

OPCAT Senegal Research Project

**Center for Law and Global Affairs
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Country Brief – Senegal



**A project to assist the
Sub-Committee on the Prevention of Torture**

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I. INTRODUCTION

The goal of this document is to assist the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) in preparation for its upcoming site visit to Senegal.

This document was prepared by a team of post-graduate research fellows (JD students) from the Center for Law and Global Affairs at the Sandra Day O'Connor College of Law at Arizona State University. Team members include Honore Callingham, Karen Nielson, Michelle Yates, Melody Goodwin and Julia Pierre-Nina. The team was supervised by Alexa Magee, Emoline Fox, the Center's program coordinator and Professor Daniel Rothenberg, the Center's executive director.

The document is modeled on prior SPT Country Briefs and should be read in conjunction with other materials, including suggested contacts in Senegal and suggested sites within the country that the SPT may want to visit.

II. GENERAL BACKGROUND INFORMATION:

Map of Senegal¹



¹ “Senegal,” CIA World Factbook, accessed October 30, 2012, <https://www.cia.gov/library/publications/the-world-factbook/geos/sg.html>.

A. Background Data²

Land area	192,722 sq km -Comparison: Slightly smaller than South Dakota
Population	12,969,606 (July 2012 est.)
Capital	Dakar
Government Type	Republic
Independence	- From France: 4 April 1960 - Dissolution of Federation with Mali: 20 August 1960
Administrative Divisions	14 Regions: Dakar, Diourbel, Fatick, Kaffrine, Kaolack, Kedougou, Kolda, Louga, Matam, Saint-Louis, Sedhiou, Tambacounda, Thies, Ziguinchor
Languages	- Official Language: French - Regional Languages: Wolof, Pulaar, Jola, Mandinka
Ethnic groups	Wolof (43.3%), Pular (23.8%), Serer (14.7%), Jola (3.7%), Mandinka (3%), Soninke (1.1%), European and Lebanese (1%), Other (9.4%)
HDI³	0.411 (Low: 144th Country on HDI list)
Currency	CFA Franc
GDP	\$25.47 billion (2011 est.)
Real growth rate	2.6% (2011 est.)
Natural resources	Fish, Phosphate, Iron Ore
Religions	Muslim (94%), Christian-predominantly Roman Catholic (5%), Indigenous beliefs (1%)
Climate	Tropical: May – November (Rainy Season): hot, humid, strong southeast winds/ December – April (Dry Season): hot, dry, harmattan wind

B. Historical Overview

On April 4, 1960, Senegal and the French Sudan proclaimed independence and formed the Republic of Mali. President Leopold Sedar Senghor and Prime Minister Mamadou Dia governed together under a parliamentary system. Political rivalry led to an attempted coup by Prime Minister Dia, who was then arrested and imprisoned. As a result, Senegal adopted a new constitution that consolidated the President's power. In 1980, President Senghor retired and handed over power to his handpicked successor, Abdou Diouf who encouraged broader

² *Ibid.*

³ "Senegal: Country Profile," Index Mundi, <http://www.indexmundi.com/senegal/>.

political participation, reduced government involvement in the economy, and widened Senegal's diplomatic engagements, particularly with other developing nations. On occasion, domestic politics spilled over into street violence, border tensions, and a violent separatist movement in the southern region of the Casamance. Diouf served four terms as president, until his 2000 defeat by opposition leader Abdoulaye Wade (pronounced "wahd") in a free and fair election. Senegal experienced its second peaceful transition of power, and its first from one political party to another.⁴

C. Geography and Socio-Economic Situation⁵

Senegal is bounded by the Atlantic Ocean, Mauritania, Mali, Guinea, and Guinea-Bissau. The Gambia penetrates more than 320 kilometers (200 mi.) into Senegal. Well-defined dry and humid seasons result from northeast winter winds and southwest summer winds. Dakar's annual rainfall of about 61 centimeters (24 in.) occurs between June and October when maximum temperatures average 27°C (82°F); December to February minimum temperatures are about 17°C (63°F).⁶

43.3% of Senegal's population is aged between 0-14 years (more males than females), 53.9% are 15-64 years, and only 2.9% are 65 or older. In Senegal, the majority of those aged 15 and above are female. Senegal's birth rate is ranked 23rd globally, and its population growth rate is ranked 28th fastest growing in the world. The death rate is 9.05 deaths/ 1,000 population, which ranks 66th in the world.

About 58% of Senegal's population is rural. In rural areas, density varies from about 77 per square kilometer (200 per sq. mi.) in the west-central region to 2 per square kilometer (5 per sq. mi.) in the arid eastern section. About 50,000 Europeans (mostly French) and Lebanese reside in Senegal, mainly in the cities.

Senegal experienced sustained positive annual economic growth at a rate of about 5% from the mid-1990s to 2005, which helped to decrease poverty significantly. However, in recent years the Senegalese economy has been significantly affected by the oil and food price crises and the effects of the global financial crisis (World Bank 2010). The OECD (2010) has warned that the country's economic growth is likely to be slowed by high youth unemployment. There are difficulties in achieving the UN Millennium Development Goals (MDGs), the lack of dialogue between government and opposition, and the persistence of the Casamance conflict. The *Senegal: Country and Research Areas Report by EUMAGINE* provides a thorough and extended explanation of the Socio-economic situation in Senegal.⁷

⁴ "Background Note: Senegal," U.S. Department of State, <http://www.state.gov/r/pa/ci/bgn/2862.htm>

⁵ CIA, *supra* note 2.

⁶ U.S. Department of State, *supra* note 4.

⁷ Papa D. Fall, María H. Carretero, and Mame Y. Sarr, "Senegal: Country and Research Areas Report," Eumagine, Université Cheikh Anta Diop De Dakar (UCAD), Peace Research Institute Oslo (PRIO), accessed 01 Oct. 2010, <http://www.eumagine.org/outputs/PP2%20-%20Senegal%20Country%20and%20Research%20Areas%20Report%20-%20Final.pdf>.

D. Political System and Government

1. The Executive

The president of Senegal is elected by popular vote for a seven-year term and is eligible for a second term. Elections were last held on 26 February 2012 with a second round runoff on 25 March 2012. The president then appoints the prime minister.

Principal Government Officials⁸⁹

President/Chief of State: President Macky Sall (since 2 April 2012)
Head of government: Prime Minister Abdoul Mbaye (since 3 April 2012)
Min. of Foreign Affairs: Mr. Alioune Badara Cissé
Min. of Justice: Aminata Touré
Min. of Internal Affairs: Mr. Mbaye Ndiaye
Min. of National Defense: Mr. Augustin Tine

2. The Legislative

Senegal has a bicameral Parliament consisting of the Senate, reinstated in 2007; there are 100 seats, 35 members are indirectly elected and the president appoints 65 members. The National Assembly is made up of 150 seats; 90 members are elected by direct popular vote and 60 are elected by proportional representation from party lists to serve five-year terms.

Elections for the Senate were first held on 19 August 2007. The National Assembly elections were last held on 1 July 2012 and are next held in 2017.

3. Administrative divisions

Senegal is divided into 14 administrative regions, each headed by a governor appointed by the President. The law on decentralization, which came into effect in January 1997, distributed significant central government authority to regional assemblies.¹⁰ The regions include: Dakar, Diourbel, Fatick, Kaolack, Kolda, Louga, Matam, Saint-Louis, Tambacounda, Thies, Ziguinchor, Sedhiou, Kaffrine, and Kerdougou. Local administrators are appointed by the president. The country is further subdivided into 45 departments and 320 rural councils.¹¹

⁸ CIA, *supra* note 2.

⁹ "Le Gouvernement," Gouvernement Du Sénégal, <http://www.gouv.sn/>.

¹⁰ U.S. Department of State, *supra* note 4.

¹¹ *Ibid*



E. Current Human Rights Issues

1. Casamance conflict:

For over 30 years, the Senegalese security force has fought an armed opposition movement, called the Democratic Forces of Casamance Movement (Mouvement des forces démocratiques de Casamance “MFDC”), that has called for the region’s independence.¹² Hostilities in Casamance between the armed element of MFDC and the Senegalese army have led to the displacement of hundreds of people, who have fled to Guinea-Bissau and Gambia.¹³ Both parties have been accused of various human rights abuses.¹⁴

In July 2004, the MFDC and the Senegalese government signed two agreements which enforced a law of amnesty for soldiers of government forces and armed members of the MFDC involved in the Casamance conflict.¹⁵ Impunity of these groups continues to promulgate victims of human rights abuses in the area.

¹² “Senegal: An agenda for human rights,” Amnesty International [AI] <https://www.amnesty.org/en/library/info/AFR49/004/2012/en>.

¹³ “Annual Report: Senegal 2010,” AI, 28 May 2010, <http://www.amnestyusa.org/research/reports/annual-report-senegal-2010?page=2>.

¹⁴ The Senegalese army has conducted dozens of extrajudicial executions, enforced disappearances, arrests and arbitrary detentions and has widely used torture. Similarly, armed members of the MFDC have been responsible for abductions and the deliberate and arbitrary killings of those 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 (see page 20 of “Annual Report: Senegal 2010” by Amnesty International).

