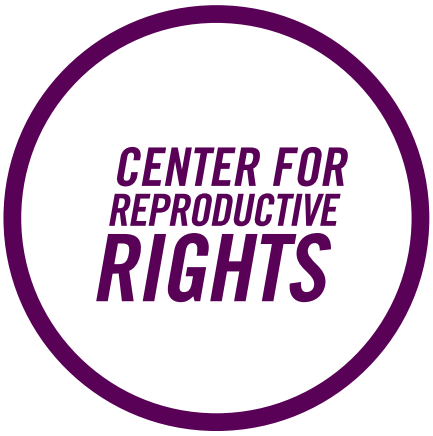

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8. Senegal

Statistics

GENERAL

Population

- The total population of Senegal is approximately 9 million.[1]
- The average annual population growth rate between 1995 and 2000 is estimated to be 2.7%.[2]
- In 1995, women comprised 52% of the population.[3]
- In 1995, 42% of the population resided in urban areas.[4]

Territory

- Senegal covers an area of 196,722 square kilometers.[5]

Economy

- In 1997, the estimated per capita gross national product (GNP) was U.S.$550.[6]
- Between 1990 and 1997, the average annual growth rate of the gross domestic product (GDP) was 2.4%.[7]
- Approximately 40% of the population have access to primary health care.[8]
- The government allocates 6.5% of the national budget to the health sector.[9]

Employment

- In 1997, women comprised 43% of the workforce, compared to 42% in 1980.[10]
- The distribution of women in the different sectors of the economy in 1994 was as follows: 87% in agriculture, 3% in industry, and 10% in services.[11]
- In 1991, the unemployment rate for women increased from 23.1% in 1988 to 26.6%.[12]

WOMEN'S STATUS

- In 1997, the average life expectancy for women was 52.3 years, compared to 50.3 for men.[13]
- The adult illiteracy rate was 77% for women, compared to 57% for men.[14]
- In 1997, 46% of married women lived in polygamous unions.[15]
- The average age at first marriage for women aged 25–49 was 17.4 years.[16] Among these women, 15% were married upon reaching 15 years, and 50% upon reaching 18 years.[17]

FEMALE MINORS AND ADOLESCENTS

- Approximately 45% of the population is under 15 years old.[18]
- In 1995, primary school enrollment for school-aged girls was 50%, compared to 67% for boys. In secondary school, it was 12% for girls and 22% for boys.[19]
- The fertility rate of adolescents aged 15 to 19 is estimated at 155 per 1,000.[20]
- In 1996, 9% of total births in Senegal could be attributed to adolescents aged 15 to 19 years.[21]
- The prevalence of female circumcision/female genital mutilation is estimated at 20%.[22]

MATERNAL HEALTH

- In 1997, the average total fertility rate (TFR) was estimated at 5.67 children per woman.[23] The TFR in rural areas was 6.74, and 4.29 in urban areas.[24]
- Maternal mortality is estimated at over 600 per 100,000 live births.[25]
- Infant mortality is estimated at 68 per 1,000 live births.[26]
- Approximately 47% of births were assisted by trained birth attendants.[27]
- The average age at first birth is estimated at 20 years.[28]

CONTRACEPTION AND ABORTION

■ Contraceptive prevalence for all methods combined (traditional and modern) is estimated at 11% and at 7% for modern methods.[29]

■ Of those using modern methods, 2.7% used the birth control pill, 1.4% used intrauterine devices, 1.3% used injectables, 0.2% used barrier methods, 1% used condoms, and 0.4% were sterilized.[30]

■ With regard to sterilization, the largest percentage (2%) was among women aged 45–49 and the second largest (1.4%) among those aged 40–44.[31] There was no reported sterilization among women aged 15–24, and the percentage was less than 1% among the remaining age groups.[32]

■ A 1995 study undertaken in urban areas illustrated that 52% of women who terminate pregnancies for the first time are between the ages of 15 and19; 23% of women who terminate pregnancies for the second time are between the ages of 30 and 34; and 50% of the women who terminate pregnancies are single.[33]

HIV/AIDS AND OTHER STIS

■ In 1997, the number of HIV-positive adults was estimated at 72,000, or 1.77% of the adult population.[34]

■ Among HIV positive adults, the number of HIV-positive women was estimated at 36,000.[35]

■ Since the beginning of the epidemic, 60,000 confirmed cases of AIDS have been recorded.[36]

■ In 1997, there were an estimated 3,800 HIV-positive children and 49,000 orphans due to AIDS.[37]

■ 7 out of 1,000 women (0.7%) and 10 men out of 1,000 (1%) indicated that they had an episode of any type of STI during the year 1997. Gonorrhea is probably the most rampant STI. Variations according to age are insignificant.[38]

ENDNOTES

1. United Nations Population fund (UNFPA), The State of World Population, at 70 (1998) [hereinafter, The State of World Population].
2. Ministère de l'Économie, des Finances et du Plan, Direction de la Prévision et de la Statistique, Division des Statistiques Démographiques, Enquête Démographique et de Santé au Sénégal, at 2 (1997) [hereinafter, DHS III].
3. Ministère de la Femme, de l'Enfant et de la Mère, Plan d'Action National de la Femme Sénégalaise, 1997-2000, at 2 (November 1996) [hereinafter, Plan d'Action National].
4. The State of World Population, *supra* note 1, at 70.
5. EDS III, *supra* note 2, at 1.
6. The World Bank, World Development Report, at 191 (1998/99) [hereinafter, World Development Report].
7. *Id.*, at 211.
8. The State of World Population, *supra* note 1, at 70.
9. Plan d'Action National, *supra* note 3, at 36.
10. World Development Report, *supra* note 6, at 195.
11. United Nations, The World's Women, at 148 (1995).
12. Plan d'Action National, *supra* note 3, at 27.
13. The State of World Population, *supra* note 1, at 67.
14. World Development Report, *supra* note 6, at 193.
15. DHS III, *supra* note 2, at 56.
16. *Id.*, at xix.
17. *Id.*, at 59.
18. Population Reference Bureau, 1997 World Population Data Sheet (1997).
19. The State of World Population, *supra* note 1, at 67.
20. *Id.*
21. DHS III, *supra* note 2, at 31.
22. Ministère de la Femme, de l'Enfant et de la Famille, Rapport National du Sénégal à la Conférence Préparatoire à la Quatrième Conférence Mondiale sur les Femmes (May 1994).
23. DHS III, *supra* note 2, at 25.
24. *Id.*
25. United Nations Population Fund (UNFPA), Recommendation by the Executive Director on Assistance to the Government of Senegal, at 2 (31 December 1996).
26. DHS III, *supra* note 2, at 102.
27. The State of World Population, *supra* note 1, at 70.
28. DHS III, *supra* note 2, at 30.
29. *Id.,* at 40.
30. *Id.*
31. *Id.*
32. *Id.*
33. Papa Demba Diouf, Demographer, Direction de la Prévision et de la Statistique.
34. UNAIDS, Report on the Global HIV/AIDS Epidemic, at 65 (June 1998).
35. *Id.*
36. *Id.*, at 68.
37. *Id.*, at 65.
38. DHS III, *supra* note 2, at 134.

I. Introduction

The Republic of Senegal (Senegal), a constitutional democracy, has had the same constitution, with numerous revisions, since 1963.[1] In 1958, Senegal joined with French Sudan (now Mali) to form the Mali Federation, and declared its autonomy from French colonial rule.[2] By 1960, the Federation had gained full independence from France;[3] and by August of that year, the Federation dissolved, and Senegal became a separate state.[4]

Senegal's first constitution, drafted in 1960, established a multi-party democratic government headed by an elected president and a prime minister.[5] Mr. Leopold Sedar Senghor, a renowned poet, became president, and Mr. Mamadou Dia, prime minister.[6] Mr. Dia was imprisoned after an unsuccessful coup attempt in 1962,[7] and Mr. Senghor subsequently moved to eliminate the office of prime minister:[8] in 1963 a new constitution was approved that transferred all executive powers to the president.[9] This strengthening of the office of president led to the introduction of a one-party system with a single party in power.[10] Because of unrest among civil servants and intellectuals over the resultant imbalance of power, the constitution was revised in 1970 to restore the office of prime minister, and Mr. Senghor appointed Abdou Diouf, his political protegee, to the post.[11] Mr. Senghor was re-elected President of the Republic in 1968, 1973 and 1978.[12]

After the 1973 elections, Mr. Senghor began to restore the multi-party system[13] by revising the constitution to permit three parties.[14] In November of 1980, Mr. Senghor was succeeded as president by Prime Minister Abdou Diouf, who then appointed Mr. Habib Thiam as prime minister.[15] In May of 1983, the post of prime minister was again eliminated[16]—only to be restored once again in 1991.[17] Mr. Abdou Diouf was reelected to a seven-year presidential term in 1993, and Mr. Habib Thiam remained as prime minister.[18] Senegal today is a multi-party democracy with universal suffrage and a high degree of political pluralism. There are currently over 20 political parties.[19]

The total population of Senegal is estimated at 9 million,[20] with women making up 52% of the population.[21] Approximately 94% of the population is Muslim, 5% are Christians, and 1% adhere to indigenous beliefs.[22] Senegal has approximately 10 ethnic groups, including the Wolof (42.7%), the Pular (23.7%), the Sérère (14.9%), the Diola (5.3%), the Madingue (4.2%), and the Soninké (1.7%).[23] While the official language is French, six other national languages are recognized in the constitution: Diola, Malinké, Poular, Sérère, Soninké and Wolof.[24]

Senegal is divided into 10 regions, 30 departments, 91 *arrondissements* or districts, 60 communes (the 43 communes in Dakar's districts are not included in this figure), and 320 rural communities.[25]

II. Setting the Stage: The Legal and Political Framework

To understand the various laws and policies affecting women's reproductive rights in Senegal, it is necessary to examine the country's legal and political systems. Without this background, it is difficult to determine the manner in which laws and policies are enacted, interpreted, modified, and challenged. The passage and enforcement of laws often involve specific formal procedures. Policy enactments, however, are not subject to such processes.

