

SENEGAL

THE HUMAN RIGHTS SITUATION

**BRIEF OVERVIEW IN THE RUN-
UP TO THE PRESIDENTIAL
ELECTION**

**AMNESTY
INTERNATIONAL**



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1. INTRODUCTION

In the run-up to the February 2012 presidential election, Senegal is faced with a double challenge regarding the respect of human rights. The country must first manage to organise an election without human rights violations in what is an extremely tense context wherein a large part of the opposition contests the right of the current president, Abdoulaye Wade, to run for a third presidential term. Additionally, once the presidential election is over, the new elected authorities must, as a matter of urgency, address the impunity that the perpetrators of human rights violations enjoy and which continues to undermine the credibility of the judiciary and the rule of law in general.

The Senegalese presidential electoral campaign will face the first moment of truth on 27 January 2012 when the Constitutional Council rules upon the validity of the candidacies for the presidential election, including the highly disputed candidacy of President Wade. In an atmosphere where some activists of political parties openly carry weapons and are determined to battle it out with their opponents, many fear the violence which may occur in the event that the outgoing president's candidacy is validated.

In this tense context where all lawful political debate should be held freely, the authorities' decision to prohibit all public gatherings from 26 January to 30 January 2012 is all the more worrying. There is no apparent justification for this ban which undermines the right to demonstrate peacefully as enshrined in article 8 of the Senegalese Constitution.

In addition to this presidential election which could lead to political violence, Senegal is also facing a sudden deterioration of the situation in Casamance. This region in the south of the country has been dealing with sporadic armed conflict for thirty years between Senegalese soldiers and an armed opposition group who wants independence for this region.

Senegal must also satisfy the expectations of the international community and in particular those of the African Union, which has urged this country to prosecute the former Chadian president, Hissène Habré, accused of committing serious human rights violations in Chad. After more than a decade of procrastination the authorities have publicly admitted that they do not want to try the former Chadian president. They must therefore extradite him to a country that is able and willing to judge him in accordance with international fair trial standards.

Twelve years after the political alternance which saw, in March 2000, the election of Abdoulaye Wade and the end of forty years of socialist rule, Senegal is at a crossroads. Political leaders on all sides must ensure that their supporters do not resort to violence, security forces also have the obligation to act in full respect of human rights. Only in this way can the 2012 presidential election proceed without the country descending into violence.

A year marred by violence preceding the elections

Over the course of 2011, the country was shaken by major legal and political debates concerning President Abdoulaye Wade's candidacy for a third presidential term. Article 26 of the Senegalese constitution, amended in 2001, stipulates that, "*the length of the President of the Republic's term of office is five years and renewable once.*" Basing their arguments on article 104 of the Constitution which states, "*The President of the Republic in office shall continue his or her term until it expires. All other provisions of the present Constitution shall apply to him or her*", political opponents have repeatedly declared that this text clearly prohibits President Wade from running for a third term, whereas, those who support the Head of State assert that this provision can only be applied after the end of his first term, which ended in 2007.

In June 2011, this constitutional row led to serious clashes between protestors and security forces resulting in hundreds injured, including 13 police officers. It was a constitutional draft amendment that sparked tensions. This amendment was intended to ensure that Senegalese voters could simultaneously elect both a president and vice-president on the basis of one "ticket". The candidate could win in the first round if the "ticket" obtained 25% of the votes cast, whilst, under the current constitution, the presidential candidate must secure an absolute majority of the votes (50% plus one vote) to be elected in the first round. Faced with the largest challenge to his government since he came to power in 2000, the President Abdoulaye Wade finally decided to retract this draft law.

This political violence reached a new level on 22 December 2011 where the town hall of a district in Dakar, run by a leader of the opposition and member of the Socialist party, Barthélémy Dias, was the site of confrontations between members of the opposition and activists of the party in power. During this altercation Barthélémy Dias fired two handguns several times. One man was shot and killed and three others injured, though the firearm(s) which caused this death and injury remain as yet unidentified. The socialist mayor, who confirmed having fired in self-defence, was charged with murder and imprisoned, alongside one of his bodyguards who was charged with "conspiracy to murder". One of President Wade's bodyguards, as well as the former bodyguard of one of the leaders of the ruling party, suspected of being involved in this clash, were briefly detained and then released under court supervision.

