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Senegal

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or delict (civil wrongs). Such actions are subject to no financial limits. These courts also deal with most divorces and actions on the care of children.

The Court of Session, whose origins have already been described, is both an appeal court and a court where cases are heard for the first time. It consists of thirty-two judges, twenty-four of whom hear cases for the first time, either in the form of debates on the applicable law or evidential hearings on disputes over facts. Usually, they sit alone, but in some cases of delict, the facts and any award of damages are decided by a jury of twelve laypeople. These judges also hear divorce actions, typically when a large amount of property is at stake. The other eight judges deal mainly with appeals from the sheriff courts and the Court of Session and various tribunals. They sit in two groups of four, of whom three are a quorum. The First Division of this so-called Inner House is headed by the Lord President of the whole court; the Second Division by the Lord Justice-Clerk. The judges of a division also hear petitions for the exercise of the *nobile officium*—an exceptional power to provide a remedy, where none exists, to prevent a serious injustice. In recent years, the Court of Session has greatly developed the practice of judicial review, used when it is alleged that a public authority such as a government department, a tribunal, or a local council has exceeded or misused its powers. Under certain conditions, appeals may be taken from the Inner House of the Court of Session to the House of Lords in London. Though principally a legislative body, the House of Lords has an Appellate Committee, which consists of twelve Lords of Appeal and others who have held high judicial office. By convention, at least two of the former will have been judges in Scotland. There is thus a single final court of appeal in cases originating in Scotland, England and Wales, and Northern Ireland.

Criminal Courts

Jurisdiction in criminal cases is wholly within Scotland. At the lowest level, there are district courts, where the judge is usually a justice of the peace who is not qualified in law but will have received some tuition in his or her duties. The district court tries minor cases of theft, assault, and road traffic contraventions, and it can impose a sentence of up to sixty days of imprisonment. The sheriff courts also have criminal jurisdiction, with the sheriffs either sitting alone or, in serious cases, with a jury of fifteen. In such jury trials, the normal maximum sentence is three years of imprisonment. The High Court of Justiciary tries the gravest criminal cases, such as murder, culpable homicide, rape, and large-scale drug-trafficking. It is staffed by the judges of the Court of Session, always with a jury. Three of the same judges, usually presided over by one of the two most senior judges, form an appeal court from all lower criminal courts. As well as a

guilty or not-guilty verdict, a verdict of not proven may be returned, implying that although the prosecution had not discharged its burden of proof, the judge or jury was not satisfied that the accused was wholly innocent.

SPECIALIZED JUDICIAL BODIES

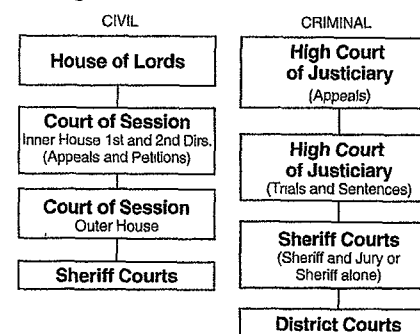
To reduce congestion in the courts, many thousands of cases are dealt with every year in specialized tribunals, sitting as required and usually chaired by a legally qualified individual and two lay members. They are on the lowest rung of a judicial ladder that stretches up to the House of Lords. Among the most used and formal are the employment tribunals, which deal with claims of unfair dismissal, racial and sex discrimination, redundancy payments, and so on. Other much-used tribunals deal with issues of social security, taxation, rents, and, under the title of children's hearings, the welfare of children, including child offenders and abused children.

STAFFING THE LEGAL PROFESSION AND THE JUDICIARY

Scotland has two legal professions, the memberships of which are mutually exclusive. Advocates belong to the Faculty of Advocates and have their own library and interview rooms beside the Court of Session and High Court in Edinburgh. They number about 400, and each practices on his or her own. The more senior advocates are awarded the title of Queen's Counsel. From their ranks, judges and some sheriffs are chosen. Their main role is to represent clients in the highest courts, civil and criminal, though they are entitled to appear in any court. But they also perform much unseen work in giving opinions on the prospects of success of a court action, the options available in a dispute, or the value of a claim, and indeed they may arbitrate in a dispute. Solicitors are much more numerous, between 8,000 and 9,000. Almost all solicitors practice in partnerships, and they can be found in all Scottish cities and towns. They must be members of the Law Society of Scotland and are subject to its authority in respect to qualifications and discipline. Some appear in the sheriff and district courts. But more are involved in the buying and selling of houses, offices, and farms; advising companies; distributing the estates of deceased people; and resolving family disputes. Since 1993, solicitors who have the requisite experience and have undergone a training course and passed examinations have been allowed to represent clients in the Court of Session and High Court, but this remains an unusual occurrence.

Nearly all advocates and solicitors are graduates in law of a Scottish university. Since 1980, that education has been followed by a year's training in the university, leading to a "Diploma in Legal Practice." The graduate is then employed in a solicitor's office, working under supervision on real cases; for trainee advocates, this experi-

Legal Structure of Scotland Courts



ence is followed by a further period of training with a practicing advocate. The Scottish Legal Aid Board provides the means for people with low incomes to receive advice and assistance on any matter of Scots law and to raise and defend meritorious court actions. Under less stringent conditions, defense lawyers can be provided for those charged with crimes and offenses.

By convention, judges of the supreme courts and the sheriffs who exercise the judicial role in the sheriff courts have long been nominated by the Lord Advocate for appointment to the bench by the monarch. However, this practice has been open to abuse, and indeed there have been cases of Lord Advocates appointing themselves to the bench. It has also seemed inappropriate that the person who is the head of the prosecution service should in any way be associated with the selection of the judges and sheriffs before whom his or her staff members appear. This criticism came to a head when a Lord Advocate was discovered to be determining the renewal of the appointment of temporary sheriffs each year. The Scottish executive now proposes the creation of a Judicial Appointments Board, chaired by a nonlawyer, to advertise vacancies, receive references, and hold interviews.