A. THE STRUCTURE OF GOVERNMENT

The Constitution of the Republic of Senegal (the Constitution) was enacted by Constitutional Law No. 63-22 of March 7, 1963.[26] It has been modified numerous times since its passage, most recently in 1992.[27] The Constitution, which is the supreme law of the land, declares Senegal to be a secular, social democracy, and establishes three branches of government: executive, legislative, and judicial.[28]

1. Executive Branch

Executive power resides with the President of the Republic (the President), who is elected by popular vote for a seven-year term, and may serve a maximum of two terms.[29] The President's job is to defend the Constitution and direct national policy.[30] The Constitution also provides for the Office of Prime Minister, which oversees the implementation of laws and has the power to issue regulations.[31] The President has the power both to appoint and remove the Prime Minister.[32]

The President also serves as chief of the armed forces. He is responsible for national defense[33] and for preserving the sovereignty and territorial integrity of the nation. In consultation with the Prime Minister, the President appoints the other members of his or her cabinet, delineates their duties, and can remove them from office.[34] The President's other powers include the appointment of ambassadors[35] and the right of pardon.[36]

The President, in conjunction with members of the National Assembly, has the power to introduce legislation.[37] On matters deemed outside the purview of the legislature, the President may issue executive orders.[38] In addition, the National Assembly may, by law, authorize the President to enact orders.[39] These orders become null and void if the National Assembly does not ratify them within the time specified in the

enabling legislation.[40]

2. Legislative Branch

Senegal's legislative branch is called the National Assembly, and its members are called deputies.[41] Elected by popular vote, they serve five-year terms.[42]

The National Assembly has the power to legislate on most matters, including civil rights, crime, and national finance.[43] Laws that the National Assembly adopts are submitted to the President, who has one week to execute the law (four days in cases of emergency).[44] The President may send a proposed law back to the National Assembly for review.[45] Legislation submitted for review must be approved by three-fifths of the members of the National Assembly for it to become law.[46] Organic laws must be adopted by an absolute majority of the National Assembly. They must then be submitted for review to the Constitutional Council, which determines the proposed law's constitutionality.[47]

The National Assembly has the power to issue a vote of non-confidence in members of the executive branch,[48] though the vote must have the support of one-tenth of the National Assembly.[49] If the vote of non-confidence is approved, the Prime Minister must immediately submit the resignation of the cabinet to the President.[50] The President, on the other hand, has the power to dissolve the National Assembly in response to such a vote.[51] If this occurs, the President must set a date for new legislative elections within a period of 40 to 60 days.[52]

Constitutional Law No. 98-11 of March 2, 1998 introduced a bicameral system by creating a 60-member Senate. Forty-five senators are elected by the regions; three senators represent the Senegalese living abroad; and 12 senators are appointed by the President of the Republic.

Any citizen of Senegal can be elected senator if he or she is at least 35 years old at the time of the election, is registered on the electoral lists, enjoys his or her full civil rights, and is sponsored by a political party. Senators are elected for a five-year term by an electoral college comprised of deputies, regional councillors, municipal councillors, communal councillors, and rural councillors.

The Senate shares legislative responsibility, and draft bills are examined by both houses. If there is disagreement between the houses regarding a draft bill, the deputies' will prevails. The first senatorial elections were held on January 24, 1999.

3. Judicial Branch

The Judicial Branch, which is independent of the Executive and Legislative branches, consists of the Constitutional Council, the Council of State, the Supreme Court of Appeal, and lower courts and tribunals.[53] The President appoints the five members of the Constitutional Council, who serve six-year, non-renewable terms.[54] The President, in consultation with the Superior Council of the Magistrature (a presidential advisory body on judicial matters) appoints all other judges, who have unlimited terms of office.[55]

The Constitutional Council determines the constitutionality of laws and international agreements, and mediates conflicts both between the executive and legislative branches and between the Council of State and the Supreme Court of Appeal.[56] It also reviews constitutional challenges raised in the Council of State or the Supreme Court of Appeal, as well as those brought by individuals in lower courts.[57]

The Council of State rules on abuses of power by members of the executive branch, as well as on proprietary questions with regard to government spending.[58] It also hears legal challenges regarding voter registration and local elections.[59] The Constitution designates all other legal questions at the highest appellate level to the Supreme Court of Appeal.[60]

There is a Court of Appeals in Dakar, and courts of first instance in each of Senegal's 10 regions. These courts of first instance have jurisdiction in all administrative, civil, commercial and criminal matters, and hear appeals in civil and commercial matters on decisions of the justices of the peace.[61] There are four Assize courts with exclusive jurisdiction over serious criminal matters.[62] Currently, there are three justices of the peace in each of Senegal's 10 administrative regions.[63]

B. SOURCES OF LAW

Laws affecting women's legal status—including their reproductive rights—derive from a variety of sources, both international and domestic.

1. International Sources of Law

Many international human rights treaties recognize and promote specific reproductive rights. Because they are legally binding on governments, these international instruments impose specific obligations to protect and advance these rights. In Senegal, as soon as legally ratified or endorsed treaties or agreements are issued, they override national laws, provided that, in cases of bilateral agreements, they are also enforced by the other party.[64]

Senegal is a party to, *inter alia*, the African Charter on Human and Peoples' Rights,[65] the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child.[66]

2. Domestic Sources of Law

Senegal's Constitution, the supreme law of the land, enumerates certain fundamental human rights and freedoms.

Foremost among these is the guarantee of equal rights among citizens, without regard to origin, race, gender and religion.[67] In addition, the Constitution guarantees equality between men and women.[68] It also guarantees every person the right to self-determination, and the rights to life and physical integrity under conditions defined by law.[69] Finally, it protects the institutions of marriage and family, and guarantees freedom of religion, the right to work and the right to public education.[70]

Since gaining independence, Senegal's legislation has fundamentally been derived from French laws. Nevertheless, a number of laws inherited from the French have been replaced. The French Civil Code was replaced by the Code of Civil, Commercial and Administrative Obligations in 1963, to which were added a set of property laws in 1964, and the Family Code in 1972.[71] Although based on the French model, Senegal's Family Code accommodates principles of the *Shari'a* (the Islamic legal code), and the Malekite school of the Sunni sect.[72] Customary law plays a relatively minor role in Senegal, except in the area of marriage;[73] the customary law courts established by the French were abolished in 1960.[74]

III. Examining Reproductive Health and Rights

Issues of reproductive health and rights are addressed in Senegal within the context of the country's health and population policies. Thus, an understanding of reproductive rights in Senegal must be based on an examination of the documents that set forth these policies.

A. HEALTH LAWS AND POLICIES

1. Objectives of the Health Policy

Senegal's National Health Policy is based on the primary health care strategy, which was adopted in the Alma Ata Declaration. The policy aims both to achieve greater community involvement in the management of primary health care and to promote educational and preventive health care activities.[75] However, the persistence of poor living conditions, especially among those intended to be the main beneficiaries, led to a 1989 reform of the health care system that culminated in the adoption of a National Health Policy Declaration.[76] The new policy sought to decentralize health care delivery systems by taking the following steps: reorganizing health care services in 45 districts; integrating programs; and promoting community participation. These reforms were intended both to improve health care coverage throughout the country, especially the health of mothers and children, and to manage population growth.[77]

Although the reforms have met with some success, they have still not adequately overcome the primary obstacles to improving the quality of health care throughout the country. Thus, in 1995, a revised Policy Declaration was adopted with new priorities for health and social welfare—priorities that indicate the government's willingness to take the socio-economic context into account in policy development. Moreover, the 1995 Declaration shows a willingness to incorporate the recommendations of the 1994 International Conference on Population and Development (ICPD), particularly in the area of reproductive health.[78] Henceforth, the government proposes to subsidize more fully the health care of individuals. The government also aims to respond more effectively to the specific needs of various beneficiary groups (e.g., adolescents/youth, women, elderly, men) and to respect the reproductive rights of individuals.[79]

In response to the recommendations of the ICPD, in March 1997, the government established a National Reproductive Health Program (1997-2001). The program's main objective is to promote reproductive health by reducing morbidity and mortality, and by improving welfare;[80] its main components are intended to benefit the following groups:[81]

- Mothers and children: the goals are to reduce maternal mortality from its current level which is very high, and to lower infant and child mortality which also remains high, although it has decreased by 34% (from 199 to 131/1000);[82]
- Youths, whose specific health needs have received little attention;
- The elderly: geriatric health issues, such as menopause, prostate cancer and andropause, need to be addressed;
- Men: the program also seeks to include men and to take their health needs into account.

