

SENEGAL

CAT A/45/44 (1990)

376. The Committee examined the initial report of Senegal (CAT/C/5/Add.19) at its 44th and 45th meetings, held on 24 April 1990 (CAT/C/SR. 44 and 45).

377. The report was introduced by the representative of the State party, who referred to the active role his country had played in the drafting of the Convention and said that a group of Senegalese lawyers was involved in the preparation of a draft African Convention for the prevention of torture, which was intended to supplement the protection machinery set up under the African Charter on Human and People's Rights.

378. Highlighting different parts of the report, the representative said that, under article 79 of the Constitution, the provisions of the Convention had been incorporated into Senegalese domestic law and could as a result be directly cited before the courts and administrative authorities. Although the Criminal Code made no specific mention of torture, its consistent elements were nevertheless taken into account under the generic term "assault and battery". In addition, violations of the physical integrity of human beings were severely punished.

379. Since the risk of torture and ill-treatment was greatest during the periods of custody, an act dated 27 February 1985 had considerably reorganized the system of custody. For example, it could not exceed 48 hours except where an extension was granted on the written authorization of the State Prosecutor, and the grounds were to be communicated to the person concerned, who, moreover, had the option of being examined by a doctor at his or her request or that of his or her counsel of any other person. The representative added that articles 56 *et seq.* of the Code of Criminal Procedure, which dealt with those matters, were properly applied in practice, as could be seen from a decision taken by the Indictments Division of the Dakar Court of Appeal on 25 January 1990, annulling a preliminary investigation procedure because of complaints of brutality during custody. Pointing out that there was also a risk of torture or ill-treatment in places of imprisonment, the representative referred to various provisions of a 1966 decree concerning conditions of imprisonment which, in particular, prohibited prison staff from using violence against prisoners, insulting them or using rude language in speaking to them, and made provision for medical supervision of the state of health of all prisoners.

380. Lastly, the representative added that, while it was permissible for restrictions to be placed on the exercise of some public freedoms in certain exceptional circumstances, such as the introduction of a state of emergency or a state of siege in cases of public danger threatening the existence of the nation, the exceptional powers thus granted to the security forces did not allow them in any circumstances to torture individuals or inflict cruel, inhuman or degrading treatment upon them.

381. The members of the Committee commended the Government of Senegal on its comprehensive and informative report and emphasized that the exhaustive information it contained and the oral introduction that had been provided gave a clearer picture of the context in which the Convention was applied in Senegal.

382. With reference to the legal framework for the application of the Convention in Senegal, the members sought further information concerning the direct application of the provisions of the Convention in Senegal, bearing particularly in mind the clause in the Constitution providing that international treaties were directly applicable subject to their implementation by the other party. They wished to know what was the age of majority in criminal matters; in how many cases individuals had been prosecuted for offences against State security; and in what way the supervision of the president of the departmental court by the State Prosecutor could be reconciled with the principle of the separation of powers. Clarification was also requested on factors and difficulties that might affect the application of the Convention and on the practical application of its provisions.

383. With reference to article 16 of the Criminal Code, which provided that a woman sentenced to death who declared that she was pregnant could not suffer the penalty until after giving birth, it was pointed out that such a provision could be likened to cruel, inhuman and degrading treatment and that the time had perhaps come to abolish the provision once and for all. More generally, since no death sentence had been carried out for 20 years, it was asked whether that implied that the most serious offences had been decriminalized and whether, since it appeared that the corresponding legislative provision had fallen into disuse, there were plans to abrogate it.

384. Concerning article 1 of the Convention, members of the Committee asked whether the Criminal Code prohibited not only acts of violence, but also the threat of such acts.

385. Concerning article 2 of the Convention, supplementary information was requested concerning legal guarantees of the protection of fundamental rights when crisis situations led the authorities to take exceptional measures. Clarification was also sought concerning the real significance of paragraph 141 of the report, bearing in mind article 315 of the Criminal Code, under which there was no crime or offence when murder or bodily assault had been prescribed by law and ordered by the lawful authorities. In that regard, it was asked whether such a provision could be used to justify corporal punishment.

386. Concerning article 4 of the Convention, the members of the Committee wished to know whether articles 334 and 337 of Senegal's Criminal Code, punishing illegal arrests and abductions committed by individuals, also applied to acts committed by public officials.