Judges and sheriffs hold office until the age of seventy; the former may have their appointments extended year by year to the age of seventy-five. The independence of judges and sheriffs is stressed, but they may be removed from office by a complex process on the grounds of "inability, neglect of duty or misbehavior." This procedure has only been used twice, both in respect to sheriffs.

IMPACT OF LAW

The rule of law is a foundation of the British way of life. Behavior contrary to law, even if not to the extent of being criminal, is condemned. The means by which law is made, principally through the UK and Scottish Parliaments, are well known, and government legislation that

was not promised in an election manifesto will be criticized on that ground. The use of law in an oppressive manner will be criticized, as well, and may even be struck down by a court.

Ian D. Willock

See also Civil Law; Criminal Law; United Kingdom

References and further reading

Ashton, Christina, and Valerie Finch. 2000. *Constitutional Law in Scotland*. Edinburgh: W. Green.

Deans, Mungo. 1995. *Scots Public Law*. Edinburgh: T and T Clark.

Page, A., C. Reid, and A. Ross. 1999. *A Guide to the Scotland Act 1998*. Edinburgh: Butterworths.

Paterson, A. A., T. St. J. N. Bates, and M. R. Poustie. 1999. *The Legal System of Scotland: Cases and Materials*. 4th ed. Edinburgh: W. Green.

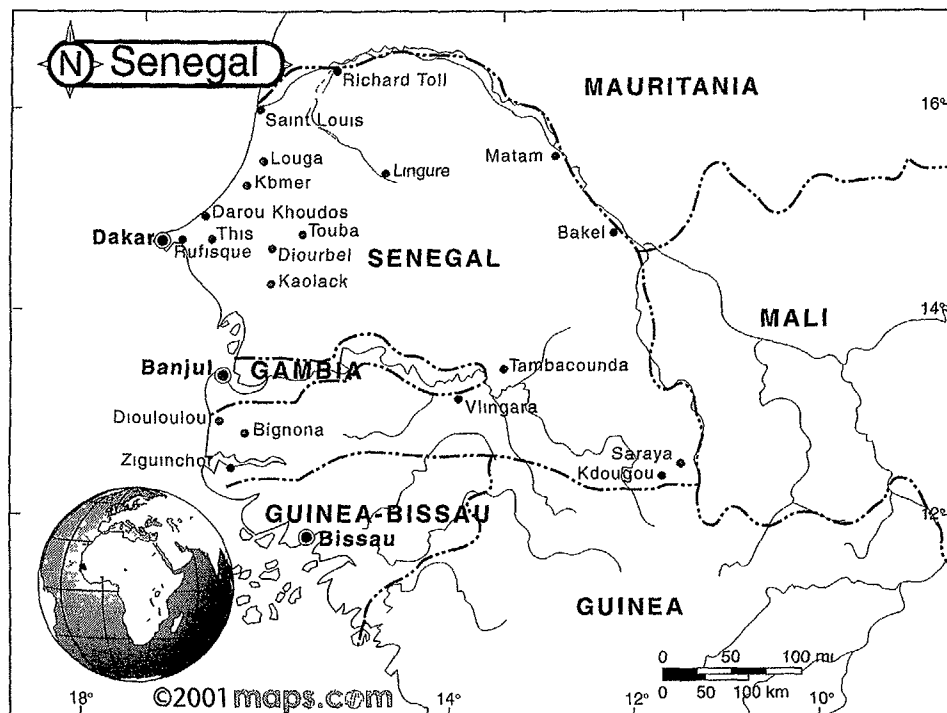
Walker, David M. 2001. *The Scottish Legal System*. 8th ed. Edinburgh: W. Green.

White, Robin M., and Ian D. Willock. 1999. *The Scottish Legal System*. 2d ed. Edinburgh: Butterworths.

SENEGAL

GENERAL INFORMATION

Senegal is located at the western tip of Africa on the Atlantic coast. It has a surface area of 196,712 square kilometers. Senegal is bordered by Mauritania to the north, Mali to the east, Guinea Bissau and Guinea to the south, and the Atlantic Ocean to the west. The Gambia is a narrow enclave in the southern half of the country. It has a tropical subdesert climate, with a wet season (*hivernage*) from July to September and a long dry season. The country is flat, the only high ground being the dunes and hills on the border with Guinea. Although Senegal is desert-like in the north and the east (the Sahel), the south (the Casamance) is endowed with luxuriant vegetation. The country is split into ten administrative regions, corresponding roughly to the natural economic regions. There is no direct relation between regions and ethnicities, although some regions are dominated by a specific ethnic group (like the Diola in the southern region of Ziguinchor). In 1999 the population was estimated at 10.5 million. Two-thirds of the people live in rural areas, the majority being concentrated toward the west, near the coast. The country welcomes various ethnic groups. The main group remains the Wolofs (36 percent of the population), which share many similar cultural values with the other ethnic groups, including the Fulani and Toucouleur, Serer, Diola, and Mandingo. The most important non-Africans in Senegal are Europeans (mainly French) and Lebanese. Although the official language is French, which is dominant in government, commerce, and mass media, the constitution recognizes six indigenous languages as national languages. Islam is the chief religion, comprising



92 percent of the population. Roughly 2 percent are Christians—most of them Roman Catholics—and the remainder adhere to indigenous religions. The population is overwhelming young, 47 percent being under fifteen years of age. Agriculture (in particular nuts, rice, millet, and cotton) and fishing, and secondarily tourism, are the main resources of Senegal. As a result of a deep crisis in agriculture, there is an unstoppable move away from the countryside to the capital, Dakar. At present one out of five Senegalese lives in Dakar or its suburbs. Although the bulk of modern infrastructure is found in the capital, the city is unable to offer jobs in the formal sector to a large proportion of its residents, so that more than half of the active population works in the informal sector. The unemployment rate is estimated at 22 percent.