Specific program objectives include, *inter alia*: providing quality prenatal care to 80% of pregnant women; increasing assisted childbirth to 80%, and ensuring that 50% of women who give birth have quality postnatal care; increasing contraceptive prevalence to 20% with a mean annual progression of 3%; reducing the rate of spontaneous and induced abortion by 50%; maintaining the HIV prevalence rate below a threshold of 2.5%; reducing the incidence of STIs by 50%; reducing female genital mutilation by 50%; reducing the various forms of violence against women, adolescents and young girls by 50%; reducing the incidence of early and/or unwanted pregnancy in young women and adolescents ages 10 to 24 years

by 25%; providing accessible services to meet the needs of seniors.[83]

The strategies recommended for achieving these objectives focus on four areas of intervention: improving the quality of services; increasing demand for services; increasing the accessibility of services; and improving the socio-economic condition of the various beneficiary groups.[84]

The Director of Public Health and Hygiene oversees the program, working in close cooperation with a steering committee made up of representatives of relevant government ministries, as well as NGOs and private sector organizations.[85] The Ministry of Public Health has been part of the government since Senegal's independence, and implements the health policy as defined by the Head of State.

In 1997, the United States Agency for International Development (USAID), Senegal's principal donor with regard to reproductive health, financed an evaluation of the country's reproductive health programs. The study, conducted by the Ministry of Health and Social Welfare (MSAS) and the Population Council, revealed gaps in the accessibility of services.[86] Indeed, the results of the study indicate that the minimum package of reproductive health services is not always available. Although it seems that family planning is provided during prenatal visits, services such as control of diarrheal diseases, childbirth services, vaccinations, nutritional monitoring, postnatal examinations and postabortion care are less frequently provided (86%).[87] In addition, nutritional counseling, testing for sterility, and family planning services for men and adolescents, are the least available services. On the other hand, information, education and communication (IEC) regarding family planning is generally available (89% of the time). HIV/AIDS prevention methods are promoted in only 67% of the points of service (POS). Analysis of the data reveals that at more than 60% of POS, services are available five days a week. Overall, a greater effort must be made to increase the availability of family planning for men and adolescents.[88]

2. Infrastructure of Health Services

i. The Public Sector

The health system is a pyramid with a base consisting of rural community structures such as maternity facilities and health huts, and urban health stations that provide primary health care. They are administered by the 45 health districts that were created in 1990. Each district has at least one health center.[89] At the mid-level, there are 10 regional hospitals. At the pyramid's apex, there are seven national hospitals that provide specialized care, as well as national institutions and services. In addition to these facilities, there are 38 social advocacy and rehabilitation centers (CPRS), medical and social assistance agencies reporting to other ministries, and private sector agencies.[90]

The number of people per hospital increased from 404,818 in 1988 to 465,510 in 1993. During the latter year, 152,185 persons visited health centers, compared to 146,423 five years earlier. This represents three times the ratios recommended by the World Health Organization (WHO). Only the number of persons per health station (one for every 11,083 inhabitants in 1993) and per midwife (one for every 5,190 women from age 15 to 49 and children up to age 4) were close to the ratios recommended by the WHO, which were one for every 10,000 inhabitants, and one for every 5,000 women respectively.[91] As for the number of persons per physician, it remains 13,550, a figure that exceeds the WHO standard, even though the ratio has decreased by 20% from 1988 to 1993. The average travel distance for Senegalese citizens to a health station is 9.3 km, with significant regional disparities of anywhere from 1.5 km in Dakar to 15.5 km in the Tambacounda region.[92] In 1995, the ratio for the social advocacy and rehabilitation centers was one center for every 219,657 inhabitants: this is seven times the standard set by the Ministry of Health, which is one for every 30,000 inhabitants.[93]

The above figures, however, do not adequately reflect the unequal distribution between health facilities and human resources in the various regions of the country. The bulk of hospitals—12 out of 17—are concentrated in the regions of Dakar (seven), and the large cities of Saint-Louis (three) and Thiès (two). On the other hand, the regions of Fatick and Kolda have none. Similarly, in 1993, while Dakar had one physician for every 4,372 inhabitants, there was only one for every 74,684 in Kolda (East).[94]

ii. The Private Sector

Private health facilities are centered primarily in the Dakar region and are made up of three components: a for-profit sector, consisting of hospitals, medical and dental offices, clinics, pharmacies and infirmaries; a non-profit sector, including a Catholic hospital and health clinics, an ophthalmology center, company infirmaries and social services; and the traditional health sector, the significance of which must be underscored, particularly in rural and quasi-urban areas.[95] In 1994, private sector employees totaled 353 physicians, including 270 general practitioners, 13 pediatricians, 126 specialists, and 98 primary health care providers.[96]

3. Cost of Health Services

i. The Public Sector

The public health sector relies heavily on the government for its financing. However, the portion of the national budget

allocated to public health has been steadily declining, from 9% in the early 1970s to just over 5% in the early 1990s.[97] Nevertheless, on the recommendation of the WHO, the government decided to increase health spending by 0.5% per year to reach 9%. Thus, in 1995, the Ministry of Health's budget was nearly 17 billion CFA francs (U.S.$27,087,747), or 6.5% of the national budget.[98]

Budget allocations, which vary considerably from one region to the next, are linked to population density and available health facilities. The share of health costs paid for by the local governments should be 8% of the budget for rural communities, and 9% for urban communities.[99] The health committees raise between 400 and 600 million CFA francs (U.S.$637,358.75) per year, excluding the amount recovered for drug costs. Nearly 255 NGOs, in conjunction with private sector organizations and individuals, contribute to financing capital expenditures in this sector.[100]

Public sector resources for health have not kept pace with the rate of population growth. As a result, there has been: a rapid deterioration of already obsolete and inadequate facilities; a heavier workload for already insufficient and poorly distributed personnel; subversion of the health pyramid, in which services of "last resort" have been used in the first instance; an increase in demands upon social welfare agencies; and increasing failure of those agencies to meet these needs.[101] Thus, the quality of public sector services has diminished.[102]

ii. The Private Sector

It is difficult to determine the exact amount of financing for private health services. However, a 1987 Ministry of Labor study investigating private sector health insurance coverage showed that such benefits amounted to 5 billion CFA francs (U.S.$7,966,984.41), slightly less than one-third of the amount of the Ministry of Health budget.[103]

In March 1996, the government gave the National Council of Employers the task of studying the feasibility of creating a National Health Insurance Fund. The study showed that the medical expenses paid by health insurance companies amounted to only 63% of actual expenditure: in real numbers, this would make the total expenditure approximately 2 billion CFA francs (U.S.$3,186,793.77) for 59,000 beneficiaries (workers and their families).[104]

If we compare the 1996 figure to one from 1987 and weigh the number of beneficiaries, taking into consideration the unemployment rate, we find that the health insurance industry alone can raise approximately 5 billion CFA francs (U.S.$7,966,984.41) in medical, pharmaceutical and hospitalization benefits.[105]

iii. Costs of Reproductive Health Care

Most service providers offer contraceptive methods free of charge—patients essentially pay only for the cost of the examination. However, 31% of the service providers who offer the pill, injectables, condoms and spermicides sell them, as do 9% of those who offer IUDs.[106]

The average costs for providing these different contraceptive methods are, respectively, 135 CFA francs (U.S.$0.22) for the pill, 485 CFA francs (U.S.$0.77) for the IUD, 330 CFA francs (U.S.$0.53) for injectables, 60 CFA francs (U.S.$0.10) for condoms, and 30 CFA francs (U.S.$0.05) for spermicides. Two service providers out of five sell Norplant®.[107]

It appears that the most expensive reproductive health service is childbirth. In this regard, the quasi-public sector provides the most expensive services. The rates for services are established by the health committees in 60% of the cases and jointly by the health committee and the medical region at 19% of the points of service. Since 1994, there have been efforts to regulate and reduce costs, and some health committees have initiated changes regarding the price of contraceptives. In some 99 districts, these changes corresponded with the government's commitments pursuant to the Bamako Initiative. However, a systematic effort must be made to inform the public of these rates; virtually no health facility has its prices visibly displayed.[108]

4. Regulation of Health Care Providers

The various categories of providers listed in the table below are authorized, after receiving appropriate training, to provide the specified services.[109]

Providers	Voluntary surgical contracept.	Norplant	IUD	Injectables	Pill	Condom	Natural family planning methods	IEC/ Counseling
Community Health worker					+	+	+	+
Health worker				+	+	+	+	+
Registered nurse		+	+	+	+	+	+	+
Midwife		+	+	+	+	+	+	+
Physician	+	+	+	+	+	+	+	+
Pharmacist				+	+	+	+	+
Development Worker					+	+	+	+

Service providers, however, are often insufficiently trained. Although a training policy has been implemented to remedy this situation, initial training has been limited to a few hours for physicians and midwives. In addition, the type of training offered to the midwives has not prepared them well for their work.[110] In 1993, the curriculum of the National School of Health and Social Development was improved to incorporate reproductive health education into the training of nurses, midwives, welfare workers and social workers.[111]

Continuing education for health care providers is provided

locally through reproductive health projects and programs. These programs have been funded by the World Bank, USAID, UNFPA, and the Senegalese Association for Family Welfare (ASBEF), and have focused on leaders of major health agencies (e.g., chief physicians of regions, districts and garrisons), head nurses and midwives.[112]

To become a physician or pharmacist, a diploma from a university college of medicine and pharmacy is required. Physicians and pharmacists are organized into associations that accredit applicants who meet the requirements for practicing, and that monitor compliance with the rules of professional ethics. The "Code of Medical Ethics" is a compendium of these rules. Similarly, Decree No. 81-039 of February 2, 1981 governs the Code of Pharmaceutical Ethics. Midwives and registered nurses receive diplomas from specialized paramedical training schools with a level of study equivalent to a Baccalaureate.