It is against this background of latent violence that the Constitutional Council will examine the validity of the candidacies for the presidential election. President Wade confirmed that he will respect the decision of the Constitutional Council but political opposition fears that this body is under pressure from the executive power to ratify the candidacy of the current president. Just a few days before the Constitutional Council's decision, the present document aims to provide a brief overview of the human rights situation in Senegal.

2. ATTACKS ON FREEDOM OF EXPRESSION

Over the last three years a number of journalists and political opponents have been subject to legal proceedings - several of whom have been convicted - for their political opinions. The harassment of, and threats made against, persons expressing a political opinion different to that of the ruling group constitutes a violation of their right to freedom of expression protected by article 10 of the Senegalese Constitution.

Malick Noël Seck, secretary general of a movement affiliated with the Socialist Party was sentenced on 20 October 2011 to two years in prison for “death threats” and “contempt of court” after he deposited a letter addressed to the Constitutional Council asking members of this body not to accept the candidacy of President Wade for a third term. His sentence was reduced after a court appeal to 4 months in prison and he was pardoned by President Wade shortly after.

Amnesty International called publicly for the release of Malick Noël Seck who was convicted for expressing his political opinion.¹ Amnesty considers that neither the act of handing in this letter nor its contents justify being tried for such offenses. The letter given to the Constitutional Council did not contain death threats addressed to this body. Moreover, this text cannot constitute an act in “contempt of court” given that the members of the Constitutional Council are not, under Senegalese law, judicial or administrative magistrates.

On 23 June 2011, Alioune Tine, president of the *Rencontre Africaine pour la Défense des Droits de l'Homme* (Raddho, African Assembly for the Defence of Human Rights) was attacked by men carrying rocks and sticks during a demonstration against the constitutional reform allowing for the possibility of a candidate to win the first round of the presidential election with only 25% of the votes. Alioune Tine was badly hurt and spent three days in hospital. Another Raddho member, Oumar Diallo, was also injured.

In July 2011, Raddho's lawyers lodged a complaint with the public prosecutor providing testimonies and images recorded during the attacks on Alioune Tine and Oumar Diallo. These images reportedly show the faces of the attackers, some of whom were wearing t-shirts of a young leader of the *Parti Démocratique Sénégalais* (PDS, Senegalese Democratic Party) the ruling political party. At the time of writing this document, no progress had been made in this investigation.

¹ Amnesty International, Senegal: The sentence of a political opponent must be quashed, 24 October 2011, (AFR 49/002/2011)

Several demonstrations were also violently repressed. Thus, in May 2011, gendarmes (paramilitary police forces) fired live bullets on demonstrators protesting against new local officials taking office after a new administrative system was put in place in the Sangalkam locality, near Dakar. A young man, Malick Bâ, was shot dead. An investigation was opened but those responsible for these acts have not yet been brought to justice.

The right to demonstrate peacefully was further undermined on 23 January 2012 when the Minister of the Interior passed an “*order temporarily prohibiting public demonstrations*”. In a press release published the following day, The Minister of the Interior justified this ban by the fact that, “*the objective of such a decision is to avoid any pressure, in one direction or another, upon this High Institution [the Constitutional Council] and to allow this body to fulfil its duties in peace and calm*”. Whilst acknowledging that it is the responsibility of the security forces to keep control should there be any disturbances to public order, Amnesty International is worried that this ban undermines a fundamental freedom protected by the Constitution.²

3. THE PERSISTENT USE OF TORTURE IN DETENTION

Despite solemn commitments made by the Senegalese authorities, security forces continue to use, in almost total impunity, torture and other ill-treatment to extract confessions during the first hours or days of detention. This practice has been publicly denounced many times by national and international human rights organisations, including Amnesty International, as well as by several United Nations bodies. Yet, the authorities have not really demonstrated their willingness to put an end to the impunity enjoyed by the perpetrators of such acts.