HISTORY

Megalithic stone circles and prehistoric potsherds and skeletons spread over the countryside indicate that the area has been inhabited for more than one thousand years. The first political entity is the Tekrour kingdom in the northern part of Senegal, which can be traced back to

the ninth century C.E. In the fourteenth century, a variety of small kingdoms united and became the Dyolof kingdom, which paid tribute to the Mali Empire. The Dyolof kingdom lasted until the sixteenth century, when the constituent parts of the kingdom attained independence. In the following centuries this process of small entities uniting and splitting up continued. At the local level, people enjoyed a high degree of administrative autonomy. Political and religious power and the administration of justice were in the hands of the local kings, assisted by councils of elders and characterized by a system of checks and balances, including the possibility of deposing the king. The development of the local legal system in the area was the result of the interaction between indigenous and Islamic rules, for Islamic teachers and clerics traveled to the courts of the Wolof rulers, where they served as advisers.

The first Portuguese trading posts on the Senegalese coast were created in the fifteenth century, and from the beginning of the sixteenth century merchants from England, Holland, and France tried to establish their influence. In the mid-nineteenth century, Senegal became a

permanent possession of France, which instituted a government that included representative and judiciary councils. Only in 1920 did Senegal become a political entity, when the colony and the protectorate of Senegal were joined under a single, uniform French administration. The country became an autonomous republic in 1958, still under the umbrella of France, and a year later it came together with the French Sudan (now known as Mali) to make up the Mali Federation. After the federation broke up in 1960, Senegal became an independent republic and installed Léopold Sédar Senghor as its first president.

The history of the Senegalese legal system is highly influenced by French colonial policy, which was guided by the theory of assimilation: the total integration of the Senegalese people into the French nation. This required an administrative and political system similar to the French one and the promotion of the Senegalese to French citizenship. In reality, however, the Senegalese colony was divided in two parts: the four communes (Dakar, Rufisque, Gorée, and Saint-Louis) and the protectorate. In the communes, the assimilation policy was applied. Persons born there were granted the civil rights of French citizens and ruled by French civil and penal codes. The court system for both civil and criminal matters resembled the French, with a court of appeal in Dakar and a court of cassation in Paris. In the nineteenth and early twentieth centuries, Islam became a vehicle for conveying cultural resistance to the French policy of assimilation in the communes. Muslim citizens called for the institution of Islamic courts of justice and emphasized an Islamic way of life, in particular Islamic personal law. A representative general council was created in the four communes, which had the right to elect a deputy to the French parliament. The first black African deputy to France's National Assembly, Blaise Diagne, was elected in 1914.

The rest of the country, by far its largest portion, was a protectorate under military administration. Although the inhabitants of the protectorate had French nationality, they were considered subjects (*sujets*) to the system of *indigénat*. They had no right to vote, were obliged to perform forced labor, and were entirely at the mercy of French colonial civil servants. The customary courts created for subjects had a very limited jurisdiction; most cases had to be submitted to courts presided over by the French.

In 1946, in the aftermath of World War II, the distinction between citizens and subjects was eliminated, universal suffrage was introduced, and all Senegalese, both in the protectorate and the communes, were placed under the French colonial law system.

At independence, in 1960, Senegal inherited the French civil law system. The civil, commercial, and criminal codes adopted in the first years after independence were to a great extent imitations of French codes. The

first Senegalese constitution, too, was oriented to the example of the constitution of the French Fifth Republic. The constitution provided for a president and a prime minister. The first president, Senghor, was clearly superior to the first prime minister, Mamadou Dia. As the result of a power struggle between these two politicians, the constitution was changed, in 1963, to create a pure presidential system. In 1970, a referendum sanctioned the constitutional reintroduction of the office of prime minister, whose role, nevertheless, was more modest than that stipulated in the 1960 constitution. Nominated by the president, the prime minister could be recalled either by parliament or by the president. The president also maintained some central areas of policy as his own competencies, such as foreign affairs and the formulation of his party's program. Under President Senghor, the ruling party, the Union Progressiste Sénégalaise (UPS), tended to behave as the sole party in fact. In 1976 the constitution was amended to establish a controlled multiparty system limited to three parties. These parties were supposed to represent three ideological currents: liberal democratic, the position claimed by the UPS, which became the Socialist Party; social-democratic, the line that the Parti Démocratique Sénégalais of Abdoulaye Wade was more or less forced to choose; and Marxist-Leninist, under which label the long-prohibited Parti Africain de l'Indépendance regained legal recognition. After Senghor's voluntary retreat from the presidency in 1980, his prime minister and nominated successor, Abdou Diouf, introduced on April 24, 1981, an integrated multiparty system without ideological restrictions. Only parties based on regional, ethnic, or religious cleavages were banned.

The first elections under this full-fledged multiparty system were held in 1983. Diouf entered the campaign in a weak political position. The opposition as a whole, and his principal rival, Wade, in particular, contested the legitimacy of his claim to power. An unprecedented economic crisis was exacerbated by the vicious effects of structural adjustment programs; high unemployment among people with skills and education, and increasing poverty in the cities as well as the countryside, fueled social discontent and Casamance separatist movements. Despite these circumstances, Diouf won the presidential elections, and his Socialist Party won the general election. They again won the elections in 1988, although carrying lower proportions of the vote. The opposition exacerbated the tense political situation by accusing the incumbents of electoral fraud and alleging other serious irregularities; for example, polling booths, which help maintain the secrecy of balloting, were not obligatory. Paradoxically, it was the leader of the opposition, Wade, who emerged from the elections with increased status. The volatile postelectoral climate exploded in riots under the

slogan *sopi* (change). Wade was arrested and charged with responsibility for the violence. In order to defuse the tension, a roundtable conference was organized, including representatives of the regime and the opposition, and one opposition member of the opposition—contrary to every expectation, Abdoulaye Wade—accepted a post in the government. Nevertheless, the presidential elections of February 1993 brought a repeat performance: electoral fraud, violence, the arrest of opposition leaders who then joined the government after their release. Regional, municipal, and rural elections took place in November 1996, and the Socialist Party, which had been thought weakened, won easily. Similarly, the general election of May 1998 was won by the ruling party, which took 93 out of 140 seats. A total of 11 parties were represented in the new National Assembly, but once again the opposition challenged the results of the balloting, calling unsuccessfully them to be declared invalid. In response, the majority of the opposition parties boycotted the 1999 elections for the newly created Senate.