Traditional practitioners, who represent an important alternative type of service provider, include matrons, excisionists and healers who use traditional medicines. No diploma is required for such practices; the only indication of the practitioner's skill is his or her reputation. Traditional practitioners are still not regulated in Senegal, though the Ministry of Scientific Research is becoming increasingly concerned about this situation.

5. Patients' Rights

Neither the Penal Code nor the Civil Code provide specifically for the protection of patients' rights. Moreover, there is very little jurisprudence on such matters. Still, the Code of Civil and Commercial Obligations does address these rights. More specifically, in the chapter regarding common law liability, the Code defines "misconduct," "injury" and the "relation of causality." Article 118, for example, stipulates "A person who, by his misconduct, causes injury to another, is liable." Article 119 defines "misconduct" as "failure to meet a pre-existing obligation of any kind whatsoever." Article 124 also defines injury. It states that "injury may be material or moral; it generates liability if it involves a breach of duty."

According to the Penal Code, in the event of medical malpractice, the court must consult an expert who determines whether malpractice has been committed and, if so, what the damages are. In this regard, the courts have designated an Association of Certified Experts and Evaluators for each of the various professions. Furthermore, the Penal Code contains other provisions that could apply to malpractice committed by a service provider. For example, Article 307 of the Penal Code stipulates that "Whoever involuntarily commits homicide or injury, due to clumsiness, carelessness, inadvertence, negligence or failure to observe the regulations, or has involuntarily been the cause thereof, shall be punished by a term of imprisonment lasting six months to five years and a fine of 20,000 (U.S.$31.84) to 30,000 CFA francs (U.S.$47.76)." Some service providers, including ASBEF, for example, have purchased private insurance to cover the costs of malpractice. In the most serious cases of medical malpractice, the National Medical Association, the agency responsible for penalizing those who commit misconduct, may revoke a practitioner's accreditation or license to practice medicine. Finally, the law also prohibits the illegal practice of medicine, pharmacy or dental surgery.

Thus, the legal provisions regarding the liability of physicians and paramedical professionals result from the combined provisions of the Code of Civil and Commercial Obligation and the Penal Code. However, they are rarely applied. On the other hand, a document entitled "Norms and Standards for the Provision of Family Planning in Senegal" lists the seven rights of patients, which include the right to: information; access services; choose an appropriate contraceptive method; safety of the equipment and materials used; privacy and confidentiality; dignity, express one's opinions and a comfortable environment; and continuity in family planning services.[113]

B. POPULATION AND FAMILY PLANNING

1. The Population Policy

In 1988, Senegal adopted a Population Policy Declaration to address the economic, health and demographic issues faced by the country. This policy is based upon the following principles: decreasing fertility; preventing mortality in all its forms; and geographically redistributing the population in order to improve the quality of life. The policy aims to achieve the following objectives: [114]

- Reducing both the fertility and population growth rates by adopting appropriate measures;
- Improving the quality of life in all regions by providing better coverage of basic needs in terms of food and nutrition, health, social welfare, housing, education, training, the environment, as well as information, cultural and leisure activities;
- Improving expertise in the field of population sciences through training.

In order to achieve these objectives, a number of strategies are recommended in the areas of health, family, training, and employment. These strategies are aimed at improving maternal and child health; strengthening efforts to enhance the welfare of women; adopting appropriate measures to promote the social development and well-being of youths; empowering women to better manage their fertility; and ensuring the

health and welfare of the elderly.[115]

The Ministry in charge of the Plan also oversees Senegal's Population Policy and has a Planning Directorate in charge of coordinating population activities. The Ministry also has an advisory body, the National Commission on Population and Human Resources (CONAPORH), which makes recommendations to the government on population and human resource development.[116] The creation of an institutional framework was accompanied by the implementation of population programs, such as the Communication Unit (UNICOM), the Population Unit, the Human Resource Development Project (PDRH), and the National Family Planning Program (PNPF). This latter program is financed by the World Bank, UNFPA and USAID.[117]

The main governmental agency responsible for Senegal's Population Policy is the Population and Human Resource Directorate (DPRH), which reports to the Ministry in charge of the Plan. Several other ministries are also involved in implementing the Population Policy, including the ministries of the Economy; Finance and Planning; Health and Social Welfare; National Education; Women, Children and the Family; Youth and Sports; Interior; Urban Planning and Housing; and Agriculture.[118] Like the government agencies, several NGOs and women's organizations are implementing programs to raise awareness about population-related issues among Senegal's urban and rural populations.[119]

2. The Family Planning Policy

The French Law of July 31, 1920 that prohibited incitement to abortion and contraceptive propaganda was repealed by Law No. 80/49 of December 24, 1980. In 1996, the government adopted a Family Planning Policy Declaration that pledges to provide: contraceptive services whose goal is to aid couples and individuals in spacing births, preventing early, late and unwanted pregnancies; services to prevent STIs/HIV/AIDS, infertility, and sterility; and information, education and communication (IEC) services, including family life education.[120]

These three objectives constitute the basis of the National Family Planning Program (PNPF), which is carried out through three channels: the Child Survival/Family Planning Project; the PNFP Support Project; and the support section of the Mother and Child Health/Family Planning Program of the PDRH (Project).[121]

3. Government Delivery of Family Planning Services

Family planning services seek to serve men and women of childbearing age, and mothers and children who are the most vulnerable groups in both urban and rural environments. In the vast majority of cases, contraceptive methods are provided free of charge and patients pay only for the examination. The average cost of the examination, depending on the sector, is summarized in the table below:[122]

Type of examination	Public	ASBEF	Semipublic / Private
Prenatal care	190 CFA francs	225 CFA francs	260 CFA francs
Childbirth	1215	NA	1855
Vaccination	85	100	100
Diarrheal diseases	70	50	100
Family Planning	155	100	200
STI treatment	130	150	215

Aware of the efforts that are still required to improve the quality of family planning services, the government has designed and published a national reference guide entitled "Norms and Standards for the Provision of Family Planning Services in Senegal." This document describes the rights of patients who use family planning services (please refer to the section on Patients' Rights). It also presents the needs of service providers, including the right to information, training and individual development; the right to good management and supervision; and the right to have access to adequate facilities and supplies.[123]

4. Services Provided by NGOs and the Private Sector

Within the framework of the National Family Planning Program (PNPF), NGOs and the private sector deliver the same services as the public sector. Most family planning services in Senegal belong to the public sector (92%), while ASBEF provides 2%. The private Catholic and semipublic sector, represented by the Association for Family Health (Sanfam), provides the remaining 6%.[124]

ASBEF is an affiliate of the International Planned Parenthood Federation (IPPF). In the ASBEF model clinics in Dakar and its suburbs, and in the six regions of Senegal where it has branches, all programs recommended by the PNPF are provided. These include the following: contraception/family planning and infertility treatments; gynecological and pediatric services; treatment for STIs, including HIV/AIDS; support in the fight against female circumcision/female genital mutilation; and promotion of breast-feeding. It is noteworthy that post-abortion consultations are no longer systematically denied.[125] When women use its services, ASBEF also takes advantage of the opportunity to advise them of their rights, and to that end, it has started a legal clinic that operates three times a week. Attorneys in the clinic train paralegals, who then disseminate the information they receive. In that endeavor, ASBEF works in close cooperation with the NGO "Rencontre Africaine pour les Droits de l'Homme" (African Encounter for Human Rights).[126]

The Family Health Association (Sanfam), which essentially operates in the quasi-public and private sectors, particularly in national and private companies, provides assistance with equipment and training. The primary beneficiaries of its services are workers in the private sector, particularly men, who outnumber women in the workplace. The Senegalese Association for the Family (ASPF) promotes natural family planning methods and provides other family planning services. Finally, the Population Study and Education Group (GEEP) advocates the incorporation of population studies and family life education courses in the curriculum. Nevertheless, it appears that much remains to be done before family planning services are widely available. To that end, it would be helpful to encourage bringing the services to the population, by means of mobile units and community-based distribution (CBD).

C. CONTRACEPTION

1. Prevalence

A variety of contraceptive methods are currently used in Senegal, including temporary methods with a prevalence rate of 7% (e.g., natural methods, barrier methods, the pill, injectables, implants, and the IUD), and permanent methods with an extremely low prevalence rate (e.g., tubal ligation and vasectomy).[127] The Demographic and Health Survey III (DHS III) also indicates the use of other traditional contraceptive methods such as extended abstinence, withdrawal, charms, herbs, and bark, with a prevalence rate of 3.8%.[128] The range of contraceptives currently available in Senegal comprises the I.U.D., implants, injectables, the pill, barrier methods (condoms), and chemical methods, including Delfen®, Neo-Sampoun® and Conceptrol®.

The level of familiarity with contraceptive methods is high in Senegal—more than 85% of women know about at least one method.[129] Among the best known modern methods are the pill (known by 72.4% of those surveyed), and the condom (known by more than 69.5% of the women in the sample).[130] The IUD, injectables and sterilization are known by 53% of women.[131] Traditional methods are less well known: only 56% of women surveyed mentioned them.[132]

Still, the contraceptive prevalence rate in Senegal remains low. Only 10.8% of all women, and 12.9% of all married women, use either a modern or a traditional method.[133] One of the objectives of the National Reproductive Health Program is to attain a prevalence rate of 20% by 2001.[134] This objective will be difficult to achieve in view of the existing problems regarding both the accessibility of, and information about, family planning services. Furthermore, if this goal is to be reached, more attention will need to be given to men and adolescents in family planning programs.