387. Concerning article 10 of the Convention, the members commended the efforts made by Senegal to provide training courses on human rights for staff of the police and the prison administration, and wished to know whether there were plans to extend such training to medical and nursing staff and to military personnel. It was also asked whether the implementation of the planned reforms of the National Judicial Training School had begun.

388. The members of the Committee sought additional information on the implementation of article 11 of the Convention. Concerning conditions of custody in particular, clarification was requested on the concrete application of article 55 of the Code of Criminal Procedure, under which persons who might be able to give information of use for an investigation or persons whose identity needed to be established could be placed in custody. It was also asked whether persons placed in custody were held in premises specially designated for that purpose; whether they could be held in solitary confinement; whether the medical examination they had a right to request could be carried out by

a doctor of their choice; whether the grounds for the detention in custody were notified to the person concerned orally or in writing; and at what time an accused person had the right to the assistance of a lawyer. Clarification was also sought on the type of supervision to which criminal investigation officers were subject; the number of prison establishments in Senegal; and the treatment of persons in detention, particularly those awaiting trial. In that regard, it was asked for what reasons foreigners accounted for more than 12 per cent of the prison population; whether prisons were overcrowded; whether there were political prisoners in Senegal and, if so, in what kind of establishment they were held.

389. Concerning article 12 of the Convention, the members asked how many public servants and other officials had been prosecuted for illegal acts of torture or detention, and whether examples could be provided of prosecutions of such persons. Citing an Amnesty International report referring to allegations of acts of torture carried out by members of the security services against persons suspected of belonging to a Casamance separatist movement, the members pointed out that article 12 of the Convention placed an obligation on States parties to undertake an impartial investigation wherever there was reasonable ground to believe that an act of torture had been committed, and asked what the Government's position was in that regard. They also asked whether, aside from the often very lengthy judicial procedure, an administrative procedure existed for the examination of such allegations.

390. Concerning article 13 of the Convention, information was sought on the number of complaints lodged concerning acts of torture, the procedure followed after the lodging of such complaints, and whether such offences were tried in specific courts.

391. Clarification was also requested concerning the realization of the right of victims to compensation, and the principle that evidence obtained by force could not be used in legal proceedings, in accordance with articles 14 and 15 of the Convention.

392. Lastly, regarding article 16 of the Convention, the members asked for information on the application of the punishment of hard labour for life laid down in article 7 of the Senegalese Criminal Code.

393. In reply to general questions raised by members of the Committee, the representative of the State party explained that article 69 of the Senegalese Constitution, which referred to the incorporation of international instruments into Senegalese domestic law, mainly concerned bilateral agreements. Furthermore, since Senegal had ratified the Convention against Torture without reservations it should therefore have no difficulty in incorporating the relevant provisions into its domestic law. Replying to other questions, he stated that special legislation applied to minors between the ages of 13 and 18 and that children below the age of 13 could not be placed in detention in any circumstances. He also agreed that the system according to which the President of the departmental court could perform the functions of a Deputy State Prosecutor violated the separation of powers of the Ministry of Justice and the Department of Public Prosecutions. The arrangement was, however, merely a transitional one accounted for by the shortage of qualified magistrates and was in the process of being rectified.

394. Turning to questions raised in connection with the death penalty, the representative

emphasized that no such sentence had been imposed in his country for 20 years; that no woman (pregnant or otherwise) had ever been executed in Senegal; and that capital punishment could therefore be said to have been abolished de facto. Furthermore, the President of Senegal had solemnly declared that the death penalty would not be imposed during the rest of his term of office. The fact that a pregnant woman sentenced to death could not be executed until her child had been born was not a cruel punishment because, in actual practice, the death penalty was no longer applied.

395. In connection with article 1 of the Convention, the representative stated that the Penal Code was being revised and that the new version would contain a specific reference to torture as defined by the Convention.

396. In response to questions raised by members in connection with article 2 of the Convention, the representative emphasized that the safeguards surrounding any suspension or restriction of constitutional rights were strict and adequate. He added that article 315 of the Penal Code could only be invoked if the order was itself legal. Consequently, any officer who carried out an order to commit an act of torture, which by definition was illegal, would be criminally responsible and liable to disciplinary measures.