¹⁵ Amnesty International, *supra* note 13.

2. Extradition of former Chad President Hissène Habré

In 2006, the Committee Against Torture concluded in “*Suleymane Guengueng v. Senegal*”¹⁶ that Senegal had violated article 5, paragraph 2, and article 7 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment by failing to prosecute or extradite former Chad President Hissène Habré, who has been accused of thousands of political killings and systematic torture and has resided in Senegal since 1990. On August 22, 2012, Senegal and the African Union (AU) signed an agreement to establish special chambers embedded in the Senegalese judicial system to prosecute the person or persons most responsible for international crimes committed in Chad between 1982 and 1990.¹⁷

F. Senegal and the UN Human Rights Mechanisms

1. Scope of international obligations¹⁸

Senegal ratified the majority of the UN human rights instruments, with the most relevant treaties listed below.

<i>Core universal human rights treaties 2</i>	<i>Date of ratification, accession or succession</i>	<i>Declarations /reservations</i>	<i>Recognition of specific competences of Treaty bodies</i>
ICERD	19 April 1972	None	Individual complaints (art. 14): Yes
ICESCR	13 January 1978	None	-
ICCPR	13 January 1978	None	Inter-State complaints (art. 41): Yes
ICCPR-OP 1	13 January 1978	None	-
CEDAW	5 January 1985	None	-
OP-CEDAW	26 May 2000	None	Inquiry procedure (arts. 8 and 9) Yes/Yes
CAT	21 August 1986	None	Inter-State complaints (art. 21): Yes Individual complaints (art. 22): Yes Inquiry procedure (art. 20): Yes
OP-CAT	18 October 2006	None	-
CRC	31 July 1990	None	-
OP-CRC-AC	3 March 2004	Binding declaration under art 3: 20 years	-
OP-CRC-SC	5 November 2003	None	-
ICRMW	9 June 1999	None	Inter-State complaints (art.76)No Individual complaints (art.77)No
<i>Core treaties to which Senegal is not a party: ICCPR-OP 2, CPD (signature only, 2007), OP-CPD (signature only, 2007), CED (signature only, 2007).</i>			

¹⁶ Communication No. 181/2001, *Suleymane Guengueng v. Senegal*, Views adopted on 17 May 2006, U.N. Doc. (CAT/C/36/D/181/2001).

¹⁷ “Q&A: The Case of Hissène Habré before the Extraordinary African Chambers in Senegal,” Human Rights Watch, September 12, 2012, <http://www.hrw.org/news/2012/09/11/qa-case-hiss-ne-habr-extraordinary-african-chambers-senegal>.

¹⁸ U.N. High Commissioner for Human Rights, “Compilation Prepared by the Office of the High Commissioner...”, December 18, 2008, A/HRC/WG.6/4/SEN/2, “http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/SN/A_HRC_WG6_4_SEN_2_E.PDF”, also see University of Minnesota, Human Rights Library, “Ratification of International Human Rights Treaties – Senegal”, <http://www1.umn.edu/humanrts/research/ratification-senegal.html>.

<i>Other relevant main instruments</i>	<i>Ratification, accession or succession</i>
Convention on the prevention and Punishment of the Crime of Genocide	Yes
Rome Statute of the International Criminal Court	Yes
Palermo Protocol	Yes
Refugees and Stateless Persons ⁴	Yes
Geneva Conventions and their Protocols ⁵	Yes, except for Additional protocol III to the Geneva Conventions
ILO Fundamental Conventions Nos. 29, 105, 87, 98, 100, 111, 138 and 182	Yes
UNESCO Convention against Discrimination in Education	Yes

2. Regional obligations

Regional African Convention	Signature	Ratification
African [Banjul] Charter on Human and Peoples' Rights	23 Sep 1981	13 Aug 1982
Convention Governing the Specific Aspects of Refugee Problems in Africa	10 Sep 1969	1 Apr 1971
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	26 Dec 2003	
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	9 Jun 1998	29 Sep 1998
African Charter on the Rights and Welfare of the Child	18 May 1992	29 Sep 1998

3. Cooperation with treaty bodies

<i>Treaty Body</i>	<i>Latest report submitted and considered</i>	<i>Latest concluding observations</i>	<i>Follow-up response</i>	<i>Reporting status</i>
CESCR	2000	September 2001	-	Third report overdue since 2003
HR Committee	1996	November 1997	-	Fifth report overdue since 2000
CERD	2001	November 2002	-	Sixteenth, seventeenth and eighteenth reports overdue since 2004
CRC	2006	October 2006	-	Consolidated third, fourth and fifth report to be submitted in 2011
CEDAW	1991	February 1994	-	Third, fourth, fifth, sixth, seventh and eighth reports to be submitted in 2010
CAT	1995	July 1996	-	Third, fourth, fifth and sixth reports overdue since 1996
OP-CRC- AC	-	-	-	Initial report overdue since 2006
OP-CRC- SC	-	-	-	Initial report overdue since 2005

4. Cooperation with special procedures

<i>Standing invitation issued</i>	No
<i>Latest visits or mission reports</i>	None
<i>Visits agreed upon in principle</i>	Special Representative of the Secretary-General on human rights defenders; Special Rapporteur on the right to education; Working Group on arbitrary detention; Special Rapporteur on the human rights of migrants; Special Rapporteur on trafficking in persons, especially in women and children.

<i>Visits requested and not yet agreed upon</i>	None
<i>Facilitation/cooperation during missions</i>	-
<i>Follow-up to visits</i>	None
<i>Responses to letters of allegations and urgent appeals</i>	Between 15 November 2004 and 14 November 2008, 6 communications concerning 7 individuals including 6 journalists were sent to the Government. During the same period, Senegal replied to two communications (33 per cent)
<i>Responses to questionnaires on thematic issues 25</i>	Senegal replied to one of the 12 questionnaires sent by Special Procedures mandate holders ¹⁹ between 1 January 2004 and 31 December 2007, within the deadlines.

III. LEGAL FRAMEWORK FOR THE PREVENTION OF TORTURE

A. The Constitution

The Constitution of Senegal, adopted in 7 January 2001 (amended in 2003, 2006, 2007), serves as the supreme law of the land.²⁰ The Constitution guarantees fundamental freedoms and civil rights²¹, and explicitly affirms Senegal's commitment to several international human rights instruments.²²

¹⁹ See (a) report of the Special Rapporteur on the right to education (A/HRC/4/29), questionnaire on the right to education of persons with disabilities sent in 2006; (b) report of the Special Rapporteur on the human rights of migrants (A/HRC/4/24), questionnaire on the impact of certain laws and administrative measures on migrants sent in 2006; (c) report of the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/4/23), questionnaire on issues related to forced marriages and trafficking in persons sent in 2006; (d) report of the Special Representative of the Secretary-General on human rights defenders (E/CN.4/2006/95 and Add.5), questionnaire on the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms sent in June 2005; (e) report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/6/15), questionnaire on the human rights of indigenous people sent in August 2007; (f) report of the Special Rapporteur on trafficking in persons, especially in women and children (E/CN.4/2006/62) and the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2006/67), joint questionnaire on the relationship between trafficking and the sent in July 2005; (g) report of the Special Rapporteur on the right to education (E/CN.4/2006/45), questionnaire on the right to education for girls sent in 2005; (h) report of the Working Group on mercenaries (A/61/341), questionnaire concerning its mandate and activities sent in November 2005; (i) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/4/31), questionnaire on the sale of children's organs sent on July 2006; (j) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2005/78), questionnaire on child pornography on the Internet sent in July 2004; (k) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2004/9), questionnaire on the prevention of child sexual exploitation sent in July 2003; (l) report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/4/35/Add.3), questionnaire on human rights policies and management practices.

²⁰ Horace Sègnonna Adjolohoun, "The Senegalese Legal System and Legal Research: A Human Rights Perspective", Globalex, last modified March/April 2009, <http://www.nyulawglobal.org/globalex/senegal.htm>.

²¹ Gouvernement du Sénégal, "Constitution du Sénégal", Preamble, September 28, 2012, <http://www.gouv.sn/-Constitution-du-Senegal-.html>.

²² 1789 Declaration of Human Rights; 1948 Universal Declaration of Human Rights; 1979 Convention on the Elimination of all Forms of Discrimination Against Women; 1989 Convention on the Rights of the Child, and; 1981 African Charter on Human and People's Rights

Various articles within the Constitution aim to guarantee the prevention of human rights abuses. The Constitution's Preamble proclaims Senegal's commitment to transparency in governance and access to public services.²³ Article 1 establishes equality for all citizens, without distinction to race, sex, or religion.²⁴ Article 5 prohibits racial, ethnic, or religious discrimination, making such discrimination punishable by law.²⁵ Article 7 declares all citizens equal under the law and offers core liberties and protections granted, including gender equality.²⁶ Specifically, Article 7 grants the right to life, liberty, and security, and provides the right to physical integrity.²⁷ Article 8 establishes fundamental political and civil rights, including freedoms of expression, opinion, religion, assembly, association, education, property, and press.²⁸ Of particular relevance to the Committee is Article 8's grant of the rights to health and healthy environment.²⁹

In addition to the constitutionally declared commitments to international human rights instruments, Senegal ratified the Convention Against Torture in 1986 and more recently the OPCAT in 2006.

