



June 23, 2009

Mr. Abdoulaye Wade, President of the Republic of Senegal

Mr. Souleymane Ndéné Ndiaye, Prime Minister of the Republic of Senegal

Mr. Cheikh Tidjane Sy, Minister of the Interior of the Republic of Senegal

Mr. Madicke Niang, Minister of Justice of the Republic of Senegal

Your Excellencies:

The International Gay and Lesbian Human Rights Commission (IGLHRC) would like to express concern at the recent report on the streaming broadcast of Walf Fadjiri on Friday, 19 June 2009 of the arrests of [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. They are now being detained at the Louga police station. These four men were arrested for alleged homosexuality and sexual acts 'against nature,' according to the report, but the charges against them are not yet known. We are additionally concerned at the report that police forced these men to reveal the names of people who are gay, in violation of their procedural rights and their right to privacy. Due to the grave violations of fundamental rights that occurred in the process of arrest, the charges against these men should be dropped and they should be released immediately.

Regardless of the circumstances in which these men were arrested and regardless of whether they are gay or not, their human rights and rights as Senegalese citizens must be secured. Due process and respect for the rule of law are fundamental commitments that the government of Senegal has enshrined under the constitution and should be respected in the case of [REDACTED], [REDACTED], [REDACTED], and [REDACTED], as the Senegal Court of Appeal did only two months ago when it ordered the immediate and unconditional release of the nine men who had been arrested and sentenced to jail for engaging in 'acts against the order of nature' under Article 319.

Criminalization of consensual sex between persons of the same sex under Article 319 of the Penal Code in Senegal is a clear violation of international human rights law. In *Toonen v. Australia* (1994), the UN Human Rights Committee confirmed that laws criminalizing consensual same-sex activity violate both the right to privacy and the right to equality before the law without any discrimination, contrary to articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which Senegal is a

party.¹ The UN Human Rights Committee has affirmed this position on many occasions, either urging States to repeal laws criminalizing consensual same-sex activity or commending them for bringing their legislation into conformity with the Covenant by repealing such provisions.² The Working Group on Arbitrary Detention has also taken the view that prison sentences solely because of a person's sexual orientation is arbitrary because it violates the ICCPR's guarantee of equality before the law and the right to equal legal protection against all forms of discrimination.³ This position is consistent with other regional and national jurisprudence, including decisions of the European Court of Human Rights⁴ and of the Constitutional Court of South Africa.⁵

The Minister of Justice recently stated at the Consideration of the Outcome of the Universal Periodic Review at the United Nations, that "it was a clear fact that the act of being homosexual was not a crime in Senegal, and there was no legislative or regulatory prescription criminalizing homosexuality," but also argued that "ignoring" Senegalese hostility to homosexuality would "stimulate the appearance of extremist attitudes." He stated that the government would "deal with the issue in a calm and moderate manner." These latest arrests reveal this statement's flawed logic: the arrest and prosecution of individuals for engaging in consensual sex or for having been accused of being gay by others is neither a calm and moderate action and it belies the statement that homosexuality is not proscribed by law or policy. Furthermore, these arrests can only increase the public's hostility to LGBT people, rather than lessen it.

In recent years, the arrest and jailing of people in Senegal under Article 319 or under suspicion as a result of state-sponsored abuse and an increase in related public statements condemning homosexuality by political and religious leaders has increased public homophobia, creating more threats to the lives and dignity of people with different sexual orientations and gender identities in Senegal and has had a negative impact on HIV prevention work, creating a threat to public health.

¹ *Toonen v Australia*, CCPR/C/50/D/488/1992, April 4, 1994.

² See Human Rights Committee Concluding Observations: United States of America, A/50/40, October 3, 1995; Cyprus, CCPR/C/79/Add.88, April 6, 1998; Ecuador, CCPR/C/79/Add.92, August 18, 1998; Chile, CCPR/C/79/Add.104, March 30, 1999; Lesotho, CCPR/C/79/Add.106, April 8, 1999; Romania CCPR/C/79/Add.111, July 28, 1999; Australia, A/55/40, July 24, 2000; Egypt, CCPR/CO/76/EGY, November 28, 2002; Kenya, CCPR/CO/83/KEN, March 28, 2005; United States of America, CCPR/C/USA/CO/3, September 15, 2006; Barbados, CCPR/C/BRB/CO/3, May 11, 2007; Chile, CCPR/C/CHL/CO/5, May 18, 2007.

³ See Report of the Working Group on Arbitrary Detention: "Civil and political rights, including the questions of torture and detention", para. 73, E/CN.4/2004/3, December 15, 2003; Opinions adopted by the Working Group on Arbitrary Detention, No 7/2002 (Egypt), paras. 5-29, E/CN.4/2003/8/Add.1, January 24, 2003; Report of the Working Group on Arbitrary Detention: "V. Regarding the Arbitrary Nature on the Ground of Discrimination - of Detention Motivated by Sexual Orientation", paras. 68-69, 76, E/CN.4/2003/8, December 16, 2002.

⁴ *Dudgeon v United Kingdom*, Series A no. 45., 1981; *Norris v Ireland*, 1991; *Modinos v Cyprus*, 1993.

⁵ *National Coalition for Gay and Lesbian Equality and another v Minister of Justice and others*, 1998.

Dropping any charges against of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], as well as transparency in their arrests, would contribute to Senegal's enforcement and application of universally recognized human rights standards.

Sincerely,

Cary Alan Johnson
Executive Director , IGLHRC

The International Gay and Lesbian Human Rights Commission's mission is to advance human rights for everyone, everywhere to end discrimination based on sexual orientation, gender identity, and gender expression. A non-profit, non-governmental organization, IGLHRC is based in New York, with offices in Cape Town and Buenos Aires. www.iglhrc.org