The Senegalese authorities consistently ensured impunity for members of the security forces allegedly involved in acts of torture or deaths in detention. They have often refused to investigate into these cases. Sometimes, however, often under pressure from lawyers, the press or human rights non-governmental organizations (NGOs), the authorities have finally agreed to investigate serious allegations of torture that led to the death of common law detainees. However, to Amnesty International's knowledge, hardly any of these investigations have brought the alleged perpetrators of these acts to justice or set sentences proportional to the gravity of their acts. The police force and gendarmerie have claimed that some deaths in custody were “suicides”, despite overwhelming evidence of torture and other ill-treatment. Other investigations have never been completed, thus depriving the families of access to justice and redress.

² Article 8 of the Senegalese Constitution stipulates that, “*The Republic of Senegal guarantees to all citizens the following fundamental individual freedoms and economic, social and collective rights: political rights: freedom of opinion, freedom of speech, freedom of assembly, freedom of public demonstration;*”

Even when judges summon members of the security forces to account for human rights violations, they encounter a major obstacle. They must first obtain a prosecution order (*ordre de poursuites*) from the Ministry responsible for the state officials in question (the Ministry of the Interior in the case of police officers and the Ministry of Defence in the case of gendarmes and military personnel). This procedure, set out in article 60 of the Code of Military Justice, grants a *de facto* power of veto to the executive with regard to any judicial proceedings against members of the security forces. In practice, the issue of prosecution orders is refused or delayed by officials higher up the chain of command who are responsible of the security force officers implicated in human rights violations, which leaves the judiciary helpless and deprives the victims and their families of any hope of redress.

Moreover, in the rare cases in which members of the security forces are challenged about acts of torture, these agents are not usually suspended during the duration of the investigation but simply redeployed elsewhere, which is contrary to the recommendations made many times in different contexts by the United Nations Committee Against Torture (CAT).

The climate of impunity in Senegal is particularly apparent in the manner in which the judiciary has treated some serious allegations of torture. Thus, in the course of the last five years, at least seven people arrested for common law offenses have died in detention, apparently as a result of torture. During only the last 18 months, Amnesty International was able to investigate the cases of six people who were victims of torture after having been arrested by law enforcement officers. The body of one of these persons was found naked, handcuffed and showing marks of torture.

In some cases, investigations were opened following complaints filed by relatives or after these deaths had been denounced by human rights organisations. But to the knowledge of the victims' parents and Amnesty International, in at least 8 out of 9 cases, the investigation did not result in those police officers or gendarmes allegedly responsible for acts of torture being brought to justice. Furthermore, no moral or financial redress was awarded to the victims of these acts or their relatives.

In a report published on 15 September 2010³, Amnesty International notably reported five cases of death in detention, apparently the result of torture. The same day, the Senegalese authorities published a written response providing information on the status of the investigations of these cases in particular. Two and a half years later, it must be noted that only one case has been brought to trial and that the members of security forces convicted were given very short or suspended sentences, failing to recognize that torture or ill-treatment took place. In the four other cases, the investigation is still officially in process and no compensation has been awarded to the victims of these acts or to their families.

³ Senegal: *Land of impunity*, 15 September 2010, (AFR 49/001/2010)

Four recent torture cases (2010-2011)

Amnesty International has collected information concerning at least four new cases of torture that may have been perpetrated by Senegalese police or gendarmes since mid-2010. Here again, the judiciary still remains for the time being unable or unwilling to hold the alleged perpetrators of these acts to account.