B. Relevant National Legislation

1. The Penal Code

Senegal was the first country to sign the Rome Statute, which established the International Criminal Court (ICC).³⁰ Accordingly, Senegal's penal code is modeled after Article 7 of the ICC with regard to crimes against humanity.³¹

Article 295-1 of the Penal Code makes torture a domestic crime.³² Torture is defined as any injury, blow, physical or mental violence that is voluntarily exercised by a state actor, either with express or implied consent, in order to obtain information, intimidate, or discriminate.³³ It provides that the attempt of such acts is to be punished as an actual act of torture.³⁴ No circumstance, regardless of how exceptional, may justify acts of torture, nor may orders from a superior authority.³⁵ Persons found guilty of committing acts of torture are punishable by imprisonment of five to ten years, plus a 100,000 to 500,000 Franc fine.³⁶

The Penal Code does not penalize acts based on retroactive laws, so that an act must be prohibited at the time of its commission in order to be punishable.³⁷

²³ *Ibid.*

²⁴ *Ibid.*, Section 1, Article 1.

²⁵ *Ibid.*, Section 1, Article 5.

²⁶ *Ibid.*, Section 2, Article 7.

²⁷ *Ibid.*

²⁸ *Ibid.*, Section 2, Article 8.

²⁹ *Ibid.*

³⁰ Mandiaye Niang, "The Senegalese Legal Framework for the Prosecution of International Crimes," *Journal of International Criminal Justice*, no. 7.5 (2009): 1047.

³¹ "Expose des Motifs," *Journal Officiel de la Republique du Senegal*, (2007): p. 2377.

³² "Code Penal," Section 2, Article 295-1, Gouvernement du Sénégal, <http://www.justice.gouv.sn/droitp/CODE%20PENAL.PDF>.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Gouvernement du Sénégal, *supra* note 32, Preliminary Provisions, Article 4.

The Penal Code was amended on January 31, 2007 in an effort to better implement Senegal's commitments to human rights.³⁸ The amendments provided explicit prohibitions on genocide, crimes against humanity, and war crimes; they also elaborate the provision on torture.³⁹

Amendment Article 431-2, listed under crimes against humanity, states that torture constitutes the following acts against civilians:

- 1) Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, all forms of sexual violence or comparable gravity,
- 2) Voluntary homicide,
- 3) Extermination,
- 4) Deportation,
- 5) Apartheid,
- 6) Enslavement,
- 7) Torture or inhumane acts that intentionally cause great suffering, or grave harm to the person's physical or mental integrity, inspired by political, racial, national, ethnic, cultural, religious, or sexist motives.⁴⁰

Although the amendments are modeled after Article 7 of the Rome Statute, there are clear distinctions between the two.⁴¹ For example, Amendment Article 431-2(4) omits forced transfer from the description of acts of torture.⁴² Given the high rate of internal displacement, this omission has a significant impact on the legal consequence of forced transfer of people within Senegal (note: court may choose to apply a broad meaning to "deportation" so that internal displacement falls within the bounds of torture).⁴³ Amendment § 431-2 also omits the ICC Art. 7 provision regarding persecution of people based on their group identity, such as political, racial, ethnic, religious, gender identities.⁴⁴ However, the objective of the ICC provision to include persecution of a group as an act of torture may be covered by § 431-2(7), though it is listed in broader terms and requires motive.⁴⁵ While the Rome Statute includes general provisions, Amendment Article 431-2 employs vaguer terminology and lacks a definition of terms section similar to the one provided in the Rome Statute Article 7(2).⁴⁶

IV. INSTITUTIONAL FRAMEWORK FOR THE PREVENTION OF TORTURE

A. The National Preventative Mechanism (NPM)

The National Preventative Mechanism (NPM) for Senegal is the National Observer of Places of Deprivation of Liberty (Observatoire national des lieux de privation de liberté, ONLPL). A National Observer was appointed in January 2012. Mr. Boubou Diouf Tall is the National

³⁸ *Ibid.*, 2007 Amendments to Penal Code.

³⁹ *Ibid.*

⁴⁰ *Ibid.*, Section 2 Article 431-2.

⁴¹ Mandiaye Niang, 1052.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, 6.

⁴⁶ *Ibid.*, 5.

Observer of Places of Detention.⁴⁷ In June 2012, Mr. Tall spent five days in France with the French counterpart, the General Inspector of Places of Deprivation of Liberty (Contrôleur général des lieux de privation de liberté), Mr. Jean Marie Delarue. They exchanged best practices and shared experiences. In addition to attending meetings, Mr. Tall accompanied the Comptroller General's teams on site visits.⁴⁸

An OPCAT Follow-Up Committee was established at a national seminar in December 2007, comprised of representatives from the Ministries of Justice, Interior, Armed Forces, representatives from four NGOs and the Senegalese Human Rights Commission.⁴⁹ The Follow-Up Committee's duties were to present recommendations to the Ministry of Justice, aid the Ministry of Justice to create the NPM law proposal, advocate Parliament to adopt the law, and advocate the appointment of the director of the new NPM.⁵⁰ The Committee assessed existing national monitoring bodies.⁵¹ Due to this work, Senegal decided to create a new institution based on the French model: the General Inspector of Places of Deprivation of Liberty (Contrôleur général des lieux de privation de liberté). A draft NPM proposal was presented to the President in July 2008, approved by the Council of Ministers in November 2008, and then presented to the Parliament for approval.

In January 2009, the National Assembly decided to amend the National Observer's law based on suggestions submitted by the Association for the Prevention of Torture (APT). These amendments restricted advance notice of an NPM visit and gave the NPM access to relevant information. The law creating the National Observer of Places of Deprivation of Liberty entered into force on 2 March 2009.⁵²

In April 2010, a regional conference on torture prevention was held in Dakar, Senegal. The APT, Amnesty International-Senegal, and the African Commission on Human and Peoples' Rights (ACHPR) organized the conference that produced "The Dakar Action Plan: Eight Points for the Prevention of Torture in Africa" to promote the ratification and effective implementation of the OPCAT in Africa.⁵³

A joint effort (between APT, the High Commissioner for Human Rights (OHCHR), and Amnesty International-Senegal) to designate a National Observer was prompted by the death of Abdoulaye Wade Yinghou while in police custody in July 2010, publicized in Amnesty International's May 2011 report.⁵⁴ On 1 June 2011, the Council of Ministers approved the implementing decree of the legislation establishing the National Observer of Places of Deprivation of Liberty (ONLPL) adopted by the Senegalese Cabinet on 16 June 2011.⁵⁵

⁴⁷ "Senegal: OPCAT status," Association for the Prevention of Torture, http://tortureprevention.ch/en/opcat_pages/opcat-situation-63/?pdf=info_country.

⁴⁸ "Observatoire national des lieux de privation de liberté Sénégal," Association for the Prevention of Torture, http://apt.ch/region/africa/CDP_Senegal_France_0612.pdf.

⁴⁹ Association for the Prevention of Torture, *supra* note 47.

⁵⁰ *Ibid.*

⁵¹ "Senegal – NPM Designation," Association for the Prevention of Torture, http://www.apt.ch/en/opcat_pages/npm-designation-59/.

⁵² Association for the Prevention of Torture, *supra* note 47.

⁵³ "One voice, multiple actions to prevent torture in Africa...", Association for the Prevention of Torture, http://www.apt.ch/content/files_res/report-africa-regional-event-en.pdf.

⁵⁴ "Nomination d'un Observateur des Lieux de Privation de Liberte," La Gazette, August 22, 2011, <http://www.lagazette.sn/index.php/spip.php?article3162>.

⁵⁵ Association for the Prevention of Torture, *supra* note 47.

A two-day workshop on the effective functioning of the ONLPL took place in Dakar in July 2011. The workshop's main objective was to create recommendations for the effective functioning of the ONLPL to prevent torture in Senegal and advocate for the prompt appointment of an independent, qualified, credible, and human rights committed person to the position of National Observer.⁵⁶

However, as of August 2011, it was feared that Senegal's National Observer would be too weak to be an effective mechanism because the Observer resulting from the July workshop would only be able to advise competent authorities.⁵⁷ The 2011 decree was found to be inadequate because the Observer would have the power to do little more than sanction.⁵⁸

According to Amnesty International, "It is for the new authorities to ensure that the National Observer of Places of Deprivation of Liberty is given the human and financial resources necessary to make this vital organ of torture prevention fully operational."⁵⁹ It is unknown whether the Sall Administration has achieved this objective.