Despite a number of protests relating to the preparations, the 2000 presidential elections passed calmly. In the first round, President Diouf did not receive a majority of the vote and was forced to enter into a runoff with his eternal rival, Abdoulaye Wade. In the runoff, held on March 19, the support of several candidates who had been eliminated in the first round contributed to the election of Wade as president of the republic. For the first time since independence, through the efforts of a coalition called the Alternation Front (FAL), Senegal enjoyed a democratic transfer of power. President Wade appointed a former Socialist Party leader as prime minister and formed a government including all the parties that had supported him during the elections. He made arrangements for a referendum on a new constitution designed to provide the institutional tools required to effect the changes, the *sopi*, that had been promised to the people of Senegal. In January 2001, the new constitution was approved by the citizenry, winning endorsement on 92.5 percent of ballots; 66 percent of eligible voters cast votes. The new constitution does away with the Senate and the Economic and Social Council, established by the 1963 constitution. It also gives the president the means to dissolve the National Assembly, which he did almost immediately. As a result, after the legislative elections in April 2001, the PDS was represented in the National Assembly by 89 deputies (out of 120).

LEGAL CONCEPTS

The supreme law of Senegal is found in its constitution, which through its several revisions has always emphasized the principle of separation of powers. The principles on which the constitution rests are set forth in a preamble and in the first few articles, in which Senegal confirms its

commitment to fundamental rights as defined in the 1789 Declaration of the Rights of Man and of the Citizen and in the 1948 Universal Declaration of Human Rights. Notwithstanding the protests that have followed every election, political life in Senegal is more peaceable than it is in the majority of African countries, and infringements of human rights are rare. Nevertheless, since 1980 the war between the Senegalese army and the separatists of the Casamance Movement of Democratic Forces (MFDC) has resulted in numerous violations of human rights from various quarters, violations denounced regularly by Amnesty International.

The constitution enshrines the right to form political parties and trade unions as well as the right to strike. Of the fifty-seven political parties officially registered in October 2000, fifteen stand out as entering into more or less stable political alliances according to their strategy for acquiring power. Several sector-based unions represent individual trades, and confederations of trade unions have a major influence on political and social life. Senegal is thus one of the few French-speaking African countries with a dynamic civil society.

Freedom of expression, freedom of the press, and the right of access to information are constitutionally guaranteed. For a long time, the government controlled the national television and radio stations and an official newspaper, *Le Soleil*. After the liberalization of the press two new independent daily newspapers appeared, publishing in French, like all other printed media (more than twenty publications, including a serial weekly). Alongside government radio, various private radio stations are on the air, some of them regularly broadcasting programs in the local languages. With respect to the electronic media, the High Council for Radio and Television acts as a supervisory body. The media in Senegal represent fairly well the political spectrum there. In January 2001, the government announced its intention to put an end to the state monopoly in television broadcasting by sanctioning the introduction of commercial channels.

The first article of the constitution confirms the secular character of the republic, an important statement in a country where Islamic brotherhoods often claim to have political ambitions. The religious authorities used to order their followers to vote for the PDS by pronouncing a *ndigal*, or religious instruction. The last major political *ndigal* was pronounced at the time of the 1988 elections. During the 1980s and 1990s, the Senegalese state integrated the Islamic reform and opposition movements into the political mix of the country so as to counter radical policies directed against its secular orientation. For example, the family code was revised several times without the inclusion of a greater consideration of Islamic law, and the Islamic law courts lost their jurisdictional functions.

GOVERNMENT

The president of the republic is head of the executive branch and is elected directly on the basis of universal suffrage. The elections consist of two rounds and are for a term of office of five years. A person may serve as president for a maximum of two terms. The president is the guardian of the constitution. He is responsible for the smooth running of state institutions and for the protection of national independence and territorial integrity. He determines the nation's foreign and domestic policies. He appoints the prime minister, who is the head of the government. The president of the republic can, after consultation with the prime minister and the president of the National Assembly, dissolve the National Assembly and call for new elections.

The government, under the direction of the prime minister and composed of the prime minister and the cabinet, runs and coordinates the nation's policies. It is responsible to the president of the republic and to the National Assembly.

Legislative power is invested in the National Assembly, which has sole voting responsibility for the law. Members of the National Assembly are elected directly on the basis of universal suffrage for a term of office of five years. This term of office can only be terminated by dissolution of the assembly. The National Assembly can request to hear the prime minister and other members of the government at any time in plenary session or in committee. It can also bring about the resignation of the government by passing a motion of censure. The assembly can be dissolved by the president of the republic, but not during the first two years of its term.

The Constitutional Council hears matters relating to the constitutionality of laws and international agreements, conflicts in questions of competence between the executive and the legislature, conflicts in questions of competence between the Council of State and the Court of Cassation, as well as claims of unconstitutionality submitted to the Council of State or the Court of Cassation. It has five members: a president, a vice president, and three judges. The term of office is six years, and terms are staggered so that new appointments to the council by the president are possible every two years.

The Electoral Law of 1992, the result of several months of negotiations involving most of the main political parties, was the first such law to be accepted by all parties since the introduction of a multiparty system. The Court of Appeals, which until 1993 was in charge of ensuring the legality of electoral operations, was replaced in 1997 by the Observatoire National des Elections (ONEL). In 1991, the position of political mediator was created to arbitrate between society and the state.

Like other African states, at independence Senegal inherited from its colonial government a highly centralized

administrative system. Policies of national and regional development as well as administrative reforms have been implemented in order to bring the state closer to its citizens and to encourage local democracy. In 1960, the thirty existing municipalities (*communes*) became districts in their own right with full self-government. On June 30, 1966, an act was passed introducing a local administrative code. Five days later, the financial arrangements for local communities (*collectivités locales*) were fixed by decree. An act passed in April 1972 increased the number of districts to thirty-seven and established local communities in rural areas. In February 1983, Dakar was created as an urban community. In October 1992, the rural districts and communities were granted financial autonomy and legal capacity and eleven additional districts were created.