2. Legal Status of Contraceptives

Article 2 of Law No. 80/49 of December 24, 1980 repealed the Decree of May 30, 1933,[135] that made the 1920 French Law—which prohibited incitement to abortion and contraceptive propaganda—applicable in Senegal. In enacting the 1980 law, the government in effect liberalized all laws relating to contraception. Thus, current laws do not prohibit any form of contraception.

This liberalization is reflected in the content of two official documents—the 9th Orientation Plan for Economic and Social Development (1996 – 2001) and the National Reproductive Health Program (1997 – 2001). These plans unambiguously call for an intensification of IEC efforts to promote the use of contraceptive methods by making these methods more effective.

3. Regulation of Information on Contraception

There is no law that specifically regulates the provision of information relating to contraception. However, there is a provision in the Code of Minor Offenses, in Article 9 of Chapter II, regarding Public Health and Hygiene, which states: "shall be punished by either or both of the penalties specified in Articles 2 and 3 … those who display or cause the display of indecent notices or images on public highways or in public places."[136] By virtue of that provision, advertising regarding the use of condoms, HIV/AIDS and other STIs, on both television and in public places, has been significantly watered down, to the point where it is almost incomprehensible.

D. ABORTION

1. Prevalence

A 1995 survey of urban areas showed that 52% of women who have had abortions had their first one between the ages of 15 and 19; 23% of women who have a second abortion do so between the ages of 30 and 34; and 50% of women who have abortions are unmarried. The survey further revealed that the abortion rate is highest among the Sérère and the Diola, even though these two ethnic groups are primarily catholic; and finally abortions tend to be more common in places where there is a high incidence of rural-urban migration.[137]

Although induced abortion is against the law, it appears that the voluntary termination of pregnancy is widespread. A study of 1,807 women done in the Pikine region shows an abortion rate of 30%, while the rate among girls between the ages of 15 and 19 tends to be even higher.[138]

2. Legal Status of Abortion

Article 305 of the Penal Code prohibits abortion without expressly defining the offense. It provides: "Whosoever, by

food, drink, medicine, violence or by any other means, procures an abortion of a pregnant woman, whether or not with her consent, will be punished with a prison term of one to five years and a fine of 20,000 (U.S.$31.84) to 100,000 CFA francs (U.S.$159.19)."[139] The woman who procures her own abortion, or who has consented to the use of the means administered for that purpose, will be punished with a prison term of six months to two years and a fine of 20,000 (U.S.$31.84) to 100,000 francs (U.S.$159.19)."[140] If physicians, pharmacists, students, herbalists, or surgical instruments merchants provide information about abortion methods, they will be subject to a similar sentence, in addition to a five-year suspension of their professional license.[141]

According to the Code of Medical Ethics, therapeutic abortion is the only legal means of terminating a pregnancy. An abortion is regarded as "therapeutic" if the woman's health is in danger or if there is a likelihood of fetal abnormalities. Thanks to new medical developments, this type of abortion is rarely performed.

Given the private nature of abortion in Senegal, there is not much case law. The media only rarely report the discovery of a fetus, and even in such cases, it is difficult to determine the facts. In Dakar, women are incarcerated more for committing infanticide than for voluntary termination of pregnancy.

3. Requirements for Obtaining a Legal Abortion

The decision to terminate a pregnancy is legal if it is made by a physician who finds that the continuation of the pregnancy will endanger the health of either the woman or the fetus or both. In such cases, the Code of Medical Ethics authorizes the physician to perform a therapeutic abortion in order to protect the health of the woman or if there is a likelihood of fetal abnormalities.

4. Policies Related to Abortion

There are no policies on abortion.

5. Penalties for Abortion

Please refer to the section on the legal status of abortion.

6. Regulation of Information on Abortion

Although Law No. 80-49 of December 24, 1980 repealed the 1920 French Law prohibiting incitement to abortion and contraceptive propaganda, restrictions on information relating to abortion continue. The 1980 law enacted a new Article 305 bis into the Penal Code that states: "Anyone who incites someone to commit the offense of abortion, either through speech or in public meetings, or who offers to sell or provide it free of charge. . . .or displays, posts or distributes in public places...books, advertisements or other printed matter related to abortion, even if this incitement has no effect, will be punished by six months to three years imprisonment and/or a fine of 50,000 (U.S.$79.59) to 1,000,000 CFA francs (U.S.$1,591.88)."

E. STERILIZATION

There are no laws in Senegal that address sterilization. For the most part, service providers in Senegal supply reversible contraceptive methods. Permanent methods are practiced by only a few providers who have the proper equipment and personnel, such as Le Dantec University Hospital Center.

F. FEMALE CIRCUMCISION/FEMALE GENITAL MUTILATION

1. Prevalence

Female circumcision/female genital mutilation (FC/FGM) is a form of violence against women and girls that has disastrous effects on reproductive health. According to a report by UNICEF, the general FC/FGM prevalence rate in Senegal is only 20%, but it is 60% in Casamance and varies between 80% and 100% among the Peul and the Toucouleur ethnic groups.[142]

2. Laws to Prevent FC/FGM

The preamble of the Constitution proclaims the respect and entrenched guarantee "of the rights and liberties of the human being and the family." Furthermore, Article 6 states that "[t]he person is sacred. The state shall have the obligation to respect and protect the person … Everyone shall have the right to life and to physical integrity under the conditions defined by the law." FC/FGM is a violation of women's rights, notably the right to bodily integrity. Consequently, we can conclude that Senegal's Constitution prohibits this type of violence.

Recently, the National Assembly enacted Law No. 06-99 of January 16, 1999, which adds Article 299 bis to the Penal Code. According to the terms of this article "Whosoever violates or attempts to violate the integrity of the genital organs of a female person by total or partial ablation of one or several of the organ's parts, by infibulation, by desensitization or by any other means will be punished with imprisonment of six months to five years."[143] "The maximum penalty will be imposed when these sexual mutilations are performed or abetted by a member of the medical or paramedical corps ... When they result in death, the penalty shall be hard labor for life ... Any person who, through gifts, promises, influences, threats, intimidation, abuse of authority or of power, provokes these sexual mutilations or gives instructions for their commission shall be punished with the same penalties."[144]

3. Policies to Prevent FC/FGM

The National Reproductive Health Program seeks to reduce FC/FGM by 50% and to reduce the various forms of violence against women, adolescents and girls by 50%.[145] To achieve these objectives, four strategies have been selected:

adopting appropriate measures to promote adherence of all partners to the objectives of the program, including the retraining of excisionists for new jobs; increasing the organizational capacity of groups involved in FC/FGM prevention; developing multimedia programs to raise awareness, educate, and provide training and information to selected groups; developing operational research and documentation of the problem, and publishing an annual report on FC/FGM and violence against women.[146]

The National Action Plan for Women, which is part of Senegal's follow-up to the 1995 Beijing Conference, contains many provisions related to the prevention of FC/FGM and all types of violence against women and girls.[147]

4. Additional Efforts to Prevent FC/FGM

The Senegalese Committee for the Prevention of Traditional Practices Harmful to Women's Health (COSEPRAT) has done significant advocacy work to raise awareness about this practice. COSEPRAT is supported by UNFPA and the Canadian economic cooperation (CECI), and especially by ASBEF in the Northern region of Senegal. Still pending is the issue of finding an income-generating alternative for excisionists. It is here that ASBEF, with the support of local leaders and youth in the region of the Senegal River, has undertaken training activities for excisionists and traditional birth attendants.

There is also the recent experience of the Malicounda Bambara village (1998). For the past 10 years, the non-governmental organization TOSTAN has succeeded in educating and retraining excisionists as traditional soap-makers. In fact, the excisionists claim that they have even greater ambitions and are working to develop more lucrative activities.

G. HIV/AIDS AND OTHER STIS

1. Prevalence

According to the most recent UNAIDS report, in 1997, Senegal had an estimated 72,000 HIV-positive adults, representing a prevalence rate of 1.77%.[148] Among the HIV-positive adults, an estimated 36,000 were women.[149] There were an estimated 3,800 HIV-positive children, and 49,000 AIDS orphans.[150] Since the beginning of the epidemic, 60,000 cumulative AIDS cases have been registered.[151]

With regard to the STI prevalence rate, seven women out of 1000 (0.7%) and 10 men out of 1000 (0.11%) stated that they had an outbreak of an STI during the past 12 months.[152] According to the DHS III, 92% of women and 98% of men have heard about at least one STI.[153] However, only 17% of women have heard about gonorrhea and 9,3% have heard about syphilis, whereas 59% of men have heard about gonorrhea and 17.6% of men have heard about syphilis.[154] Gonorrhea is probably the most widespread STI. Indeed, in certain parts of the country, having it is a sign of virility.

The DHS III noted that 80% of women, and 85% of men who have heard about AIDS, also know how the infection is transmitted. One of the most commonly cited transmission methods was sexual relations (76% of women and 81% of men).[155] With regard to awareness about methods of preventing AIDS, 79% of women and 85% of men stated that they knew some way of preventing the infection.[156]

Statistics on this subject should be interpreted with caution, however. The level of awareness of STIs other than AIDS is very low. Moreover, accurate diagnosis of STIs requires a medical opinion and thus the survey responses may be far from the reality. Finally, because STIs are often associated with sexual behaviors that are difficult to admit, some people refrain from mentioning them.[157]

2. Laws Related to HIV/AIDS

There are no laws regarding HIV/AIDS in Senegal.