V. STATE ORGANS

A. Judiciary

As a post-French colonial power, the Senegalese judiciary functions under civil law. The independence of the judiciary from the legislative and executive is established in Article 88 of the Constitution. Judges are only subject to the authority of the law while exercising their functions according to Article 90, paragraph 2 of the Constitution.⁶⁰ All judges are nominated by the minister of justice, recommended by the High Council of Magistrature, and appointed by the President of the Republic.⁶¹ Article 91 of the Constitution places the judiciary as the guardian of Constitutional freedoms. The High Court of Justice can try the President of the Republic for high treason and ministers for treasonable conspiracy.⁶²

The judicial branch is composed of: the Constitutional Council (Conseil constitutionnel); the Supreme Court (Cour suprême), formerly Council of State (Conseil d'état) and the Court of Final Appeals (Cour de cassation); the courts of appeal (Dakar, Kaolack, Saint Louis, Thies, and Ziguinchor); and regional tribunals.⁶³ Senegal has three specialized courts: labor courts, juvenile courts, and courts of military justice. The judicial system has a pyramid organizational structure. At the base are the courts of first instance. The courts of appeal, courts of assize, regional courts, and departmental courts form the courts of second instance. The Supreme Court is the highest court and the Minister for Justice, Aminata Touré, is the

⁵⁶ "Promoting the prevention of torture in places of deprivation of liberty..." African Commission on Human and Peoples' Rights, <http://www.achpr.org/news/2011/07/d30>.

⁵⁷ La Gazette, *supra* note 55.

⁵⁸ *Ibid.*

⁵⁹ "Senegal: An Agenda for Human Rights," Amnesty International, <http://reliefweb.int/sites/reliefweb.int/files/resources/afr490042012en.pdf>.

⁶⁰ U.N. Human Rights Council, "Report of the Working Group on Arbitrary Detention on its mission to Senegal," March 23, 2010, A/HRC/13/30/Add.3, at 6.

⁶¹ Horace Ségnonna Djolohoun, *supra* note 20.

⁶² U.N. Human Rights Council, *supra* note 61, Add.3, at 5.

⁶³ "Organisation Judiciaire," Ministère de la Justice du Sénégal, <http://www.justice.gouv.sn/organisation.php>

⁶⁴ CIA, *supra* note 2.

most senior official in the judicial system.⁶⁵ She oversees monitoring discipline within the judiciary, recruiting judges, supervising court officials and managing staff and resources.⁶⁶ The Constitutional Council handles constitutional matters and is responsible for ensuring respect for the Constitution. It consists of five presidentially appointed members who serve a six-year non-renewable term.⁶⁷ As of 2009, the Council has not expressly dealt with human rights issues.⁶⁸

The Council of State deals with administrative matters and has advisory and judicial functions.⁶⁹ It gives independent advisory opinions to the General Assembly on issues requested by the government.⁷⁰ The Court of Final Appeals is the highest appeals court and handles criminal matters. The Supreme Court is the court of first and last resort for abuse of power by executive authorities. It rules on final appeals for incompetence and violations of law or of custom directed against final judgments from all jurisdictions as well as decisions of arbitration boards of collective labor disputes.

1. Problems facing the Courts:

a) Impunity

The judiciary has faced obstacles when trying to summon security forces to account for human rights violations. Judges must obtain a prosecution order (*ordre de poursuites*) from the Ministry responsible for the state officials in question. However, according to article 60 of the Code of Military Justice, the executive has de facto power of veto with regard to any judicial proceeding against members of the security forces. As a result, many prosecution orders are refused or delayed by officials.⁷¹

b) Delay

The right to be tried without undue delay often is undercut by abnormally long delays before a case goes to trial. This problem may be caused by slow trial preparation for criminal cases, overloaded criminal courts, and a limited number of investigating judges.⁷²

c) Maintaining Independence of the Judiciary

L'Organisation Nationale des Droits de l'Homme du Sénégal (ONDH) and the Fédération internationale des ligues des droits de l'Homme (FIDH) have reported numerous violations of the independence of the judiciary, particularly in pending cases. Additionally they report

⁶⁵ "Madame Aminata Touré," Gouvernement du Sénégal, <http://www.gouv.sn/Madame-Aminata-Toure.html>.

⁶⁶ U.N. Human Rights Council, *supra* note 61, Add.3, at 5-6.

⁶⁷ Ministère de la Justice du Sénégal, *supra* note 64.

⁶⁸ Horace Ségnonna Adjolohoun, *supra* note 20.

⁶⁹ *Ibid.*

⁷⁰ U.S. Department of State, *supra* note 4.

⁷¹ Senegal: Land of Impunity," Amnesty International, 2010, <http://www.amnesty.org/en/library/asset/AFR49/001/2010/en/6dcdd964-211b-4269-9cab-32b9d6f28a99/af490012010en.pdf>

⁷² U.N. Human Rights Council, *supra* note 61, Add.3, at 8

the High Council of Magistrature (Conseil Supérieur de la Magistrature) fails in its assigned objective to maintain judicial independence.⁷³

B. Police Forces

The Senegalese National Police (formally National Security) consists of two systems: the Police Force and the Gendarmerie.⁷⁴ The Police Force is under the Directorate General of National Safety in the Ministry of the Interior⁷⁵ and the Gendarmerie is part of the Ministry of Defense (see Military Justice).⁷⁶ The judicial process is similar for arrests made by both forces.⁷⁷ The police have a minimum of one police station and one mobile safety brigade in every region with more in the capital. Police are divided into the administrative police and the judicial police.⁷⁸ The administrative police are designed to be preventative and maintain public order.

Police have broad detention powers, although arbitrary arrest and detention is constitutionally prohibited.⁷⁹ Before having to file formal charges, suspects may be held:

- up to 48 hours after arrest,
- up to 96 hours if authorized by a public prosecutor, and
- up to 192 hours in cases involving threats to state security.⁸⁰

Suspects have no attorney access during the first 24 hours,⁸¹ after which the suspect has a right to an attorney but at the suspect's own expense. The prosecutor will appoint counsel if necessary when the case is presented to the prosecutor.⁸² However, a lawyer is only mandatory in criminal cases, not misdemeanors. Most misdemeanor cases do not receive assistance by a lawyer.⁸³ After 96 hours, the public prosecutor is supposed to do one of three things: release the individual, issue a detention order and refer to a court, or refer the case to the judge.⁸⁴

As part of a right to a fair trial, the functions of prosecution and case trial preparation are officially separated. Therefore, an independent judicial authority, the investigating judge, directs the factual investigation for criminal cases. The investigating judge collects evidence for both the prosecution and defense. He places the defendants under judicial supervision

⁷³ U.N. Human Rights Council, "Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with Paragraph 159 c) of the Annex to Human Rights Council Resolution 5/1," Nov. 24, 2008, A/HRC/WG.6/4/SEN/3 Add. 1 at 6

⁷⁴ "Arrested Americans in Senegal," Embassy of the United States in Dakar, Senegal, <http://dakar.usembassy.gov/service/emergency-services/arrested-americans-in-senegal.html>.

⁷⁵ "La Police Nationale," Ministère De L'Intérieur du Sénégal," http://www.interieur.gouv.sn/index.php?option=com_content&view=article&id=52&Itemid=27

⁷⁶ "Monsieur Augustin Tine," Gouvernement du Sénégal, http://www.gouv.sn/spip.php?article182&var_recherche=gendarmerie

⁷⁷ Embassy of the United States in Dakar, Senegal, *supra* note 75.

⁷⁸ "Missions de Police", Gendarmerie National, <http://www.gendarmerie.sn/pages/police.php>

⁷⁹ Embassy of the United States in Dakar, Senegal, *supra* note 75.

⁸⁰ *Ibid.*

⁸¹ Report of the Working Group on Arbitrary Detention, A/HRC/13/30/Add.3, at 9.

⁸² "Arrested Americans in Senegal," Embassy of the United States in Dakar, Senegal.

⁸³ Report of the Working Group on Arbitrary Detention, A/HRC/13/30/Add.3, at 12.

⁸⁴ *Ibid.*

or in pretrial detention.⁸⁵ He also determines on bail applications, although bail is rarely used.⁸⁶

There are three categories of offenses:

- Contraventions - a maximum penalty of 1-month incarceration.
- Delits- a sentence of incarceration of greater than 1 month but less than 10 years.
- Crimes- a possible sentence greater than 10 years.⁸⁷

1. Problems with the Police Force:

The Senegalese military personnel, gendarmes and police officers who have allegedly perpetrated massive human rights violations have pursued immunity from prosecution by using various political and legal stratagems. For example, in July 2004, the Senegalese president, Abdoulaye Wade, promulgated an amnesty law for all offences committed during the internal conflict in Casamance since 1991, “whether the perpetrators have been definitively judged or not.”⁸⁸ The Senegalese authorities have used this law and another amnesty law, the Ezzan law,⁸⁹ to avoid criminal proceedings. During 2011, no prosecutions or investigations have been closed against government officials, including law enforcement or security officials, who allegedly committed abuses.⁹⁰ According to Amnesty International-Senegal officials in 2011, its reports with recommendations since 2003 have never experienced a result.⁹¹ Public opinion shows the police are perceived to be most affected by corruption.⁹² In general, over half of the people surveyed reported paying a bribe.⁹³

a) Extended custody and detention

In 2009, the Working Group discovered that the public prosecutor had a practice of returning detained individuals to the police station rather than releasing them or moving them towards a trial.⁹⁴ This “return by prosecution” results in extensions beyond the legal time limit of police custody.