- On 14 July 2010, **Abdoulaye Wade Yinghou**, a salesman born in 1981, died in detention reportedly as a result of ill-treatment. Though just on his way to work after going to run an errand, this young man found himself by chance in the middle of confrontations between demonstrators and police forces in the Yeumbeul Bène baraque neighbourhood in Dakar. According to some witnesses, Abdoulaye Wade Yinghou was violently beaten by police officers using their batons and rifle butts during his arrest and at the police station where he was then taken. He died the same evening, reportedly as a result of his injuries. The police confirmed that he had died after he collapsed (*"décédé d'un malaise"*) whilst the autopsy performed at the Dantec hospital in Dakar concluded that it was *"death as a result of the failure of the cardio and pulmonary system exacerbated by assault and battery with one or more hard and sharp object[s]"*. The family filed a complaint but no further action has been taken as yet.
- On 24 December 2010, **Fally Keïta**, a 45 year-old docker was found hung, by aid of his t-shirt, in a cell in the Môle 8 gendarme station in Dakar. He had been arrested a few hours before for the theft of a car radio and held in police custody. An investigation was opened by the gendarme investigation department.
- On 29 March 2011, the naked body of **Aladji Knoaté** was found on the banks of the Senegal River in Bakel (around 750 km north of Dakar). The Senegalese press published photos showing the handcuffed body bearing signs of torture. Amnesty International learned that this young man had been arrested by gendarmes, reportedly for drug trafficking. Amnesty International also obtained information indicating that neighbours heard him shouting at the time of his arrest. Four days later a fisherman found the body in the river. Amnesty International has gathered information indicating that when the gendarmes were notified, they looked at each other and said, "It's our man". They then went after the body and one of them took off the handcuffs using a key in his possession. The security forces then confirmed that he had jumped in the river in an attempt to escape. The body was buried without an autopsy to identify the exact circumstances of death. Two weeks later, three human rights organisations, Amnesty International Senegal, the *Ligue sénégalaise des droits humains* (LSDH, Senegalese Human Rights League) and the Raddho called for an investigation to be opened. The family of the deceased filed a complaint, but at the time this present report was written, no investigation had been opened and the family had not received any reparation.
- In September 2011, three youths were severely ill-treated and injured by gendarmes in the Thiaroye neighbourhood in Dakar. They had been arrested following a neighbour's complaint. An investigation was opened and the two gendarmes were confined to their quarters. At the time this present report, the suspected authors of

these acts had not yet been brought to justice and the victims had not received any reparation. Amnesty International has also recently learned that gendarmes put pressure for the complaint to be withdrawn, which the victims refused to do.

The impunity enjoyed by the perpetrators of acts of torture and other serious human rights violations is deep-rooted in Senegal as public prosecutors have constantly refused to investigate allegations of torture in police custody or provisional detention, made by victims or their lawyers during trials. An even more serious issue is that judges often rely on “confessions” extracted under torture to convict defendants, in violation of one of the basic provisions of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), ratified by Senegal in 1986. For example, this occurred in three trials in 2009 and 2010, during which men alleged to be homosexuals, others arrested in the region of Kédougou (approximately 700 km to the southeast of Dakar) and others arrested in the region of Vélingara (670 km to the south of Dakar), were sentenced to long prison terms on the basis of “confessions” extracted under torture.⁴

The use of “confessions” extracted under torture to convict the accused violates one of the essential provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Senegal in 1986. Article 15 of the Convention states that:

“Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

4. CASAMANCE: A CONFLICT WHICH HAS LASTED THIRTY YEARS

The Casamance conflict, which began exactly thirty years ago⁵, has witnessed lulls as well as moments of very high tension. The two belligerent parties, namely the *Mouvement des Forces*

⁴For further information regarding this trial and the importance of confessions extracted under torture in the conviction of these persons, please see Amnesty International. Senegal: Land of impunity, 15 September 2010 (AFR 49/001/2010).

⁵ On 26 December 1982, the Movement of the Democratic Forces of Casamance (MFDC) organised a peaceful march in Ziguinchor in the direction of the Governor’s office. The demonstrators brought down the Senegalese flag hoisted on this building and replaced it with their own flag. The march was bloodily repressed and the security forces then made several arrests, including the leader of the MFDC, the Abbot Diamacoune Senghor.

Democratiques (MFDC, Movement of the Democratic Forces of Casamance) an opposition group that wants independence for their region in southern Senegal, and the Senegalese security forces, have committed serious human rights violations.

In March 2001, both parties signed two peace agreements providing for the release of all prisoners, the return of refugees living in neighbouring countries, the de-mining of the region, the disarming of armed MFDC groups and the return of Senegalese soldiers to their barracks. Though these peace agreements significantly reduced tensions for almost a decade it was not possible to fully implement them, notably because of the rivalries between different factions in the MFDC.

Throughout the last decade, sporadic fighting between the Senegalese army and armed elements of the MFDC has caused the local population to flee to neighbouring countries: Guinea-Bissau and the Gambia. Civilians were also subject to serious human rights violations committed by suspected MFDC members.