A policy of regionalization was introduced in April 1992. Regions and departments acquired the status of territorial communities with increased jurisdiction. Act 96-07, passed in March 1996, has regulated this decentralizing process of transferring competences to the regions, districts, and rural communities. Since the local elections of November 1996, Senegal has had 400 territorial communities administered by 24,000 councillors. The local representatives of the state provide supervision at each level of territorial administration. After the transfer of political power in early 2000, President Wade announced important decentralization reforms (among other things, the creation of thirty-five provinces with new borders and names to replace the existing ten regions) to be worked out by the new National Assembly, elected in April 2001. He also postponed the elections of the rural communities, which had been expected in November 2001.

JUDICIARY

The judiciary is independent from the legislative and executive branches. It consists of the Constitutional Council, the Council of State, the Court of Cassation, the Court of Audit, and the courts and tribunals. The constitution also provides for a High Court of Justice, to which the members of the executive are answerable for their actions.

Staffing

Senegal has approximately 350 judges and prosecutors, 250 barristers registered at the bar association, 27 notaries, and 30 process servers (bailiffs).

The training of lawyers in Senegal begins at the law faculties of the two universities, Cheikh Anta Diop in Dakar and Gaston Berger in Saint-Louis. Legal education at Cheikh Anta Diop, the oldest university in francophone Africa, is strongly oriented toward positive law, based on the French legal tradition. The law curriculum at Gaston Berger, established in 1989, also covers legal anthropology. In addition to the law faculties there are two specialized

Structure of Senegalese Courts

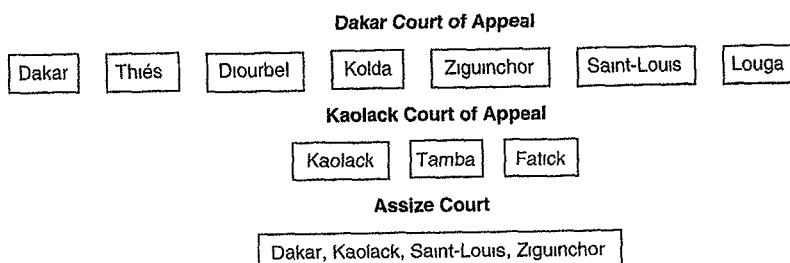
The legal institutions of Senegal: Schematic representations

A. Classification according to kind (sovereign, ordinary, or specialized)

SOVEREIGN COURTS

Court of Cassation Institutional Act 92-25 of 30 May 1992	Court of Audit Institutional Act 99-70 of 21 February 1999	Constitutional Council Institutional Act 92-23 of 30 May 1992	Council of State Institutional Act 96-30 of 21 October 1996
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ORDINARY COURTS



Legend
 Courts of second instance Courts of Appeal
 Courts of first instance Departmental Court

SPECIALIZED COURTS

Industrial Relations Tribunal Act of 1 December 1997	Juvenile Court Part I of Book IV of the Civil Procedure Code	Military Court Act 94-44 of 27 May 1994	High Court of Justice	Court for the Repression of Illicit Enrichment Act 81-54 of 10 July 1981
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B. Classification of the Senegalese courts according to type of jurisdiction

Duality of type of jurisdiction	Administrative	Constitutional Council	Court of Audit	Judiciary
	Court of Cassation: Supreme Court			Council of State: Supreme Court

Unity of type of jurisdiction	Court of Appeal: Court of second instance
	Regional Court: Court of first instance (and of second instance in exceptional circumstances)
	Departmental Court: Court of first instance (for some matters only)

Legend:
 Dual jurisdiction at top level
 Unified jurisdiction at base
 Sovereign courts that are difficult to classify according to type of jurisdiction

Structure of Senegalese Courts (continued)

C. Classification of the courts according to geographical jurisdiction

NATIONAL LEVEL

Court of Cassation Institutional Act 92-25 of 30 May 1992	Court of Audit Institutional Act 99-70 of 21 February 1999	Constitutional Council Institutional Act 92-23 of 30 May 1992	Council of State Institutional Act 96-30 of 21 October 1996	High Court of Justice
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MULTIREGIONAL LEVEL

Dakar Court of Appeal	Assize Court	Kaolack Court of Appeal
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REGIONAL LEVEL

(Administrative Region): The various regional courts

DEPARTMENTAL LEVEL

(Department): The various departmental courts

D. Classification of the courts according to instance

SECOND INSTANCE	Court of Appeal	Specialized Regional Court
FIRST INSTANCE	Departmental Court	Regional Court

E. Alternative methods provided by the justice system for settling disputes

Forms	Institutional framework	Legal framework
Arbitration	Common court of justice and arbitration of OHADA	c.f. Section 10 of OHADA Convention
	Dakar Arbitration Division	Dakar Arbitration Division
Bodies designed to improve access to justice system	Law centers	c.f. decree 99-1124
	Criminal mediator	c.f. Section 451 of the new Criminal Procedure Code
	Conciliator	c.f. Section 22 of decree 99-1124
Quasi-judicial bodies	Competition Commission, Order of Advocates, Order of Medical Experts, National Election Observer, National Ombudsman	

law schools, the National Administration School (École Nationale d'Administration, or ENA) for the training of civil servants and the Center for Legal Training (Centre de Formation Judiciaire, or CFJ) for the training of judges, prosecutors, and clerks. Both institutions offer two levels of training, the lower open to students with a bachelor's degree and the higher to students with a master's degree. A further option for legal education will soon

be available in Porto Novo, Benin, where a regional law school, the Ecole Régionale Supérieure de Magistrature, is to be established for students from twelve francophone African countries, including Senegal. The regional school will train judges and prosecutors as well as offer specialized training in business law.