397. With reference to questions raised by members concerning article 4 of the Convention, the representative pointed out that, by virtue of the principle of equality before the law, the same provisions applied to public officials, including the police and gendarmerie, as to private individuals.

398. With reference to questions asked in connection with article 10 of the Convention, the representative agreed that human rights instruction for doctors and army personnel might be incorporated in the draft legislation being prepared on that subject and stated that he would transmit the recommendation to his Government.

399. With regard to questions raised in connection with article 11 of the Convention, the representative stated that Senegalese legislation carefully defined cases in which a custody order could be issued. In that regard he emphasized that persons detained in custody were not held incommunicado, but were kept in sections of police stations set aside for that purpose; that they could receive visits and were given medical attention; that they had to be informed of the reasons for the custody order; and that medical examination to verify allegations of torture were impartial. In flagrante delicto cases there was a requirement that the case be tried as soon as possible, that the accused be informed of his right to counsel and that he should have three days to prepare his defence. There was, however, no provision for access to a lawyer during the preliminary inquiry, access being granted once charges had been made. Responding to other questions he pointed out that as foreigners constituted an estimated 15 to 20 per cent of the entire Senegalese population, the figure of 12 per cent of the prison population was not excessive; that detention in custody could not, in principle, exceed six months; that detainees' rights to visits and correspondence were protected by law; and that one method which had been adopted to reduce the problem of prison overcrowding was the granting of presidential pardons and amnesties on the National Day and at the New Year. Although there were no political prisoners in the legal sense of the term, special detention centres existed for persons accused of crimes of a political nature and in other establishments there were special premises where such persons enjoyed more favourable treatment than ordinary detainees.

400. With reference to questions raised in connection with article 12 of the Convention, the representative drew the Committee's attention to the fact that there were very few specific cases in which allegations of torture by the police had been found to be true but, when they had, the persons responsible had been punished to the full extent of the law. He further stated that the allegations in the Amnesty International report that torture had been used in Casamance concerned a number of separatists who had attacked the police and that some separatists had died in the attack. Those who had been arrested had been properly brought to trial and had received fair trials. Furthermore, the delegation of the International Committee of the Red Cross in Dakar had been given constant access to the persons arrested and sentenced. He added that like any democracy, Senegal required that political demands should be made legally through political parties. He also explained that the Government Attorney was responsible for monitoring custody orders; that State prosecutors were instructed to make visits without notice to gendarmerie brigade headquarters to check the conditions in which persons were being held in custody.

401. With regard to article 13 of the Convention, the representative explained that most prosecutions for acts of torture were undertaken on the initiative of the Department of Public Prosecution, that torture cases were tried by ordinary judges in ordinary courts and that, to his knowledge, no cases of torture had ever been brought before the State Security Court.

402. In connection with articles 14 and 15 of the Convention, the representative stated that in some circumstances rehabilitation was a right and that in others, a request had to be made to the court in which the prosecution was being held. He added that although the law might not specifically set out which means of obtaining evidence was prohibited, Senegalese courts applied certain general principles with the result that evidence obtained by means of torture would be held inadmissible. In a case of torture, rehabilitation would be as of right.

403. Finally, with reference to article 16 of the Convention, the representative said that persons detained pending trial were not required to work and that prison law provided that there should be just remuneration for any work done. Hard labour was an outdated penalty and Senegal planned to replace it by incarceration. In the interim, prisoners sentenced to such a penalty served their sentences in the same establishments and under the same conditions as those sentenced to incarceration alone.

404. In concluding the consideration of the report, the members of the Committee once again congratulated the representative of Senegal on his oral introduction and replies to the questions asked. They, however, expressed concern with respect to some provisions in current Senegalese legislation, especially regarding the death penalty, and requested the Senegalese Government to provide an additional report, pursuant to rule 67, paragraph 2, of the rules of procedure, responding to questions raised on the number of cases of public officials sentenced for torture, on the way the plans for training and information were being carried out and to the request for statistics on prison establishments.

405. The representative assured the Committee that his country would do everything possible to execute the provisions of the Convention, which it had ratified without reservation. It would continue to follow with interest the Committee's efforts to eradicate the odious crime of torture, and would provide the additional information requested by the Committee.