Things worsened considerably in November 2011 when armed MFDC elements carried out several attacks on Senegalese army positions. The army then launched search operations. This fighting resulted in some twenty deaths on both sides. Moreover, in December 2011 and at the beginning of January 2012, the MFDC has, for the first time in a long time, captured one gendarme, six soldiers and one other person. The International Committee of the Red Cross (ICRC) was able to visit these persons in December 2011 and January 2012.⁶

This renewed tension was accompanied by serious human rights violations. On 21 November 2011, suspected MFDC elements killed 10 youths who had gone to find teak wood in the Bissine forest (around 30 km from Ziguinchor, the main town in Casamance). The MFDC combatants have forbidden, for some years now, people using resources from this forest, which they consider to be their own private reserve. In May 2008, 16 villagers gathering cashew nuts in Tampe, 15 kilometres east of Ziguinchor, were attacked by individuals claiming to be MFDC members who, after having bound their hands, cut off their left ears.

In response to these attacks led by the MFDC, the Senegalese soldiers have, for their part, arrested civilians suspected of supplying information to the MFDC. As a result, on 2 January 2012 eight people were arrested in the village of Affiniam (around 30 km north of Ziguinchor). Amongst those arrested there were teachers, one school boy, one student, a fisherman, and a shepherd arrested by security forces as his flock grazed in the bushes. These persons were charged with undermining state security and were detained in the Ziguinchor prison. Amnesty International fears that these arrests may have been carried out as part of reprisals launched a few hours after a Senegalese gendarme along with three others were injured in this same village.

⁶ The International Committee of the Red Cross, *Senegal: ICRC visits eight people held by MFDC in Casamance*, News Release 12/08, 17 January 2012

An amnesty law which denies the suffering and the rights of the victims of the conflict

The two agreements signed between the Senegalese government and the MFDC were accompanied by a law of amnesty promulgated by the Senegalese president Abdoulaye Wade in July 2004. This law provided an amnesty for all offences committed during the internal conflict in Casamance since 1991, "*whether the perpetrators have been definitively judged or not*".

By declaring an amnesty before taking any legal proceedings against the soldiers of government forces and armed members of the MFDC responsible for serious human rights violations and abuses, President Abdoulaye Wade deprived hundreds of the victims of this terrible conflict and their families from their right to justice and redress.

The impunity that marked the countless atrocities committed by both parties to the conflict was therefore enshrined in law, denying the suffering of the victims and their families and leaving them in a state of total abandonment.

The suffering continues to haunt the families of the dozens of disappeared Casamance people arrested by government forces during the conflict. Although the uncertainty concerning the fate of the disappeared has given way to resignation as time has passed, many are still unable to grieve for their families as the bodies of the deceased have not been returned.

The amnesty promulgated by the Senegalese Head of State also deprived of any hope of justice and redress the many victims of human rights abuses committed by the MFDC. Throughout the conflict, armed elements of the MFDC were responsible for the deliberate and arbitrary abduction and homicide of civilians suspected of collaborating with the Senegalese authorities. They also committed acts of torture and rape in order to force communities off land considered by the armed opposition movement to be its private property.

Causing such suffering to the families of disappeared people (an inevitable and sometimes deliberate result of forced disappearances) also constitutes a violation of human rights. On several occasions, international human rights treaty bodies, including the United Nations Human Rights Committee, have stated that the willingness of the authorities to let months and even years go by without granting the families of the disappeared the right to know what happened to their families is a violation of the prohibition of torture and other ill-treatment.

The continuing silence regarding the fate of the disappeared continues to have serious economic and psychological consequences for their families. The wives of the disappeared are faced with economic difficulties that many of them have never really been able to overcome and children have grown up without knowing why their father was not at home. To Amnesty International's knowledge, no family, or almost no family of the disappeared has received either compensation or material or psychological support.

5. THE TRIAL OF HISSÈNE HABRÉ: A DECADE OF DELAY TACTICS

For more than twelve years, Hissène Habré's victims have hoped that the Senegalese authorities would try the former Chadian president who took refuge in Senegal after being forced from power in 1990. However, the Senegalese authorities have multiplied delay tactics to avoid taking Hissène Habré to trial, in spite of the repeated requests of the Committee against Torture, the decision made in 2006 by the African Union ordering Senegal to try Hissène Habré, and President Abdoulaye Wade's formal commitments to try this former African Head of State accused of serious and large-scale human rights violations on African soil.