- In July 2010, police arrested Abdoulaye Wade Yinghou during a protest for electricity outages in a Dakar suburb. Yinghou was purchasing poultry feed for his employer and was not demonstrating. At the local police station, he used his cell phone to notify his employer. Initially the police denied having arrested him, but the next day,

⁸⁵ Report of the Working Group on Arbitrary Detention, A/HRC/13/30/Add.3, at 7.

⁸⁶ *Ibid.*

⁸⁷ Embassy of the United States in Dakar, Senegal, *supra* note 75.

⁸⁸ AI, 2010, *supra* note 72

⁸⁹ In February 2005, an amnesty law “for all infractions, whether correctional or criminal” committed in Senegal or abroad, in relation with the general and local elections held between 1983 and 2004 or regarding infraction “having a political motive, whether their perpetrators have been tried or not”

⁹⁰ “Country Reports on Human Rights Practices for 2011, Senegal,” U.S. Department of State Bureau of Democracy, Human Rights and Labor, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186236#wrapper>.

⁹¹ La Gazette, *supra* note 55.

⁹² “Senegal,” Transparency International, http://www.transparency.org/country#SEN_PublicOpinion.

⁹³ *Ibid.*

⁹⁴ “2010 Human Rights Report: Senegal,” U.S. Department of State Bureau of Democracy, Human Rights and Labor, <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154366.htm>.

told his employer that Yinghou died of a seizure while in custody. A postmortem indicated that Yinghou died of heart failure after suffering a broken cervical vertebrae, wounds from sharp instruments, and lung injuries.⁹⁵ In April 2011, the prosecutor ordered an investigation into his death, which was denounced by the African Assembly for Human Rights (RADDHO).⁹⁶ Amnesty International has reported at least 10 deaths of detainees in police custody as a result of torture in the last decade.⁹⁷

Human Rights Watch has reported several accounts of police arbitrarily arresting, eliciting bribes, and torturing suspected homosexuals.⁹⁸

- In December 2008, Dakar police arrested nine members of AIDES Senegal, an HIV/AIDS education group, after an HIV/AIDS training session. The men spent four months in detention, where police tortured them. They have suffered persecution, physical assault, and the constant threat of violence since their release in April 2009.⁹⁹

VI. CRIMINAL PROCEDURE

A. General description

The Senegalese legal system is based on the French civil law system and the Constitution is heavily based on the 1958 French Constitution. Defendants' rights can be found in the Senegal Constitution and the Code de Procédure Pénale.¹⁰⁰ Defendants have a the right to a fair trial, which will be inquisitorial in nature, the right to be present in court, the right to cross examine witnesses and the right to an attorney in criminal cases when one cannot be afforded.¹⁰¹

The judicial backlog and absenteeism of judges has caused the average length of time for pretrial detention, between the Public Prosecutor bringing charges and the verdict, to be three to seven years.¹⁰² Article 123 bis of the Code of Criminal Procedure allows the indefinite detention for criminal cases (i.e., murder, threats to national security, or misappropriation of public funds).¹⁰³ Also the right to an attorney exists when funding permits.¹⁰⁴ Corruption and impunity have been an issue plaguing the Courts in the form of governmental influence, bribes, and familial and political ties.¹⁰⁵ At trial, confessions extracted by means of torture and other ill-treatment during the first hours of detention are

⁹⁵ U.S. Department of State Bureau of Democracy, Human Rights and Labor, *supra* note 91

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ "Fear for Life: Violence against Gay Men and Men Perceived as Gay in Senegal," Human Rights Watch, 2010, <http://www.hrw.org/sites/default/files/reports/senegal1110webwcover.pdf>.

⁹⁹ *Ibid.*

¹⁰⁰ Gouvernement du Sénégal, *supra* note 31.

¹⁰¹ Dr. Robert Winslow, "Crime and Society: A Comparative Criminology Tour of the World: Senegal," 2001 *available at* <http://www-rohan.sdsu.edu/faculty/rwinslow/africa/senegal.html>

¹⁰² Report of the Working Group on Arbitrary Detention, A/HRC/13/30/Add.3, para D 63

¹⁰³ Report of the Working Group on Arbitrary Detention, A/HRC/13/30/Add.3, para D 64

¹⁰⁴ Dr. Robert Winslow, "World: Africa: Senegal," Crime and Society: A Comparative Criminology Tour of the World, 2001, <http://www-rohan.sdsu.edu/faculty/rwinslow/africa/senegal.html>.

¹⁰⁵ *Ibid.*

used to convict the accused.¹⁰⁶ Amnesty International has found three trials in 2009 and 2010 where long prison sentences were handed down based on confessions extracted under torture in violation of the CAT.¹⁰⁷ This has raised substantial questions as to fair trials in Senegalese Courts.

B. Criminal Prosecution of Human Rights Violations

Corruption and impunity cause problems in addition to coerced statements being used at trial. Many human rights violations are never investigated or prosecuted, granting offenders freedom from punishment.

For a judge to summons security forces to account for violations of human rights, they must first obtain a prosecution order (*ordre de poursuites*).¹⁰⁸ However, the executive has *de facto* veto power and in practice, the orders are refused or delayed by officials in higher positions who are responsible for the security forces.¹⁰⁹

Amnesty International has collected information regarding recent cases of torture that may have been perpetrated by the Senegalese security forces where the judiciary has been unwilling or unable to hold the alleged responsible¹¹⁰:

According to witnesses, on July 14, 2010 Abdoulaye Wade Yinghou was beaten by police with batons and rifle butts during his arrest and at the police station. He died later that evening and an autopsy concluded the death resulted from "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.

An investigation was opened into the suspicious suicide of 45-year-old Fally Keita at the Mole 8 gendarme station in Dakar, however no conclusions have been made.

On March 29, 2011 the naked body of Aladji K[on]ate was found on the banks of the Senegal River in Bakel. The press published photos showing the handcuffed body bearing signs of torture. Through further investigation, Amnesty International learned that Konate had been arrested by gendarmes for drug trafficking. The gendarmes, upon viewing the body, stated "It's our man," and removed the handcuffs with a key in their possession. The body was buried without an autopsy and the family filed a complaint, but no investigation has been opened.

Moreover, in the rare cases in which security forces members are challenged about acts of torture, the agents are not usually suspended during the investigation, but are redeployed elsewhere. This is contrary to the recommendations made by the OPCAT.

¹⁰⁶ Amnesty International, "Senegal: The Human Rights Situation, Brief Overview in the Run-Up to the Presidential Election," January 2012, p. 11

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.* at 9.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

C. Legal Safeguards from Detention to Trial¹¹¹

The Criminal Code and the Code of Criminal Procedure of Senegal include broad protections of human rights due to recent amendments.¹¹² The official justice system grants the right to a fair trial in an independent judicial system. Further, the Senegal Constitution and law prohibit arbitrary arrest and detention.¹¹³ Arrests should be supported by warrants issued by judges. Article 130 of the Code of Criminal Procedure allows the accused to apply for bail before a judge.¹¹⁴ Detention periods are limited to 24 hours without charges, but if there is serious and consistent evidence sufficient to bring charges, the limitation is extended to 48 hours, extendable further per Articles 53, 54 and 55 of the Code of Criminal Procedure; for criminal proceedings, there is no limit to pretrial detention.¹¹⁵

Despite these provisions, authorities have arbitrarily arrested and detained persons. In practice, warrants are rarely executed before detaining a person. The formal detention period does not begin until it has been officially declared that the person is being detained and with a prosecutor's permission, the period of detention before the detainee is ever notified of charges can be extended up to 96 hours and for cases a claimed threat to national security, 192 hours. Bail is rarely granted and during the first 48 hours of detention, the accused has no right to an attorney and generally not granted access to family, but may demand a medical exam. There have been cases where persons are freed from detention without charges ever being filed. For these persons, no compensation is paid. According to human rights groups, attorneys, and victims, security forces have extorted money from detainees in exchange for release and from prostitutes to overlook noncompliance with prostitution regulations.

A serious concern for the Working Group on Arbitrary Arrest during its Mission to Senegal was the shortage of criminal lawyers, reporting only 350 lawyers in Senegal and 300 located in Dakar and the surrounding areas.¹¹⁶ The Working Group asserts that the lack of access to a lawyer (either as there is no constitutional guarantee to a lawyer when one is charged with a misdemeanor or lack of lawyers available) has led to disrespect for the principle of balance between the defense and prosecution.¹¹⁷ The Government has responded by creating a State-funded legal aid system, which as of 2009, was not operating efficiently.¹¹⁸

D. Conclusion

As a result of the weak judiciary, mob violence has occurred. Civilians have administered punishment by beating presumed thieves before handing them over to security forces.¹¹⁹

¹¹¹ "2008 Human Rights Report: Senegal," U.S. Department of State Bureau of Democracy, Human Rights, and Labor, <http://www.state.gov/j/drl/rls/hrrpt/2008/af/119021.htm>.

¹¹² United Nations General Assembly, Human Rights Council, Thirteenth Session, "Report of the Working Group on Arbitrary Detention on its Mission to Senegal (5 to 15 September 2009)," <http://www1.umn.edu/humanrts/wgad/2010report-senegal.pdf>.