CAT A/51/44 (1996)

102. The Committee considered the second periodic report of Senegal (CAT/C/17/Add.14) at its 247th and 248th meetings, on 1 May 1996 (CAT/C/SR.247 and 248), and has adopted the following conclusions and recommendations:

1. Introduction

103. The Committee welcomes the submission by Senegal of its second periodic report and its core document (HRI/CORE/1/Add.51) and thanks the delegation for its oral introduction and for its frank collaboration, as demonstrated by its constructive dialogue with the Committee.

2. Positive aspects

104. The Committee notes with great satisfaction Senegal's firm commitment to the defense of human rights, demonstrated, inter alia, by its ratification of a series of international treaties concerning the protection of human rights, and the modernization of legislation on the subject which is now in progress. In addition, the State party's frank collaboration with the Committee shows its willingness to fulfil the obligations it assumed when ratifying the Convention.

105. The Committee notes as a positive aspect that the status accorded by the Senegalese Constitution to international treaties ratified by Senegal is higher than that of domestic law.

106. The Committee also regards as very positive recent developments in the field of human rights in Senegal as set forth in the joint communiqué by a delegation of the Government and non-governmental organizations of 13 March 1996, announcing the establishment of a periodic dialogue and the establishment of a human rights unit.

107. The Committee also welcomes the fact that the Senegalese delegation, on behalf of the authorities of the State party, has undertaken to ensure that measures are taken to provide for the training of personnel performing the functions listed in article 10 of the Convention, particularly medical personnel, and to complete the procedure regarding the declaration provided for under article 22 of the Convention.

3. Factors and difficulties impeding the application of the provisions of the Convention

108. At the normative level, the Committee notes the absence of regulations to ensure the effective implementation of the Convention.

109. The Committee notes that the conflict in Casamance sometimes impedes effective implementation of the Convention.

4. Subjects of concern

110. The Committee is disturbed by the numerous cases of torture that have been brought to its attention by non-governmental organizations of established credibility, and are also referred to in

the State party's report, notably in paragraphs 12, 37 and 103.

111. While taking into account the particular problem of Casamance, which is threatening the integrity and security of the State, the Committee recalls that a democracy must, whatever the circumstances, ensure that only legitimate means are used to protect the security of the State, peace and stability.

112. The Committee is concerned that, in its report, the State party invokes a discrepancy between international and internal law to justify granting impunity for acts of torture on the basis of the amnesty laws.

113. The Committee is doubtful whether the provisions in force in Senegal can effectively ensure full respect for the fundamental rights of persons in police custody.

5. Recommendations

114. The Committee recommends that the State party should, during its current legislative reform, consider introducing explicitly in national legislation the following provisions:

(a) The definition of torture set forth in article 1 of the Convention and the classification of torture as a general offence, in accordance with article 4 of the Convention, which would, inter alia, permit the State party to exercise universal jurisdiction as provided in articles 5 et seq. of the Convention;

(b) A blanket prohibition of any act of torture, with the stipulation that no exceptional circumstance may be invoked to justify torture, in accordance with article 2, paragraph 2, of the Convention;

(c) An express provision stipulating that an order from a superior officer or from a public authority may not be invoked to justify torture, in accordance with article 2, paragraph 3, of the Convention;

(d) Provisions explicitly prohibiting evidence from being obtained by torture and prohibiting any statement shown to have been extracted in this way from being used as evidence in any proceedings, in accordance with article 15 of the Convention.

115. The Committee recommends that all of the crimes referred to in article 4, paragraph 1, of the Convention should automatically be made the subject of a rigorous and prompt investigation by the competent judicial authorities and by the Government Attorney.

116. The Committee recommends that any person accused of an offence under criminal law should be subject to an objective investigation and, in the event that his responsibility is established, handed over to the competent authority as soon as possible.

117. The Committee recommends that article 79 of the Senegalese Constitution, establishing the precedence of international treaty law ratified by Senegal over internal law be implemented unreservedly. The Committee considers the amnesty laws in force in Senegal to be inadequate to ensure proper implementation of certain provisions of the Convention.

118. The Committee hopes that the allegations made by the non-governmental organizations will be investigated and the results transmitted to the Committee.

119. Finally, the Committee would welcome a contribution, however symbolic, from the Senegalese Government to the United Nations Voluntary Fund for Victims of Torture.