After years of procrastination and broken promises, the Senegalese authorities openly declared, in 2011, that they did not intend to try Hissène Habré. In February 2001, the Senegalese President Abdoulaye Wade had told the French daily newspaper, *La Croix*, that he rejected the decision taken one month earlier by the African Union conference to try Hissène Habré in Senegal on behalf of Africa, for war crimes, crimes against humanity and torture. In the same interview, President Wade expressed his refusal to extradite the former Chadian president to Belgium, a country willing and able to give him a fair trial which would exclude capital punishment.

Then in July 2011, the Senegalese authorities threatened to extradite Hissène Habré to Chad where he had been sentenced to death *in absentia* in August 2008. This decision sparked a wave of protests⁷ and was not taken any further.

In the beginning of 2012, President Wade apparently changed his mind again by promising to extradite Hissène Habré to Belgium if the Dakar Court of Appeal agreed. On 12 January 2012, this court refused the extradition request on the grounds that the warrant issued against him by Belgium, in their opinion, contained formal defects.

The delay tactics undertaken by Senegal during the last ten or so years constitute not only a refusal to respect its international obligations under international law, they also reflect contempt for the Hissène Habré's African victims who filed complaints in Dakar twelve years ago. Several have already passed away and those who are still alive have put their hopes in the hands of the Senegalese legal system. Over and above its legal obligation to try Hissène Habré, Senegal has a moral responsibility towards these victims who have believed in its promises and commitments. It is clear that for the moment, these victims, the African Union and the rest of the international community who have expressed a clear desire to see Hissène Habré tried in Senegal, must feel let down.

⁷ Senegal: Authorities must not return former Chadian president to Chad, 9 July 2011, (PRE01/343/2011)

6. HOMOPHOBIC DISCRIMINATION

In the last few years, men faced harassment, arbitrary arrest, torture and unfair trial because of their suspected engagement in consensual same-sex sexual relationships. These arrests and convictions occurred in a context of growing hostility towards homosexuals in Senegal, a hostility that has resulted in arbitrary arrests and homophobic measures of harassment and discrimination.

In January 2009, nine men were sentenced to eight years' imprisonment for "indecent conduct and unnatural acts and conspiracy" on the basis of confessions extracted by security forces under torture. The men had been arrested following anonymous accusations about their sexual behaviour. They were all released in April after the Dakar Appeal Court overturned the convictions.

In June 2009, three men and a teenage boy were arrested in the city of Darou Mousty, Louga region, after being anonymously denounced for alleged sexual acts "against nature". The teenager was released and the three adults were sentenced in August to prison terms ranging from two to five years' imprisonment.

7. CONCLUSION

In the following days, Senegal will enter an election period which risks being rather tumultuous. The challenge to the legitimacy of President Wade's candidacy for a third presidential term and the fact that some supporters of political parties are openly armed and seem determined to take the violent road if their candidate is defeated, may lead the country into serious disorder and human rights violations and abuses.

All political parties as well as security forces have a responsibility in this regard and they must make every effort to ensure that human rights are respected in Senegal in the days and weeks to come.

Over and above the inherent risks of this election period, the Senegalese human rights record leaves a lot to be desired. Many official Senegalese texts state that: "*Senegal is a State of law where the Constitution guarantees that all citizens are equal before the law.*"

However, the cases described in this report indicate that, on the contrary, members of the security forces who commit human rights violations enjoy *de jure* or *de facto* impunity that protects them from being brought to justice.

This impunity, consistently denounced by United Nations treaty bodies and many national and international human rights NGOs, undermines the foundations of the rule of law in Senegal.

Once the elections are over, it will be incumbent on the Senegalese authorities to immediately combat this culture of impunity. They must respond to the anguish of the victims of human rights violations and the families who are still waiting for justice and reparation. It is a question of restoring the confidence of all Senegalese people in their security forces and judiciary, so that Senegal ceases to be a land of impunity and becomes a land of justice where the rule of law is truly observed.