¹¹³ U.S. Department of State Bureau of Democracy, Human Rights, and Labor, *supra* note 112.

¹¹⁴ United Nations General Assembly, Human Rights Council, Thirteenth Session, "Report of the Working Group on Arbitrary Detention on its Mission to Senegal (5 to 15 September 2009)," *available at* <http://www1.umn.edu/humanrts/wgad/2010report-senegal.pdf>

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ U.S. Department of State Bureau of Democracy, Human Rights, and Labor, *supra* note 112; Dr. Robert Winslow, *supra* note 94.

The government does permit prison visits by independent human rights monitors who are able to assist inmates with issues, including legal matters.¹²⁰ Impunity enjoyed by security forces, which is consistently denounced by NGOs, undermines the foundations of rule of law in Senegal.¹²¹ The end of impunity is absolutely necessary to improving Senegal's ability to respect the human rights of its people.

VII. PRISON SYSTEM

A. Network of Prisons

The Ministère de la Justice is responsible for the prison administration, the Direction de l'Administration Pénitentiaire.¹²² The Direction de l'Administration Pénitentiaire is located at 58 Boulevard de la République, Dakar Senegal, telephone number +221 823 86 03, fax +221 822 93 62. The Director of the Prison Administration is Cheikh Tidiane Mbaye.

The prison system is governed by DEcree No. 66-1081 of 31 December 1966, the provisions of the Criminal Code, and the Code of Criminal Procedure.

According to the United States Senegal Country Report on Human Rights Practices for 2011, Senegal has 37 prisons with a designed maximum capacity of 3,000 prisoners.¹²³ According to the Association for the Prevention of Torture, Senegal has 38 prisons and a prison population of 5,360.¹²⁴ Ci-Biti, an NGO specializing in prisoners' rights, reported a prison population of 7,300 in 2010, including 3,000 pretrial detainees.¹²⁵ In the Report of Working Group on Arbitrary Detention on its mission to Senegal from 5 to 15 September 2009, the Working Group reports Senegal had 38 prisons: one for women, one for minors and three camp facilities for prisoners serving sentences of over one year; current prison population of 7,086: 6,692 men, 250 women and 144 minors.¹²⁶ Of these detainees, 4,149 had been convicted and 2,937 are in pretrial detention.¹²⁷

B. Specific Issues within the Interplay of the Formal Criminal Justice System and the Prison System

1. Condition of Prisons and Detention Centers

Prison and detention center conditions are considered poor because no new facilities have been built since 1960 and because of overcrowding.¹²⁸ Adequate sanitation has also posed a major problem for prisons. A UN study group on pretrial detention visited "Rebeuss," Dakar's main prison facility, and found it housed 1,592 inmates. Rebeuss was designed to

¹²⁰ "Senegal: The Human Rights Situation, Brief Overview in the Run-Up to the Presidential Election," Amnesty International, January 2012, 11

¹²¹ *Ibid.*

¹²² "World Prison Brief: Senegal," International Centre for Prison Studies, *available at* http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=41

¹²³ U.S. Department of State Bureau of Democracy, Human Rights and Labor, 2011, *supra* note 91.

¹²⁴ Association for the Prevention of Torture, *supra* note 46.

¹²⁵ U.S. Department of State Bureau of Democracy, Human Rights and Labor, 2011, *supra* note 91.

¹²⁶ United Nations General Assembly, *supra* note 106.

¹²⁷ *Ibid.*

¹²⁸ U.S. Department of State Bureau of Democracy, Human Rights and Labor, 2011, *supra* note 91.

accommodate 800 inmates.¹²⁹ The National Organization for Human Rights found Dakar's Central Prison, which had a maximum capacity of 700 persons, held approximately 1,400.¹³⁰

In 2009, the Working Group on Arbitrary Detention noted specific overcrowding at Reubeus Detention Centre, the *Camp pénal Liberté VI* facility, the *Liberté VI* Detention Centre for Women and Thiès Detention and Correctional Facility.

Men and women are housed in separate facilities. Other separation regulations are not always enforced and at times detainees may be housed with convicted prisoners and juveniles with adults.¹³¹ During a 2009 visit to Senegal, The Working Group on Arbitrary Detention reported finding minor girls being housed with adult women and pretrial detainees housed with convicted inmates.¹³²

Prisons lack access to doctors and medication.¹³³ A report from the National Organization for Human Rights reported a national ratio of one doctor per 5,000 inmates.¹³⁴ The 2011 United States Country Report on Human Rights Practices reported one mattress for every five detainees, issues with drainage during the rainy season and stifling heat during the summer, infestations of bugs and low quality of food.¹³⁵ Currently prisons are allocated \$1 per prisoner per day; \$0.90 for daily meals and \$0.10 for hygiene.¹³⁶ However, this per day allotment is also supposed to cover an inmate's medical care.

A prevalent but often ignored issue in prisons is sexual assault. The issue of sexual assault is not discussed in the strict culture where sexual relations between men are taboo.¹³⁷ Sexual assaults against women in prisons are taken less seriously than sexual assaults against women in the public, where they often go unpunished or where the woman's history is used to defend the man or men accused of rape.¹³⁸

2. HIV/AIDS in Prison

Detainees have been described as one of the most vulnerable groups to HIV/AIDS in the predominantly Muslim nation, where health and prison authorities often refuse to acknowledge the issue of men who have sex with men.¹³⁹ There are no studies showing HIV rates in Senegal's prisons specifically, as the studies have not been conducted, however in other African Countries, rates among prisoners are twice that of the general population.¹⁴⁰ Limited HIV/AIDS education has been allowed and distribution of condoms in prisons has been discussed, however authorities are reluctant to allow this when their religion does not permit the sort of activity.¹⁴¹

3. Torture in Prisons

¹²⁹ *Ibid.*

¹³⁰ U.S. Department of State Bureau of Democracy, Human Rights, and Labor, 2008, *supra* note 112

¹³¹ U.S. Department of State Bureau of Democracy, Human Rights and Labor, 2011, *supra* note 91.

¹³² United Nations General Assembly, *supra* note 106.

¹³³ U.S. Department of State Bureau of Democracy, Human Rights and Labor, 2011, *supra* note 91.

¹³⁴ U.S. Department of State Bureau of Democracy, Human Rights, and Labor, 2008, *supra* note 112

¹³⁵ U.S. Department of State Bureau of Democracy, Human Rights and Labor, 2011, *supra* note 91.

¹³⁶ *Ibid.*

¹³⁷ U.S. Department of State Bureau of Democracy, Human Rights, and Labor, 2008, *supra* note 112

¹³⁸ *Ibid.*

¹³⁹ "In Senegal's Prisons, a Small Victory for AIDS Awareness," VOA News, 19 January 2012, <http://osdir.com/ml/health-discussion-help/2012-01/msg01608.html>.

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

Despite promises by Senegalese authorities and a legal framework of protections for persons, torture and other ill-treatment is still used on detainees with almost total impunity.¹⁴² The practice has been recognized and publicly denounced by national and international human rights organizations, yet authorities have not demonstrated a willingness to end impunity and prevent the practice.¹⁴³

Noted examples of physical abuse committed by security forces include: forcing detainees to sleep directly upon bare floors, beating detainees with batons, keeping them in cells with minimal access to air.¹⁴⁴ Ibrahima Fall described his time in detention after being arrested on 17 February 2012 while returning home from a demonstration in Tivavouane to Amnesty International. Fall said,

They got me to lay face down and hit me with batons, water hoses and electric cables... Another threatened to rape and murder my mother. The man told me: 'Here we hit you, we kill you and this will go nowhere and we won't be judged.'¹⁴⁵

Amnesty International reports that at least seven people arrested for common law offenses have died in detention, apparently as a result of torture.¹⁴⁶ In a period of just 18 months before January 2012, Amnesty International was able to investigate the cases of six people who were victims of torture after having been arrested by security forces.¹⁴⁷ There is no available information regarding punishment or civil redress for the victims or their families in these cases.¹⁴⁸ In response to AI's allegation, the Senegalese government acknowledged the existence of torture but noted that such cases were isolated and not systematic.¹⁴⁹

C. Conclusion

Senegalese law includes adequate provisions to ensure the protection of human rights, however, in practice human rights are not always respected. An end to impunity for security forces and prison authorities committing violations of human rights against detainees is necessary to begin realizing and protecting the rights of detainees. Through recent publicity, the Senegalese Government appears interested in improving the physical conditions of prison facilities. Improvement should be authenticated and encouraged.

VIII. GROUPS IN FOCUS

A. Women

There is a long history of oppression of women in Senegal, resulting from a fundamentalist construction of the women's role in society. Institutionalized patriarchy

¹⁴² Amnesty International, *supra* note 100.

¹⁴³ *Ibid.*

¹⁴⁴ U.S. Department of State Bureau of Democracy, Human Rights and Labor, 2011, *supra* note 91.

¹⁴⁵ "Senegal: New Government Must End Decades of Impunity for Human Rights Violations," Amnesty International Media Centre, 20 June 2012, <http://amnesty.org/en/for-media/press-releases/senegal-new-government-must-end-decades-impunity-human-rights-violations-20>.