3. Laws Related to other STIs

There are no laws regarding STIs in Senegal.

4. Programs Related to Prevention and Treatment of HIV/AIDS and other STIs

In 1990, the government implemented a National AIDS Prevention Program (PNLS) intended primarily to reduce the prevalence of HIV/AIDS, and to manage other STIs. The National Reproductive Health Program also contains specific objectives for HIV/AIDS. One of its principal objectives is to maintain the HIV prevalence rate below 2.5% between 1997 and 2001.[158] To attain this objective, the following strategies have been adopted: prevention of HIV transmission through blood transfusions; prevention of perinatal HIV and other STI transmissions; and strengthening of monitoring activities.[159] The PNLS has succeeded in achieving significant social mobilization around STI prevention. It has also made progress in the training of service providers.[160] Nevertheless, much work remains to be done. In fact, fewer than 30% of women and men indicated an awareness of the public sector providing condoms and only 19% of women knew that they could obtain condoms at pharmacies.[161]

According to a study on the sexual behavior of Dakar residents, conducted in April 1998 by the National AIDS Prevention Committee in conjunction with UNAIDS, AIDSCAP and UNDP, premarital sexual activity was significant in women and very frequent in men. The study showed a very low number of sexual partners before marriage for Dakar women (0.34 partners) and a higher number for men (four partners); a protected initial relation with a casual partner for 63% of women and 59% of men; very infrequent sexual relations for pay (9% of men and 16% of women); and very few

declared cases of urethritis, which promotes HIV infection, even though it is likely that these numbers were underestimated (two percent of women surveyed declared that they had such an infection during the course of the 12 months preceding the survey. Half of these never used a condom with their partner).[162]

Based on a sample of 1,848 persons ages 15 to 49, the study's authors conclude that boys under age 20 should be the primary targets for sensitization efforts in order to prevent STIs/HIV/AIDS. Second, the study also urges the National AIDS Prevention Council to provide a dynamic impetus for the policy of condom promotion in order to curb the spread of STIs/HIV/AIDS. With regard to women, the study pointed out that there is a higher rate of illiteracy among them (34%) compared to men (19%), and that only 6% of them engage in practices intended to stimulate pleasure in their sexual partners, such as dry sex.

IV. Understanding the Exercise of Reproductive Rights: Women's Legal Status

Women's reproductive health and rights cannot be fully evaluated without investigating women's status within the society in which they live. Not only do laws relating to women's legal status reflect societal attitudes that affect reproductive rights, but such laws often have a direct impact on women's ability to exercise those rights.

The legal context of family life, women's access to education, and the laws and policies affecting their economic status can contribute to the promotion or the restriction of women's access to reproductive health care and their ability to make voluntary, informed decisions about such care. Laws regarding the age of first marriage can have a significant impact on young women's reproductive health. Furthermore, rape laws and others related to sexual assault or domestic violence present significant rights issues and can also have direct consequences for women's health.

A. LEGAL GUARANTEES OF GENDER EQUALITY/NON-DISCRIMINATION

The first article of the Constitution proclaims that Senegal "provides equality before the law for all of its citizens, regardless of origin, race, gender, religion." Article 2 continues by stating that "all Senegalese nationals of both sexes, as of age 18, enter into their civil and political rights and are electors under the conditions specified by law."

B. RIGHTS WITHIN MARRIAGE

1. Marriage Law

The Senegalese Family Code governs marriage laws. The legal age of marriage is 16 for women and 20 for men.[163] The type of marriage that will be entered into is governed by the so-called Options System. There are three possible alternatives: monogamy; limited polygamy (which restricts the number of wives); and polygamy that allows men to have up to four wives.[164] If a man does not choose one of the options, the type of marriage defaults to polygamy.[165] The option of monogamy or limited polygamy is irrevocable and binds the husband for the rest of his life, even if the marriage during which it was chosen is dissolved.[166]

With respect to the marital system, the system of separation of property generally applies. However, the spouses may choose either community property or a settlement in trust.[167] If no choice is made, the marriage defaults to the system of separation of property.[168] In polygamous marriages, the husband cannot use the income of one wife for the benefit of others.[169]

A settlement in trust governs property given to a woman at the time of her marriage by persons other than her spouse.[170] Property given by the future husband at the time of the marriage is hypothetically excluded from the settlement in trust.[171] This system may apply only to registered real estate, securities deposited with a bank, and animals constituting a herd and their progeny.[172] The other property of the spouses is subject to the system of separate estates.[173]

In accordance with Article 132 of the Family Code, the spouses may agree that the bride-price will be a fundamental condition of the marriage. However, the bride-price may not exceed the maximum value specified by law.[174] The bride-price is the sole property of the woman, who may dispose of it as she sees fit.[175] Property acquired by the wife through a profession separate from that of her husband constitutes reserved property that she administers and of which she may dispose according to the rules of separate estates, regardless of the marital system.[176] In monogamy, the marital system may be one of joint ownership of furnishings and acquired property. This limits the community property to items acquired during the marriage.[177]

To accommodate the role of religion and custom, Senegalese law recognizes marriages that are entered into in accordance with civil law, and traditional registered marriages. The former are often monogamous. The latter occur when the prospective spouses choose to marry in accordance with traditional marriage rites.[178] They are required to inform the Registrar of their intention one month in advance, if the marriage

is to take place in a municipality that has a Registrar's office.[179] If the marriage is to take place anywhere else, the notice of intent is given to the village chief and, if applicable, to a person in the village appointed by the Registrar.[180] An unreported marriage is valid, but the spouses may not use it to receive family benefits from the government and/or public or private institutions.[181] The spouses have six months in which to appear before the Registrar with two witnesses who can testify to the couple's exchange of vows. Even with a late declaration, the couple is entitled to make claims based on the marital relationship.[182]

Decree No. 25-91 provides the list of applicable customs in Senegal.[183] Article 830 of the Family Code, even though it stipulates the repeal of general and local customs as of its effective date, nevertheless makes an exception for those customs relative to traditional marriage rites.[184] On April 17, 1971, the Dakar county court, relying on Decree No. 25-91, refused to register a marriage celebrated according to a custom that did not appear in the aforementioned decree.[185]

Senegal recognizes animistic and fetishistic customs under which marriages may be traditionally celebrated.[186] Thus, these customs coexist alongside the Catholic and Islamic customs. For example, the Family Code recognizes Diola fetishistic custom, Diola Catholic custom, and Diola Islamic custom, as well as Bassari animistic custom and Peul animistic custom. In the fetishistic and animistic customs, the marriage is sealed in the village with local products such as palm wine and cola. It is with regard to marriage rites that custom retains its full influence.

2. Divorce and Custody Law

No fault divorce is recognized so long as it is certified by a justice of the peace, or by a judicial ruling dissolving the marriage at the request of one of the spouses.[187] In addition to no fault divorce, the law recognizes 10 causes of fault-based divorce, including: declared absence of one of the spouses; adultery committed by one of the spouses; sentencing of one of the spouses for a defamatory penalty; failure of the husband to support the wife; refusal by one of the spouses to fulfill his or her obligations under the marriage contract; desertion of the home or family; serious cruelty; sterility; incurable disease; and incompatibility.[188]

The obligation to provide support exists only if the person claiming the support can prove vital need based on income, or if the sued person has sufficient resources to provide the support.[189] The obligation of spouses to support one another and the children is carried out like the obligation to provide support during the marriage.[190] This obligation lasts until the dissolution of the marriage and extends to the estate of a deceased husband, which owes the widow food and lodging for a period of 300 days following the death—an obligation that ceases if the widow remarries before the end of this period.[191]

In the event of irreconcilable differences between spouses, if there are children, the judge may assign any qualified person to gather information about the physical and psychological situation of the family. Such a qualified person may also be required to give an opinion relative to the assignment of custody.[192] The decree or certification of the divorce or legal separation determines the custody of each of the children born to the marriage, which may be given to either of the parents or, if necessary, to a third party. The person who is awarded custody exercises paternal rights over the children and their belongings. The court also specifies the terms of visitation for the non-custodial parent.[193]

If the parents (father and mother) are not found competent to protect the interests of the child, a third party may be given all of the legal prerogatives of a guardian. For example, the Dakar court of first instance has determined that the "remarriage of the mother is not sufficient grounds for her to lose custody." In any event, according to the law, the judge must take only the interests of the child into consideration in assigning custody.

The concept of paternal rights is specified in the Family Code, which affirms that paternal rights belongs jointly to the father and mother, but is exercised during the marriage by the father, as head of the family.[194] Women's groups are asking that parental authority replace paternal rights to reflect the increasingly important role played by women in running the household.

C. ECONOMIC AND SOCIAL RIGHTS

The preamble to the Constitution of Senegal proclaims the entrenched respect and guarantee of economic and social rights. These rights include the right to own property, the right to work, the right to marry and have a family, the right to education, the right to strike, and the right to social welfare.

1. Property Rights

Article 12 of the Constitution stipulates that "the right to own property is guaranteed under the Constitution. It may be infringed upon only in the event of lawfully established public necessity, subject to just and prior compensation." The Family Code in theory indicates no discrimination between men and women with regard to access to land ownership; however, there is a restriction regarding inheritance under Islamic law where a woman may inherit only half of a man's share.[195]

The problem of land ownership is central to the lives of rural women, since access to land ownership determines access

to all other productive resources. In the traditional land-ownership system, women could not be land managers. The 1964 Law on National Domain, in its principle, called for the equality of individuals in matters of land ownership and a better distribution of the land for the benefit of those who work it. The 1972 reform of territorial and local governments restructured the rural communities, but made no mention of women.

