agree, by 23 November 2013, to follow the optional reporting procedure in preparing its report. Under this procedure, the Committee would send the State party a list of issues prior to submission of the periodic report and the State party's replies to the list of issues would constitute, under article 19 of the Convention, its next periodic report.