¹⁴⁶ Amnesty International, *supra* note 100.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ "Senegal," U.S. Department of State, <http://www.state.gov/documents/organization/160141.pdf>

stunts the development of women's rights, with forced polygyny widely practiced and property ownership allocated to only men. While female genital mutilation (FGM) was outlawed in the reconstructed 2001 Senegalese Constitution, it is still persistently practiced throughout many rural areas. There is a marked disparity in educational opportunities in the country, evidenced by the percentage of illiterate women in the country.

1. Female Genital Mutilation

In January 1999, Senegal amended its Penal Code to criminalize FGM/FGC, which provides for a six month to five-year prison sentence for those who "violate the integrity of the genital organs of a female person."¹⁵⁰ Furthermore, the UNFPA/UNICEF Joint Programme on Female Genital Mutilation/Cutting has worked in conjunction with Senegal-based nonprofits in recent years to thwart the practice of FGM in the country, particularly in rural villages.¹⁵¹ Despite the massive progress in Senegal regarding FGM, it is still practiced in approximately 20% of villages and results from systems of patriarchy that determine the marriage ability and desirability of women, the lesser status of women, and the sexual purity of women.¹⁵² One of the keys to eliminating the practice in rural regions, especially in the south, lies in local imams and other religious leaders speaking to their followers of the dangers of FGM. For the Haalpulaar'en, their current interpretation of Islam necessitates females be circumcised as a rite of passage in the community, and continues to be the most difficult population to abandon the practice.¹⁵³

2. Other Forms of Violence Against Women

Rape and domestic violence are still prevalent in Senegal, again largely practiced with impunity because of the institutionalization of patriarchy in the state. Spousal rape is still permitted by the absence of its mention in the penal code, and for other forms of rape the law is rarely enforced.¹⁵⁴ When cases actually go to trial, oftentimes a women's sexual history will be used as a defense for the man accused of raping her, indicating an underlying belief that promiscuity is equivalent to consent. Group or gang rapes are becoming more frequent despite the codification and criminalization of such practices.¹⁵⁵

The MFDC rebels have utilized rape as a tool of war on a regular basis. In a report released by Amnesty International, women detail their assaults and rapes at the hands of the MFDC, and while they find medical assistance there is no real way for rebels to face appropriate punishment for their actions as the government has no real hold on MFDC loyal areas.¹⁵⁶ For women who were assaulted, raped, and tortured before 2004 there is

¹⁵⁰ Republic of Senegal, Proposed Law Modifying Certain Provisions of the Penal Code, adopted January 1999; also see Concluding Observations of the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.62), para. 6.

¹⁵¹ "More Communities in Senegal Disavow Female Genital Mutilation and Cutting," UNFPA, January 31, 2012, <http://www.unfpa.org/public/home/news/pid/9935>.

¹⁵² "Table 1 – FGS Prevalence Rates by Country," Brigham and Women's Hospital, October 19, 2011, http://www.brighamandwomens.org/Departments_and_Services/obgyn/services/africanwomenscenter/FGCprevalence.aspx.

¹⁵³ Roy Diley, *Islamic and Caste Knowledge Practices Among Haalpulaar'en in Senegal*, (Edinburgh, UK: Edinburgh University Press, 2004), 114. and UNFPA, *supra* note 152.

¹⁵⁴ "2010 Human Rights Report: Senegal," U.S. Department of State Bureau of Democracy, Human Rights and Labor, <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154366.htm>.

¹⁵⁵ George Fominyen, "Senegal rights groups warn of rising group rapes," Trust Law, August 10, 2011, <http://www.trust.org/trustlaw/news/senegal-rights-groups-warn-of-rising-group-rapes>.

¹⁵⁶ Amnesty International, *supra* note 72.

no way to seek reparations as President Wade signed an amnesty agreement with the MFDC which excused the rebels, and Senegalese forces, for criminal actions committed during some of the harshest years of fighting.¹⁵⁷

3. Educational Inequality and Political Oppression

Social stigma of women's inferiority, has led to lower educational pursuits by women. There is only 29.2 percent literacy for women compared with 51.1 percent literacy for men. NGO Tostan, which works to educate girls and women and reduce gender inequality, has successfully constructed an education program which is culturally appropriate and widely accepted. Despite their efforts, and the support given them by other international organizations, educational disparity is still high in the country and particularly in rural areas.¹⁵⁸

In 2010, Senegal's gender parity law came into force, which requires all political parties to introduce absolute gender parity in electoral lists for both local and national elections. Prior to this law women made up 23 percent of the National Assembly, 10 percent of government officials, 13 percent of regional council members, and 20 percent of municipal council members or rural council members.¹⁵⁹ Following the most recent election in July 2012, 42 percent of the National Assembly now comprises women. While these developments are noteworthy, many Senegalese men are outspoken in their condemnation of the law especially after the last election.¹⁶⁰

B. Children

As mentioned in under the socio economic section of this brief, the population of Senegal is comprised largely of young people.¹⁶¹ In 2006, to rectify a failure of the state to identify barriers faced by children, Senegal's inter-ministerial Directorate on the rights of the child established the *Haut Commissariat aux Droits de l'Homme et à la Promotion de la Paix* within the office of the President, which is mandated to receive complaints from children.¹⁶²

Formal statelessness is all too common among children in Senegal, with approximately one out of five children unregistered in the country, and two out of every three in rural areas such as Diourbel and Tambacounda.¹⁶³ Abject poverty forces many children into a life of begging. In a state where the population is so disproportionately young, this undoubtedly creates instability.

1. A Culture of Begging

¹⁵⁷ Ernest Harsch, "Peace pact raises hope in Senegal", *African Renewal* 19.1 (2005), 14.

¹⁵⁸ Nafissatou J. Diop et. al, "The TOSTAN Program Evaluation of a Community Based Education Program in Senegal," US Agency for International Development (USAID), August 2004, http://www.popcouncil.org/pdfs/frontiers/FR_FinalReports/Senegal_Tostan%20FGC.pdf.

¹⁵⁹ Nicole Atwill, "Senegal: Adoption of Gender Party Law," *Library of Congress Global Legal Monitor*, June 7, 2010, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402029_text.

¹⁶⁰ Afua Hirsch, "Senegal makes headway on gender equality – but not everyone is happy," *The Guardian*, August 16, 2012, <http://www.guardian.co.uk/global-development/poverty-matters/2012/aug/16/senegal-headway-gender-equality>.

¹⁶¹ CIA, *supra* note 2.

¹⁶² CRC/C/SEN/CO/2, para. 13

¹⁶³ U.S. Department of State Bureau of Democracy, Human Rights and Labor, 2010, *supra* note 148.

Children, especially young boys, are forced into begging by their families or Qur'anic teachers, known as marabouts. The young boy beggars, called *talibes*, are often abused by their teachers and are about ten years old.¹⁶⁴ There are approximately 50,000 children forced into begging and they live off a meager incomes despite working for up to eight hours a day.¹⁶⁵ While the government attempted to criminalize the forcing of anyone into begging for personal financial gain, there is little enforcement and the practice is widely accepted. Many Senegalese say that the lack of enforcement of the law coupled with little welfare assistance from the state make begging the only possible source of income for children and families.¹⁶⁶

2. Corporal Punishment

Although corporal punishment in schools is prohibited, the CRC is concerned that it is still being used in various institutional settings.¹⁶⁷

3. Juvenile Detention:

Several provisions of the Code of Criminal Procedure have defined the conditions in which imprisonment is to be enforced for juveniles. Article 55, paragraph 4, of the Code of Criminal Procedure provides that the police officer shall keep the juvenile in special premises isolated from adult detainees when in police custody in a police or gendarmerie station.

In 2006, the Senegalese government introduced “*Renforcement de la Protection Juridique des Mineurs au Sénégal*” (RPJMS).¹⁶⁸ That same year, the OHCHR reported that Senegal lacked specialized juvenile courts and consequently juvenile judges and adequately trained social educators.¹⁶⁹ The RPJMS aims to strengthen the rights of the child including the area of judicial proceedings.¹⁷⁰ However, the severe lack of funds and oversight render the RPJMS and other protective measures ineffective.¹⁷¹

Surveys conducted by DEI-Senegal (Defense des Enfants International) in collaboration with UNICEF note several problems facing juveniles in the Senegalese justice system.¹⁷² In addition to the absence of a specialized institutional framework to handle juvenile cases, children, including girls, are often held with adults.¹⁷³ Juveniles often do not have access to education while in prison.¹⁷⁴ Also, juveniles considered to be delinquents are often abandoned by their parents, causing them to face further challenges.¹⁷⁵ The loss of advocacy

¹⁶⁴ *Ibid.*

¹⁶⁵ “Senegal: Protect Children from Forced Begging,” Human Rights Watch, March 31, 2012, <http://www.hrw.org/news/2012/03/31/senegal-protect-children-forced-begging>.

¹⁶⁶ Ofeibe Quist-Arcton, “Senegal’s Poor Hurt By Begging Ban Meant To Help,” National Public Radio, October 9, 2010, <http://www.npr.org/templates/story/story.php?storyId=130155756>.