In practice, the village chiefs distribute land parcels to men much more than to women, and the latter continue passively to accept this situation. The majority of peasant women, especially the most underprivileged, still have access to land ownership only through their husbands or other male family members, who may give them a parcel. The under-representation of women on rural councils, which are the bodies that determine many important issues, including land distribution, production and marketing, marginalizes them further still with respect to land ownership.

2. Labor Rights

Article 20 of the Constitution expressly stipulates that everyone has the right to work and to employment. In exercising this right, there is no discrimination under the law. In fact, the first article of the Labor Code states, "Any person who is hired to carry out his professional activity, in exchange for compensation, under the management and authority of another natural person or legal entity, whether public or private, is considered a worker as defined in the introduction, regardless of gender and nationality."

The law recognizes, however, that a work contract may be temporarily suspended during a pregnant woman's rest period. The Labor Code[196] and the National Interprofessional Collective Agreement[197] stipulate that, during maternity leave, a woman working for a company must be compensated according to legal and regulatory provisions. Consequently, the Social Security Code specifies that a salaried woman has the right to maternity benefits while on maternity leave and to a suspended work contract for 14 weeks, including six weeks before delivery and eight weeks afterward.[198] Maternity leave may be extended for three weeks if there is a medically proven inability to return to work. The employer is required to rehire the woman worker after her maternity leave, since the work contract was only suspended. Finally, the Labor Code stipulates that, "For a period of 15 months after the birth of the child, the mother has the right to a rest period for nursing."[199] The total length of these rest periods may not exceed one hour per day of work.

However, women working for companies suffer from salary discrimination and discrepancies in occupational classification, which are exacerbated by persistent unemployment. The labor inspectors in charge of monitoring management's compliance with the Labor Code have tried to take the necessary corrective action, but the economic environment, which is marked by lack of employment stability and a resulting gloominess, is eroding workers' ability to negotiate.

Furthermore, in matters of social security, several types of discrimination, with their origins in the concept of paternal rights, should be noted. First, a working woman cannot receive reimbursement if her husband and children are ill. Second, a working woman is not allowed a deduction for her children in matters of income tax; she is considered single with respect to determining the number of shares for calculating income tax. Third, family allowance is paid to the father in his capacity as head of the family. A mother may collect it only under exceptional circumstances.[200] The establishment of the concept of parental authority by the Family Code would eliminate these provisions that discriminate against women. The National Action Plan for Women, 1998-2001, supported by women's organizations, is taking on this issue.[201] A draft bill establishing parental authority has been submitted by the Ministry of Justice.

3. Access to Credit

There is no law governing women's access to credit. In theory, women have the same access to credit as men. However, because women are often involved in small businesses, they may be in more need of microcredit not easily provided by most commercial banks. As a result, credit union structures have emerged, which rely on a system of self-financing groups. This distribution of microcredit to women has facilitated income-generating activities, as well as the mobilization of women around specific goals regarding family planning, prevention of STIs and FC/FGM, and productive management and investment training. It has also strengthened the urban economy and the informal sector.

Nevertheless, access to credit remains a crucial problem for rural women, who often lack training in modern agricultural techniques. The only techniques they are taught are the ones relating to easing their workload at home, and to packaging their produce. In addition, it is very difficult for them to sell produce because of the limited number of local markets, and the transportation shortages.

4. Access to Education

The Constitution guarantees the right to education for youth in public schools and religious institutions.[202] Nevertheless, the high rate of female illiteracy—82%[203]—reflects the fact that there are fewer girls attending school than boys. In fact, only 41% of girls ages 7 to 12 attend school, compared with 68% of boys in the same age cohort.[204] Furthermore, the high-

er the level of education, the lower the proportion of women.[205]

The enrollment of girls in schools is hampered by socio-cultural factors, early marriages and early pregnancies. The Government, through its National Action Plan for Women, together with a significant number of NGOs, has begun to develop programs to support the education of girls and help keep them in school until they graduate. A number of programs have been implemented to combat female illiteracy, among which are the Women's Priority Literacy Program (PAPF) and Senegalese Synergy for Education and Development. Centers for literacy in two national languages have been opened with a success rate of 82.43%.[206] A reproductive health education module has been introduced at several of these centers, and women have literally flocked to the centers offering family planning education. Efforts are now underway to replicate these centers elsewhere.

D. RIGHT TO PHYSICAL INTEGRITY

1. Rape

The Penal Code expressly prohibits rape.[207] Law No.06-99, which was adopted by the National Assembly on January 16, 1999, modifies Article 320 of the Penal Code. This amended article defines rape as "Any act of sexual penetration, of any nature whatsoever, which has been perpetrated against another person by means of violence, force, threat or surprise." It is noteworthy that under this definition, the victim of a rape can be either a woman or a man.

Whoever is guilty of rape will be punished by five to 10 years' imprisonment. If it results in mutilation, permanent injury, or if the rape was committed by sequestration or by a group of people, the sentence will be 10 to 20 years' imprisonment. If it results in death, the perpetrators will be guilty of murder.[208] If the rape was committed against a child under the age of 13, or against a person who is particularly vulnerable because of her pregnancy, age or health, the perpetrator will receive the maximum sentence.[209]

Likewise, whoever commits or attempts to commit sexual assault by use of force against individuals of either sex will be punished by five to 10 years of imprisonment.[210] If either offense is committed against a child under the age of 13, or against a person who is particularly vulnerable because of her pregnancy, age or health, the perpetrator will receive the maximum sentence.[211]

If the rape is committed by a child's older relatives, teachers, or paid servants, or by officials or ministers of a religion, the sentence will be 10 years of imprisonment.[212] There are an increasing number of rapes committed within the family and there appears to be a trend toward reducing such rape charges to sexual assault, with sentences of three months to two years instead of five to 10 years.

The Penal Code also punishes and prohibits the kidnapping and abduction of a minor.[213] The sentence is increased—hard labor in perpetuity—if the minor is under age 15.[214] In addition, the amended Article 320 bis punishes the corruption of a minor, pedophilia, and the holding of meetings of a sexual nature involving a minor (see the section on Sexual Crimes and Offenses against Minors and Adolescents).

There is no law regarding marital rape. Also, incest *per se* is not defined in the Penal Code. However, indecent assault perpetrated by any parent or person with authority over the minor victim, if this minor is under the age of 13, is punishable by the maximum sentence (five years).[215]

Rape during armed conflict does not receive any special mention. It does appear, however, to fall into the category of acts of torture defined as "assault, battery, physical or mental violence or other types of harm intentionally committed by a police officer or any other person acting in an official capacity or at his instigation, or with his express or tacit consent, in order to obtain information or admissions, to exact retaliation, or to proceed with acts of intimidation, or with the intent to discriminate in some way."[216] No exceptional circumstance of any sort, whether it be a state of war or threat of war, may be claimed as justification for torture. Even if the act of torture was ordered by a superior or a public authority, it is not justified.

2. Domestic Violence

Domestic violence, both physical and mental, is a common occurrence. Article 297 bis of the Penal Code, amended in January 1999 by Law No. 06-99, punishes domestic violence by an imprisonment of one to five years and a fine of 50,000 (U.S.$79.59) to 500,000 CFA francs (U.S.$795.94), if a disease or disability have resulted from this violence. If the violence does not result in a disease or disability, the perpetrator will be liable to a fine of 30,000 (U.S.$47.76) to 150,000 CFA francs (U.S.$238.78), and to an imprisonment of one to five years. If the violence results in mutilation, amputation, blindness or other permanent injuries, the perpetrator will be liable for hard labor for 10 to 20 years. If the violence was a regular occurrence and results in unintentional death, the perpetrator will be liable for forced labor for life. If the violence was a regular occurrence and results in intentional death, the perpetrator will be guilty of murder.[217]

3. Sexual Harassment

Law No. 06-99, which was adopted by the National Assembly on January 16, 1999, punishes sexual harassment committed by a person who has abused his authority. Article 319 bis states that "Anyone who abuses his authority by harassing another

through orders, gestures, threats, words, writing or force, in order to obtain sexual favors, will be liable to a sentence of six months to three years of prison without possibility of parole, and to a fine of 50,000 (U.S.$79.59) to 500,000 CFA francs (U.S.$795.94). If the victim is under 16 years of age, the perpetrator will receive the maximum sentence."

v. Focusing on the Rights of a Special Group: Female Minors and Adolescents

The reproductive health needs of adolescents are often unrecognized or neglected. Because early pregnancy has disastrous consequences for the health of mothers and children, it is important to study the reproductive lives of adolescents between 15 and 19 years old.

The population of Senegal is extremely young—75.7% is under 20 years.[218] It is particularly important to meet the reproductive health needs of this group since recent surveys indicate that 41.1% of young people in school have engaged in some form of sexual activity. This number increases to 50% for out-of-school youth who often have little exposure to either family planning or IEC programs.[219]

A. REPRODUCTIVE HEALTH OF FEMALE MINORS AND ADOLESCENTS

According to the Demographic Health Survey III (DHS III), by age 15, 16% of girls have had at least one sexual experience; by age 18, the percentage exceeds 55%.[220] These figures, however, obscure important variations. Girls' sexual activity occurs much earlier in rural areas than in urban ones (age 16.4 v. 19.2 years, respectively).[221] This disparity has directly affected the sexuality and fertility of adolescents in Senegal, where the early pregnancy rate is among the highest in Africa. The DHS III also shows that the average age for first-time mothers is 19.8 years.[222] Moreover, it is significant that 22% of women ages 15 to 19—almost one out of every five women—are sexually active, with 18% already having had at least one child, and 4% being pregnant for the first time.[223] In addition, according to a survey conducted at Dantec University Hospital Center's maternal and child health services, approximately 60% of women suffering complications from abortions were between the ages of 15 and 24.