According to Act 92-26 of May 30, 1992, the career perspectives of both judges and public prosecutors are the

exclusive responsibility of a special council, the Conseil Supérieur de la Magistrature, to which four members of the magistracy are elected and four members are appointed ex officio. The council is chaired by the president of the republic (or the minister of justice). Candidates for council seats must participate in a competitive examination. Lawyers who possess at least ten years' professional experience may, in exceptional cases, be nominated without taking the examination. Judges and prosecutors are appointed by the president of the republic, but only on the advice of the Conseil Supérieur. That same council acts as a court of judicial discipline in cases of alleged professional misconduct of judges and public prosecutors, and the decisions of the council cannot be appealed.

Although in principle the constitution and the law guarantee the tenure of office for judges, the reality is somewhat different. The minister of justice has the right to transfer a judge "if necessary for the public service." In such a case he makes a proposal to the council, which has only the right to fix a maximum period for the transfer. Moreover, Senegalese judges are, with very few exceptions, appointed on an interim basis and so do not enjoy tenure of office. The reason given for this situation is that the shortage of judges in Senegal means that most of them cannot be appointed according to their rank. Indeed, in most departmental courts, one judge combines the functions of president of the court, examining magistrate, and public prosecutor.

The profession of barrister is organized according to Act 84-09 of January 4, 1984. Before being admitted to the profession, a lawyer must be a trainee in a law firm for three years.

Structure

The judiciary in Senegal comprises courts of first instance, courts of second instance, specialized courts, and courts from which no decision may be appealed (sovereign courts).

The courts of first instance include the departmental, regional, and assize courts. The departmental courts are located in the principal towns of the departments and have authority over their respective departments. They are competent in civil and commercial as well as criminal matters. In the civil and commercial sphere, these courts adjudicate cases concerning movable property and real estate, landlord-tenant disputes, and the legal capacity of persons.

In personal matters or matters concerning movable property, the departmental courts are competent at first instance without appeal when cases involve amounts not in excess of 200,000 francs and are competent at first instance with the possibility of appeal if the matter does not exceed 1,000,000 francs. In residential tendency cases, the departmental courts are competent at first instance

without appeal if the rent is not in excess of 25,000 francs and competent at first instance with the possibility of appeal if the rent is at least 25,000 francs and less than 50,000 francs. In criminal cases, the departmental courts have exclusive competence with respect to petty offenses listed in Section 2 of Act 84-20, and are known as police courts.

There is a regional court in each of the ten regions of Senegal. The members of the court act either as judges or as prosecutors. The regional court is competent at first instance and in appeal proceedings. In civil and commercial matters at first instance, the regional courts are the ordinary courts for lesser indictable offenses. In administrative matters, the regional courts deal with all fiscal proceedings with the exception of applications for judicial review and appeals relating to elections. In appeal proceedings, the regional tribunals deal with all decisions from departmental courts at first instance.

Four assize courts, in Dakar, Kaolack, Saint-Louis, and Ziguinchor, meet in session every four months. Each court consists of three professional judges and four juries.

There are two courts of second instance (courts of appeal), even though the new Section 25 of Decree 84-1194 provides for the creation of four, in Dakar, Kaolack, Saint-Louis, and Ziguinchor. In 1999, there was only the court of appeal, in Dakar, competent for the whole of Senegal. Since that time, a second court of appeal has been established, in Kaolack.

The court of appeal of Dakar consists of seven chambers: two civil and commercial chambers, two social chambers, two criminal chambers, and one chamber of indictment. The court of appeal of Kaolack has four chambers. Pending the establishment of other chambers of indictment, the one at Dakar is competent to hear proceedings for its own district as well as those of Saint-Louis and of Ziguinchor. The courts of appeal hear appeals of decisions issued by regional courts and, in exceptional circumstances, departmental courts (in criminal matters and matters relating to lesser indictable offenses). Also, in exceptional circumstances the courts of appeal are competent to hear electoral matters.

Senegal's specialized courts include an industrial relations tribunal, which is competent to hear such matters as individual proceedings involving employees and employers relating to the performance of employment contracts, apprenticeship contracts, collective agreements, and arrangements relating to working conditions, health, and social security. Juvenile courts deal with criminal offenses committed by minors (Part 2, Book 3, of the criminal procedure code), and there are specialized courts treating criminal offenses committed by military personnel (Act 94-44 of May 27, 1994, relating to the military justice code). The High Court of Justice is the ultimate court for political matters. A specialized court for the

repression of illicit enrichment, founded by Act 81-54 of October 7, 1981, is responsible for hearing cases involving corruption among government officials, such as the concealment and handling of stolen goods.

Upon gaining independence, Senegal established an unusual institution within a French-oriented legal system: the Supreme Court. This court was abolished in 1992 by Act 92-22. Acts concerning two sovereign courts, the Constitutional Council and the Court of Cassation, were adapted in the same year. In 1996, the act concerning the Council of State was also modified. A fourth sovereign court, the Court of Audit, was established in 1999.

The Constitutional Council was modified by Act 92-23 of May 30, 1992. It consists of five members, each elected for a single term of five years, and serves various judicial and nonjudicial functions. The council issues recommendations when the president of the republic wishes to submit new laws for a referendum, receives notifications of candidacy for the presidency of the republic, and installs the president of the republic and receives notice of his resignation. It approves or denies calls for general elections and presidential elections, and it rules on the constitutionality of laws and international engagements.

The Council of State was established by Act 96-30 of October 21, 1996. It is made up of a president, two section presidents, and four judges and auxiliary judges. Act 99-72 of February 17, 1999, provided for the appointment by decree of a law officer. The Council of State acts as a trial and appeals court when deciding applications for judicial review, the legality of actions of local communities, and electoral matters. It acts as a court of cassation when deciding on appeals against decisions of tribunals and courts in administrative matters, as well as appeals against decisions of the Court of Audit and of administrative bodies.