¹⁶⁷ “Senegal,” Child Rights Information Network, February 6, 2009, <http://www.crin.org/docs/Senegal.pdf>.

¹⁶⁸ *Contexte et Difficultes de la Situation des Mineurs au Senegal*, 2003. Page 1

¹⁶⁹ U. N. General Assembly, Human Rights Council, Fourth Session, "Compilation prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(b) of the Annex to the Human Rights Council Resolution 5/1", pg. 7 para 26,

http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/SN/A_HRC.WG6.4.SEN.2.E.PDF

¹⁷⁰ CRC/C/SEN/CO/2, sect. 68

¹⁷¹ *Ibid.*

¹⁷² *Contexte et Difficultes de la Situation des Mineurs au Senegal*, *supra* note 168

¹⁷³ *Ibid.* at 1-2

¹⁷⁴ *Ibid.* at 7

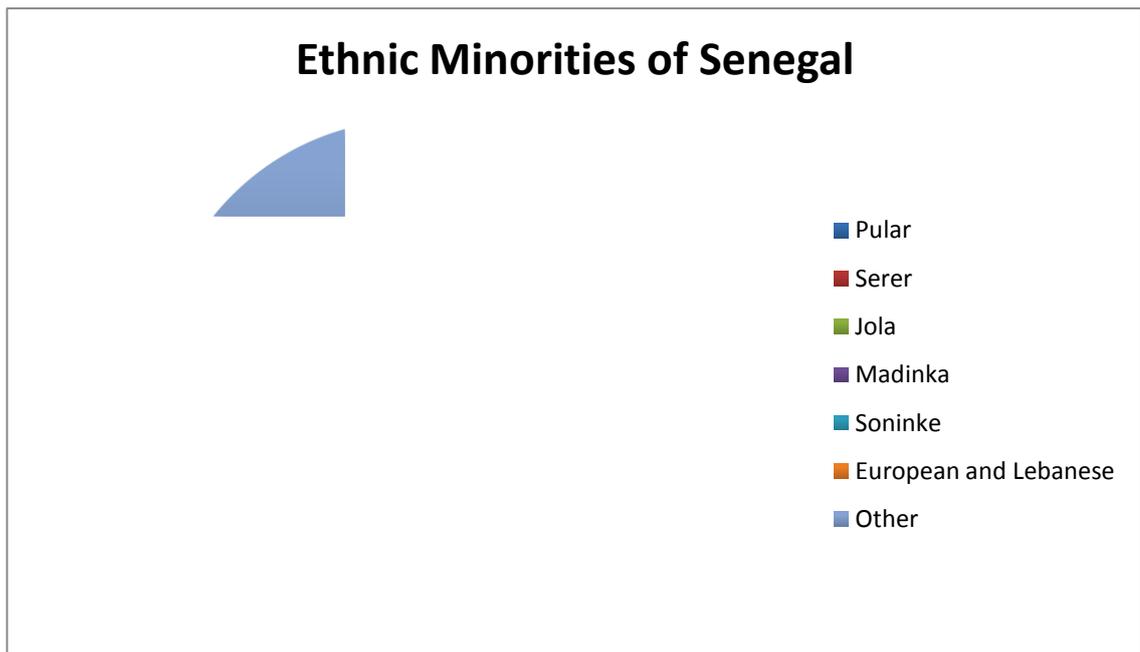
¹⁷⁵ *Ibid.* at 3

and support of their families, leads to delays in the child’s judicial proceedings and longer imprisonment.¹⁷⁶

DEI recommendations include training of specialized judges for children, service agents, and police, expediting judicial proceedings, and separation of children from adult quarters.¹⁷⁷

C. Racial and Ethnic Minorities

There are a significant number of ethnic groups in Senegal, with the Wolof group comprising the majority of 43.3 percent of the population. Minorities thus comprise more than half the population, with the breakdown as shown below in the graph:¹⁷⁸



While multiple ethnic minorities have coexisted peacefully, there are continuing interethnic tensions between the majority Wolof group and southern ethnic groups that has resulted in the Casamance rebellion.

1. The Casamance Rebellion

While the rebellion quieted down in the early 2000s, in the past two years MFDC rebels have elevated attacks on Senegal soldiers and on women in the southern regions. The Jola people, who make up the majority of the Casamance region, have fought for their independence from Senegal since the 1980s after an alleged broken promise of independence from Senegal’s first president, Leopold Senghor. In 2005, negotiations took place again between the Senegalese government and MFDC factions, but the fighting continued, causing thousands to flee into the Gambia in 2006.¹⁷⁹ For the past

¹⁷⁶ *Ibid.* at 3

¹⁷⁷ *Ibid.* at 4

¹⁷⁸ U.S. Department of State Bureau of Democracy, Human Rights and Labor, 2010, *supra* note 154

¹⁷⁹ “Senegal: Attacks in Casamance despite peace move,” IRIN, December 5, 2006, <http://www.irinnews.org/Report/62332/SENEGAL-Attacks-in-Casamance-despite-peace-move>.

five years relative peace has existed in the region, but after MFDC rebels killed twelve people, including five Senegalese soldiers, in December 2011 the conflict has worsened.¹⁸⁰ Since that attack, there have been a string of conflicts between the government forces and MFDC rebels leading many to believe there is no end in sight to the conflict that has raged for thirty years.¹⁸¹

As the root of the conflict is in ethnic differences between the majority population and the minorities in the South, ethnic discrimination continues to be practiced by government troops in particular. During the conflict thousands have been arbitrarily arrested due to their membership in a particular ethnic group that is tied to the rebellion.¹⁸²

2. Sanankunya

According to Senegalese, their society is based on harmony between the twenty racial and ethnic groups. There is a relationship called ‘sanankunya’ which loosely translates to “the ‘joking, or cousin, relationship’ in Senegal.¹⁸³ This relationship allows for people of different ethnic backgrounds to make jokes about each other without offense, permitting that there is a certain amount of friendliness between the parties involved.

D. LGBT discrimination

Article 319.3 of the Senegalese Penal Code criminalizes same sex activities, stating that “whoever will have committed an improper or unnatural act with a person of the same sex will be punished by imprisonment of between one and five years and by a fine of 100,000 to 1,500,000 francs” (approximately US \$200-\$3,000). In 2008, there were two sets of internationally publicized arrests of individuals thought to be homosexuals.

In February 2008, *Îcône*, a Senegalese gossip magazine, published more than twenty photos from a party that had occurred in 2006. It wrote that the people in the photos were homosexuals taking part in a “gay marriage” ceremony.” Other media outlets republished the photos, sparking outrage and condemnation from religious leaders and organizations which led to arrests. According to interviews in the Human Rights Watch report, *Fear for Life: Violence Against Gay Men and Men Perceived as Gay in Senegal*, during the arrest men were subjected to slaps, kicks, and insults by the police. The men were detained for five days, and police officers as well as newspaper reporters took pictures and shot videos of the men while in custody. During their detainment, the police gave the men no food or water and did not allow them to use the toilet. The police did not tell them why they had been arrested, but questioned them about “gay marriage.” The police threatened to kill one of the detainees if he did not tell the truth. Local as well as international human rights groups denounced the police action. The police had no evidence that a “gay wedding” had taken place or that the men had engaged in homosexual acts, and the men were released after five days. Massive public outcry,

¹⁸⁰ “Casamance ‘MFDC rebels’ kill Senegal soldiers,” BBC News, December 21, 2011, <http://www.bbc.co.uk/news/world-africa-16283352>.

¹⁸¹ “Senegal: No end in sight to Casamance conflict,” IRIN, February 17, 2012, <http://www.irinnews.org/Report/94895/SENEGAL-No-end-in-sight-to-Casamance-conflict>.

¹⁸² Amnesty International, *supra* note 72, p. 10

¹⁸³ The United Nations Office at Geneva, “Committee on Elimination of Racial Discrimination Examines Report of Senegal,” August 15, 2012, [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/ED827B91F1B8E342C1257A5B00311A9E?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/ED827B91F1B8E342C1257A5B00311A9E?OpenDocument).

religious rallies, sermons, and sensationalist media coverage led to threats and attacks over the following months. According to activists, at least nine of the men fled the country and at least five have not returned. Others went into hiding within Senegal.

In December 2008, days after Senegal hosted ICASA, the international conference on AIDS and STIs, police arrested nine members of AIDES Senegal, an HIV/AIDS association that conducts education and outreach among men who have sex with men (MSM). During detention, one of the men recalls that they were slapped hundreds of times and beaten with batons for an hour and a half until they were bleeding. At the time of the beating, the police demanded the men admit that they were gay, which they eventually did. During the arrest, another AIDES Senegal member was taken into a police van and beaten.

The members were accused of engaging in homosexual acts under Article 319.3 of the Criminal Code, and with forming a criminal association under Article 238. A court found them guilty and sentenced each of them to eight years in prison. Though the nine were released in April 2009, their testimonies reveal that they continue to suffer the aftereffects of their ordeal; they lost their livelihoods, families, community, and often the bare means of survival. The case drew extensive media coverage, which lasted for months, with many conservative imams and other prominent leaders calling for the “destruction of homosexuals” in Senegal.

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