Aware of the importance of adolescent reproductive health, the government has deliberately targeted young people in the National Reproductive Health Program (1997-2001).[224] Several projects have been developed to meet the reproductive health needs of this beneficiary group. The Ministry of Youth and Sports has initiated "Youth Promotion," an ambitious project which operates Counseling Centers for Adolescents, specializing in reproductive health services, as well as family life education. Several other NGOs and Associations are also working on adolescent issues.

B. FEMALE CIRCUMCISION/FEMALE GENITAL MUTILATION OF FEMALE MINORS AND ADOLESCENTS

FC/FGM is practiced from early childhood through puberty. The National Reproductive Health Program recently set the goal of reducing FC/FGM by 50%,[225] and the National Assembly has just passed a law prohibiting FC/FGM. Henceforth, any person who violates or attempts to violate the integrity of the genital organs of a female person by total or partial ablation of one or several of the organ's parts, by infibulation, by desensitization or by any other means, will receive a sentence of six months to five years imprisonment.[226] "The maximum penalty will be imposed when these sexual mutilations are performed or abetted by a member of the medical or paramedical corps … When they result in death, the penalty shall be hard labor for life … Any person who, through gifts, promises, influence, threats, intimidation, abuse of authority or of power, provides these sexual mutilations or gives instructions for their commission shall be punished with the same penalties."[227]

C. MARRIAGE OF FEMALE MINORS AND ADOLESCENTS

The age at first marriage or first sexual relationship has a significant effect on a woman's reproductive behavior, as well as on her reproductive health and her social status. Generally, marriage of a minor results in early pregnancy. Early pregnancy, in turn, constitutes a significant risk factor in both maternal mortality and the school drop-out rate. It also constitutes a major risk factor for the children born to these young mothers. In light of these risks, Senegalese lawmakers have expressly determined a minimum age at first marriage.

The Family Code specifies the age of first marriage for girls as 16.[228] In practice, however, in certain regions of Senegal, girls below the age of 15 are given in marriage without their consent to much older men in exchange for a substantial bride-price. This practice could be qualified as marital rape, which is not prohibited by law, or as abduction of a minor, which is prohibited by law. Unfortunately, the latter offense is rarely prosecuted, because the women's organizations, who could defend the rights of these young brides, are not authorized by law to act on their behalf.

The Penal Code punishes the consummation of marriage involving children under the age of 13 and imposes a sentence

of two to five years of imprisonment. If serious injury to the child results, the sentence is increased to five to 10 years.[229]

According to the DHS III, the median age of women at first marriage is 19.6 years in urban areas and 16.3 years in rural ones.[230] Significantly, marriage age increases with the level of education: women with a secondary education or higher marry at least seven years later than those who have never attended school—23.6 versus 16.5 among women ages 25 to 49.[231] Furthermore, the percentage of women who married at a very early age decreases from the older to the younger generations, a phenomenon that reflects a declining trend toward early marriage.[232]

D. EDUCATION FOR FEMALE MINORS AND ADOLESCENTS

Although there are no specific laws regarding the education of adolescent girls, there is a voluntary government policy aimed at developing programs to enroll and keep girls in school. These programs are implemented with the assistance of UNICEF and NGOs (see the section on The Right to Education above). The National Action Plan for Women has developed programs specifically for the education of girls, with a special focus on literacy.

At all educational levels, the percentage of girls attending school is lower than that of boys. In Dakar, the disparity between the number of girls and boys enrolled in school is significant (46.6% for girls compared with 62.6% for boys in 1994–95).[233] At the national level, fewer than half of all girls are in school, with girls representing 43% of the total school population.[234] The proportion of girls is lower still in middle (33%) and secondary school (29%).[235]

The access of girls to higher education is limited by early pregnancy. Early family responsibilities also have a negative effect on their staying in school, as well as their ability to progress in their careers. In general, the higher the level of education, the lower the proportion of women. Women make up only 12% of university professors in Senegal.[236]

E. SEXUALITY EDUCATION FOR FEMALE MINORS AND ADOLESCENTS

The policies developed by the Ministry of National Education in the area of sexuality education are limited. Sexuality education is not a specific subject in high school curricula. Rather, information about the male and female reproductive systems is taught in high school biology courses.

It is generally during these courses that some sexuality education is imparted to the students.

F. SEXUAL OFFENSES AGAINST FEMALE MINORS AND ADOLESCENTS

The Penal Code protects minors against kidnapping, abduction, indecent assault against children under the age of 13, incest, homosexuality, and corruption of a young person.

1. Kidnapping and Abduction

Article 347 of the Penal Code states that "Whoever, by fraud or violence, kidnaps or abducts minors … will be liable to forced labor."[237] If the kidnapped or abducted minor is under the age of 15, the perpetrator will be liable to forced labor for life. However, the perpetrator will be liable to forced labor for five to 10 years if the minor is found alive before the judgment is handed down. The abduction will carry the death penalty if the minor is found dead.[238]

Furthermore, Article 348 provides "Whoever, without fraud or violence, kidnaps or abducts, or attempts to kidnap or abduct a minor under the age of 18 years, will be liable to two to five years imprisonment and to a fine of 20,000 (U.S.$31.84) to 200,000 CFA francs (U.S.$318.38). If a perpetrator subsequently marries a minor after kidnapping or abducting her, he can only be brought to court by persons who would be authorized to request the annulment of the marriage. The perpetrator can only be found guilty after the marriage has been annulled."[239]

2. Indecent Assault

The Penal Code prohibits acts of indecent assault committed intentionally upon minors. Article 319, ¶ 1 provides "Any act of indecent assault, attempted or committed without violence on a child of either sex under the age of 13 years will carry a prison sentence of two to five years."[240]

3. Incest

Even though incest *per se* is not defined in the Penal Code, Article 319, ¶ 2 states that "Any act of indecent assault, which has been committed by a child's relatives, or by any person who exercises authority over the victim, even if the child is over the age of 13, will carry the maximum sentence."[241]

4. Homosexuality

The Penal Code prohibits homosexuality. Article 319, ¶ 3 provides "Whoever commits an act against nature with an individual of the same sex will be liable to one to five years imprisonment and to a fine of 100,000 (U.S.$159.19) to 1,500.000 CFA francs (U.S.$2,387.81). If this act was committed with a minor under the age of 21 years, the maximum sentence will apply."[242]

5. Corruption of a Minor

The habitual corruption of a minor of either sex under the age of 21 years will be punished. If this corruption occurs only

occasionally, it will be punished only if the corrupted minor is under the age of 16 years.[243]

In addition, Law No. 06-99 of January 16, 1999 punishes pedophilia, and the holding of sexual meetings involving a minor. The amended Article 320 bis provides that "Any gesture, touch, caress, pornographic manipulation, or use of images or sounds for sexual purposes, that is practiced on a child of either sex under the age of 16, will constitute an act of pedophilia, and will carry a prison sentence of five to 10 years." If the offense has been committed by an older relative of the child, or by any person who exercises authority over the minor, the sentence will be increased.

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200. Social Security Code, and General Civil Service Statutes.
201. Plan National d'Action de la Femme, *supra* note 21.
202. Senegal Const., Art.17.
203. IXe Plan d'Orientation pour le Développement économique et Social, *supra* note 77, at 43.
204. *Id*.
205. *Id*.
206. Ministry of National Education.

207. PENAL CODE, Art. 320.
208. *Id.,* Art. 320 amended.
209. *Id.*
210. *Id*., Art. 320.
211. *Id*., Art. 320 amended.
212. *Id*., Art. 321.
213. *Id.*, Art. 346-349.
214. *Id.,* Art. 347.
215. *Id*., Art. 319.
216. Act No. 96-15 of August 28, 1966, which creates a new Article 295-1 of the Penal Code.
217. PENAL CODE, Art. 297 bis, amended.
218. DHS III, *supra* note 126, at 2.
219. PROGRAMME NATIONAL EN SANTÉ DE LA REPRODUCTION, *supra* note 75, at 5.
220. DHS III, *supra* note 126, at 61.
221. *Id*.
222. *Id*., at 31.
223. *Id*.
224. PROGRAMME NATIONAL EN SANTÉ DE LA REPRODUCTION, *supra* note 75, at 5.
225. *Id*., at 25.
226. PENAL CODE, Art. 299 bis, amended.
227. *Id*.
228. FAMILY CODE, Art. 111.
229. PENAL CODE, Art. 300.
230. DHS III, *supra* note 126, at 59.
231. *Id*.
232. *Id.*
233. ANALYSE DE LA SITUATION DE L'ENFANT ET DE LA FEMME, *supra* note 23, at 138.
234. *Id*.
235. *Id*.
236. Dakar's University Cheikh Anta Diop, Information obtained from the Dean's General Secretariat.
237. PENAL CODE, Art. 346.
238. *Id*., Art. 347.
239. *Id*., Art. 348.
240. *Id*., Art. 319, ¶ 1.
241. *Id*., Art. 319, ¶ 2.
242. *Id.,* Art. 319, ¶ 3.
243. *Id*., Art. 324