The Court of Cassation was established by Act 92-25, as amended on May 30, 1992. It consists of two types of legal officers, judges and prosecutors, as well as nonlegal members, including the chief registrar and associate judges. It has two major divisions, nonjudicial and judicial. The nonjudicial division consists of the Council of the Court of Cassation (made up of the president of the court, the principal state prosecutor, the presidents of the chambers, and the chief solicitor general) and the general assembly (made up of all the members of the Court of Cassation). It can engage in preliminary deliberations before the establishment of rules of procedure, and it is competent to deal with all issues brought before it by the president of the court. The judicial division consists of three chambers: criminal, civil and commercial, and social. When, after a first decision has been set aside, the same case involving the same parties is heard by the court, all three chambers meet to decide the case anew.

The mission of the Court of Cassation is threefold.

First, it decides on appeals on points of law against all decisions given in last instance, subject to the competences of the Council of State and with the exception of the decisions of the Court of Audit challenged in hearings conducted by the Council of State. Nevertheless, since the Organization for the Harmonization in Africa of Business Law (OHADA) convention came into effect in 1993, the Court of Cassation has lost some areas of jurisdiction; the Common Court of Justice and Arbitration, a community court, hears appeals against decisions given in last instance by the courts of the member states in all matters relating to questions associated with the implementation of OHADA decisions.

Second, the Court of Cassation generally does not reconsider the facts of a case but rules solely on the formal correctness of the lower court's decision. In exceptional circumstances, however, the Court of Cassation acts as a trial and appeals court for serious crimes or lesser indictable offenses committed by a legal officer. This function constitutes the second part of the court's mission. If the act is a serious crime, the chambers decide in joint session, and if the act under scrutiny is a lesser indictable offense, the criminal chamber decides alone.

Third, the Court of Cassation acts as the regulatory body for the judicial system to the extent that it is competent to deal with applications for retrial transferred from one court to another on grounds of bias, public security, the settlement of conflicts of jurisdiction between other courts, and actions for damages against a judge for a misuse of authority.

The Court of Audit was added to the legal system by Act 99-02 of January 29, 1999. The court has various organizational arrangements: the solemn plenary hearing, the full court hearing, the Court of Discipline, and the chambers. The commission for the auditing of accounts and supervision of institutions has become a chamber of the Court of Audit.

The Court of Audit carries out judicial audits of the conformity and truthfulness of receipts and expenditures described in public accounts, assesses the records of public accountants and persons whom it declares to be de facto accountants, passes judgment on faults of management, and imposes appropriate fines. The court also exercises nonjudicial supervision by auditing fund credits and securities managed by state bodies, public authorities, and public establishments; auditing the accounts and management of public sector enterprises; and ensuring that the state and its representatives are acting in accordance with the regulations of social security institutions.

IMPACT

Although officially legislation is the only source of law, the reality in Senegal (and in general in Africa) is a situation of legal pluralism in which statutory law, local law,

and Islamic law are simultaneously applicable. In spite of an avalanche of postindependence state laws, most Senegalese, both in urban and in rural areas, continue to defer to local (or customary) law and Islamic law. Examples are plentiful, especially in family and probate law but also in criminal law, of the distance between the law on the books and the living law. The great majority of legal conflicts (commercial, civil, and criminal) are handled by an imam or village chief. Thus, in spite of the abolition of the colonial dual legal system, local legal norms still apply in the daily life of Senegalese. Apparently, Senegalese statutory law embodied in codes derived from French positive law is not able to address the needs of the population in virtually all realms of life. The ways in which conflicts are mediated at the local level are not based on the formal application of rules and laws but rather are found in negotiations between the parties in a legal conflict.

In order to increase access to the justice system, law centers, criminal mediators, and conciliators have been introduced. Law centers, established by decree 99-1124, fulfill five functions: provision of assistance (public counseling and information), handling of disputes and certain offenses, prevention of offenses, coordination, and counseling for people in legal difficulty. The centers were created by order of the Minister of Justice. The authority of the criminal mediators is based on authorization by the General Assembly of the Court; in urgent cases, however, provisional authority may be conferred by the public prosecutor. The role of these mediators is to look for a freely negotiated solution for the parties when there is an offense. Only the public prosecutor and the court trying a case can order the intervention of a criminal mediator. Section 22 of decree 99-1124 states that conciliators who deal with disputes should take the initiative to propose solutions. Their authority to assist parties in reaching an agreement derives from the court.

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See also Alternative Dispute Resolution; Civil Law; Constitutional Review; Customary Law; Islamic Law; Judicial Independence; Judicial Misconduct/Judicial Discipline; Legal Pluralism; Magistrates—Civil Law Systems; Mediation References and further reading

Beck, L. 1997. "Senegal's Patrimonial Democrats: Incremental Reform and Obstacles to the Consolidation of Democracy." *Canadian Journal of African Studies* 31, 1-31.

Bendel, Brenda. 1999. "Senegal." Pp. 756-774 in *Elections in Africa. A Data Handbook* Edited by D. Nohlen, M. Krennrich, and B. Thibaud. Oxford: Oxford University Press.

Bourel, Pierre. 1981. *Le Droit de la famille au Sénégal* Paris: Economica.

Centre d'Etudes d'Afrique Noire (Bordeaux). <http://www.ccean.u-bordeaux.fr/etat/institutionnel/senegal.html> (accessed March 1, 2002).

Diop, Momar Coumba, ed. 1993. *Senegal: Essays in Statecraft*. Dakar: CODESRIA.

Hesselting, Gerti. 1985. *Histoire politique du Sénégal*. Paris: Karthala.

Le Roy, Etienne. 1994. "Le Code civil au Sénégal ou le vertige d'Icare." Pp. 290-330 in *La Réception des systèmes juridiques: Implantations et destins*. Edited by J. Vanderlinden. Brussels: Bruylant.

Loimeier, Roman. 2001. *Säkularer staat und islamische Gesellschaft in Senegal*. Hamburg: Lit Verlag.

Mbaye, Kéba. 1967. *Organisation judiciaire du Sénégal*. Paris: Penant.

Nelson, Harold D. 1974. *Area Handbook for Senegal*. Washington, DC: Foreign Area Studies.

Thiam, Cheikh Tidiane. 1993. *Droit public du Sénégal: L'état et le citoyen*. Dakar: Editions du CREDILA.

Touré, Moustapha. 1975. "Histoire de l'organisation judiciaire au Sénégal: L'unification des juridictions et l'unité de la justice." *Revue sénégalaise du droit*, no. 7.

Vanderlinden, Jacques. 1992. *Bibliographies internationales de la doctrine juridique africaine: Sénégal*. Moncton, NB: Université de Moncton.

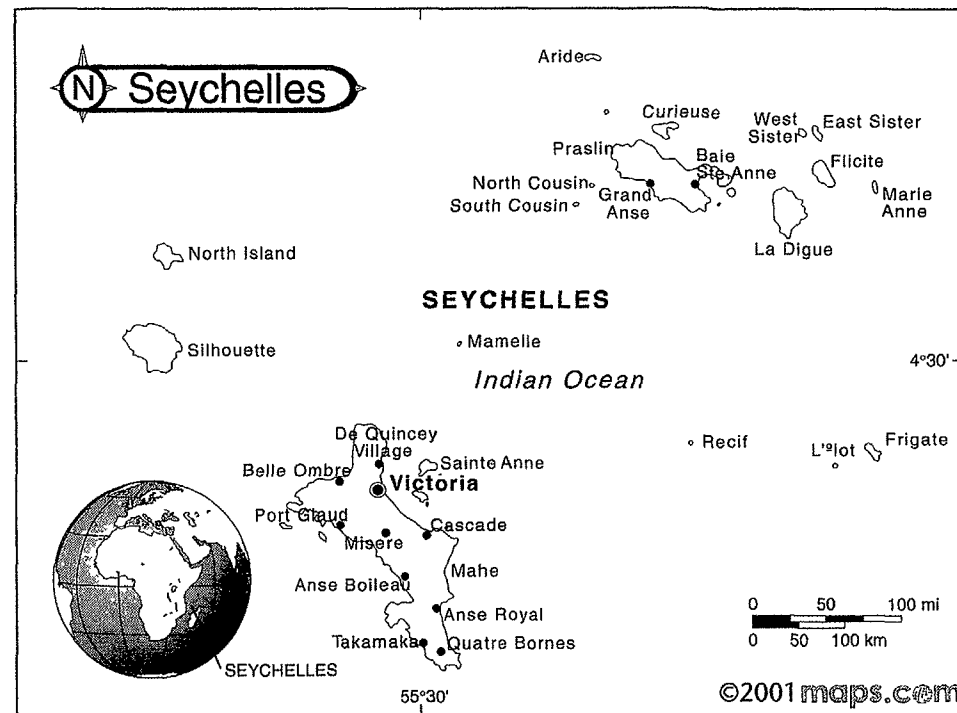
SEYCHELLES

COUNTRY INFORMATION

The Seychelles is one of the several island nations located in the Indian Ocean. The Indian Ocean consists of a vast region that encompasses an area of about 73.4 million square kilometers, roughly 14 percent of the earth's surface. Notably, the region played a prominent commercial role in East-West trade in the early times when colonial powers, mainly Britain and France, used its shores as trading posts and refueling stations en route to exploration/exploitation of colonies in the East before the construction of the Suez Canal in 1869.

The country of Seychelles is an island-grouped nation of 115 islands scattered over more than 1,374,000 square kilometers or 530,000 square miles in the southwest of the Indian Ocean. The actual landmass of the Seychelles' archipelagos is 445 square kilometers (172 square miles). The capital is Victoria, which also serves as its chief port located on the Mahé Island, the main and most habitable of the islands, of approximately 55 square miles holding roughly 80 percent of the population of that country. There are two main groups of islands that form the Seychelles. It has no borders with any nation and the southernmost islands are about 210 kilometers or 130 miles away from Madagascar. The climate of Seychelles is tropical but breezy with high humidity.

The people are mainly descendants of eighteenth-century French colonialists and freed African slaves. The Seychelles has a relatively homogeneous ethnic popula-



tion. The people consist of a mixture of African, Asian, and European descent. Three languages are spoken in Seychelles, namely Creole, English, and French. Education in the Seychelles is free and compulsory from kindergarten through ninth grade. There is no higher institution of learning at the university level in the island nation. Overall, the country claims an estimated literacy rate of 85 percent among adults age fifteen and above, according to a 1991 estimate and report. The government also provides free health service to all citizens.

Seychelles' economy is relatively healthy but overreliance on tourism enhances its vulnerability to external shocks, as illustrated during the Gulf War in the early 1990s. The government in recent years has diversified the economy by increasing the revenues received from fishing rights and investing in the fish-processing sector with foreign joint partners in order to move the economy away from its heavy reliance on tourism. Manufacturing is showing the potential of surpassing tourism as the most important economic activity in the island nation. With an economic rebound and an estimated gross domestic product of \$590 million, as well as a real growth rate of

1.8 percent and an inflation rate of 3 percent for 1999, the economy is currently very sound.

HISTORY

Seychelles' history and its colonial legacy are intimately tied to its politics. Seychelles fashioned four constitutions in the first twenty-five years of its independence. Starting with democratic ideals, an internal self-government was granted in 1975. After independence and free elections in 1976, a military coup d'état in 1977 transformed the Seychelles into an authoritarian state dominated by military leaders, with a façade of civilian institutions, until it began its transition to democracy in the 1990s. The reinstitution of a multiparty system in 1992 and the eventual approval of a new constitution in a 1993 referendum (by a 74 percent popular vote) marked the return to democracy. Arguably, to understand Seychelles' history and politics is also to understand its struggles and, more importantly, its legal system. In spite of some gains made since independence in 1976 in the basic process of nation building and forging a civil society, the numerous coups and attempted coups during this period notwithstanding,